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WHEN: Tuesday, November 13, 2012
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1446]

RIN 7100 AD 93

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 2013. 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 2013 at 12.4 million (from $11.5 million in 2012). 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 (over the reserve requirement exemption amount) that is subject to a three percent reserve requirement in 2013 at $79.5 million (from $71.0 million in 2012). 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:* November 30, 2012.

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 27, 2012, and the corresponding fourteen-day reserve maintenance period that begins Thursday, December 27, 2012. 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 18, 2012, and the corresponding seven-day reserve maintenance period that begins Thursday, January 17, 2013. 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 2013.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202/452–3565), Legal Division, or Ezra A. Kidane, Financial Analyst (202/973–6161), 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 9.6 percent (from $5,455 billion to $5,978 billion) between June 30, 2011, and June 30, 2012. Accordingly, the Board is amending Regulation D to set the reserve requirement exemption amount for 2013 at $12.4 million, an increase of $0.9 million from its level in 2012.[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.

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

Net transaction accounts of all depository institutions increased 15.0 percent (from $1,190 billion to $1,368 billion) between June 30, 2011 and June 30, 2012. Accordingly, the Board is amending Regulation D to increase the low reserve tranche for net transaction accounts by $8.5 million, from $71.0 million for 2012 to $79.5 million for 2013.

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 27, 2012, and for the corresponding fourteen-day reserve maintenance period beginning Thursday, December 27, 2012. 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 18, 2012, and for the corresponding seven-day reserve maintenance period beginning Thursday, January 17, 2013.

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, 2011 to June 30, 2012, total transaction accounts, savings deposits, and small time deposits at all depository institutions increased 8.8 percent (from $8,174 billion to $8,890 billion). Accordingly, the Board is increasing the nonexempt deposit cutoff level by $19.0 million to $290.5 million for 2013 (from $271.5 million in 2012). The Board is also increasing the reduced reporting limit by $107 million to $1.628 billion in 2013 (from $1.521 billion for 2012).[2]

Beginning in 2013, the boundaries of the four deposit reporting panels will be defined as follows. Those depository institutions with net transaction accounts over $12.4 million (the reserve requirement exemption amount) or with total transaction accounts, savings deposits, and small time deposits greater than or equal to $1.628 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 $290.5 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 $290.5 million are required to file the FR 2900 report each quarter. Those depository institutions with net transaction accounts less than or equal to $12.4 million (the reserve requirement exemption amount) and with total transaction accounts, savings deposits, and small time deposits less than $1.628 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 $12.4 million (but with total transaction accounts, savings deposits, and small time deposits less than $1.628 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 $12.4 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

[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.

deposits, and Eurocurrency liabilities of the institution during the computation period.

Reservable liability	Reserve requirement
NET TRANSACTION ACCOUNTS:	
$0 to reserve requirement exemption amount ($12.4 million)	0 percent of amount.
Over reserve requirement exemption amount $12.4 million) and up to low reserve tranche ($79.5 million).	3 percent of amount.
Over low reserve tranche ($79.5 million)	$2,013,000 plus 10 percent of amount over $79.5 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Monetary Affairs under delegated authority.

Dated: October 24, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–26662 Filed 10–30–12; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1090

[Docket No. CFPB–2012–0040]

RIN 3170–AA30

Defining Larger Participants of the Consumer Debt Collection Market

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final rule.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) amends the regulation defining larger participants of certain consumer financial product and service markets by adding a new section to define larger participants of a market for consumer debt collection. The final rule thereby facilitates the supervision of nonbank covered persons active in that market. The Bureau is issuing the final rule pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act. That law grants the Bureau authority to supervise certain nonbank covered persons for compliance with Federal consumer financial law and for other purposes. The Bureau has the authority to supervise nonbank covered persons of all sizes in the residential mortgage, private education lending, and payday lending markets. In addition, the Bureau has the authority to supervise nonbank ''larger participant[s]'' of markets for other consumer financial products or services, as the Bureau defines by rule. An initial rule defining larger participants of a market for consumer reporting was published in the **Federal Register** on July 20, 2012 (Consumer Reporting Rule).

DATES: Effective January 2, 2013.

FOR FURTHER INFORMATION CONTACT: Kali Bracey, Senior Counsel, (202) 435–7141, or Susan Torzilli, Attorney-Advisor, (202) 435–7464, Office of Nonbank Supervision, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: On February 17, 2012, the Bureau published a notice of proposed rulemaking proposing to define larger participants of two markets identified by the Bureau: consumer reporting and consumer debt collection.[1] On July 20, 2012, the Bureau published the Consumer Reporting Rule.[2] The Bureau is issuing this final rule to define larger participants of a market for consumer debt collection (Final Consumer Debt Collection Rule). This Final Consumer Debt Collection Rule is the second in a series of rulemakings to define larger participants of markets for consumer financial products and services for purposes of 12 U.S.C. 5514(a)(1).

I. Overview

Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act)[3] established the Bureau on July 21, 2010. One of the Bureau's responsibilities under the Dodd-Frank Act is the supervision of certain nonbank covered persons,[4] and very large banks, thrifts, and credit unions and their affiliates.[5]

Under 12 U.S.C. 5514, the Bureau has supervisory authority over all nonbank covered persons offering or providing three enumerated types of consumer financial products or services: (1) Origination, brokerage, or servicing of residential mortgage loans secured by real estate, and related mortgage loan modification or foreclosure relief services; (2) private education loans; and (3) payday loans.[6] The Bureau also has supervisory authority over ''larger participant[s] of a market for other consumer financial products or services,'' as the Bureau defines by rule.[7] On July 20, 2012, the Bureau published in the **Federal Register** the Consumer Reporting Rule, which defined larger participants of a market for consumer reporting.[8] The Consumer Reporting Rule also established various procedures and standards that will apply with respect to all larger participants defined by rule, including those in the market for consumer debt collection that is defined in this Final Consumer Debt Collection Rule.

[1] 77 FR 9592 (Feb. 17, 2012).

[2] 77 FR 42874 (July 20, 2012).

[3] Public Law 111–203 (codified at 12 U.S.C. 5301 *et seq.*).

[4] The provisions of 12 U.S.C. 5514 apply to certain categories of covered persons, described in subsection (a)(1), and expressly exclude from coverage persons described in 12 U.S.C. 5515(a) or 5516(a). A ''covered person'' means ''(A) any person that engages in offering or providing a consumer financial product or service; and (B) any affiliate of a person described [in (A)] if such affiliate acts as a service provider to such person.'' 12 U.S.C. 5481(6); *see also* 12 U.S.C. 5481(5) (defining ''consumer financial product or service''). Under 12 U.S.C. 5514(d), subject to certain exceptions, ''to the extent that Federal law authorizes the Bureau and another Federal agency to * * * conduct examinations, or require reports from a person described in subsection (a)(1) under such law for purposes of assuring compliance with Federal consumer financial law and any regulations thereunder, the Bureau shall have the exclusive authority to * * * conduct examinations [and] require reports * * * with regard to a person described in (a)(1), subject to those provisions of law.''

[5] *See* 12 U.S.C. 5515(a). The Bureau also has certain authorities relating to the supervision of other banks, thrifts, and credit unions. *See* 12 U.S.C. 5516(c)(1), (e). The Bureau notes that one of the objectives of the Dodd-Frank Act is to ensure that ''Federal consumer financial law is enforced consistently without regard to the status of a person as a depository institution, in order to promote fair competition.'' 12 U.S.C. 5511(b)(4).

[6] 12 U.S.C. 5514(a)(1)(A), (D), (E).

[7] 12 U.S.C. 5514(a)(1)(B), (a)(2). The Bureau also has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity * * * to respond * * * is engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' 12 U.S.C. 5514(a)(1)(C). The Bureau has published a notice of proposed rulemaking to establish procedures relating to this provision of the Dodd-Frank Act. 77 FR 31226 (May 25, 2012).

[8] 77 FR 42874.

The Bureau is authorized to supervise nonbank entities subject to 12 U.S.C. 5514 of the Dodd-Frank Act by requiring the submission of reports and conducting examinations to: (1) Assess compliance with Federal consumer financial law; (2) obtain information about such persons' activities and compliance systems or procedures; and (3) detect and assess risks to consumers and consumer financial markets.[9] While the specifics of an examination may vary by market and entity, the supervision process generally proceeds as follows. Typically, Bureau examiners initiate an on-site examination by contacting the entity for an initial conference with management, and often by also requesting records and information. Bureau examiners also will review the components of the supervised entity's compliance management system. Based on these discussions and a preliminary review of the information received, examiners determine the scope of an on-site examination, and then coordinate with the entity to initiate the on-site portion of the examination. While on-site, examiners spend a period of time holding discussions with management about the company's processes and procedures; reviewing documents, records, and accounts for compliance; and evaluating the entity's compliance management systems. As with the Bureau's bank examinations, examinations of nonbanks involve issuing confidential examination reports, supervisory letters, and compliance ratings.

The Bureau has published a general examination manual describing the Bureau's supervisory approach and processes. This manual is available on the Bureau's Web site.[10] As explained in the examination manual, reports of examination will be structured to address various factors related to a supervised entity's compliance with Federal consumer financial law and other relevant considerations. On September 5, 2012, prior to beginning examinations of consumer reporting entities, the Bureau released examination procedures specific to consumer reporting.[11] In connection with this Final Debt Collection Rule, the Bureau is releasing examination procedures related to debt collection. This Final Consumer Debt Collection Rule establishes a category of covered persons that are subject to the Bureau's supervisory authority[12] under 12 U.S.C. 5514, by defining ''larger participants'' of a market for consumer debt collection.[13] The Final Consumer Debt Collection Rule pertains only to that purpose and does not impose new substantive consumer protection requirements. Nor does the Final Consumer Debt Collection Rule delineate the scope of the Fair Debt Collection Practices Act (FDCPA),[14] provisions of the Dodd-Frank Act related to consumer debt collection activities, or any other Federal consumer financial law. Activities that the Bureau has chosen to exclude from the defined consumer debt collection market may nonetheless qualify as ''collecting debt'' within the meaning of the Dodd-Frank Act and may constitute consumer financial products or services. Activities that the Bureau has excluded from this market may also be subject to the FDCPA. Nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority, and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.[15]

II. Background

On June 29, 2011, through a notice and request for comment (Notice), the Bureau solicited public comment on developing an initial proposed larger participant rule.[16] The Bureau also held a series of roundtable discussions with industry, consumer and civil rights groups, and State regulatory agencies and associations.[17] The Bureau considered the comments it received in connection with the Notice in developing a proposed rule to define larger participants of two markets for consumer financial products or services: consumer debt collection and consumer reporting. The Bureau published a notice of proposed rulemaking on February 17, 2012 (Proposed Rule or Proposal), that proposed definitions for larger participants of consumer reporting and consumer debt collection markets, as well as procedures and definitions that would be applicable for all current and future markets in which the Bureau will define larger participants.[18] The Bureau requested and received public comment on the Proposed Rule. The Bureau received 83 comments on the Proposed Rule from, among others, consumer groups, industry trade associations, companies, State financial services agencies, and individuals.[19] The comments pertaining to consumer debt collection are discussed in more detail below in the section-by-section analysis of the final rule.

On July 20, 2012, the Bureau published the Consumer Reporting Rule defining larger participants of a consumer reporting market.[20] The Consumer Reporting Rule established subpart A of 12 CFR part 1090 (12 CFR 1090.100–103), including general definitions, concepts, protocols, and procedures applicable to all larger participants of markets for consumer financial products or services. Section 1090.100 sets forth the scope and purpose of part 1090 as defining larger participants of certain markets for consumer financial products or services that are subject to supervision by the Bureau. Section 1090.101 defines terms that are generally applicable to Part 1090. Unless otherwise specified, the definitions in § 1090.101 should be used when interpreting terms in this Final

[9] 12 U.S.C. 5514(b)(1).

[10] *Available at http://www.consumerfinance.gov/guidance/supervision/manual/.*

[11] *See* Consumer Financial Protection Bureau, *Consumer Reporting Examination Procedures* (Sept. 5, 2012) *available at http://files.consumerfinance.gov/f/201209_cfpb_Consumer_Reporting_Examination_Procedures.pdf.* These procedures are an extension of the CFPB's general Supervisory and Examination Manual and provide guidance on how the Bureau will be conducting its monitoring in the consumer reporting market.

[12] The Bureau's supervision authority also extends to service providers of those covered persons that are subject to supervision under 12 U.S.C. 5514. 12 U.S.C. 5514(e); *see also* 12 U.S.C. 5481(26) (defining ''service provider'').

[13] The Final Consumer Debt Collection Rule describes one market for consumer financial products or services, which the rule labels ''consumer debt collection.'' The definition in the rule does not encompass all activities that could be considered consumer debt collection. Any reference herein to ''the consumer debt collection market'' means only the particular market for consumer debt collection identified by the Final Consumer Debt Collection Rule.

[14] The FDCPA is codified at 15 U.S.C. 1692 *et seq.*

[15] As the Bureau explained in the Consumer Reporting Rule, the Bureau may examine a covered person's consumer financial products and services, as well as any of its activities that are subject to Federal consumer financial law, beyond the particular activities that rendered the person subject to supervision. Thus, the Bureau may examine activities of a larger participant of the consumer debt collection market that might not fall within the rule's definition of consumer debt collection.

[16] 76 FR 38059 (June 29, 2011).

[17] In July 2011, the Bureau held four roundtable discussions on the Notice. More than 70 stakeholders participated, representing a diverse mix of nonbank and bank trade associations and consumer advocacy and civil rights groups. The roundtables focused on key issues regarding how to define larger participants, including what criteria to measure, where to set thresholds, available data sources, and which markets to cover. Also in July 2011, the Bureau held a multistate regulator and regulatory association conference call that had more than 40 participants.

[18] 77 FR 9592.

[19] Comments solely relating to Subpart A of 12 CFR part 1090, such as those relating to general definitions, concepts, protocols, and procedures relating to the Bureau's supervision of larger participants and assessments of whether entities are larger participants were addressed in the Consumer Reporting Rule and are not discussed again here.

[20] 77 FR 42874.

Consumer Debt Collection Rule. Section 1090.102 establishes that once a nonbank covered person meets the larger-participant test for a particular market, the person retains larger-participant status for a period of at least two years. Section 1090.103 sets forth a procedure for a person to challenge an assertion by the Bureau that the person qualifies as a larger participant of a covered market and a mechanism by which the Bureau may request information to assess whether a person is a larger participant. The Consumer Reporting Rule also established subpart B of part 1090 (12 CFR 1090.104), identifying a market for consumer reporting, defining terms applicable to that market, and establishing a test for assessing which entities are larger participants of that market. As the Bureau identifies additional markets of which to supervise larger participants, the Bureau will include relevant market descriptions and larger-participant tests in subpart B.

In addition to the provisions that were adopted in the Consumer Reporting Rule, the Proposed Rule included a test to assess whether a nonbank covered person is a larger participant of the consumer debt collection market. Under this test, a nonbank covered person with more than $10 million in annual receipts resulting from consumer debt collection, as described in the Proposed Rule, would be a larger participant of the consumer debt collection market. As defined in the Proposed Rule, ''annual receipts'' would generally be derived from a three-year average of receipts.

III. Summary of the Final Rule

The Final Consumer Debt Collection Rule amends part 1090 by adding § 1090.105 to subpart B, to define larger participants of the consumer debt collection market. Section 1090.105 identifies a market for consumer debt collection, defines the term ''annual receipts'' for purposes of measuring participation in that market, and sets forth the test for assessing which entities are larger participants of the market. In the Proposal, the Bureau explained that the consumer debt collection market encompasses the collection, or attempted collection, of debt related to the consumer financial products or services described in 12 U.S.C. 5481(5) and (15). As discussed below, the Final Consumer Debt Collection Rule adopts a definition of ''consumer debt collection'' that is similar in scope but has been restructured in response to comments.

Participants of the consumer debt collection market identified in the Final Consumer Debt Collection Rule generally include different types of consumer debt collection entities such as third-party debt collectors, debt buyers, and collection attorneys (collectively referred to as consumer debt collectors). Third-party debt collectors primarily collect debt on behalf of originating creditors or their assignees and typically are compensated through contingency fees calculated as a percentage of the debt they recover.[21] Creditors' practices vary in how they use third-party debt collectors. In some cases, creditors use third-party debt collectors in the early stages of delinquency prior to charge off.[22] In other cases, creditors use third-party debt collectors after the creditors have written off the debts.

Debt buying is another important component of the consumer debt collection market. As the name indicates, debt buyers purchase debt, either from the original creditors or from other debt buyers, usually for a fraction of the balance owed.[23] They profit when their recoveries exceed the direct and indirect costs of collection, including the costs of acquiring the debt and of collecting from consumers. Debt buyers sometimes use third-party debt collectors or collection attorneys to collect their debts, but many also undertake their own collection efforts. Finally, debt buyers also may decide to sell purchased debt to other debt buyers.

Additionally, collection attorneys play a role in the consumer debt collection market. Collection attorneys undertake traditional collection efforts, such as contacting consumers by telephone or written communication. Attorneys also file lawsuits against consumers to collect debts or may buy debt and collect in their own names.[24]

Debt collection is a multi-billion-dollar industry that directly affects a large number of consumers. In 2012, approximately 30 million individuals, or 14 percent of American adults who have credit reports, had debt that was subject to the collections process (averaging approximately $1,500 per consumer).[25] Consumer debt collection is important to the functioning of the consumer credit market and has a significant impact on consumers. By collecting consumer debt, collectors reduce creditors' losses from non-repayment and thereby help to keep credit accessible and more affordable to consumers.

Debt collection performed in illegal ways has the potential to cause consumers substantial harm. If collectors falsely represent amounts owed, consumers may pay debts they do not owe simply to stop collection efforts or because they are unsure how much they owe. In addition, consumers may unintentionally yield their rights, such as by waiving the statute of limitations on debt claims for which the relevant limit periods have expired. Whether or not consumers owe and are liable for the debts collectors are attempting to recover, unlawful collection practices can cause significant reputational damage, invade personal privacy, and inflict emotional distress. Among the possible consequences, a collector's inappropriate interference with a consumer's employment relationships can also impair the consumer's ability to repay debts.

Federal consumer financial law related to debt collection, and its implementation by the Bureau, protects consumers from such harms. The FDCPA gives consumers certain rights that protect them from unfair, deceptive, misleading, or abusive collection practices as well as from the collection of debts they do not owe. In addition, Federal consumer financial law promotes fair competition in the debt collection marketplace. To the extent that unfair, deceptive, or abusive practices increase collectors' rate of recovery on debts subject to collection, debt collectors that avoid such practices could be at a competitive disadvantage. By placing important parameters on debt collection activities, the FDCPA was meant in part to ensure that those that refrain from improper practices in debt collection are not thereby competitively disadvantaged.[26] Title X's prohibition of unfair, deceptive, or abusive acts or practices serves, in part,

[21] ACA International, *2012 Agency Benchmarking Survey,* at 21 (2012). According to ACA International's 2012 Benchmarking Survey, collection agency commission rates averaged 28.4% in 2011, with a median of 25.5%.

[22] Charge off usually occurs 120 or 180 days after delinquency, depending on the type of debt. For example, the Federal Financial Institutions Examination Council, in its Uniform Retail Credit Classification and Account Management Policy, establishes a charge-off policy for open-end credit at 180 days delinquency and for closed-end credit at 120 days delinquency. *See* 65 FR 36903 (June 12, 2000).

[23] Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change,* at 4 (Feb. 2009), *available at http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf* (citing Kaulkin Ginsberg, The Kaulkin Report: The Future of Receivables Management at 50 (7th ed. 2007)).

[24] Federal Trade Commission, *Collecting Consumer Debts: The Challenges of Change,* at 14 (Feb. 2009), *available at http://www.ftc.gov/bcp/workshops/debtcollection/dcwr.pdf* (citing Kaulkin Ginsberg, The Kaulkin Report: The Future of Receivables Management at 73 (7th ed. 2007)).

[25] Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit* (May 2012), *available at http://www.newyorkfed.org/research/national_economy/householdcredit/DistrictReport_Q12012.pdf.*

[26] *See* 15 U.S.C. 1692(e).

a similar end. The Bureau's program of supervision in the consumer debt collection market will help to secure these benefits and advance the Bureau's mission of promoting fair, transparent, and competitive consumer financial markets.

The Final Consumer Debt Collection Rule describes a market for consumer debt collection. In response to comments received, the Bureau has adopted a definition of ''consumer debt collection'' that differs in some respects from that of the proposed definition. As defined in the Final Consumer Debt Collection Rule, the market includes collection by ''debt collector[s],'' as defined in the Final Consumer Debt Collection Rule, of debts incurred by consumers primarily for personal, family, or household purposes related to consumer financial products or services.[27] This definition encompasses a scope of activity similar to what the definition in the Proposed Rule covered;[28] in light of comments received, the Bureau believes the definition adopted will be clearer.

The Final Consumer Debt Collection Rule also establishes a test, based on ''annual receipts,'' to assess whether a nonbank covered person engaging in consumer debt collection is a larger participant in this market. The definition of ''annual receipts'' is adapted from the definition of the term used by the Small Business Administration (SBA) for purposes of defining small business concerns. The Final Consumer Debt Collection Rule adopts the proposed test for qualifying as a larger participant of the consumer debt collection market: more than $10 million in annual receipts resulting from relevant consumer debt collection activities. However, the Final Consumer Debt Collection Rule excludes from the definition of annual receipts those receipts that result from collecting debts that were originally owed to a medical provider. Covered persons meeting the test qualify as larger participants and are subject to the Bureau's supervision authority under 12 U.S.C. 5514.

The test to assess larger-participant status set forth in the Final Consumer Debt Collection Rule is tailored to the consumer debt collection market identified by the Final Consumer Debt Collection Rule. The Bureau has not determined that annual receipts, or a threshold of $10 million in annual receipts, would be appropriate for any other market that may be the subject of a future larger-participant rulemaking. Rather, the Bureau will tailor each test for defining larger participants to the market to which it will be applied.

IV. Legal Authority and Effective Date

A. Rulemaking Authority

The Bureau is issuing this Final Consumer Debt Collection Rule pursuant to its authority under (1) 12 U.S.C. 5514(a)(1)(B) and (a)(2), which authorize the Bureau to supervise larger participants of markets for consumer financial products or services, as defined by rule; (2) 12 U.S.C. 5514(b)(7), which, among other things, authorizes the Bureau to prescribe rules to facilitate the supervision of covered persons under 12 U.S.C. 5514; and (3) 12 U.S.C. 5512(b)(1), which grants the Bureau the authority to prescribe rules as may be necessary and appropriate to enable the Bureau to administer and carry out the purposes and objectives of Federal consumer financial law, and to prevent evasions of such law.

B. Effective Date of Final Rule

The Bureau proposed an effective date of 30 days after the publication of the Final Consumer Debt Collection Rule, noting that the Administrative Procedure Act generally requires that rules be published not less than 30 days before their effective dates.[29] The Bureau received two comments requesting a postponement of the effective date to at least 180 days after publication of any rule finalizing larger-participant definitions for the consumer reporting or consumer debt collection markets. Responding to these comments, the Bureau set an effective date for the Consumer Reporting Rule that was more than 60 days after publication of that rule. The Bureau believes, for the same reasons expressed in the Consumer Reporting Rule, that it is reasonable to set an effective date more than 60 days after publication of this Final Consumer Debt Collection Rule.[30] In balancing the requests for a longer pre-effective date period with the Bureau's view that too lengthy a period would be detrimental to consumers and the debt collection market, the Bureau believes it is reasonable to extend the effective date to January 2, 2013, to give larger participants, as defined by this rulemaking, more time to prepare for the possibility of Federal supervision. The Bureau therefore adopts this effective date for the Final Consumer Debt Collection Rule. As compared with the Proposal, this new effective date will provide more than double the time between the publication date and the date when consumer debt collectors may be subject to Bureau supervision under the Final Consumer Debt Collection Rule.

V. Section-by-Section Analysis of the Final Rule[31]

Subpart B—Markets

Section 1090.105—Consumer Debt Collection Market

As discussed in the Summary of the Final Rule above, consumer debt collection is important to the functioning of the consumer credit market and has a significant impact on consumers, with approximately 30 million individuals in the United States having debt in collection.[32] The market identified by the Final Consumer Debt Collection Rule generally includes third-party debt collectors, debt buyers, and collection attorneys.

Commenters criticized the Bureau's plan to supervise larger participants of the markets identified in the Proposed Rule. They stated that the Dodd-Frank Act requires the Bureau to consider the

[27] The definition of ''debt collector'' in the Final Consumer Debt Collection Rule incorporates parts of the FDCPA's definition of that term. 15 U.S.C. 1692a(6).

[28] The Proposed Rule suggested that medical debt is not a consumer financial product or service and that collection of such debt therefore did not fall within the proposed definition of ''consumer debt collection.'' The Final Consumer Debt Collection Rule acknowledges that medical debt may, if it arose from an extension of credit within the meaning of the Dodd-Frank Act, involve a consumer financial product or service. However, the rule excludes receipts resulting from collecting medical debt from the definition of ''annual receipts,'' and thus from the quantity that determines larger-participant status. *See infra* nn. 39–47 and accompanying text.

[29] 5 U.S.C. 553(d).

[30] *See* 77 FR 42876. The Bureau decided to extend the effective date in the Consumer Reporting Rule to over 60 days after publication because companies affected by the Consumer Reporting Rule might not previously have been supervised at the Federal or State level and might need time to develop processes and engage in training to prepare for examinations. The Bureau declined to extend the effective date any further, as requested by commenters, because the Consumer Reporting Rule did not impose substantive conduct requirements requiring time to come into compliance. Furthermore, an extended delay in the Bureau's supervision program would have harmed consumers. Similar reasoning applies here.

[31] The Bureau notes that the Final Consumer Debt Collection Rule is structured differently than the Proposed Rule. Unlike the Proposed Rule, 12 CFR 1090 is divided into Subparts A and B. Subpart A establishes generally applicable definitions and processes for assessing larger-participant status. Subpart B establishes market-specific definitions and tests for assessing larger-participant status. The Final Consumer Debt Collection Rule amends 12 CFR 1090 by adding § 1090.105 to define larger participants of the consumer debt collection market to follow § 104, which defines larger participants in a market for consumer reporting.

[32] Federal Reserve Bank of New York, *Quarterly Report on Household Debt and Credit* (May 2012), available at *http://www.newyorkfed.org/research/national_economy/householdcredit/DistrictReport_Q12012.pdf.*

four specific factors listed in 12 U.S.C. 5514(b)(2) [33] when issuing a rule under 12 U.S.C. 5514(a)(2). As explained in the Consumer Reporting Rule, the Bureau believes that these commenters misinterpreted the scope and purpose of 12 U.S.C. 5514(b)(2).[34] That subsection describes how the Bureau must ''exercise its authority under paragraph [(b)](1),'' [35] which in turn authorizes the Bureau to supervise ''persons described in subsection (a)(1).'' [36] The Final Consumer Debt Collection Rule does not exercise authority provided by subsection (b)(1). Instead, it ''describe[s],'' in part, a set of entities falling within subsection (a)(1), a category of larger participants to which the Bureau may apply the authority that subsection (b)(1) provides. Thus, the Bureau is not required to conduct a risk-based analysis when deciding in which markets it will define ''larger participants.'' Instead, the Bureau will conduct the risk-based analysis required under 12 U.S.C. 5514(b)(2) in choosing which persons to supervise among the larger participants in a given market.

One commenter also asked the Bureau to explain why it is identifying consumer debt collection as the subject of this rule, instead of some other market for a different consumer financial product or service. The Bureau has wide discretion in choosing markets in which to define larger participants. The Bureau need not conclude, before issuing a rule defining larger participants, that the market identified in the rule has a higher rate of non-compliance, poses a greater risk to consumers, or is in some other sense more important to supervise than other markets. Indeed, 12 U.S.C. 5514(b)(1), by recognizing that the purposes of supervision include assessing compliance and risks posed to consumers, suggests that the Bureau is not required to determine the level of compliance and risk in a market before issuing a larger-participant rule.

The consumer debt collection market is a reasonable choice for the Bureau. Because consumer debt collection is an important activity that affects millions of consumers, supervision of larger participants of this market will be beneficial to both consumers and the market as a whole. Supervision of larger participants in the consumer debt collection market will help the Bureau ensure that these market participants are complying with applicable Federal consumer financial law and thereby will further the Bureau's mission to ensure consumers' access to fair, transparent, and competitive markets for consumer financial products and services.

Section 1090.105(a)—Market-Related Definitions

Annual receipts. The Bureau received a number of comments relating to ''annual receipts.''

Overview of proposed definition. The proposed definition of ''annual receipts'' was informed by the method of calculating ''annual receipts'' used by the SBA in determining whether an entity is a ''small business'' concern.[37] Under the proposed definition, for purposes of calculating ''annual receipts,'' the term ''receipts'' would mean ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms. Under the Proposal, the term would not include net capital gains or losses. In addition, annual receipts would be measured as the average over a person's three most recently completed fiscal years, or over the entire period the person has been in business if that period is less than three completed fiscal years.[38] The proposed calculation of annual receipts also would implement the aggregation requirement in 12 U.S.C. 5514(a)(3)(B) by providing that the annual receipts of a person shall be added to the annual receipts of each of its affiliated companies. As proposed, such aggregation includes the receipts of both the acquired and acquiring companies in the case of an acquisition occurring during any relevant measurement period.

Exclusion of receipts from collecting medical debt. In the Supplemental Information section of the Proposal, the Bureau stated that ''debt related to * * * consumer financial products or services'' generally does not include medical debt.[39] In light of that statement, consumer debt collectors might expect that annual receipts resulting from the collection of medical debt would not be used to determine whether they were larger participants in the identified market for consumer debt collection. The Bureau received several comments both in favor of and opposed to counting annual receipts resulting from the collection of medical debt towards larger-participant status. Several consumer groups stated that annual receipts resulting from the collection of medical debt should count towards larger-participant status because the collection of medical debt is conducted similarly to that of other debts and has similar impact on consumers. Another commenter pointed out that when a medical provider gives care first and then bills the consumer later, the medical debt arose from an extension of credit, so the collection of that debt is therefore related to a consumer financial product or service. Two industry commenters agreed with the Proposal that collection of medical debt should not be included in the market for consumer debt collection.

The Bureau agrees with commenters who took issue with the categorical statement that the collection of medical debt generally is not a consumer financial product or service. In some situations, the collection of medical debt may be a consumer financial product or service. The Dodd-Frank Act defines as a ''financial product or service'' the activity of collecting debt ''related to any consumer financial product or service.'' [40] If the underlying transaction involved a consumer financial product or service under the Dodd-Frank Act, such as ''extending credit'' to a consumer for personal, family, or household purposes,[41] then the resulting debt arose from, and is thus ''related to,'' a consumer financial product or service. The collection of that debt is also a consumer financial product or service within the meaning of the Dodd-Frank Act. Under the Dodd-Frank Act, ''credit'' is ''the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment for such purchase.'' [42] In some situations, a medical provider may grant the right to defer payment after the medical service is rendered. In those circumstances, the transaction might involve an extension of credit.

However, the Bureau has decided to explicitly exclude from the definition of annual receipts those receipts that result

[33] These factors are ''the asset size of the covered person; the volume of transactions involving consumer financial products or services in which the covered person engages; the risks to consumers created by the provision of such consumer financial products or services; [and] the extent to which such institutions are subject to oversight by State authorities for consumer protection.'' 12 U.S.C. 5514(b)(2).

[34] 77 FR 42883 (noting that the risk-based factors described in 12 U.S.C. 5514(b)(2) do not apply to ''larger participant'' rulemakings).

[35] 12 U.S.C. 5514(b)(2).

[36] 12 U.S.C. 5514(b)(1).

[37] 13 CFR 121.104.

[38] 12 CFR 1090.101 defines terms such as ''completed fiscal year,'' ''fiscal year,'' and ''tax year.''

[39] 77 FR 9597.

[40] 12 U.S.C. 5481(15)(A)(x).

[41] 12 U.S.C. 5481(15)(A)(i); 12 U.S.C. 5481(5)(A).

[42] 12 U.S.C. 5481(7).

from the collection of medical debt.[43] The Bureau is concerned that consumer debt collectors will find it impracticable to determine whether the medical debts they collect involved extensions of ''credit,'' and therefore whether those medical debt collection receipts should be counted toward the threshold defining larger-participant status. The Bureau expects that a consumer debt collector will know certain information about a debt it collects, such as whether the debt was originally owed to a medical provider.[44] However, a consumer debt collector may not have enough information to determine whether the debt involved an extension of credit, because that question turns on additional details about whether the medical provider granted the consumer the right to defer payment. The Bureau believes that consumer debt collectors often do not have enough details to answer that question for each debt under collection, and they therefore may not have enough information to determine whether particular medical debts arose from consumer financial products or services.

Accordingly, the Final Consumer Debt Collection Rule excludes from the definition of annual receipts those amounts that result from collecting medical debt. For these purposes, medical debt means debt that was originally owed to a medical provider.[45] As noted above, the Bureau expects that debt collectors already know the identities of the persons to whom the debts were originally owed. Therefore, an exclusion defined by reference to such persons will be straightforward for consumer debt collectors to apply. Neither the Bureau, in making its assessments regarding a consumer debt collector's larger-participant status, nor a consumer debt collector, in challenging an assertion by the Bureau that it qualified as a larger participant, would need to determine the specific details of each underlying transaction that gave rise to medical debt.

Notwithstanding this exclusion, the Bureau believes that the collection of medical debt has an important impact on consumers.[46] The Bureau reiterates that the Final Consumer Debt Collection Rule excludes medical debt collection activities from receipts because of the difficulty, at the current time, of identifying whether particular medical debts resulted from extensions of credit. The Bureau will continue to seek more information relevant to that task, through supervision, through potential registration of nonbank covered persons under 12 U.S.C. 5512(c)(7) and 12 U.S.C. 5514(b)(7), and from other sources. In addition, in supervising a larger participant of the consumer debt collection market, the Bureau will examine the entity's collection of medical debt along with other activities subject to the FDCPA and other Federal consumer financial law.[47]

Other categories of debt. Commenters also asked the Bureau to clarify whether a number of other categories of debt are included in or excluded from the defined consumer debt collection market and as a result whether annual receipts resulting from such collection are counted towards larger-participant status. But these comments did not identify any comparable uncertainty in determining, given the identities of the originating creditors, whether debts in these various categories involve consumer financial products or services. As noted above, the Bureau expects that consumer debt collectors know the identities of the originating creditors for debts they collect. For many types of debt, that information should permit the consumer debt collector to determine, with a reasonable degree of accuracy, whether the underlying transaction involved a consumer financial product or service.[48] Thus, the difficulty a consumer debt collector would face in assessing the status of a medical debt should not arise as a general matter in the collection of other debts. In essence, commenters asking the Bureau to clarify the status of various other kinds of debt were asking the Bureau to state whether such types of debt are related to consumer financial products or services, as a categorical matter. The Bureau declines at this point to identify specific types of debt that involve consumer financial products or services, or to provide an exhaustive list of such debts.

Use of IRS guidance. A commenter asked whether the Bureau intends to bind itself to IRS guidance and related Federal tax law with respect to the calculation of annual receipts and recommended that the Bureau provide examples of how different industry participants should do that calculation. The Bureau noted in the Consumer Reporting Rule that to the extent a nonbank covered person uses IRS tax forms to calculate receipts, the person should rely on IRS guidance. Additionally, the Bureau declined to provide examples of how market participants should calculate annual receipts because there may be a variety of circumstances facing covered persons, and the Bureau is not in the best position to ascertain the most appropriate or useful calculation methods for each entity. The Bureau declines, for reasons similar to those articulated in the Consumer Reporting Rule, to provide examples of how participants in the consumer debt collection market should calculate annual receipts.

Reimbursed amounts. The Bureau received a comment from an attorney representative expressing concern that the proposed definition of annual receipts included certain amounts for which attorneys or other consumer debt collectors receive reimbursement and recommending that such amounts be

[43] As discussed above, this exclusion was implicit in the Proposed Rule. Annual receipts under the proposed definition included only receipts resulting from the collection of debt related to consumer financial products or services, and the Proposed Rule stated that this category does not include medical debt.

[44] Very often, debt collectors may obtain accounts from the original creditors. In addition, under the FDCPA, if a consumer makes a timely request for verification of a claimed debt, the debt collector must, if it persists in its attempts to collect the debt, respond with information that generally includes the name and address of the original creditor. 15 U.S.C. 1692g(b). For these reasons, the Bureau expects that debt collectors ordinarily make themselves aware of the original creditors for debts they collect.

[45] Many debts that arise as a consequence of medical care are not originally owed to the medical care provider. For example, a consumer might use a credit card to pay some or all of a medical bill. The Bureau would regard the resulting debt as originally owed, for purposes of the Final Consumer Debt Collection Rule, to the credit card issuer.

[46] According to one survey, in 2010, medical debt constituted 35% of new business for debt collectors. ACA International, *ACA Top Collection Markets Survey,* 2011. The same survey also reported that at least 53% of all debt collectors participate in the medical debt collection market. The 2007 Commonwealth Fund Biennial Health Survey found that 16% of working age adults, approximately 28 million people, had been contacted by debt collectors regarding medical debts, up from 13% in 2005. S. Collins *et al., Losing Ground: How the Loss of Adequate Health Insurance is Burdening Working Families, Commonwealth Fund,* Aug. 2008 at 12 *available at http://www.commonwealthfund.org/usr_doc/Collins_losinggroundbiennialsurvey2007_1163.pdf?section=4039.* In 2011, 54% of third-party debt collectors listed health care (hospital) as one of their top three markets, and 64% listed health care (non-hospital). ACA International, *2012 Agency Benchmarking Survey,* 2012.

[47] As the Bureau explained in the Consumer Reporting Rule, it has the authority to examine an entity's compliance with Federal consumer financial law, beyond the activities that rendered the entity subject to supervision. 77 FR 42880.

[48] For example, consumer credit originated by a credit card issuer is a consumer financial product and the collection of that debt is therefore a consumer financial service. As another example, utility companies regularly extend credit to consumers who receive utility services. *See, e.g., Mays* v. *Buckeye Rural Elec. Coop.,* 277 F.3d 873, 879 (6th Cir. 2002); *Mick* v. *Level Propane Gases, Inc.,* 183 F. Supp. 2d 1014, 1019 (S.D. Ohio 2000); *Williams* v. *AT&T Wireless Services, Inc.,* 5 F. Supp. 2d 1142, 1145 (W.D. Wash. 1998); *Haynesworth* v. *South Carolina Elec. & Gas Co.,* 488 F. Supp. 565, 567 (D.S.C. 1979). A consumer debt collector could reasonably expect that a debt originally owed by a consumer to a utility company arose from an extension of credit.

excluded. This commenter contended that certain reimbursements for expenses, such as recording or filing fees, are not considered income under Federal tax law. This commenter requested that the Final Consumer Debt Collection Rule make clear that such pass-through funds are not included in the calculation of annual receipts. The Bureau notes that the calculation of annual receipts in the Final Consumer Debt Collection Rule is built on the concepts of ''total income'' and ''cost of goods sold,'' as used in Federal income tax reporting. Quantities that consumer debt collectors do not include in those categories would not count as annual receipts. If, on the other hand, some amount of reimbursed expense is included in one of these categories, that amount would count as annual receipts. Such an amount could fairly be considered a cost of doing business and providing the relevant consumer financial service. That some consumer debt collectors may characterize such an expense as a ''reimbursed expense'' and bill clients separately for the expense does not alter that fact. For these reasons, the Bureau declines to amend the definition of annual receipts to add a specific exclusion for reimbursed amounts.

Annual receipts and measurement period. The Bureau received several comments suggesting different measurement periods for assessing larger-participant status. One recommended that an entity be deemed a larger participant if either the entity's average annual receipts over the last three fiscal years or its receipts in the most recent fiscal year met the applicable threshold. Another commenter suggested that an entity should qualify as a larger participant only if its receipts were above the threshold for each of three years in a row. Some commenters, incorrectly believing the Proposal already specified that larger-participant status would be triggered by a single year's results, asked the Bureau to measure larger-participant status over a longer period of time. Otherwise, they stated, businesses would forego growing in order to avoid becoming subject to the Bureau's supervisory authority.

In the Consumer Reporting Rule, the Bureau clarified that ''annual receipts'' are not based solely on the receipts of a single year, but are generally based on the average of an entity's receipts over a three-year period.[49] Using a longer measurement period reduces the impact on the calculation of short-term and potentially temporary fluctuations in receipts a company may experience—both decreases and increases. Similar reasoning motivates the Bureau to adopt a three-year measurement period, as proposed, for the Final Consumer Debt Collection Rule.

Two consumer groups suggested that to prevent evasion of the rule, annual receipts should also include receipts of any person who is an agent or contractor of a consumer debt collector. One of these commenters expressed concern that a debt buyer, in particular, could evade coverage as a larger participant by engaging several third-party debt collectors to collect debts on its behalf.

The Bureau understands commenters' concern regarding possible evasion of the Final Consumer Debt Collection Rule that could potentially occur by market participants engaging third-party debt collectors. However, the Dodd-Frank Act requires that an entity's activity levels be computed by aggregating the activities of affiliated companies.[50] The definition of annual receipts implements this aggregation requirement by counting the receipts of affiliated companies.[51] Control or common control is a prerequisite for being an ''affiliate'' under the Dodd-Frank Act, and the Consumer Reporting Rule appropriately made control or common control a prerequisite for being an ''affiliated company'' under Part 1090. Commenters offered no reason to think a special, different understanding of the term should apply for the consumer debt collection market. The Bureau therefore declines to amend the Proposal to require aggregation of the annual receipts of companies that have only an agency or contractual relationship.

The Bureau adopts the proposed definition of ''annual receipts'' with the amendment described above, excluding receipts that result from collecting debt that was originally owed to a medical provider, and with other minor technical amendments.

Consumer debt collection. The Final Consumer Debt Collection Rule defines a market for ''consumer debt collection,'' which is among the consumer financial products or services described in 12 U.S.C. 5481(5)(B) and 15(A).[52] Activities covered under these provisions of the Dodd-Frank Act include ''collecting debt related to any consumer financial product or service.''[53] Under 12 U.S.C. 5481(5)(B), such activity is a ''consumer financial product or service'' when ''delivered, offered, or provided in connection with a consumer financial product or service.'' The definition of ''consumer debt collection'' in the Final Consumer Debt Collection Rule is not meant to track these related provisions in the Dodd-Frank Act. The Final Consumer Debt Collection Rule's definition has a different function. Rather than describing the scope of a certain consumer financial product or service, it identifies a specific market for such a product or service.

The Bureau received a number of comments asking it to exclude various types of activity from the definition of consumer debt collection. As discussed more fully below, the Bureau is adopting a number of the suggested exclusions, either in part or in full, and rejecting some of the suggestions. Many of the suggested exclusions were based on exclusions from the FDCPA's definition of debt collector.[54] For those suggestions the Bureau is accepting, it is incorporating into the rule's definitions language from the FDCPA that creates the corresponding exclusions in that statute.

To make the rule clearer in light of these changes, the Bureau is also restructuring the definition of consumer debt collection to track the FDCPA more closely. The Final Consumer Debt Collection Rule includes definitions of ''creditor'' and ''debt collector'' that are based on the FDCPA's definitions of those terms. Consumer debt collection, in turn, means the activity of a ''debt collector,'' as defined in the rule, to collect debt incurred by a consumer for personal, family, or household purposes, and related to a consumer financial product or service. For most purposes, the scope of the Final Consumer Debt Collection Rule's definition will be the same as that of the proposed definition. The difference in structure facilitates the Bureau's

[49] As noted in the Proposal, if an entity has not completed three fiscal years, its ''annual receipts'' will reflect an average based on the shorter period of its existence.

[50] *See* 12 U.S.C. 5514(a)(3)(B).

[51] *See* 12 U.S.C. 5481(1) (definition of ''affiliate''); 12 CFR 1090.101 (definition of ''affiliated company'').

[52] The Proposal defined the term ''consumer debt collection'' as collecting or attempting to collect, directly or indirectly, any debt owed or due or asserted to be owed or due to another and related to any consumer financial product or service. A person offers or provides consumer debt collection where the relevant debt is either collected on behalf of another person; or collected on the person's own behalf, if the person purchased or otherwise obtained the debt while the debt was in default under the terms of the contract or other instrument governing the debt. 77 FR 9607.

[53] 12 U.S.C. 5481(A)(x).

[54] The Bureau notes that the usage, or omission, of specific language from the FDCPA in the Final Consumer Debt Collection Rule is not an endorsement by the Bureau of any specific interpretation of the FDCPA.

response to the comments requesting various exclusions from the market.

Specific exclusions. The Bureau received a number of comments urging the adoption of particular exclusions from the definition of consumer debt collection.

First, the Bureau received several comments that the proposed definition of consumer debt collection appeared to include loan servicing or the collection of debt that is not in default. Many commenters suggested that the Bureau should explicitly exclude loan servicing from the defined consumer debt collection market by incorporating an exclusion contained in the FDCPA's definition of debt collector. Under the FDCPA, a person who collects ''debt which was not in default at the time it was obtained by such person'' [55] is not, on the basis of that activity, a debt collector. Commenters stated that companies active in loan servicing rely on the FDCPA exclusion, with which they are familiar, to distinguish their servicing activities from debt collection.

The Bureau does not regard loan servicing as part of the same market, for purposes of this Final Consumer Debt Collection Rule, as consumer debt collection. Loan servicers send out billing statements, accept payments and assign them to accounts, and answer consumer questions. In many cases, loan servicing activities involve consumers who are current on payments of their loans and with whom creditors have ongoing relationships. Loan servicing in the traditional sense ordinarily does not involve attempts to locate a debtor by contacting relatives or employees; garnishment of wages or lawsuits. Attorneys are not often involved in loan servicing; they ordinarily do not become involved until debts are in default.[56] In light of these characteristics, the Bureau believes that the purposes of the Final Consumer Debt Collection Rule are best served by excluding loan servicing, as described here, from the activity of ''consumer debt collection'' defined for purposes of the Final Consumer Debt Collection Rule.

Indeed, the Proposal did not contemplate including loan servicing in that market, as several commenters recognized.[57] As such commenters pointed out, the Proposal's economic assessment of the consumer debt collection market was based on Economic Census data that generally covered debt collection and did not cover loan servicing.[58] The scope of the economic data that the Bureau described in the Proposal was reasonably consistent with the scope of the market that the Proposal contemplated.

However, the Bureau acknowledges that the proposed definition could have been misunderstood on this point. To clarify that loan servicing is not within the defined consumer debt collection market, the Bureau accepts the commenters' suggestion and excludes from the definition of debt collection activity involving ''debt which was not in default at the time it was obtained by such person[s].'' The Bureau intends to include in the consumer debt collection market those entities that are engaged in debt collection activity and exclude those that only engage in loan servicing. The provision just described is an appropriate means to achieve that purpose, because it is similar to language in the FDCPA provision that, as commenters noted, many entities regard as distinguishing loan servicing from debt collection.[59]

Two trade associations representing student lenders commented that the proposed definition of consumer debt collection would prevent their members from engaging in default prevention and loan modification activities that they said are a form of loan servicing. According to the commenters, the goal of these activities is to benefit consumers by offering payment plans and other services in an effort to prevent default. If, as these commenters suggested, their loan modification and default prevention services involve debt that was not in default at the time it was obtained, then those activities are not consumer debt collection under the Final Consumer Debt Collection Rule.

Second, an association whose membership includes collectors of student loans suggested that the Bureau should exclude from the consumer debt collection market the activity of collectors of student loans made pursuant to Title IV of the Higher Education Act (Title IV loans).[60] According to the commenter, the collectors of Title IV loans undergo independent audits as part of their obligations to the Federal government and to state guaranty agencies that guarantee student loans on behalf of the Federal government. The association states that the audits include an on-site review of calls to consumers, complaints, and other activities related to the debt collection process. The commenter states that the United States Department of Education (Department of Education) and the state guaranty agencies use the audit findings to rank their contractors and allocate future accounts for collection. Because of the audits, the association asserts that practices associated with the collection of Title IV loans are less risky to consumers than are other debt collection activities.

Unlike the typical audits by the Department of Education, the Bureau's supervision program will assess compliance with Federal consumer financial law. The Department of Education has specifically noted that third-party collectors of Title IV loans are subject to the FDCPA, notwithstanding its oversight of Title IV loan collection.[61]

Moreover, commenters' claim that student loan debt collectors pose relatively low risks to consumers does not, by itself, justify excluding those collectors from the overall consumer debt collection market. As noted above, the Dodd-Frank Act does not require the Bureau to consider risk in defining a larger participant market pursuant to 12 U.S.C. 5514(a)(1). When choosing which nonbank covered persons to supervise among the larger participants defined by rule, the Bureau must consider the factors set forth in 12 U.S.C. 5514(b)(2) which include, among others, ''the risks to consumers created by the provision of such consumer financial products or

[55] 15 U.S.C. 1692a(6)(F)(iii).

[56] The Bureau recognizes that some loan servicing activity may involve techniques like those used in debt collection. And some consumer debt collectors may engage in collecting on accounts that are not in default. To the extent that developments in the markets for obtaining consumers' repayment of debts blur or alter the line between servicing and debt collection, the Bureau may in the future revisit the distinction that the Final Consumer Debt Collection Rule draws between the two activities. Meanwhile, as noted above, the Bureau may examine any consumer financial service provided by a person that is subject to Bureau supervision, such as a larger participant in the consumer debt collection market.

[57] Because the Bureau already has supervisory authority over mortgage servicing pursuant to 12 U.S.C. 5514(a)(1)(A), the Bureau did not consider including mortgage servicing within the market for consumer debt collection.

[58] The Economic Census classifies industries using the North American Industry Classification System (NAICS) codes. The Bureau based its estimate of market coverage for the Proposed Rule on the NAICS code for debt collection (561440). Loan servicing activities fall under a different NAICS code (522390).

[59] 15 U.S.C. 1692a(6)(F)(iii).

[60] Another commenter stated that courts have found that state guaranty agencies are not debt collectors pursuant to an FDCPA exception for collection activities that are ''incidental to a bona fide fiduciary obligation.'' 15 U.S.C. 1692a(6)(F)(i). However, some courts have held that when guaranty agencies collect debts for which they are not the guarantors, that activity is not ''incidental'' to any ''fiduciary obligation.'' *See Murungi* v. *Texas Guaranteed,* 402 Fed. Appx. 849, 851 (5th Cir. 2010); *Rowe* v. *Educ. Credit Mgmt. Corp.,* 559 F.3d 1028, 1035 (9th Cir. 2009).

[61] 55 FR 40120, 40121 (Oct. 1, 1990).

services.'' The Dodd-Frank Act does not mandate consideration of those factors before issuing a rule that establishes the scope of coverage of the Bureau's supervision authority under 12 U.S.C. 5514(a)(1).

For these reasons, the Bureau declines to exclude collection of Title IV loans from the consumer debt collection market.

Third, a representative of non-profit consumer credit counselors asked the Bureau to exclude from the market their activities in assisting individuals with debt repayment. According to the commenter, non-profit consumer credit counselors operate differently from consumer debt collectors. At the consumers' request, non-profit consumer credit counselors work with consumers to help them restructure their debts and formulate repayment plans. Non-profit consumer counselors act as intermediaries between consumers and their creditors. The counselors help consumers devise budgets and plans to pay their debts. Consumers can decide whether they will participate in such counseling programs and, if they do, whether to adhere to the repayment plans negotiated by credit counselors. The Bureau agrees that this business model distinguishes non-profit consumer credit counselors from other debt collectors that work on behalf of themselves or on behalf of creditors to collect debts. Therefore, the Bureau is excluding non-profit consumer credit counselors from the definition of ''debt collector.'' The FDCPA excludes such entities from its definition of ''debt collector,'' and the Bureau is adopting comparable language in the Final Consumer Debt Collection Rule.[62]

Fourth, a consumer data trade association commented that the proposed definition of consumer debt collection requiring that the debt be ''related to'' a consumer financial product or service was too broad and may include, for instance, business debts related to a company's purchase of consumer reports or other consumer financial products. To make clear that such activities are not part of the consumer debt collection market, the Final Consumer Debt Collection Rule's definition adds to the proposed definition a requirement that the debts under collection be those incurred by consumers for personal, family or household purposes—not for business purposes and not by businesses.

Finally, an attorney group commenter contended that a person who enforces security interests, for example by pursuing foreclosure actions, should not be included in the consumer debt collection market. The commenter cited cases in which courts have held that the practice of enforcing security interests does not constitute debt collection under the FDCPA. Relatedly, a number of courts, distinguishing between collecting debt and enforcing security interests, have concluded that a person can be a debt collector for purposes of the FDCPA even when the person enforces security interests, but only if it is also engaged in collecting debts that are subject to the security agreement.[63] Other courts, however, have concluded that enforcing a security interest qualifies on its own as debt collection under the FDCPA.[64] Regardless of whether enforcing a security interest can, on its own, qualify as collecting debt under the FDCPA, the Bureau does not deem a person who only enforces a security interest, and does not seek payment of money or transfer of assets that are not designated as collateral for the note or instrument, to be, on that basis, a part of the consumer debt collection market defined by the Final Consumer Debt Collection Rule. However, when a person both seeks payment of money and enforces a security interest, that person can qualify as a debt collector for purposes of the Final Consumer Debt Collection Rule.

Collections by originating creditors. A commenter representing the debt buying industry suggested that the Bureau also include first-party debt collection by both banks and nonbanks within its definition of consumer debt collection. The commenter notes that originating creditors collect outstanding debts from their own customers. However, the Bureau regards such collections by originating creditors as part of a different market from third-party debt collection and debt buying. Collecting overdue debts is not the primary business of originating creditors. Rather, their primary business is to provide credit or other products or services. Collecting unpaid debts is usually an ancillary function. By contrast, neither third-party debt collectors nor debt buyers have originated the debts they collect or have ongoing business relationships with the consumers from whom they collect debts. Debt collectors are in the business of collecting on debts that were originated by a variety of creditors. Given these differences, the Bureau declines to include collection by originating creditors within the market for consumer debt collection.[65]

Moreover, the Bureau has the authority to supervise the first-party debt collection activities of many covered persons, regardless of whether the defined consumer debt collection market includes such activities.[66] Specifically, the Dodd-Frank Act authorizes the Bureau to supervise large banks and credit unions, and the affiliates of such entities, pursuant to 12 U.S.C. 5515.[67] In the course of such supervision, the Bureau can examine an entity's collection practices relating to mortgages, credit cards, auto loans, personal loans, deposit advance products, and other consumer financial products or services provided by the entity. In addition, pursuant to 12 U.S.C. 5514, the Bureau has authority to supervise certain nonbank originators: mortgages, private education loans, and payday loans.[68] In the course of such supervision, the Bureau can examine those persons' collection activities. Furthermore, to the extent the Bureau concludes it is important to examine collection activities conducted by nonbank institutions in other specific markets, the Bureau can define appropriate categories of larger participants in such markets. As earlier noted, this Final Consumer Debt Collection Rule is the second in what will be a series of larger-participant rulemakings. For these reasons as well, the Bureau declines to include collection by originating creditors in the defined market for consumer debt collection.[69]

[62] 15 U.S.C. 1692a(6)(E).

[63] *See, e.g., Reese* v. *Ellis, Painter, Ratterree & Adams, LLP,* 678 F.3d 1211 (11th Cir. 2012); *Birster* v. *Amer. Home Mortgage. Servicing Inc.,* No. 11–13574, 2012 WL 2913786, at *2 (11th Cir. July 18, 2012).

[64] *See, e.g., Shapiro & Meinhold* v. *Zartman,* 823 P.2d 120, 124 (Colo. 1992) (''[A] foreclosure is a method of collecting a debt by acquiring and selling secured property to satisfy a debt.'').

[65] For similar reasons, the Bureau is also excluding from the definition of ''debt collector'' an entity that collects debt only for a person to which the entity is related by common ownership or control, if the principal business of such person is not the collection of debts.

[66] In addition, the Bureau may supervise all collection services—whether or not they are subject to the FDCPA—that a larger participant of the consumer debt collection market provides to other persons such as originating creditors.

[67] 12 U.S.C. 5515(a)(1).

[68] 12 U.S.C. 5514(a).

[69] The Bureau declines to define submarkets, as some commenters suggested. These comments focused, for example, on consumer debt collection activities that have a disproportionate impact on minority groups, military groups, students, or senior citizens, or on geographic submarkets. One of these commenters stated that at a minimum, the Bureau should collect data that would allow it to define submarkets at a later time. The Bureau notes that different types of consumer debt collectors all participate in the same activity—consumer debt collection—regardless of their respective business models. And the same legal requirements cover participants in any market segment suggested by commenters. To the extent that the activities of

Continued

Attorneys. The Bureau received several comments from attorney groups asserting that attorneys should not be treated as participants of the consumer debt collection market that could, on that basis, be subject to the Bureau's supervision. This category of comments focused on 12 U.S.C. 5517(e)(1), a provision that restricts the Bureau's supervisory and enforcement authority, in some circumstances, over attorneys engaged in the practice of law.

Two related provisions preserve the Bureau's authority despite that restriction.[70] First, as provided in 12 U.S.C. 5571(e)(2), the Bureau retains its authority ''regarding the offering or provision of a consumer financial product or service'' (a) ''that is not offered or provided as part of, or incidental to, the practice of law, occurring exclusively within the scope of the attorney-client relationship;'' or (b) ''that is * * * offered or provided by [an] attorney * * * with respect to any consumer who is not receiving legal advice or services from the attorney in connection with that product or service.'' [71] Second, 12 U.S.C. 5517(e)(3) preserves the Bureau's authority over attorneys who are otherwise subject to any ''enumerated consumer law'' within the meaning of the Act.[72]

Several commenters took the broad view that all attorneys and legal professionals engaged in collecting consumer debt should be excluded from the Final Consumer Debt Collection Rule. In support of this argument, commenters cited a floor speech by Representative John Conyers, one of the House's conferees with the Senate on the Dodd-Frank Act. According to these commenters, Representative Conyers expected the phrase ''practice of law'' in 12 U.S.C. 5571(e)(1) to be read as broadly as the term is construed by state courts and bar associations to prevent ''regulation from a new source [that] would unavoidably conflict with the existing rules and lines of accountability,'' and wanted any determinations by the Bureau, ''by rule, or otherwise, regarding what activities constitute the practice of law [to] be consistent with the view and practices of the State supreme court or State bar in question.'' [73]

The Bureau does not understand this statement to suggest that all activity conducted by attorneys is outside the Bureau's authority. Representative Conyers focused his remarks on attorneys who provide legal services to consumers, such as the ''consumer clients of bankruptcy lawyers, consumer lawyers, and real estate lawyers.'' [74] He did not discuss legal services in which lawyers act on behalf of commercial clients with interests adverse to those of consumers, such as by collecting consumer debts.[75]

Moreover, the relevant statutory language clearly prescribes a different result.[76] Consumer debt collection is a consumer financial service.[77] The service is provided ''with respect to'' those consumers who owe (or are claimed to owe) the debts subject to collection. Because debt collection attorneys do not provide ''legal advice or services'' to those consumers in connection with the debt collection services—the attorneys represent clients with interests adverse to the consumers'—subparagraph (e)(2)(B) preserves the Bureau's authority regarding those services.[78]

One commenter also suggested that if the paragraph (e)(2)(B) exception applied to consumer debt collection, that exception would swallow the general rule limiting the Bureau's authority with respect to the practice of law. But subsection (e)(2)(B) only preserves the Bureau's authority when an attorney offers or provides a consumer financial product or service with respect to a consumer who is not receiving legal advice or services from the attorney in connection with the product or service.[79] To fall within the scope of the Final Consumer Debt Collection Rule, attorneys must also collect debt related to a consumer financial product or service.[80]

An attorney group commenter suggested that the Bureau's supervision of debt collection attorneys would interfere with the established system of regulation by state bars. As the commenter notes, state bars issue law licenses and have the power to discipline and disbar lawyers for a variety of ethical and legal violations. The commenter concludes that the Bureau therefore ought not to impose

larger participants of the consumer debt collection market differ, the Bureau can adjust the scope and focus of its supervision activities accordingly. Further, by identifying the broader market and supervising larger participants as defined in the Final Consumer Debt Collection Rule, the Bureau will be able to address emerging issues across the various business models. This approach will promote consistency in supervision across the consumer debt collection market. Therefore, the Bureau declines to revise the proposed definition of consumer debt collection to define submarkets as commenters suggested. The Bureau notes that nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority, and any applicable Federal consumer financial law. The Bureau also has the authority to supervise any nonbank covered person that it ''has reasonable cause to determine, by order, after notice to the covered person and a reasonable opportunity * * * to respond,'' is ''engaging, or has engaged, in conduct that poses risks to consumers with regard to the offering or provision of consumer financial products or services.'' 12 U.S.C. 5514(a)(1)(C).

[70] 12 U.S.C. 5517(e)(1), (e)(2).

[71] 12 U.S.C. 5517(e)(2).

[72] 12 U.S.C. 5517(e)(3). Paragraph (e)(3) also preserves the authorities transferred under subtitle F or H of Title X.

[73] Cong. Rec. E1348–E1349 (Speech of Hon. John Conyers, Jr. on the Conference Report).

[74] Cong. Rec. E1349.

[75] Representative Conyers also observed that state courts and bar associations have a limited ability to regulate lawyers outside of the practice of law. He testified that ''our Committee recognized that attorneys can be involved in activities outside the practice of law, and might even hold out their law license as a sort of badge of trustworthiness. Although State supreme courts would have some authority to respond to abuses in even these outside activities, as reflecting on the attorney's unfitness to hold a law license * * * their disciplinary authority is not necessarily as extensive in these outside areas. The Committee was equally determined that these outside activities not escape effective regulation simply because the person engaging in them is an attorney or is working for an attorney.'' Cong. Rec. E1349.

[76] ''[C]lear evidence of congressional intent may illuminate ambiguous text. We will not take the opposite tack of allowing ambiguous legislative history to muddy clear statutory language.'' *Milner* v. *Dep't of Navy,* 131 S. Ct. 1259, 1266 (2011).

[77] In addition, consumer debt collection, as defined in the Final Consumer Debt Collection Rule, is generally subject to the FDCPA. That is true even if the debt collector is an attorney or law firm. ''[A]ttorneys who 'regularly' engage in consumer-debt-collection activity'' are subject to the FDCPA, ''even when that activity consists of litigation.'' *Heintz v. Jenkins,* 514 U.S. 291, 299 (1995).

[78] The Bureau also notes that pursuant to paragraph (e)(3), the restriction in paragraph (e)(1) ''shall not be construed so as to limit the authority of the Bureau with respect to any attorney, to the extent that such attorney is otherwise subject to any of the enumerated consumer laws or the authorities transferred under subtitle F or H.'' 12 U.S.C. 5515(e)(3).

[79] An association representing attorneys expressed concern that the Bureau would supervise attorneys representing larger participants in matters unrelated to the offering or provision of consumer financial products or services through its jurisdiction over service providers to larger participants. According to the commenter, the Bureau could intrude on the attorney-client relationship in non-consumer litigation matters or in cases in which an attorney defends a case on behalf of a client against a consumer. The Bureau need not address these comments in this rulemaking. The Final Consumer Debt Collection Rule establishes the Bureau's supervisory authority over the identified market. It does not alter the Bureau's supervisory authority over service providers, except insofar as it enlarges the set of supervisable firms whose activities might form the basis for supervising their service providers. A discussion of which types of service providers might be subject to the Bureau's supervisory authority would be beyond the scope of the Final Consumer Debt Collection Rule.

[80] The Business Law Section of the American Bar Association noted, in a comment, that ''attorneys who are engaged in offering or providing a consumer financial product or service (such as collection of consumer debt) but do not represent consumers in such activities may be subject to the Bureau's supervision.'' The Bureau takes this commenter to agree that the subparagraph (e)(2)(B) exception applies to consumer debt collection. Letter from American Bar Association, Business Law Section, to Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection (Apr. 11, 2012).

additional requirements upon attorneys. The commenter also raised the concern that the Bureau's supervision of debt collection attorneys will expose attorneys to the risk that the Bureau would adopt standards inconsistent with those of states. However, nothing in the Final Consumer Debt Collection Rule requires attorneys to engage or refrain from engaging in any particular conduct. Whatever standards might govern attorneys' consumer debt collection activities arise under existing substantive law, not the Final Consumer Debt Collection Rule. Furthermore, the Final Consumer Debt Collection Rule does not impose professional conduct rules specific to attorneys. Of course, Federal consumer financial law does impose some conduct rules that apply to attorneys. These requirements are unlikely to be inconsistent with state professional conduct rules, as such rules presumably do not obligate attorneys to violate Federal law, including Federal consumer financial law.

This commenter also suggested that the Bureau's definition of consumer debt collection would bring into the market a myriad of attorneys who file legal claims against consumers. The commenter acknowledged that engaging in debt collection as defined by the FDCPA could bring an attorney under the Bureau's supervisory jurisdiction. But, the commenter pointed out, ''there are many instances in which an attorney may bring or assert a claim against a consumer for nonperformance of an obligation related to a consumer financial product or service'' yet not be ''engaged in 'collecting debt' '' under any accepted meaning of the term. The commenter cited as an example an attorney asserting a claim against a high net-worth individual who has defaulted on a jumbo loan secured by her residence. As another example, the commenter hypothesized an attorney asserting counter-claims against a consumer or purported class of consumers in consumer-related litigation.

The Bureau agrees that not every occasion on which an attorney seeks money from a consumer constitutes debt collection and that not all attorneys are fairly considered debt collectors active in the market defined by this Final Consumer Debt Collection Rule. Attorneys engage in a diverse set of activities, many of which do not fit into the defined market. For this reason, among others, the Bureau has amended the Proposed Rule to limit consumer debt collection activities to only those conducted by ''debt collectors,'' which are defined to be only those persons whose principal business activity is debt collection or that ''regularly'' engage in debt collection. Under this definition, filing an occasional counter-claim against a consumer would not necessarily make a law firm a debt collector. However, if a law firm is indeed a debt collector under the rule, filing a counter-claim against a consumer could qualify as consumer debt collection.

Several commenters were concerned that, in the course of the Bureau's supervision of an attorney, the attorney would be forced to reveal information protected by the attorney-client privilege and thereby cause the privilege to be waived. The Bureau has noted previously that it has general authority to require supervised entities to provide it with privileged information. The Bureau has promulgated a regulation clarifying that complying with such a requirement does not constitute a waiver of privilege; materials produced in response to the Bureau's demand will remain confidential.[81]

Moreover, the focus of the Bureau's supervision program will be the acts and practices of debt collectors as they relate to and impact consumers. Much of the relevant information is not privileged. For example, the Bureau might seek records of an attorney's communications with consumers. Thus, the Bureau can conduct meaningful supervisory activity of a debt collection attorney without asking for privileged information, and the attorney's possession of privileged information is not a reason to avoid examining the attorney. If the Bureau does seek privileged information from a debt collection attorney, it can address at that time any issues specific to that context.

For all these reasons, the Bureau declines to revise the rule to exclude collection attorneys categorically from the consumer debt collection market.

Section 1090.104 (b)—Test To Define Larger Participants

Criterion. The Bureau has broad discretion in choosing a criterion for determining whether a nonbank covered person is a larger participant of a market within which the Bureau will conduct supervision. For any specific market there might be several criteria, used alone or in combination, that could be viewed as reasonable alternatives. For the consumer debt collection market, the Bureau considered a variety of criteria, including annual receipts; number of consumers; number of accounts; annual recoveries; number of employees and annual amount of new business (debt purchased by or placed with a collector). The Bureau proposed to use annual receipts as the criterion for defining larger participants of the market for consumer debt collection. The proposed concept of ''annual receipts'' was based on the SBA's definition of ''annual receipts,'' as well as on the calculations relevant for Federal income tax and for Census reporting.

The Bureau believes that annual receipts is a reasonable criterion because, among other things, it is a meaningful measure of the level of a consumer debt collector's participation in the consumer debt collection market and the consumer debt collector's corresponding impact on consumers. For example, third-party collectors, debt buyers, and collection law firms earn income from recovering consumer debt. Those recoveries are the result of market participation, either through traditional collection means or litigation. Thus, the level of a person's market participation is reflected by the amount of that person's annual receipts.

In addition, ''annual receipts'' is a quantity that is familiar to nonbank covered persons and that reflects calculations already performed using records created in the ordinary course of business. The SBA's definition of ''annual receipts'' has been used by the SBA for purposes of measuring small business concerns since soon after the inception of its program.[82] IRS tax forms require reporting of similar quantities. Thus, using ''annual receipts'' as the criterion should make it straightforward for firms to assess whether they qualify as larger participants.

In addition, using annual receipts as the criterion facilitates the Bureau's use of data from the Economic Census[83] to determine the general contours of the market for consumer debt collection. The Economic Census undertakes a direct survey of domestic business establishments and releases comprehensive statistics about key features and activity levels of these businesses, including total annual receipts.[84] To conduct an Economic

[81] 77 FR 39617 (July 5, 2012).

[82] *See* ''SBA Size Standards Methodology'' at 4, *available at http://www.sba.gov/sites/default/files/size_standards_methodology.pdf.*

[83] U.S. Census Bureau 2007 Economic Census, *available at http://www.census.gov/econ/census07/.*

[84] As noted in the section-by-section discussion of the definition of ''annual receipts,'' the SBA and the Economic Census use the term ''annual receipts'' somewhat differently. As used by the Economic Census, the term includes receipts from all business activities, including net investment income, interest, and dividends, whether or not payment was received in the census year. The SBA, by contrast, defines the term to exclude net capital gains and losses and thus does not capture

Continued

Census, the Census Bureau mails out data collection forms for all establishments of multi-unit companies, large single-unit employers, and a sample of small employers (generally defined as having three or fewer employees).[85]

The Bureau recognizes that there are limitations to the use of the Economic Census data on annual receipts in the debt collection market for purposes of the Final Consumer Debt Collection Rule. The Economic Census data may be both over-inclusive and under-inclusive.[86] The Economic Census data are not limited to the collection of consumer financial debt, but rather include both business and non-financial consumer debt. They may also be under-inclusive because entities that fall within the NAICS code may not correctly identify themselves or may otherwise fail to respond accurately to the Census. Moreover, the NAICS code may not include all persons engaged in activities that meet the definition of consumer debt collection. However, the Economic Census data are nevertheless useful in showing the general contours of the consumer debt collection market, the relative size of participants within it on an aggregated basis, and how participants are distributed by size.

Commenters suggested a variety of alternative criteria such as the number of accounts, the number of complaints about an entity, the number of employees, an entity's relative market share, or the annual receipts of an entity in a given geographic or demographic segment. One commenter representing third-party debt collectors stated that annual receipts is not an appropriate criterion to measure participants in the consumer debt collection industry because it would capture amounts collected by an agency on behalf of the debt owner. This commenter suggested measuring gross revenue instead.

The Bureau does not believe these other suggested criteria are superior alternatives. The available data do not permit the Bureau meaningfully to measure the general contours of the market based on these criteria and thus, on such bases, to devise a test for defining larger participants of the consumer debt collection market or to apply the test efficiently. Further, as set forth in the Proposal, the Bureau believes that the number of employees is not a suitable alternative criterion because it could be difficult for a multi-line company to apportion employee time between market-related and other activities and because many responsibilities may be fulfilled by contractors rather than employees. With respect to the suggestion of gross revenues as a criterion, the Final Consumer Debt Collection Rule's definition of ''annual receipts'' is functionally similar to what the commenter proposed. Amounts collected on behalf of another are excluded from the proposed calculation for annual receipts, just as they would be from the commenter's proposed gross revenues criterion.

A representative of the debt buying industry argued that the annual receipts criterion discriminated unfairly between debt buying and third-party debt collection.[87] The proposed definition of annual receipts, in accordance with Federal income tax reporting and Census reporting, excludes amounts collected on behalf of and remitted to others.[88] This commenter observed that for a given amount of annual receipts, calculated per the proposed definition, a debt buyer would have recovered substantially less debt from consumers than would a comparable third-party debt collector.[89] The commenter contended that the amounts recovered from consumers (gross recoveries) was the proper criterion for market participation. The commenter suggested that the Bureau could use an amount such as annual receipts as a substitute if the calculation included amounts recovered on behalf of others. Under that calculation, a debt buyer and a third-party debt collector with the same amount of gross recoveries would also have about the same amount of annual receipts.

The Bureau disagrees that the Final Consumer Debt Collection Rule's concept of annual receipts should correspond directly to gross recoveries, because the Bureau does not consider gross recoveries to be the sole or proper measure of market participation relevant for purposes of the Final Consumer Debt Collection Rule. Given that the goals of supervision include assessing risks to consumers and to consumer financial markets, the Bureau has chosen to view a firm's level of participation in this market chiefly in terms of the firm's overall impact on consumers. Actually receiving a sum of money from consumers is, to be sure, an important type of impact. But a consumer debt collector also can substantially affect consumers from whom it does not succeed in recovering money. For example, a firm affects consumers by having authority to collect and by attempting to collect their debts, regardless of how much it succeeds in recovering. In addition, a consumer debt collector may report to consumer reporting agencies those debts that go unrecovered. Furthermore, a firm's conduct in collecting debt—by contacting consumers, contacting third parties, filing lawsuits, garnishing wages, and using other debt collection techniques—affects even those consumers who actually do not owe or are not liable for the debts under collection.

Thus, a myriad of indicia reflect various types of impact on consumers. Among those indicia are the number of consumer contacts, the number of consumers or number of consumer accounts under collection, the frequency of reports to consumer

investment income. Notwithstanding this difference in the meaning of the term, the Economic Census data regarding annual receipts remain useful for purposes of developing a general understanding of the market for consumer debt collection and establishing a test for defining larger participants of that market.

[85] Response to these forms is required by law. No firm-level data are released; rather, the data are aggregated by sector according to North American Industry Classification System (NAICS) codes. When categorizing the data by industry sector, both the SBA and the Economic Census use the NAICS codes. *See infra* n.86 and accompanying text.

[86] Entities whose activities fall within this NAICS code are described as: ''establishments primarily engaged in collecting payments for claims and remitting payments collected to their clients'' and include, among others, collection agencies, debt collection services, and account collection services. NAICS code 56144 (collection agencies), *available at http://www.census.gov/cgi-bin/sssd/naics/naicsrch.* The Bureau also believes that debt buyers often self-identify in this NAICS code, although the description does not explicitly mention them. *See, e.g.,* SquareTwo Financial Corp., Registration of Securities Issued in Business Combination Transactions (Form S–4/A) (Mar. 4, 2011), *available at http://pdf.secdatabase.com/178/0001047469-11-001751.pdf.*

[87] The Bureau notes that some firms function both as third-party debt collectors and as debt buyers. The discrepancy that the commenter observes is a difference between business models, not necessarily between firms.

[88] The Census quantity ''receipts'' ''exclude[s] * * * gross receipts collected on behalf of others.'' Census Bureau, *American Factfinder Help,* http://factfinder2.census.gov/help/en/american_factfinder_help.htm (select ''Glossary''; select ''Sales, shipments, receipts, revenue, or business done''; select ''sector specific definitions''), last visited Oct. 19, 2012. This is in accord with the usual treatment of such amounts under income tax accounting. *See generally Commissioner v. Glenshaw Glass Co.,* 348 U.S. 426, 431 (1955) (defining income as ''instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion.'').

[89] A third-party debt collector receives a contingency fee based on the amounts recovered. For 2011, the average rate was 28%. ACA International, *2012 Agency Benchmarking Survey,* at 21. According to the ACA's 2012 Benchmarking Survey, collection agency commission rates averaged 28.4% in 2011, with a median of 25.5%. Thus, for annual receipts of $10 million, an average entity will have recovered around $36 million. By contrast, a debt buyer with $10 million of annual receipts will presumably have recovered only around $10 million.

reporting agencies, the number of lawsuits filed or judgments obtained, the total face value of debt under collection, the total fair value of debt under collection, and the amount recovered from consumers. Another measure of impact on consumers would be the scale of a firm's operations—such as the number of employees available to call consumers or the volume of mail the firm sends. The Bureau does not regard any of these indicia on its own as the true measure of market participation; rather, it has attempted to reflect all of them, albeit imperfectly, in a single criterion. Several options for the criterion might serve that purpose to some degree. For example, total face value, gross recoveries, and annual receipts should all generally correlate with the various types of consumer impact.

For none of these criteria is the relationship between the single numerical value and the various forms of consumer impact identical for all types of firms, all models of debt collection, or all types or ages of debt.[90] In particular, each criterion produces some variation between debt collection conducted on a debt buying model and performed as a third-party debt collector.[91] Total face value of debt under collection, as a criterion, would tend to magnify the apparent market participation of debt buyers. Debt buyers hold debts on their books for years, often purchase debts for a small fraction of their face values, and expect to recover relatively small fractions of the debts' face values. Thus, measuring the total face value of a debt buyer's portfolio at a given point in time could overstate its amount of consumer impact, as compared to a debt collector that turns over that volume of debt (measured by face value) on a much shorter time scale. On the other hand, gross recoveries, as a criterion, could tend to understate the impact of debt buyers as compared to third-party debt collectors. Third-party collectors tend to work with relatively recently defaulted debt and to retain accounts for fairly brief periods of time.[92] To the extent that a debt buyer focuses on older and longer-defaulted debt, and persists over years in its attempts to collect debts on its books, a given amount of gross recoveries will represent substantially more contact with consumers than would that same amount if recovered by a third-party collector.

That is not to say that total face value under collection or gross recoveries would be an illegitimate or improper measure of market participation. Each captures aspects of impact on consumers and thus of participation in the consumer debt collection market. Nor do the observations above suggest that the Bureau should treat third-party debt collectors and debt buyers separately. The Bureau regards the two types of activity as part of the same market. They fulfill the same purpose in consumer financial markets by generating recoveries that reduce creditors' losses on defaulted debts. Debt buyers and third-party debt collectors also use many of the same techniques to collect debts; their activities are therefore similar from consumers' perspectives. Moreover, the differences between the two business models, in terms of how the possible criteria of market participation measure them, are not necessarily greater than differences that exist among firms practicing each model. For example, total face value under collection might treat a debt buyer that focuses on recently defaulted debt similarly to a third-party collector and differently from a debt buyer that works with comparatively old debts. The Bureau concludes that the fact that a criterion tends to produce different results for different forms of debt collection activity is not, alone, a reason not to use a particular criterion.

Annual receipts, as the commenter pointed out, is not the best measure of gross recoveries, one aspect of consumer impact. However, annual receipts, as compared to the other two criteria just discussed, seems the most appropriate measure of overall market participation. Compared to those other criteria, it is a better measure of an entity's capacity to contact consumers, engage in debt collection techniques, and collect debts, as well as the likelihood of recovery.

In addition, the concept of ''annual receipts'' has practical advantages, as discussed above. First, the proposed criterion can generally be calculated using existing business records because consumer debt collectors already prepare IRS filings on an annual basis and maintain accounting systems that support those filings.[93] Third-party debt collectors do not include amounts remitted to others in their income calculations for purposes of Federal income tax reporting. Using gross recoveries as the criterion, as the commenter suggested, would force consumer debt collectors to depart significantly from their IRS reports.[94] Second, the proposed criterion facilitates the Bureau's analysis of the market and development of a threshold for larger-participant status because

[90] All other things being equal, a firm that contacts a larger number of consumers is probably collecting on a larger face value of debt, will probably recover more, and will probably have greater annual receipts. However, the correlation is imperfect for each possible criterion, because the relationship between consumer impact and each criterion varies depending on a number of circumstances such as the age and type of the debts involved and the techniques and business models applied to collecting them. For example, a recent survey found liquidation rates ranging from 12.0 to 28.8 percent depending on the type of debt being collected. ACA International, *2012 Agency Benchmarking Survey,* at 21 (2012). As another example, recent studies have shown prices for charged-off debt that range from less than 1% of face value to over 15% of face value. *See, e.g.,* Kaulkin Ginsberg, *U.S. Credit Card Sector Update: Market Trends, Liquidation, and Portfolio Pricing,* Presentation to ACA International Fall Forum, Nov. 2010. And five publicly traded debt buyers have reported recovering from 150 percent to 250 percent of the purchase price of their debts. Asset Acceptance Capital Corp., Annual Report (Form 10–K) (Mar. 6, 2012), Portfolio Recovery Associates, Inc., Annual Report (Form 10–K) (Feb. 28, 2012), SquareTwo Financial Corp., Annual Report (Form 10–K) (Feb. 24, 2012), Encore Capital Group, Inc., Annual Report (Form 10–K) (Feb. 9, 2012); Asta Funding, Inc., Annual Report (Form 10–K) (Dec. 14, 2011).

[91] The Bureau reiterates that these are different business models and do not necessarily involve different firms. Some firms operate both as debt buyers and as third-party debt collectors.

[92] The Bureau roughly estimates that third-party collectors, on average, collect on new accounts for approximately 220 days. That figure is the difference between the average account age for primary accounts (those with their first debt collectors after default) and for secondary accounts (those with their second debt collectors, after a first period as primary accounts). ACA International, *2011 Top Collection Markets Survey* (2011). In general, the age of a secondary account reflects the age at which it reached its first debt collector, plus the time that debt collector held the account before it was transferred to a second debt collector. Thus, the difference between primary and secondary ages is a rough indicator of how long debt collectors tend to hold primary accounts. ACA International's 2011 survey reported average ages for each of eight sub-markets; to reach the estimate of 220 days, the Bureau averaged the hold time, calculated in this manner, across all eight sub-markets. Debt buyers, on the other hand, collect on accounts for much longer; on average, the five publicly traded debt buyers' portfolios appear to yield, on average, 17% of their purchase price five years after purchase. This figure represents estimated remaining collections divided by purchase price, as reported in 2011 filings for debt purchased in 2006. Asset Acceptance Capital Corp., Annual Report (Form 10–K) (Mar. 6, 2012), Portfolio Recovery Associates, Inc., Annual Report (Form 10–K) (Feb. 28, 2012), SquareTwo Financial Corp., Annual Report (Form 10–K) (Feb. 24, 2012), Encore Capital Group, Inc., Annual Report (Form 10–K) (Feb. 9, 2012); Asta Funding, Inc., Annual Report (Form 10–K) (Dec. 14, 2011).

[93] Another alternative the Bureau considered was to exclude from annual receipts the price of debt buyers pay to purchase debt. But this alternative would be administratively difficult for debt buyers and for the Bureau. Because debt buyers typically amortize their debt purchases over a number of years, it would be difficult to know what amount to exclude when counting the income from recovering debts many years after purchase.

[94] Under the commenter's proposed method, a third-party debt collector would need to revise its annual receipts upwards by about 350 percent, with the actual amount of the change depending on the details of its pricing as agreed with various creditors.

third-party debt collectors already report their incomes to the Census on this basis. The Bureau is not aware of comparable market data on the gross recoveries of various consumer debt collectors.[95]

For the reasons set forth above, the Bureau declines to depart from the proposed criterion for the larger-participant test for the consumer debt collection market and adopts the use of annual receipts as proposed.

Threshold. As noted in the Proposal, the Bureau has broad discretion in setting the threshold above which an entity would qualify as a larger participant in the consumer debt collection market. The Bureau proposed $10 million in annual receipts as the threshold. For the reasons stated below, the Bureau adopts that proposed threshold in the Final Consumer Debt Collection Rule.

Available data indicate that a threshold of $10 million in annual receipts resulting from consumer debt collection activities will enable the Bureau to cover in its nonbank supervision program a broad range of consumer debt collectors. The Bureau believes that this threshold will cover a sufficient number of market participants to enable the Bureau effectively to assess compliance and identify and assess risks to consumers, but at the same time cover only consumer debt collectors that can reasonably be considered ''larger'' participants in the market. Although the Bureau's supervision program would cover only a small percentage of firms in the market, the Bureau would have supervisory authority over nonbank entities interacting with a significant portion of consumers with debt under collection.[96]

As explained in the Proposal, based on the Economic Census, a threshold of $10 million would likely bring within the Bureau's supervisory authority approximately 175 out of the 4,500 entities engaged in debt collection under NAICS code 561440.[97] Thus, larger participants would include about 4% of all consumer debt collection firms, representing about 63% of annual receipts in the consumer debt collection market.[98] The Bureau must deploy its limited resources in an efficient manner in order to encourage lawful behavior and assess risks to consumers. Consumer debt collectors that are larger participants play a greater role in the market, and therefore have a greater impact on consumers, than consumer debt collectors that are not larger participants. Although consumer debt collectors that are not larger participants may commit abuses, lowering the threshold to cover them would require significant additional resources yet would add less than half the market—measured by annual receipts—to the Bureau's supervisory authority. Meanwhile, the Bureau has the authority to supervise any nonbank covered person who it determines, on the basis of reasonable cause, is engaging or has engaged in conduct that poses risk to consumers.[99] In addition, nonbank covered persons generally are subject to the Bureau's regulatory and enforcement authority, and any applicable Federal consumer financial law, regardless of whether they are subject to the Bureau's supervisory authority.

Several commenters suggested that the Bureau adopt a threshold lower than the one proposed. One suggested that the threshold be lowered to $7 million, the threshold that the Bureau adopted for the consumer reporting market. Another did not advocate a particular threshold but argued that the Bureau could reasonably supervise more than 4% of participants in the debt collection market. One commenter argued that 4% of the market is not sufficient coverage because small debt collectors commit the greatest abuses. Many consumer-group commenters recommended an approach that would effectively lower the threshold by counting a firm's receipts from any source, as long as at least $3.5 million of its receipts resulted from the collection of debts related to consumer financial products or services. For the reasons discussed above, the Bureau believes that a threshold of $10 million serves the purposes and objectives of its supervision program.[100]

One consumer group commented that the Bureau did not explain why the threshold for consumer debt collection differs from the $7 million threshold for consumer reporting. As stated in the Proposal, the Bureau considers each market separately and may adopt different criteria and thresholds for each market. Among other differences between the two markets that are the subjects of the Bureau's first two larger-participant rules, consumer reporting entities and consumer debt collectors perform entirely different functions; firms in the two markets interact with consumers in different ways; the market

[95] Such information would also be difficult for the Bureau to infer from the Census data, in part because some firms function both as third-party debt collectors and as debt buyers. To use gross recoveries as the criterion, the Bureau would need to understand what proportions of these firms' receipts came from which type of activity.

[96] As discussed below, the Bureau estimates it may examine the majority of larger participants at an average rate of up to once every five years. Individual consumer debt collectors may be subject to examination more frequently, as a result of the Bureau's consideration of the risk-based factors enumerated in 12 U.S.C. 5514(b)(2). The $10 million threshold is not set to enable the Bureau to supervise every larger participant on a regular basis but rather to permit the Bureau, using the available resources and exercising its discretion with respect to those risk-based factors, to focus its supervisory activity at those entities where it would most effectively serve the Bureau's missions.

[97] One *ex parte* submission noted that out of 745 collection agencies licensed in Colorado, 162 reported in an informal survey that they would meet the proposed threshold for larger-participant status in the consumer debt collection market. However, these figures are not comparable to the Bureau's estimates based on the nationwide Census data. A collection agency is required to obtain a Colorado license if it is located in Colorado; if it regularly collects from debtors located in Colorado; if it solicits the business of companies located in Colorado or if it collects debts on behalf of companies located in Colorado. Colo. Rev. Stat. § 12–14–102; Colo. Att'y Gen., Persons Required to be Licensed as a Colorado Collection Agency, pp. 4–5 (Aug. 12, 1994). As a result of Colorado's expansive licensing requirements, neither the count of larger participants that are operating in Colorado nor the count of debt collection agencies licensed there can be extrapolated (on the basis of population or other factors) to the overall counts of larger participants or consumer debt collectors.

[98] The Bureau recognizes that because the Economic Census data include the collection of medical debt, which, according to the ACA Survey, was 35% of new business for debt collectors in 2010, the Bureau may be overestimating market coverage. ACA International, *ACA Top Collection Markets Survey,* 2011. A hypothetical collector might have $14 million in actual receipts, but, if 35% of them resulted from collecting medical debt, its annual receipts as defined by the rule would be just at the $10 million threshold. In reality, some debt collectors have portfolios with higher percentages of medical debt than average and some have lower. In addition, because recovery rates may vary depending on the type of debt being collected, medical debts may not account for the same proportion of receipts that they do of debts under collection. In sum, the Bureau does not have a way of ascertaining in detail how any overestimation with respect to medical debt might affect the scope of the supervisory authority established by the rule. The Bureau does not believe the effect is large. Even if the Bureau were to change the threshold to $14 million to account for the exclusion of medical debt, a $14 million threshold would cover approximately 144 firms, or approximately 3% of total firms, and approximately 61% of market share.

[99] 12 U.S.C. 5514(a)(1)(C).

[100] The Bureau also will examine depository institutions, credit unions, and nonbanks, insofar as such entities are subject to its supervisory authority, with regard to those entities' processes for managing the risks of service-provider relationships with any third-party debt collectors whose services they use. The Bureau expects covered persons to take steps to ensure that their business arrangements with service providers do not present unwarranted risks to consumers. Such steps should include monitoring to ensure whether service providers are complying with Federal consumer financial law and reviewing service providers' policies, procedures, internal controls, and training materials to ensure that service providers conduct appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities. *See* Consumer Financial Protection Bureau, CFPB Bulletin 2012–03 (Apr. 13, 2012), *available at http://files.consumerfinance.gov/f/201204_cfpb_bulletin_service-providers.pdf.*

structures are different;[101] the substantive Federal consumer financial law principally relevant to the two markets have major differences;[102] and the manner in which annual receipts connect to consumer interactions is different in the two markets.[103] The Bureau does not mean to suggest that each such difference determines the Bureau's views with respect to the criterion or the threshold or that each difference would be important to justify using different criteria or thresholds for larger-participant status with respect to the two different markets. Rather, the Bureau recites these differences in order to explain that the thresholds for the consumer reporting and consumer debt collection markets, while they are both expressed in dollar figures related to annual receipts, are simply not comparable.

For these reasons, the Bureau declines to lower the threshold for larger-participant status in the consumer debt collection market.

The same consumer group commenter suggested that the Bureau undertake another rulemaking to supervise smaller debt collectors. The Bureau will continue to research and monitor the consumer debt collection market to determine if additional rulemakings are necessary. In addition, as discussed above, nonbank covered persons may be subject to the Bureau's enforcement, regulatory, and supervisory authority even if they are not larger participants.

A handful of commenters suggested raising the threshold. A commenter representing third-party debt collectors suggested that the threshold should be raised to $250 million in annual receipts.[104] The commenter also argued that its suggested threshold would be consistent with what the commenter said is the Bureau's mandate under the Dodd-Frank Act, to supervise only very large nonbank covered persons. This commenter, referring to the Bureau's supervisory authority over ''very large'' depository institutions and credit unions, *i.e.,* those with over $10 billion in assets, and their affiliates,[105] argued that the Bureau correspondingly should supervise only very large nonbank entities. But, as the Bureau explained in the Consumer Reporting Rule, the Dodd-Frank Act's division of supervisory authority for insured depository institutions and credit unions does not govern the supervision of nonbank entities. Unlike depository institutions and credit unions with less than $10 billion in assets, nonbanks in the consumer debt collection market that are not subject to Bureau supervision under 12 U.S.C. 5514 generally will not be subject to other Federal supervision for assessing compliance with Federal consumer financial law or for other purposes. Moreover, the Dodd-Frank Act authorizes the Bureau to supervise entities that are ''larger'' participants of a market, not merely ''very large'' participants.[106] Accordingly, the Bureau declines to raise the proposed annual receipts threshold to $250 million for the consumer debt collection market in response to this comment.

Additionally, the Bureau does not believe that a $250 million annual receipts threshold would result in sufficient market coverage to allow it effectively to assess compliance with Federal consumer financial law and detect and assess risks to consumers in the overall market. The Bureau estimates that a $250 million threshold would cover, at most, 7 consumer debt collectors, less than 0.2 percent of market participants and representing approximately 20 percent of overall collection industry receipts.[107] The approximately 168 additional entities (for a total of about 175) covered by the Bureau's proposed threshold represent an additional 43 percent of annual receipts in the market. The proposed threshold would provide the Bureau with the ability to supervise a broader range of market participants and identify and evaluate risks to consumers.

A commenter representing debt buyers suggested that the Bureau raise the threshold to $50 million in annual receipts to provide ''regulatory relief'' to the many debt buying companies that are small businesses. But the SBA's size standard in the debt collection market is $7 million.[108] Therefore, under the larger-participant threshold as proposed and adopted—$10 million—no businesses that qualify as small businesses for SBA purposes would ordinarily be classified as larger participants. Additionally, the Bureau does not believe that a $50 million annual receipt threshold would result in sufficient market coverage to allow it effectively to assess compliance with Federal consumer financial law and detect and assess risks to consumers. A $50 million threshold would cover fewer than 30 consumer debt collectors, less than one percent of market participants and representing only approximately 39 percent of overall collection industry receipts.[109]

The Bureau also received comments from the debt buying industry and a trade association for consumer credit agencies asserting that the proposed threshold would not reflect the middle market for consumer debt collection. According to the commenters, there must be a market of mid-sized firms that includes more than just those between $7 and $10 million in annual receipts. But the Bureau notes that the SBA's small-business standard and the Bureau's larger-participant threshold cannot be compared in this way. ''[L]arger participants,'' in 12 U.S.C. 5514(a)(2), does not refer to the absolute size of the businesses in question. As explained in the Consumer Reporting Rule, the Bureau interprets ''larger participants'' to mean those persons that participate to a relatively large degree in the relevant market. Given the structure of the consumer debt collection market, the Bureau believes it is reasonable to set a threshold for larger-participant status at $10 million in annual receipts. In fact, the median annual receipts for businesses within the NAICS code for debt collection is less than $500,000.[110]

Finally, two commenters recommended that the Bureau index the

[101] For instance, the consumer debt collection market is diffuse and is made up of approximately 4,500 entities, a number which is more than 10 times greater than the number of consumer reporting entities.

[102] The statute principally relevant for the consumer reporting market is the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.,* while the statute primarily relevant to the consumer debt collection market is the FDCPA.

[103] *See* 77 FR 9594–9600.

[104] The commenter stated that a $250 million threshold would account for the economics of the debt collection industry in which consumers make payments in trust to a consumer debt collector which then distributes the payment to the credit grantor, less a contingency fee. The commenter did not explain, and the Bureau is not aware, why a cash flow arrangement of this type should affect the selection of the larger-participant threshold, particularly given that for third-party debt collectors the amounts collected for others do not count towards the threshold.

[105] 12 U.S.C. 5515.

[106] 12 U.S.C. 5514.

[107] Estimated from 2007 U.S. Economic Census, *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ6&prodType=table,* scroll to NAICS code 561440.

[108] A commenter noted that the SBA has proposed to amend its size standard for the category corresponding to debt collector. Under the SBA's proposed rule, a debt collector would be a ''small business'' if it has $14 million or less in annual receipts. 76 FR 63510 (Oct. 12, 2011). This commenter urged the Bureau to increase the larger-participant threshold to avoid capturing would-be small businesses as larger participants. However, even if the SBA finalizes a regulation in accordance with its proposal, the change would not alter the degree to which various entities participate in the consumer debt collection market. Thus, the Bureau declines to raise the threshold for the consumer debt collection market to $50 million in annual receipts.

[109] *See* 2007 U.S. Economic Census, *available at http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ6&prodType=table,* scroll to NAICS code 561440.

[110] *See id.*

threshold for annual receipts for inflation. At this time, the Bureau does not intend to index for inflation. To the extent necessary or appropriate, the Bureau anticipates making adjustments to the threshold through future rulemakings. These future rulemakings may reflect inflation, shifts in the market, and other data that may be available to the Bureau.

For the reasons stated above, the Bureau adopts the proposed threshold of $10 million in annual receipts for the consumer debt collection market.

Apportionment. As noted in the Proposal, some multi-line companies derive only portions of their annual receipts from consumer debt collection activities. The Proposed Rule provided that the only annual receipts to be considered for purposes of determining larger-participant status are those ''resulting from'' activities related to the consumer debt collection market.

The Bureau received a number of comments on the issue of apportionment. One industry representative said that apportionment would present substantial difficulties for multi-line companies because IRS forms generally do not differentiate between income streams within organizations, and a multi-line company will need to perform burdensome calculations beyond the calculations IRS forms require.[111] A group representing attorneys engaged in commercial law stated that the Proposed Rule would likely require participants to overhaul their accounting systems to segregate revenue by activity type, at a significant cost, in order to determine whether they are larger participants or to respond to Bureau assertions on that point. Two consumer groups suggested that the Bureau should count a company's total annual receipts, from any of its revenue streams, toward the larger-participant threshold. These commenters stated that determining a company's status as a larger participant using total annual receipts would be much simpler than trying to segregate annual receipts from market-related activities, and would serve to prevent evasion by reducing the temptation for companies to misclassify the source of their revenues to avoid supervision. Another commenter said that the Bureau should define the term ''apportionment'' and use that definition when describing the aggregation of annual receipts for affiliated companies.[112] Finally, one commenter representing third-party debt collectors supported the concept of apportionment and asked the Bureau to issue a simple form by which market participants could report apportioned data.

The Bureau declines to define the term ''apportionment.'' The term is not used in the regulatory text; rather, apportionment is a concept that conveys the inclusion of receipts ''resulting from'' activities related to the consumer debt collection market. The Bureau believes it is appropriate to permit apportionment of annual receipts. In some instances there may be nonbank covered persons that have significantly different business lines, with certain business lines not relating to the consumer debt collection market. In addition, as noted above, participants of the consumer debt collection market should be reasonably aware of the sources of their revenue, and should thus be able to apportion without undue burden. To clarify, market participants are not required to apportion their annual receipts on a periodic or other basis under the Final Consumer Debt Collection Rule. Accordingly, the Bureau finds it unnecessary to publish a form by which market participants could report such data. On the contrary, the Bureau has decided to permit apportionment, in part to enable a nonbank covered person to apportion its annual receipts if it wishes to challenge an assertion by the Bureau that it qualifies as a larger participant. In such a case, the person may provide records, documents, or other evidence to the Bureau reasonably identifying that portion of its annual receipts that do not result from market-related activities. However, if the person does not wish to apportion receipts in challenging such an assertion, it may forego doing so, with the sole result being that it will have higher annual receipts counted toward the $10 million threshold for larger-participant status.

Accordingly, the Bureau adopts in the Final Consumer Debt Collection Rule the provision that the only receipts counting toward the calculation of ''annual receipts'' are those ''resulting from'' activities related to the covered market.

VI. Section 1022(b)(2)(A) of the Dodd-Frank Act

A. Overview

In developing the Final Consumer Debt Collection Rule, the Bureau has considered potential benefits, costs, and impacts.[113] The Proposal set forth a preliminary analysis of these effects, and the Bureau requested and received comments on the topic. In addition, the Bureau has consulted or offered to consult with the Federal Trade Commission, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Housing Finance Agency, the National Credit Union Administration, and the United States Departments of Education, and Housing and Urban Development, in connection with this rulemaking, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

The Final Consumer Debt Collection Rule defines a category of ''larger participants of other markets for consumer financial products or services'' that will be subject to the Bureau's nonbank supervision program pursuant to 12 U.S.C. 5514(a)(1)(B). The category defined by the rule includes ''larger participants'' of a market for ''consumer debt collection'' that the rule

[111] This commenter also appears to have misapprehended the Proposed Rule to make IRS forms the only permissible source of information about a company's annual receipts. The commenter recommended that the final rule state expressly that a market participant may make a good faith determination of its annual receipts based on records maintained in the ordinary course of business. The Bureau does not believe such an addition to the regulation is necessary, because the rule does not require companies to rely solely on their IRS forms. The criterion by which market participation is measured is annual receipts resulting from consumer debt collection; the Bureau is aware that this specific quantity does not necessarily correspond, for every company, to a figure reported to the IRS. In addition, § 1090.103(a) establishes that a person wishing to dispute whether it is a larger participant may provide the Bureau records, documents, or other evidence reasonably identifying what portion of its annual receipts result from activities falling outside a covered market.

[112] The Bureau also received a comment from a representative of the loan servicing industry recommending that the concept of apportionment should apply to both the multi-line entities and their affiliates. This commenter apparently interpreted the Proposal to mean that only an affiliated company's receipts would be subject to apportionment, which would then be aggregated with the parent company's annual receipts from any activity. In fact, the rule permits a company to apportion both its receipts and its affiliates' to calculate its annual receipts for purposes of the rule.

[113] Specifically, 12 U.S.C. 5512(b)(2)(A) calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services, the impact on depository institutions and credit unions with $10 billion or less in total assets as described in 12 U.S.C. 5516, and the impact on consumers in rural areas. In addition, 12 U.S.C. 5512(b)(2)(B) directs the Bureau to consult, before and during the rulemaking, with appropriate prudential regulators or other Federal agencies, regarding consistency with objectives those agencies administer. The manner and extent to which the provisions of 12 U.S.C. 5512(b)(2) apply to a rulemaking of this kind that does not establish standards of conduct is unclear. Nevertheless, to inform this rulemaking more fully, the Bureau performed the analysis and consultations described in those provisions of the Dodd-Frank Act.

describes. Participation in this market is assessed on the basis of annual receipts, generally averaged over three years, resulting from consumer debt collection activities. If a nonbank covered person's annual receipts from consumer debt collection are over a threshold of $10 million, the entity is a larger participant in that market and thus subject to the Bureau's supervisory authority. With the rule in place, the Bureau will be able to commence supervisory activities in the identified consumer debt collection market.

B. Potential Benefits and Costs to Consumers and Covered Persons

This analysis considers the benefits, costs, and impacts of the key provisions of the rule against a pre-statutory baseline; that is, the analysis evaluates the benefits, costs, and impacts of the relevant statutory provisions and the regulation combined.[114] Before the Dodd-Frank Act, there was no Federal program for supervision of nonbank participants of the consumer debt collection market. With the statute and the Final Consumer Debt Collection Rule in effect, the Bureau will be able to supervise participants of the consumer debt collection market who have annual receipts from consumer debt collection of more than $10 million.

The Bureau notes at the outset that limited data are publicly available with which to quantify the potential benefits, costs, and impacts of the rule. For example, although the Bureau has general quantitative information, discussed above, on the number of market participants and their receipts, the Bureau lacks detailed information about their rate of compliance or non-compliance with Federal consumer financial law (including the FDCPA) and about the range of compliance mechanisms and their costs to market participants. The Proposal requested information to support the analysis of benefits, costs, and impacts, but commenters did not provide, or identify sources for, relevant data.[115] Over time, the Bureau expects to develop information related to these topics through its supervisory and other activities.

In light of these data limitations, this analysis generally provides a qualitative discussion of the benefits, costs, and impacts of the Final Consumer Debt Collection Rule. General economic principles, together with the limited data that are available, provide insight into these benefits, costs, and impacts. Where possible, the Bureau has made quantitative estimates based on these principles and data as well as its experience of supervision.

The discussion below describes three categories of potential benefits and costs. First, after the rule authorizes the Bureau's supervision in the consumer debt collection market, larger participants in the market may respond to the possibility of supervision by changing their systems and conduct. Second, when the Bureau undertakes supervisory activity at specific consumer debt collectors, those consumer debt collectors will incur costs from participating in supervision, and the results of these individual supervisory activities may also produce benefits and costs.[116] Third, the Bureau analyzes the costs associated with entities' efforts to assess whether they qualify as larger participants under the rule.

1. Benefits and Costs of Responses to the Possibility of Supervision

The Final Consumer Debt Collection Rule subjects larger participants of the consumer debt collection market to the possibility of Bureau supervision. That the Bureau is authorized to undertake supervisory activities with respect to a nonbank covered person who qualifies as a larger participant does not necessarily mean the Bureau will in fact undertake such activities regarding that covered person in the near future or at all. Rather, as explained in the Proposal, supervision of any particular larger participant as a result of this rulemaking will be probabilistic in nature. For example, the Bureau will examine certain larger participants on a periodic or occasional basis. The Bureau's decisions about supervision will be informed, as applicable, by the factors set forth in 12 U.S.C. 5514(b)(2), relating to the size and transaction volume of individual participants, the risks their consumer financial products and services pose to consumers, the extent of State consumer protection oversight, and other factors the Bureau may determine are relevant. Each entity that believes it qualifies as a larger participant will know that it might be supervised and may gauge, given its circumstances, the likelihood that the Bureau will initiate an examination or other supervisory activity.

As the Proposal pointed out, the prospect of potential supervisory activity may create an incentive for larger participants to increase compliance with Federal consumer financial law. They may anticipate that by doing so (and thereby decreasing risks to consumers), they can decrease their chances of actually being subjected to supervision as the Bureau evaluates the factors outlined above. In addition, an actual examination would likely reveal any past or present noncompliance, which the Bureau may seek to correct through supervisory activity or, in some cases, enforcement actions. Larger participants may therefore judge that the prospect of supervision has increased the potential consequences of noncompliance with Federal consumer financial law, and they may seek to decrease that risk by curing or mitigating any noncompliance.

The Bureau believes it is likely that market participants will increase compliance in response to the Bureau's supervisory activities authorized by this rule. However, because the Final Consumer Debt Collection Rule itself does not require any consumer debt collector to alter its conduct of consumer debt collection, any estimate of the amount of increased compliance would be a prediction of market participants' behavior. The data the Bureau currently has do not support a specific quantitative prediction. But, to the extent that consumer debt collectors increase their compliance in response to the Final Consumer Debt Collection Rule, that response will result in both benefits and costs.[117]

a. Benefits From Increased Compliance

Increased compliance would be beneficial to consumers that are affected

[114] The Bureau has discretion in any rulemaking to choose an appropriate scope of analysis with respect to potential benefits and costs and an appropriate baseline. The Bureau, as a matter of discretion, has chosen to describe a broader range of potential effects to more fully inform the rulemaking.

[115] One commenter asserted without explanation that medium-sized firms would need to dedicate between three and eight employees to the supervision process during the two weeks before and two weeks of an examination.

[116] Pursuant to section 12 U.S.C. 5514(e), the Bureau also has supervisory authority over service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. The Bureau does not have data on the number or characteristics of service providers to the roughly 175 larger participants of the consumer debt collection market. The discussion herein of potential costs, benefits, and impacts that may result from the Final Consumer Debt Collection Rule generally applies to service providers to larger participants.

[117] Another approach to considering the benefits, costs, and impacts of the rule would be to focus almost entirely on the supervision-related costs for larger participants and omit a broader consideration of the benefits and costs of increased compliance. As noted above, the Bureau has, as a matter of discretion, chosen to describe a broader range of potential effects to more fully inform the rulemaking.

by consumer debt collection. As discussed above, the potential pool of consumers who are directly affected by debt collection is broad and includes, on average, 14% of the population. Lawful consumer debt collection is important to the functioning of the consumer credit market, because participants in this market reduce creditors' losses from nonpayment and thereby help to keep consumer credit accessible and potentially more affordable to many consumers. Unlawful debt collection can damage consumers' finances and harm them in other ways. Unfair, deceptive, and abusive practices, to the extent they succeed in recovering more from consumers (including perhaps more than is owed) can also damage the broader debt collection market by altering the competitive balance. A number of Federal consumer financial laws, including, among others, the FDCPA, the FCRA, and Title X of the Dodd-Frank Act, and related regulations, offer substantive protections to consumers regarding consumer debt collection. Increasing the rate of compliance with such laws will benefit consumers and the consumer financial market by providing more of the protections mandated by those laws.

For example, the FDCPA prohibits debt collectors from recovering amounts that are not expressly authorized by agreement or permitted by law.[118] The FDCPA also prohibits certain forms of communication with consumers that debt collectors might otherwise be tempted to make.[119] And it requires debt collectors to make information available to consumers, in certain circumstances, about the origins, status, and amounts of debts under collection.[120] Thus, increased compliance by debt collectors with the FDCPA would likely result in a decrease in the collection of invalid debt claims, and an increase in the protections of consumers and of the market that the FDCPA affords.

As another example, the Fair Credit Reporting Act imposes certain duties on businesses that furnish information about consumers to consumer reporting agencies.[121] Debt collectors frequently furnish such information, and the Bureau's supervision program may lead to their increased fulfillment of FCRA obligations. Those obligations may include, among others, not furnishing information that a furnisher has reasonable cause to believe is inaccurate; updating or correcting information, already furnished, that the furnisher determines to have been inaccurate; and carrying out reasonable investigations of consumer disputes. Thus, in general, an increase in a furnisher's compliance with the FCRA can lead to an improvement in the accuracy of information the furnisher provides to consumer reporting agencies. Such an increase, to the degree it occurs, would tend to benefit consumers. An increase would also benefit consumer reporting agencies, which sell consumer reports, based in part on information gathered from furnishers, that are meant to be reliable sources of information about consumers' past credit experiences, and would also benefit users of such reports.

b. Costs of Increased Compliance

On the other hand, as discussed in the Proposal, increasing compliance involves costs. In the first instance, those costs will be paid by the market participants that choose to increase compliance. Consumer debt collectors may need to hire or train additional personnel to effectuate any changes in their practices that are necessary to produce the increased compliance. They may need to invest in systems changes to carry out their revised procedures. In addition, consumer debt collectors may need to develop or enhance compliance management systems, to ensure that they are aware of any gaps in their compliance. Such changes would also require investment and may entail increased operating costs.

An entity that does incur costs in support of increasing compliance may try to recoup those costs by demanding increased revenue for collecting debt.[122] Whether and to what extent this increase occurs will depend on competitive conditions in the consumer debt collection market. In addition, if increasing compliance leads to lower recovery rates, creditors may perceive the risk of loss on loans to be greater. In either case, consumers' access to credit may decrease, although whether and to what extent such a decrease might occur would also depend on competitive conditions in the consumer credit markets.[123] At the same time, to the extent the decrease in recovery resulted from the collection of fewer debts for which consumers were not legally responsible—such as debts not truly owed—the change ought to represent an improvement in the allocation of credit. Credit should be allocated to reflect the real risk of loss—without that risk's being masked by collectors' recovering amounts that are not actually owed.

2. Benefits and Costs of Individual Supervisory Activities

In addition to the responses of market participants anticipating supervision, the possible consequences of the rule include the effects of individual examinations or other supervisory activity that the Bureau may conduct in the consumer debt collection market.

a. Benefits of Supervisory Activities

The information gathered during supervisory activity will be useful in several ways. For example, when an examination uncovers deficiencies in a company's policies and procedures, both the company and the Bureau will become aware of those deficiencies. The Bureau's examination manual calls for the Bureau to prepare a report of each examination and to assess the strength of the subject entity's compliance mechanisms and the risks the entity poses to consumers, among other topics. The Bureau will share the examination report with the subject entity, because one purpose of supervision is to inform the entity of problems detected by examinations.

Thus, for example, an examination may reveal that, due to the design of its procedures, a company frequently collects on debt that cannot be validated. Or an examination may determine that a company has sometimes failed to provide consumers required notices while attempting to collect debts, or has engaged in inappropriate communications with third parties regarding debts subject to collection. Examiners may find evidence of widespread noncompliance with Federal consumer financial law, or they may identify specific areas where a company has inadvertently failed to

[118] 15 U.S.C. 1692f(1).

[119] 15 U.S.C. 1692c.

[120] 15 U.S.C. 1692g (validation of debts).

[121] *See* 15 U.S.C. 1681s–2.

[122] How a participant receives its revenue depends on the participant's business model. Because third-party debt collectors often collect debt on commission, they may demand larger percentages. Debt buyers typically buy debt at a substantial discount to its face value, and their revenue is based on the difference between the amount collected and the price paid for the debt. These participants might lower the amount they were willing to pay for a given amount of debt.

[123] The Bureau is aware that changes in bankruptcy law that affect creditors' ability to recover amounts lent to consumers have been found to affect the pricing and availability of credit offered to consumers. If recovery rates for debt subject to collection decrease, that change may also affect the pricing and availability of credit for those consumers whose debts are considered relatively likely to end up in collection. However, the Bureau is not aware of any published research estimating the quantitative magnitude of the latter effect. The Bureau notes that the Equal Credit Opportunity Act would prohibit creditors from undertaking underwriting or pricing actions on a prohibited basis. Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq*.

comply. These examples are only illustrative of what kinds of information an examination might deliver.

Detecting and informing companies about such problems should be beneficial to consumers. When the Bureau notifies a company about risks associated with an aspect of its activities, the company is expected to adjust its practices to reduce those risks. That response may result in increased compliance with Federal consumer financial law, with benefits like those described above. Or it may avert a violation that would have occurred had Bureau supervision not detected the risk promptly. The Bureau may also inform companies about risks they pose to consumers short of violating the law. Action to reduce those risks would also be a benefit to consumers.

Given the obligations consumer debt collectors have under Federal consumer financial law and the existence of efforts to enforce such law, the results of supervision may also benefit consumer debt collectors under supervision by detecting compliance problems early. When an entity's level of noncompliance has resulted in litigation or an enforcement action, the company must face both the costs of defending its actions and the penalties for noncompliance—including potential liability for statutory damages to private plaintiffs—and must also adjust its systems to cure the breach. Changing practices at this point can be expected to be relatively difficult, because a level of noncompliance that has attracted the attention of enforcement authorities or private plaintiffs will sometimes be severe enough to represent a serious failing of a company's systems. Supervision may detect flaws at a point when correcting them is relatively inexpensive. And catching problems before they involve a company in costly private litigation or administrative enforcement, and potentially the payment of legal penalties or other forms of relief, could save the company substantial time and money. In short, supervision might benefit consumer debt collectors under supervision by reducing the need for other more expensive activities, like enforcement and private litigation, to achieve a given compliance rate. Accordingly, a shift of some amount of regulatory oversight from enforcement to supervision would be beneficial to market participants.

Further potential benefits to consumers, covered persons, or both may arise from the Bureau's gathering of information during supervisory activities. The goals of supervision include informing the Bureau about activities of market participants and assessing risks to consumers and to markets for consumer financial products and services. The Bureau may use this information to improve regulation of consumer financial products and services and enforcement of Federal consumer financial law, in order to better serve its mission of ensuring consumers' access to fair, transparent, and competitive markets for such products and services. Benefits of this type will depend on what the Bureau learns during supervision and how it uses that knowledge.

b. Costs of Supervisory Activities

The potential costs of actual supervision arise in two categories. The first involves the costs of individual consumer debt collectors' increasing compliance in response to the Bureau's findings during supervisory activity and to supervisory actions. These costs are similar in nature to the possible compliance costs, described above, that larger participants in general may incur in anticipation of possible supervisory activity. This analysis will not repeat that discussion. The second category is the cost of supporting supervisory activity.

Supervisory activity may involve requests for information or records, on-site or off-site examinations, or some combination of these activities. For example, in an on-site examination, generally, Bureau examiners begin by contacting the entity for an initial conference with management. That initial contact is often accompanied by a request for information or records. Based on the discussion with management and an initial review of the information received, examiners will determine the scope of the on-site exam. While on-site, examiners will spend some time in further conversation with management about the entity's processes and procedures. The examiners will also review documents, records, and accounts to assess the entity's compliance and evaluate the entity's compliance management systems. As with the Bureau's bank examinations, examinations of nonbank covered persons will involve issuing confidential examination reports and compliance ratings. The Bureau's examination manual describes the supervision process and indicates what materials and information an entity can expect examiners to request and review, both before they arrive and during their time on-site. The primary cost an entity faces in connection with an examination is the cost of employees' time to collect and provide the necessary information.

At this early stage in its nonbank supervision program, the Bureau does not have precise estimates of the expected duration and frequency of its examinations and the resources that entities may expend to cooperate with such examinations. The frequency and duration of any examinations of any particular entity will depend on a number of factors, including the size of the entity, the compliance or other risks identified, whether the entity has been examined previously, and the demands on the Bureau's supervisory resources imposed by other entities and markets. Nevertheless, some rough estimates may be useful to provide a sense of the magnitude of potential staff costs that entities may incur.

Typical examinations of consumer debt collectors within the category of larger participants with annual receipts close to the $10 million threshold might be relatively brief. Bureau examiners might review materials and interview employees for four weeks, and an entity might devote the equivalent of one full employee during that time and for two weeks beforehand to prepare materials for the examination. The typical cost of the employee involved in responding to supervision can be expected to be roughly $49 per hour.[124] Six weeks of such an employee's time would cost less than $12,000.[125] For a larger participant with annual receipts from consumer debt collection of more than $10 million, this cost would represent 0.12 percent of those annual receipts.[126] Even if an examination required twice as much employee time, the cost would still come to only 0.24 percent of annual receipts for such an entity.

By contrast, at the very largest consumer debt collectors in the market, supervisory activity could last much longer. Given the complexity of a very large entity, Bureau examiners might need months to review the relevant materials. Such an entity might dedicate the equivalent of two full-time employees to participate in the examination.[127] The cost of eight

[124] Bureau of Labor Statistics, (BLS), National Compensation Survey, Employment Cost Trends, *available at http://www.bls.gov/ncs/ect/*. BLS data for ''nondepository credit intermediation'' indicate that the mean hourly wage of a compliance officer in that sector is $33.40. BLS data also indicate that salary and wages constitute 67.5 percent of the total cost of compensation. Dividing the hourly wage by 67.5 percent yields a wage (including total costs, such as salary, benefits, and taxes) rounded to the nearest dollar of $49 per hour.

[125] All figures assume 40 hours of work per week.

[126] The Proposal described four business-weeks of employee time as ''a fraction of a percent'' of revenues, for a service provider that was a small business. Six business-weeks is also a fraction of a percent, as estimated above.

[127] Of course, multiple individuals, both inside and outside a firm, might participate in a

Continued

months of employee time (four months each for two employees) would be about $68,000, or about 0.07 percent of annual receipts for an entity with $100 million in receipts.

For an entity of a more typical size, which would be between the two size groupings discussed above, Bureau examiners might review materials and interview employees for eight weeks, and an entity might devote the equivalent of one full employee during that time and for two weeks beforehand to prepare materials for the examination. Thus, a typical examination would take ten weeks of such an employee's time and would cost less than $20,000.

To put the market-wide impact of supervision in perspective, the Bureau estimates that the average annual market-wide cost of supervision is 0.015 percent of receipts. The Bureau does not expect to supervise every larger participant in every year. For purposes of estimation, the Bureau assumes that each of the sixteen largest market participants will be examined at most every other year, at a cost of $68,000 each, for an aggregate annual cost of $544,000. By way of estimation, the Bureau assumes that each of the remaining larger participants, about 160 in total, will be examined up to once every five years, at a cost of $20,000 each, giving an aggregate annual cost of $640,000. The total staff cost of responding to supervision comes to approximately $1,184,000 annually.[128] This figure represents 0.015 percent of the aggregate annual receipts—$7.7 billion [129]—of the larger participants of the consumer debt collection market.

The Bureau declines to predict, at this point, precisely how many examinations in the consumer debt collection market it will undertake in a given year. Once the rule takes effect, the Bureau will be able to undertake supervisory activity in the identified market; neither the Dodd-Frank Act nor the Final Consumer Debt Collection Rule specifies a particular level or frequency of examination. The frequency of examination will depend on a number of factors, including the Bureau's understanding of the conduct of market participants and the specific risks they pose to consumers; the responses of larger participants to prior examinations and the demands that other markets make on the Bureau's supervisory resources. These factors can be expected to change over time, and the Bureau's understanding of these factors may change as it gathers more information about the market through its supervision and by other means.

3. Costs of Assessing Larger-Participant Status

Finally, the Bureau acknowledges that in some cases consumer debt collectors may incur costs in assessing whether they qualify as larger participants and potentially disputing their status. The rule is designed to minimize those costs.

Larger-participant status depends on annual receipts, a quantity that for many consumer debt collectors should correspond to data they already report to the IRS. For such consumer debt collectors, assessing whether they satisfy the Final Consumer Debt Collection Rule's definition of larger participant in the consumer debt collection market will involve minimal expense. Potential differences from the IRS figures arise only for consumer debt collectors that have annual receipts arising from activities besides consumer debt collection as defined in the Final Consumer Debt Collection Rule. Some consumer debt collectors may have multiple distinct lines of business. The Bureau believes that such consumer debt collectors ordinarily have records for each division of the accounting quantities underlying the calculation of annual receipts.

If, in addition, a consumer debt collector sometimes engages in debt collection that is excluded from the market and sometimes in debt collection within the defined market, the consumer debt collector's accounting systems might not distinguish the two types of activity. However, most market participants should not need such detailed information. The rule does not require market participants to submit data on their annual receipts. Most of the time, a consumer debt collector only needs to know its annual receipts resulting from market-related activity to the extent it wants to determine in advance of any supervisory activity by the Bureau whether it is a larger participant. A consumer debt collector with receipts from all activities that are above the threshold will not necessarily need to trace precisely what quantity derives from activities other than consumer debt collection (as defined by the Final Consumer Debt Collection Rule). A rough estimate would suffice to inform such an entity whether its consumer debt collection receipts cross the threshold. Most likely, the only consumer debt collectors that might need a more precise calculation of annual receipts would be those that have total receipts not greatly exceeding the threshold and significant receipts from activities (like collection of medical debt) that would be excluded from the calculation.

The data the Bureau currently has do not support a detailed estimate of how many consumer debt collectors will incur such costs, or how much they might spend. Regardless, consumer debt collectors would be unlikely to spend significantly more on specialized accounting systems to enable these calculations than it would cost them to be supervised by the Bureau as larger participants. It bears emphasizing that expenditures on an accounting system intended to prove a consumer debt collector is not a larger participant will not necessarily mean that the consumer debt collector cannot be supervised. The Bureau can supervise a consumer debt collector whose conduct the Bureau determines, pursuant to 12 U.S.C. 5514(a)(1)(C), poses risks to consumers. Thus, a consumer debt collector choosing to spend significant amounts on an accounting system directed toward the larger-participant test could not be sure it would not be subject to Bureau supervision notwithstanding those expenses. The Bureau therefore believes it is unlikely that any but a very few consumer debt collectors would undertake such expenditures.

4. Consideration of Alternatives

The Bureau considered selecting different thresholds for larger-participant status in the consumer debt collection market. If the threshold were much higher—say $250 million, as one commenter suggested—then the Bureau's supervisory authority under the rule would reach only the very largest consumer debt collectors—approximately 7—in the market. Such an approach would reduce both the expected benefits to consumers and the costs to covered persons, because fewer consumer debt collectors would be subject to the Bureau's supervisory authority. As the Proposal explained, if a change in an consumer debt collector's systems or practices results in increased compliance with Federal consumer financial law, such a change would

supervisory activity. For example, a firm might seek an attorney's advice on how to respond to and participate in an examination. The Bureau of Labor Statistics estimates the relevant attorney wage as $112.34, and it is conceivable that attorney activity might constitute 10 percent of a firm's overall activity during the course of an examination. The rough estimate provided above is meant to represent the aggregate amount of labor resources a company might dedicate to responding to supervisory activity.

[128] As noted above, there are roughly 175 entities whose annual receipts from consumer debt collection exceed the $10 million threshold.

[129] *See http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ECN_2007_US_56SSSZ4&prodType=table,* scroll to NAICS code 561440. $7.7 billion represents 63 percent of all receipts for ''collection agencies,'' which total $12.2 billion.

produce greater benefit at a large consumer debt collector than at a smaller consumer debt collector. The largest consumer debt collectors are expected to affect the most consumers, and any increase in compliance by such consumer debt collectors would benefit a relatively large number of consumers.

At which market participants supervision produces the greatest benefits or costs due to increased compliance depends on where the greatest risks to consumers lie. If some consumer debt collectors below $250 million in annual receipts have particular compliance problems, bringing such consumer debt collectors within the Bureau's supervisory authority, and conducting actual examinations at those consumer debt collectors, can be expected to produce larger increases in compliance than would supervising larger consumer debt collectors. The statutory criteria regarding supervision should ensure that those larger participants that are supervised are the same consumer debt collectors where the benefits from supervision are likely to be highest.[130] The selected threshold of $10 million gives the Bureau the flexibility to direct its supervisory resources to the consumer debt collectors where supervision will be of greatest use, even if they are not the very largest in the market.

5. Responses to Comments

The Bureau received a number of comments on its preliminary analysis under 12 U.S.C. 5512(b)(2).

Several comments related to the Bureau's characterization of supervision as probabilistic. One commenter criticized the Bureau for asserting that the rule only authorizes supervisory activities and that the Bureau will likely not supervise all larger participants in any given year. According to this commenter, the Bureau was trying to avoid acknowledging the costs of supervision. Later, when the Bureau actually undertakes supervisory activity, the commenter claims that the Bureau will not consider benefits, costs, and impacts because such consideration is only necessary for rulemaking, not supervision. Another commenter argued that the Bureau had assumed the rule would produce increased compliance yet had discounted the costs as ''probabilistic.'' One commenter suggested that consumer debt collectors will make additional efforts at compliance, in anticipation that they might be supervised, and will therefore bear the resulting costs regardless of how often the Bureau actually conducts supervisory activity.

As reflected above, the Bureau continues to believe that supervision of specific consumer debt collectors pursuant to the Final Consumer Debt Collection Rule is probabilistic in nature. The Bureau has recognized two stages in which the rule could increase compliance, with its attendant benefits and costs. First, the Bureau acknowledges that consumer debt collectors may respond to the possibility of the Bureau's supervision activity by changing their systems and conduct to produce more compliance with Federal consumer financial law. The discussion above presented benefits and costs associated with consumer debt collectors' changing their conduct in anticipation of possible supervision. Second, in the course of actual examinations, the Bureau may uncover specific problems that consumer debt collectors then correct. The benefits resulting from this second stage, like the costs of actual supervisory activity, are indeed probabilistic in nature for the reasons described above.

Commenters offered somewhat contradictory comments regarding the rate of existing compliance. Some suggested that the Bureau had underestimated the efficacy of consumer debt collectors' existing incentives—from sources such as enforcement and supervision by State regulators—to comply with the law. Such commenters asserted that market participants are already aware of the risks of enforcement action and regulatory oversight and have effective compliance mechanisms. Thus, the commenter concluded, the benefits of the rule are smaller than the Proposal assumed. Another commenter stated that the rule will be more costly than the Proposal acknowledged, because consumer debt collectors will have to develop compliance policies and procedures, by hiring new staff and developing new systems. Yet another commenter contended that because the rule is not substantive, but only establishes the possibility of supervision, the Bureau cannot assume that consumer debt collectors will increase their legal compliance in response.

The comments do not lead the Bureau to different conclusions regarding the benefits and costs of increased compliance as a potential effect of the rule. If the rule incentivizes consumer debt collectors to develop compliance management systems that they do not already have, that result will likely both produce benefits in the form of improved compliance and the costs involved in creating and administering such systems. As a general matter, the Bureau believes it is unlikely that consumer debt collectors can consistently comply with the law without having reasonably thorough systems for promoting and monitoring compliance. Without such systems, a consumer debt collector may happen to comply with the law, but it cannot be assured that it is doing so; cannot reliably learn of problems and fix them; and cannot modify its practices to keep up with changes in the law.

If, on the other hand, compliance levels are already high—in part because of incentives that one commenter pointed out, arising from Federal and State enforcement and State supervisory activity—then the benefits of the rule will be lower. However, to achieve high levels of compliance, consumer debt collectors presumably already incur corresponding costs. The compliance-related costs of the rule will therefore be lower as well. In addition, the Bureau's likely level of supervisory activity over time may also be lower. The commenters provided no evidence of the existing level of compliance of consumer debt collectors. In any event, whatever increase in compliance may occur as a result of the rule is accompanied by the associated benefits and costs of that increase.[131]

Commenters also questioned the Bureau's estimates of how much supervision would cost entities. An industry association asserted that the Bureau's estimate, for actual supervisory activity, of four full weeks of employee time at a small consumer debt collector was a significant underestimate. The commenter did not offer an alternative estimate, but the commenter argued that even a month of employee time would be burdensome for a small business.

The Bureau acknowledges that staff time can be a cost for an entity responding to particular supervisory activity. The Bureau has estimated the magnitude of that cost for consumer debt collectors of various sizes. The estimated amount of staff time involved

[130] 12 U.S.C. 5514(b)(2).

[131] According to several commenters, the Bureau also overlooked the cost of firms' organizing their compliance management policies in a format consistent with the Bureau's supervision manual. These commenters asserted that companies would, anticipating the possibility of supervisory activity, expand their compliance management systems beyond what is appropriate for assuring compliance. The Bureau notes that its examination manual does not specify a particular format for compliance management policies. Of course, it is nonetheless possible that some companies may develop more comprehensive compliance management systems than would be necessary or appropriate for their circumstances. The Bureau has, and commenters provided, no information with which to assess the possible magnitude of such an effect.

represents the Bureau's experience of supervision. Depending on the circumstances, that amount may be an underestimate or overestimate for some supervisory activities. But even if all supervisory activity cost twice as much as the Bureau estimated, the cost would still, as noted above, be 0.24 percent of the annual receipts of an individual entity with receipts just above the $10 million threshold.

Several commenters suggested that the rule would force consumer debt collectors to develop new accounting systems to generate data on the amount of receipts attributable to consumer debt collection. It bears emphasis that the rule imposes no such requirement. The Bureau has not required market participants regularly to submit accounting data. Market participants might be motivated to alter accounting systems to some degree to improve their assessments of whether they qualify as larger participants, but the Bureau is not persuaded by these commenters that consumer debt collectors will spend significant amounts on such alterations. As noted above, a consumer debt collector with multiple lines of business presumably knows basic accounting information, such as receipts, for each division. If existing accounting systems do not provide detailed information corresponding to the rule's test for assessing larger participant status, the discrepancy would only relate to the amount of receipts related to activities that the rule excludes from the consumer debt collection market. As discussed above, an entity would only need to know such information in detail to the degree that the precise facts might render the entity not a larger participant. Moreover, consumer debt collectors would be unlikely to spend significantly more on accounting systems than it would cost them to be supervised by the Bureau.

One commenter also discussed how the costs of supervision will affect the consumer debt collection market. The commenter argued that the cost of undergoing examination will be most easily borne by large businesses. The commenter inferred that the existence of supervision would create an economy of scale that would favor the growth of large consumer debt collectors in the market at the expense of smaller participants. The commenter did not explain whether this hypothesized market effect would be beneficial or harmful, either to consumers or to covered persons.

Even if, as the commenter contends, a larger entity is better able to bear the costs of supervision, the rule as a whole does not necessarily burden smaller firms disproportionately. The Bureau may supervise the largest consumer debt collector more frequently than those that are just above the threshold to qualify as larger participants. As the Proposal noted, the benefits gained from detecting noncompliance are likely to be greater when the consumer debt collector under examination is larger. Larger consumer debt collectors affect larger numbers of consumers. The benefit from any improvement in policies and processes will therefore be multiplied across the experiences of more consumers. In addition, participants' asset sizes and transaction volumes are among the 12 U.S.C. 5514(b)(2) factors that the Bureau may consider in prioritizing its supervisory activities. There is little reason to believe that the Bureau's general supervision of larger participants of this market will skew the playing field in favor of the largest consumer debt collectors—particularly in view of the fact, explained above, that the staff costs of responding to supervisory activity are likely to be small even for entities just above the larger-participant threshold.

This commenter also argued that the costs of examination will be passed on to creditors and will therefore lead to a decrease in consumers' access to credit.[132] The commenter offered no data or argument to support this assertion. As noted above, an increase in the cost of consumer debt collection may lead to an increase in the price or a decrease in the availability of credit to those consumers whose debts are regarded as likely to need the work of consumer debt collectors. However, whether and to what extent newly supervised consumer debt collectors shift the cost of supervision, or of increased compliance, to creditors will depend on complex market conditions. The Bureau believes any such effects are likely to be very small.

C. Impact on Depository Institutions and Credit Unions With Total Assets of $10 Billion or Less, and Impact on Consumers in Rural Areas

The Final Consumer Debt Collection Rule does not apply to depository institutions or credit unions of any size.[133] Nor would the rule have a unique impact on rural consumers. The Bureau is not aware of any evidence suggesting that rural consumers have been subject to unlawful collection practices at a rate higher than other consumers, or that the size distribution of consumer debt collectors operating in rural areas differs from that of participants in the overall market.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small not-for-profit organizations.[134] The RFA defines a ''small business'' as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.[135]

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small entity representatives prior to proposing a rule for which an IRFA is required.[136]

The undersigned certified that the Proposal, if adopted, would not have a significant economic impact on a substantial number of small entities and that an initial regulatory flexibility analysis was therefore not required. The Final Consumer Debt Collection Rule adopts the Proposal, with some modifications that do not lead to a different conclusion. Therefore, a final regulatory flexibility analysis is not required.

The Final Consumer Debt Collection Rule will define a class of consumer debt collectors as larger participants of the consumer debt collection market and thereby authorize the Bureau to undertake supervisory activities with respect to those consumer debt collectors. Because the Final Consumer Debt Collection Rule adopts a test for larger-participant status of more than $10 million in annual receipts resulting from consumer debt collection activities, larger market participants

[132] *See supra* n.123 and accompanying text.

[133] As potential users of consumer debt collection services, depository institutions and credit unions might see changes in the quality and pricing of such services. The Bureau knows of, and commenters have suggested, no reason to think that these entities would be negatively affected by the Final Consumer Debt Collection Rule.

[134] 5 U.S.C. 601 *et seq.* The Bureau is not aware of any governmental units or not-for-profit organizations to which the Final Consumer Debt Collection Rule would apply.

[135] 5 U.S.C. 601(3). The Bureau may establish an alternative definition after consultation with the SBA and an opportunity for public comment.

[136] 5 U.S.C. 609.

would generally be above the existing SBA small-business size standard for this market: annual receipts at or below $7 million. Moreover, the rule does not itself impose any obligations or standards of conduct on businesses outside the category of larger participants. The rule therefore does not have a significant impact on a substantial number of small entities.[137]

Additionally, and in any event, the Bureau believes that the Final Consumer Debt Collection Rule would not result in a ''significant impact'' on any small entities that could be affected. As previously noted, whether the Bureau would in fact engage in supervisory activity, such as an examination, with respect to a larger participant (and, if so, the frequency and extent of such activity) would depend on a number of considerations, including, among others, the Bureau's allocation of resources and the application of the statutory factors set forth in 12 U.S.C. 5514(b)(2). Given the Bureau's finite supervisory resources, and the range of industries over which it has supervisory responsibility for consumer financial protection, whether and when a consumer debt collector would be supervised is probabilistic. Moreover, even in cases where supervisory activity were to occur, the costs that would result from such activity are expected to be minimal in relation to the overall activities of the consumer debt collector.[138]

Finally, 12 U.S.C. 5514(e) authorizes the Bureau to supervise service providers to nonbank covered persons encompassed by 12 U.S.C. 5514(a)(1), which includes larger participants. As the Bureau noted in the Proposal, because the rule does not address service providers, effects on service providers need not be addressed for purposes of this RFA analysis. Even were such effects relevant, the Bureau continues to believe that it is very unlikely that any supervisory activities with respect to the service providers to the approximately 175 larger participants in the consumer debt collection market delineated in the Final Consumer Debt Collection Rule would result in a significant economic impact on a substantial number of small entities.[139]

One commenter pointed out that the SBA has issued a notice of proposed rulemaking, considering an increase in the small business size standard for the debt collection market to $14 million in annual receipts. The SBA's proposal does not affect the accuracy of the Bureau's RFA analysis, because the size standard has not yet changed. In any event, even if a $14 million standard applied, the rule would still not impact a ''substantial number'' of small entities. The Bureau estimates, using the Economic Census data, that the rule treats as larger participants approximately 175 consumer debt collection entities out of approximately 4,500 entities in the market. Out of these 4,500 entities, the Bureau estimates that approximately 4,356 market participants would be small business entities under the SBA's proposed size standard of $14 million. Among the approximately 175 larger participants of the consumer debt collection market, about 31 might fall below a $14 million threshold. Thus, the Final Consumer Debt Collection Rule would impact only 0.7 percent of consumer debt collectors that might be considered small businesses under the SBA's proposal, and the impact on these consumer debt collectors would not be significant in any event, for the reasons previously articulated. The Final Consumer Debt Collection Rule would thus not have a significant impact on a substantial number of small entities, even if the SBA were to adopt its proposed change to the relevant definition of small business.

One commenter argued that the Bureau was incorrect in taking the positions that ''[t]he rule would not itself impose any obligations or standards of conduct on larger participants for purposes of [Regulatory Flexibility Act] analysis'' and that ''whether and when an entity in the * * * consumer debt collection market[] would be supervised is probabilistic.''[140] This commenter stated that the actual imposition of examination requirements will have an effect on small businesses, because the consequences of supervision could include an increase in the cost of credit and a diminution in access to credit. The commenter argued that the Bureau should not have certified the Proposed Rule and should have convened a panel and consulted representatives of small entities in compliance with the requirements set forth in the Small Business Regulatory Enforcement Fairness Act (SBREFA), as amended by Section 1100G of the Dodd-Frank Act.

The Bureau believes that its certification of the Proposed Rule was appropriate and that, as a result, the convening of a panel to consult with small entities was not required under the RFA. The Proposed Rule would not have imposed any standards of conduct on entities for purposes of RFA analysis, but rather would have authorized the Bureau to exercise its supervisory authority with respect to a class of entities. Furthermore, the Bureau does not have any evidence suggesting that this rule would increase small entities' cost of credit. Thus, the Proposal, like the Final Consumer Debt Collection Rule, does not give rise to a regulatory compliance burden for small entities. In any event, the Bureau properly found (as described above with respect to the Final Consumer Debt Collection Rule) that even if the Proposed Rule were considered to impose regulatory obligations for purposes of RFA analysis, it would not have created a significant impact on a substantial number of small entities.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

[137] The Proposal hypothesized two circumstances in which a business might be a larger participant of the consumer debt collection market yet be a small business for RFA purposes. First, a nonbank covered person that was not a small business might become a small business during the second year after it qualified as a larger participant. This occurrence would be rare, because relatively few nonbank covered persons appear (according to the Economic Census data) to have annual receipts near the $10 million threshold. The second hypothesized circumstance involves the rule's definition of ''control,'' which is somewhat more expansive than the SBA's. A company might be affiliated with another company for purposes of this rule, so that the two company's receipts would be aggregated in assessing whether the threshold was met. Yet the SBA's method might not treat the two companies as affiliated, and their separate receipts might not exceed the $10 million threshold. The Bureau anticipates no more than a very few such cases in the market covered by the Final Consumer Debt Collection Rule. Commenters provided no reason to alter the Bureau's evaluation of these issues.

[138] As discussed above, the cost of participating in an examination might be roughly 0.12 percent of annual receipts for a firm near the $10 million threshold. The proportion would be larger for a smaller firm, but the impact will still not be substantial.

[139] As the Bureau noted in the Proposal, it reaches this judgment in light of the number of relevant small firms in the relevant NAICS codes. For example, many of these service providers would be considered to be in the industries with NAICS code 522390, ''Other activities related to credit intermediation,'' or 518210, ''Data Processing, Hosting, and Related Services.'' According to the 2007 Economics Census, there are more than 5,000 small firms in the first industry group and nearly 8,000 in the second. The number of firms connected to the 175 larger participants of the consumer debt collection market is likely to be a fraction of these two figures. Moreover, the impact of supervisory activities at such service providers would likely be no more intensive—and probably much less, given the Bureau's exercise of its discretion in supervision—than at the larger participants themselves. As discussed above, supervisory activities at larger participants would not be expected to give rise to a significant economic impact. Finally, because it is very unlikely that the Bureau would supervise many of such entities, a substantial number of entities would not likely be affected.

[140] 77 FR 9606.

VIII. Paperwork Reduction Act

The Bureau determined that the Proposed Rule would not impose any new recordkeeping, reporting, or disclosure requirements on covered entities or members of the public that would constitute collections of information requiring approval under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The Bureau did not receive any comments regarding this conclusion, to which the Bureau adheres. The Bureau concludes that the Final Consumer Debt Collection Rule, which adopts the Proposal in relevant respects, also imposes no new information collection requirements subject to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 1090

Consumer protection, Credit.

For the reasons set forth in the preamble, the Bureau amends 12 CFR Part 1090 as follows:

PART 1090—DEFINING LARGER PARTICIPANTS OF CERTAIN CONSUMER FINANCIAL PRODUCT AND SERVICE MARKETS

■ 1. The authority citation for part 1090 continues to read as follows:

Authority: 12 U.S.C. 5514(a)(1)(B); 12 U.S.C. 5514(a)(2); 12 U.S.C. 5514(b)(7)(A); and 12 U.S.C. 5512(b)(1).

■ 2. Add a new § 1090.105 to subpart B to read as follows:

§ 1090.105 Consumer debt collection market.

(a) *Market-Related definitions.* As used in this subpart:

Annual receipts means, for the consumer debt collection market, receipts calculated as follows:

(i) *Receipts* means ''total income'' (or in the case of a sole proprietorship, ''gross income'') plus ''cost of goods sold'' as these terms are defined and reported on Internal Revenue Service (IRS) tax return forms (such as Form 1120 for corporations; Form 1120S and Schedule K for S corporations; Form 1120, Form 1065 or Form 1040 for LLCs; Form 1065 and Schedule K for partnerships; and Form 1040, Schedule C for sole proprietorships). Receipts do not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers but excluding taxes levied on the entity or its employees; or amounts collected for another (but fees earned in connection with such collections are receipts). Items such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes are included in receipts.

(ii) *Period of measurement.* (A) Annual receipts of a person that has been in business for three or more completed fiscal years means the total receipts of the person over its three most recently completed fiscal years divided by three.

(B) Annual receipts of a person that has been in business for less than three completed fiscal years means the total receipts of the person for the period the person has been in business divided by the number of weeks in business, multiplied by 52.

(C) Where a person has been in business for three or more completed fiscal years, but one of the years within its period of measurement is a short tax year, annual receipts means the total receipts for the short year and the two full fiscal or calendar years divided by the total number of weeks in the short year and the two full fiscal or calendar years, multiplied by 52.

(iii) *Annual receipts of affiliated companies.* (A) The annual receipts of a person are calculated by adding the annual receipts of the person with the annual receipts of each of its affiliated companies.

(B) If a person has acquired an affiliated company or been acquired by an affiliated company during the applicable period of measurement, the annual receipts of the person and the affiliated company are aggregated for the entire period of measurement (not just the period after the affiliation arose).

(C) Receipts are calculated separately for the person and each of its affiliated companies in accordance with paragraph (iii)(B) of this definition even though this may result in using a different period of measurement to calculate an affiliated company's annual receipts. Thus, for example, if an affiliated company has been in business for a period of less than three years, the affiliated company's receipts are to be annualized in accordance with paragraph (iii)(B) of this definition even if the person has been in business for three or more completed fiscal years.

(D) The annual receipts of a formerly affiliated company are not included if affiliation ceased before the applicable period of measurement as set forth in paragraph (iii)(B) of this definition. This exclusion of annual receipts of formerly affiliated companies applies during the entire period of measurement, rather than only for the period after which affiliation ceased.

(E) Annual receipts do not include receipts that result from the collection of debt that was originally owed to a medical provider.

Consumer debt collection is a debt collector's collection of debt incurred by a consumer primarily for personal, family, or household purposes and related to a consumer financial product or service.

Creditor means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that the person receives an assignment or transfer of a debt in default solely for the purpose of facilitating the collection of debt for another.

Debt collector means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due to another. Notwithstanding the exclusion provided by paragraph (iii) of this definition, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts. The term does not include:

(i) Any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts;

(ii) Any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(iii) Any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity:

(A) Concerns a debt which was originated by such person; or

(B) Concerns a debt which was not in default at the time it was obtained by such person; and

(iv) Any person engaged solely in enforcing a security interest.

Test to define larger participants. A nonbank covered person is a larger participant of the consumer debt collection market if the nonbank covered person's annual receipts resulting from consumer debt collection are more than $10 million.

Dated: October 21, 2012.

Richard Cordray,

Director, Bureau of Consumer Financial Protection.

[FR Doc. 2012–26467 Filed 10–30–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0596; Directorate Identifier 2011–NM–245–AD; Amendment 39–17236; AD 2012–21–20]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A330–200 freighter series airplanes, Model A330–200 and –300 series airplanes, and Model A340–200, –300, –500, and –600 series airplanes. This AD was prompted by reports of the ram air turbine (RAT) not deploying when tested. This AD requires identification of the supplier, part number, and serial number of the installed RAT actuator, and re-identification of the actuator and RAT, or replacement of the RAT actuator with a serviceable unit and re-identification of the RAT, if necessary. We are issuing this AD to prevent non-deployment of the RAT, which if occurred following a total engine flame-out, or during a total loss of normal electrical power generation, could result in reduced control of the airplane.

DATES: This AD becomes effective December 5, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 5, 2012.

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 18, 2012 (77 FR 36209). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During a production test flight, a Ram Air Turbine (RAT) did not deploy when tested. An investigation, conducted by the RAT manufacturer Hamilton Sundstrand (HS) and Arkwin Industries, revealed that the RAT did not deploy due to insufficient stroke inside one of the actuator deployment solenoids.
>
> This condition, if occurring following a total engine flame out, or during a total loss of normal electrical power generation, could possibly result in reduced control of the aeroplane.
>
> For the reasons described above, this [European Aviation Safety Agency] AD requires the modification of the affected RAT actuator deployment mechanism, or replacement of the RAT actuator with a modified unit.

The required actions include identification of the supplier, part number, and serial number of the installed RAT actuator, and re-identification of the actuator and RAT, or replacement of the RAT actuator with a serviceable unit and re-identification of the RAT, if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 36209, June 18, 2012) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes and re-identification of the sub-paragraphs of paragraphs (g) and (h) of this final rule. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 36209, June 18, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 36209, June 18, 2012).

Costs of Compliance

We estimate that this AD will affect 56 products of U.S. registry. We also estimate that it will take about 14 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $66,640, or $1,190 per product.

In addition, we estimate that any necessary follow-on actions would take about 13 work-hours and require parts costing $0, for a cost of $1,105 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 36209, June 18, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–21–20 Airbus: Amendment 39–17236. Docket No. FAA–2012–0596; Directorate Identifier 2011–NM–245–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD, certificated in any category.

(1) Airbus Model A330–201, –202, –203, –223, –243, –223F –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all manufacturer serial numbers (MSN); except those on which Airbus modification 201043 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes, all MSN; except those on which Airbus modification 201043 or 201042 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 29: Hydraulic Power.

(e) Reason

This AD was prompted by reports of the ram air turbine (RAT) not deploying when tested. We are issuing this AD to prevent non-deployment of the RAT, which if occurred following a total engine flame-out, or during a total loss of normal electrical power generation, could result in reduced control of the airplane.

(f) Compliance

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

(g) Identification and Replacement for Certain Airbus Model A330, and A340–200 and –300 Airplanes

For Airbus Model A330–200 freighter series airplanes, Model A330–200 and –300 series airplanes, and Model A340–200 and –300 series airplanes: Within 15,000 flight hours or 36 months, whichever occurs first after the effective date of this AD, identify the supplier, part number (P/N), and serial number (S/N) of the installed RAT actuator, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–29–3114, dated May 18, 2011 (for Model A330–200 freighter series airplanes, and Model A330–200 and –300 series airplanes); or Airbus Mandatory Service Bulletin A340–29–4089, dated May 18, 2011 (for Model A340–200 and –300 series airplanes).

(1) If the supplier identified is Arkwin, and the identified actuator part number and serial number are listed as already modified in Hamilton Sundstrand Service Bulletin ERPS06M–29–18, dated March 8, 2011, but not yet re-identified: Before further flight, re-identify the actuator and the RAT, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–29–3114, dated May 18, 2011 (for Model A330–200 freighter series airplanes, and Model A330–200 and –300 series airplanes); or Airbus Mandatory Service Bulletin A340–29–4089, dated May 18, 2011 (for Model A340–200 and –300 series airplanes).

(2) If the supplier identified is Arkwin Industries and the identified actuator part number and serial number are listed as not modified as specified in Hamilton Sundstrand Service Bulletin ERPS06M–29–18, dated March 8, 2011: Before further flight, replace the RAT actuator with a serviceable unit, and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–29–3114, dated May 18, 2011 (for Model A330–200 freighter series airplanes, and Model A330–200 and –300 series airplanes); or Airbus Mandatory Service Bulletin A340–29–4089, dated May 18, 2011 (for Model A340–200 and –300 series airplanes).

(h) Identification and Replacement for Certain Airbus Model A340–500 and –600 Airplanes

For Model A340–500 and –600 airplanes: Within 15,000 flight hours or 36 months, whichever occurs first after the effective date of this AD, identify the part number and serial number of the installed RAT actuator, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–29–5018, dated May 18, 2011.

(1) If the identified actuator part number and serial number are listed as already modified as specified in Hamilton Sundstrand Service Bulletin ERPS33T–29–5, dated March 8, 2011, but not yet re-identified: Before further flight, re-identify the actuator and the RAT, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–29–5018, dated May 18, 2011.

(2) If the identified actuator part number and serial number are listed as not modified as specified in Hamilton Sundstrand Service Bulletin ERPS33T–29–5, dated March 8, 2011: Before further flight, replace the RAT actuator with a serviceable unit, and re-identify the RAT, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–29–5018, dated May 18, 2011.

(i) Parts Installation Limitations

(1) As of the effective date of this AD, no person may install any RAT actuator having P/N 5912958 or P/N 1211575–001, or any RAT having P/N 1702934A having a serial number listed as affected in Hamilton Sundstrand Service Bulletin ERPS06M–29–18, dated March 8, 2011, on any airplane, unless the RAT actuator has been replaced with a serviceable unit and the RAT has been re-identified, as applicable, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–29–3114, dated May 18, 2011 (for Model A330–200 freighter series airplanes, and Model A330–200 and –300 series airplanes); or Airbus Mandatory Service Bulletin A340–29–4089, dated May 18, 2011 (for Model A340–200 and –300 series airplanes).

(2) As of the effective date of this AD, no person may install any RAT actuator having P/N 5912536 or P/N 1211526–002, or any RAT having P/N 772722F having a serial number listed as affected in Hamilton Sundstrand Service Bulletin ERPS33T–29–5, dated March 8, 2011, on any airplane, unless the RAT actuator has been replaced with a serviceable unit and the RAT has been re-identified, as applicable, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–29–5018, dated May 18, 2011.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local

Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0204, dated October 14, 2011, and the service information specified in paragraphs (k)(1), (k)(2), (k)(3), (k)(4), and (k)(5) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A330–29–3114, dated May 18, 2011.

(2) Airbus Mandatory Service Bulletin A340–29–4089, dated May 18, 2011.

(3) Airbus Mandatory Service Bulletin A340–29–5018, dated May 18, 2011.

(4) Hamilton Sundstrand Service Bulletin ERPS06M–29–18, dated March 8, 2011.

(5) Hamilton Sundstrand Service Bulletin ERPS33T–29–5, dated March 8, 2011.

(l) Material Incorporated by Reference

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

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

(i) Airbus Mandatory Service Bulletin A330–29–3114, dated May 18, 2011.

(ii) Airbus Mandatory Service Bulletin A340–29–4089, dated May 18, 2011.

(iii) Airbus Mandatory Service Bulletin A340–29–5018, dated May 18, 2011.

(iv) Hamilton Sundstrand Service Bulletin ERPS06M–29–18, dated March 8, 2011.

(v) Hamilton Sundstrand Service Bulletin ERPS33T–29–5, dated March 8, 2011.

(3) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com*. For Hamilton Sunstrand service information identified in this AD, contact Hamilton Sundstrand, Technical Publications, Mail Stop 302–9, 4747 Harrison Avenue, P.O. Box 7002, Rockford, Illinois 61125–7002; telephone 860–654–3575; fax 860–998–4564; email *tech.solutions@hs.utc.com;* Internet *http://www.hamiltonsundstrand.com*.

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

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

Issued in Renton, Washington, on October 12, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26171 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0642; Directorate Identifier 2011–NM–262–AD; Amendment 39–17232; AD 2012–21–16]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (OPERATIONS) LIMITED Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146 series airplanes and Model Avro 146–RJ series airplanes. This AD was prompted by hydraulic pipe ruptures in the center of the cabin resulting in passengers being contaminated with hydraulic fluid. This AD requires installing a hydraulic fluid containment system. We are issuing this AD to prevent harmful or hazardous concentrations of hydraulic fluid or hydraulic vapor from entering the passenger compartment, possibly resulting in injury to the passengers.

DATES: This AD becomes effective December 5, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 5, 2012.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 21, 2012 (77 FR 37340). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> Cases of hydraulic pipe ruptures in the centre of the cabin of BAe 146 aeroplanes have been reported, which have resulted in the passengers being contaminated with hydraulic fluid. The results of the investigations have shown that the pipe failures were caused by a combination of seam welded pipes, bends in the pipe runs with small bend radii and fatigue damage due to pressure variations.
>
> This condition, if not corrected, could lead to harmful or hazardous concentrations of hydraulic fluid or hydraulic vapour entering the passenger compartment, possibly resulting in injury to the occupants.
>
> For the reasons described above, this [European Aviation Safety Agency] AD requires the installation of a flexible envelope around the hydraulic pipe group where the failures have occurred to capture and contain any fluid escaping from a burst pipe and channel it below floor level into the forward cargo bay.

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

Comments

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

Request for Exclusion of Airtankers

Neptune Aviation Services requested a change in the text of paragraph (c) ''Applicability,'' of the NPRM (77 FR 37340, June 21, 2012) to include an ''exemption'' for an airplane operated as an ''airtanker,'' which does not carry passengers.

We partially agree with the request to change the text in paragraph (c) of this AD. We disagree with using the term ''airtanker''; however, we have revised

paragraph (c) to include an exception for airplanes in a non-passenger configuration.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously, except for minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 37340, June 21, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 37340, June 21, 2012).

Costs of Compliance

We estimate that this AD will affect 1 product of U.S. registry. We also estimate that it will take about 8 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $5,079 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,759.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 37340, June 21, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–21–16 BAE Systems (Operations) Limited: Amendment 39–17232. Docket No. FAA–2012–0642; Directorate Identifier 2011–NM–262–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146–100A, –200A, and –300A airplanes, and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category; except for airplanes operating in a cargo or non-passenger configuration. The requirements of this AD become applicable at the time an airplane operating in a cargo or non-passenger configuration is converted to a passenger configuration.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Reason

This AD was prompted by hydraulic pipe ruptures in the center of the cabin resulting in passengers being contaminated with hydraulic fluid. We are issuing this AD to prevent harmful or hazardous concentrations of hydraulic fluid or hydraulic vapor from entering the passenger compartment, possibly resulting in injury to the passengers.

(f) Compliance

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

(g) Actions

Within 4,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, install the hydraulic fluid containment system, in accordance with the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Modification Service Bulletin SB.29–048–30676A, Revision 2, dated December 23, 2010.

(h) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service bulletin specified in paragraph (h)(1) or (h)(2) of this AD.

(1) BAE SYSTEMS (OPERATIONS) LIMITED Modification Service Bulletin SB.29–048–30676A, dated October 18, 2010 (which is not incorporated by reference in this AD).

(2) BAE SYSTEMS (OPERATIONS) LIMITED Modification Service Bulletin SB.29–048–30676A, Revision 1, dated November 5, 2010 (which is not incorporated by reference in this AD).

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly

to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(j) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0220, dated November 11, 2011; and BAE SYSTEMS (OPERATIONS) LIMITED Modification Service Bulletin SB.29–048–30676A, Revision 2, dated December 23, 2010; for related information.

(2) For service information identified in this AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm*.

(k) Material Incorporated by Reference

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

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

(i) BAE SYSTEMS (OPERATIONS) LIMITED Modification Service Bulletin SB.29–048–30676A, Revision 2, dated December 23, 2010.

(ii) Reserved.

(3) For service information identified in this AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm*.

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

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

Issued in Renton, Washington, on October 14, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26185 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0728; Directorate Identifier 2012–NM–050–AD; Amendment 39–17234; AD 2012–21–18]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model MD–90–30 airplanes. This AD was prompted by reports of fatigue cracks found in Stringer 11 at the outboard flap, inboard drive hinge at Station Xrs=164.000. This AD requires repetitive inspections for cracks in Stringer 11, and a splice repair if necessary; and repetitive post-repair inspections, and repair if necessary. We are issuing this AD to detect and correct such cracking, which could result in the wing structure not supporting the limit load condition, which could lead to loss of the structural integrity of the wing.

DATES: This AD is effective December 5, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 5, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5233; fax: (562) 627–5210; email: *roger.durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on August 1, 2012 (77 FR 45515). That NPRM proposed to require repetitive inspections for cracks in Stringer 11, and a splice repair if necessary; and repetitive post-repair inspections, and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comment received. Boeing supports the NPRM (77 FR 45515, August 1, 2012).

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 45515, August 1, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 45515, August 1, 2012).

Costs of Compliance

We estimate that this AD affects 52 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	13 work-hours × $85 per hour = $1,105 per inspection cycle.	None	$1,105 per inspection cycle	$57,460 per inspection cycle
Post-repair inspection	13 work-hours × $85 per hour = $1,105.	None	$1,105	$57,460.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Splice repair per wing	93 work-hours × $85 per hour = $7,905	$28,126	$36,031

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions of the post-repair inspection specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–21–18 The Boeing Company: Amendment 39–17234; Docket No. FAA–2012–0728; Directorate Identifier 2012–NM–050–AD.

(a) Effective Date

This AD is effective December 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model MD–90–30 airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin MD90–57A030, dated February 14, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of fatigue cracks found in Stringer 11 at the outboard flap, inboard drive hinge at Station Xrs=164.000. We are issuing this AD to detect and correct such cracking, which could result in the wing structure not supporting the limit load condition, which could lead to loss of the structural integrity of the wing.

(f) Compliance

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

(g) Repetitive Inspections

Before the accumulation of 14,000 total flight cycles, or within 9,470 flight cycles after the effective date of this AD: Whichever occurs later, do an in-tank eddy current high frequency (ETHF) inspection for cracks in Stringer 11 at the outboard flap, inboard drive hinge at Station Xrs=164.000 of the left and right wings, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A030, dated February 14, 2012. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 31,000 flight cycles.

(h) Splice Repair

If any cracking is found during any inspection required by paragraph (g) of this AD: Before further flight, do a splice repair, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A030, dated February 14, 2012.

(i) Post-Repair Inspection

Within 42,000 flight cycles after doing the splice repair specified in paragraph (h) of this AD: Do an ETHF inspection for cracks in Stringer 11 at the outboard flap, inboard drive hinge at Station Xrs=164.000, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A030, dated February 14, 2012. Repeat the inspection thereafter at intervals

not to exceed 31,000 flight cycles. If any crack is found: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by The Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and 14 CFR 25.571, Amendment 54, and the approval must specifically refer to this AD.

(k) Related Information

For more information about this AD, contact Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5233; fax: (562) 627–5210; email: *roger.durbin@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin MD90–57A030, dated February 14, 2012.

(ii) Reserved.

(3) For The Boeing Company Airplanes service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on October 12, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26187 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0652; Directorate Identifier 2010–NM–045–AD; Amendment 39–17240; AD 2012–22–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model MD–90–30 airplanes. This AD was prompted by reports of cracks of the wing rear spar lower cap at the outboard flap, inboard drive hinge at station Xrs=164.000. This AD requires repetitive eddy current high frequency (ETHF) inspections for cracking on the aft side of the left and right wing rear spar lower caps at station Xrs=164.000, further ETHF inspections if cracks are found, and repair if necessary; and repetitive post-repair inspections, and repair if necessary. We are issuing this AD to detect and correct cracking of the left and right rear spar lower caps, which could result in fuel leaks and damage to the wing skin or other structure, and consequent loss of the structural integrity of the wing.

DATES: This AD is effective December 5, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 5, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5233; Fax: (562) 627–5210; email: *roger.durbin@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on July 24, 2012 (77 FR 43178). The original NPRM (76 FR 40288, July 8, 2011) proposed to require repetitive eddy current high frequency (ETHF) inspections for cracking on the aft side of the left and right wing rear spar lower caps at station Xrs=164.000, further ETHF inspections if cracks are found, and repair if necessary. The original NPRM also proposed to require repetitive post-repair inspections and repair if necessary. The SNPRM proposed to continue to have the same requirements as the original NPRM, but also added new repetitive post-repair inspections, and corrective action if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the SNPRM (77 FR 43178, July 24, 2012) or on the determination of the cost to the public.

Conclusion

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

• Are consistent with the intent that was proposed in the SNPRM (77 FR

43178, July 24, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 43178, July 24, 2012).

Costs of Compliance

We estimate that this AD affects 51 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	4 work-hours × $85 per hour = $340 per inspection cycle.	N/A	$340 per inspection cycle	$17,340 per inspection cycle.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–22–04 The Boeing Company: Amendment 39–17240; Docket No. FAA–2011–0652; Directorate Identifier 2010–NM–045–AD.

(a) Effective Date

This AD is effective December 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of cracks of the wing rear spar lower cap at the outboard flap, inboard drive hinge at station Xrs=164.000. We are issuing this AD to detect and correct cracking of the left and right rear spar lower caps, which could result in fuel leaks and damage to the wing skin or other structure, and consequent loss of the structural integrity of the wing.

(f) Compliance

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

(g) Repetitive Inspections

Before the accumulation of 30,000 total flight cycles, or within 10,000 flight cycles after the effective date of this AD, whichever occurs later, do an eddy current high frequency (ETHF) inspection for cracking on the aft side of the left and right wing rear spar lower caps at station Xrs=164.000, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. If no cracking is found on the left or right wing rear spar lower cap, repeat the inspection on the affected wing rear spar lower cap thereafter at intervals not to exceed 2,550 flight cycles. Doing a repair of the left or right wing rear spar lower cap required by this AD terminates the repetitive inspections required by this paragraph for that side only.

(h) Further Inspections if Cracking of Two Inches or Less Is Found and Is Not in the Rear Spar Lower Cap, Repair, and Repetitive Post-Repair Inspections

If, during any inspection required by paragraph (g) of this AD, any crack is found that is two inches or less and is not in the rear spar lower cap forward horizontal leg radius: Before further flight, do an ETHF inspection for cracking on the affected wing rear spar upper cap at station Xrs=164.000, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011.

(1) If no crack is found in the rear spar upper cap during the inspection required in paragraph (h) of this AD, do the actions specified in paragraph (h)(1)(i) or (h)(1)(ii) of this AD.

(i) Option 1: Before further flight, do a doubler repair of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 13,500 flight cycles after doing the doubler repair, do an ETHF inspection for any cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspection thereafter at intervals not to exceed 8,500 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(ii) Option 2: Before further flight, do a splice repair of the rear spar lower cap, in

accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an eddy current low frequency (ETLF) inspection and an ultrasonic (UT) inspection for cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) If any crack that is two inches or less is found in the rear spar upper cap during the inspection required by paragraph (h) of this AD, do the actions specified in paragraph (h)(2)(i) or (h)(2)(ii) of this AD.

(i) Option 1: Before further flight, do a doubler repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 13,500 flight cycles after doing the doubler repair, do an ETHF inspection for any cracking in the repaired area of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspection thereafter at intervals not to exceed 8,500 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(ii) Option 2: Before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for any cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(3) If any crack that is greater than two inches is found in the rear spar upper cap during the inspection required by paragraph (h) of this AD, do the actions specified in paragraph (h)(3)(i) or (h)(3)(ii) of this AD.

(i) Option 1: Before further flight, do a splice repair of the rear spar upper cap and a doubler repair of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 13,500 flight cycles after doing the doubler repair, do an ETHF inspection for any cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspection thereafter at intervals not to exceed 8,500 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(ii) Option 2: Before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for any cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(i) Further Inspections If Cracking That Is Greater Than Two Inches Is Found or Is in the Rear Spar Lower Cap, Repair, and Repetitive Post-Repair Inspections

If, during any inspection required by paragraph (g) of this AD, any crack is found that is greater than two inches or is in the rear spar lower cap forward horizontal leg radius, before further flight, do an ETHF inspection for cracking on the affected wing rear spar upper cap at station Xrs=164.000, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011.

(1) If no crack is found in the rear spar upper cap, before further flight, do a splice repair of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for any cracking of the repaired area of the lower rear spar cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) If any crack that is two inches or less is found in the rear spar upper cap, do the actions specified in paragraph (i)(2)(i) or (i)(2)(ii) of this AD.

(i) Option 1: Do the actions specified in paragraphs (i)(2)(i)(A), (i)(2)(i)(B), and (i)(2)(i)(C) of this AD.

(A) Before further flight, do a doubler repair of the rear spar upper cap and a splice repair of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011.

(B) Within 13,500 flight cycles after doing the doubler repair required by paragraph (i)(2)(i)(A) of this AD, do an ETHF inspection for any cracking in the repaired area of the rear spar upper cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspection thereafter at intervals not to exceed 8,500 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(C) Within 20,000 flight cycles after doing the splice repair required by paragraph (i)(2)(i)(A) of this AD, do an ETLF inspection and a UT inspection for cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(ii) Option 2: Before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(3) If any crack that is greater than two inches is found in the rear spar upper cap, before further flight, do a splice repair of the rear spar upper and lower caps, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Within 20,000 flight cycles after doing the splice repair, do an ETLF inspection and a UT inspection for cracking in the repaired area of the rear spar lower cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011. Repeat the inspections thereafter at intervals not to exceed 3,000 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in

accordance with the procedures specified in paragraph (l) of this AD.

(j) Repeat ETHF Inspection

For airplanes on which any splice repair was required by this AD: Within 30,000 flight cycles after the splice repair, repeat the inspection required by paragraph (g) of this AD for the repaired wing. If no cracking is found on the on the rear spar lower cap of the repaired wing, repeat the inspection on the affected wing rear spar lower cap thereafter at intervals not to exceed 2,550 flight cycles. If any cracking is found during any inspection required by this paragraph, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(k) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g), (h), and (i) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin MD90–57A026, dated February 11, 2010, which is not incorporated by reference in this AD.

(l) Alternative Methods of Compliance (AMOCs)

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

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Roger Durbin, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5233; fax: (562) 627–5210; email: *roger.durbin@faa.gov*.

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com*.

(n) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin MD90–57A026, Revision 1, dated February 23, 2011.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com*.

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

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

Issued in Renton, Washington, on October 19, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26483 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0427; Directorate Identifier 2011–NM–202–AD; Amendment 39–17233; AD 2012–21–17]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A320–214 and –232 airplanes. This AD was prompted by reports that medium-head fasteners were installed in lieu of shear-head fasteners on a certain upper panel, which manufacturer fatigue and damage tolerance analyses demonstrated could have an effect on panel fatigue life. This AD requires repetitive inspections for cracking of certain fasteners, and repairs if necessary. We are issuing this AD to detect and correct such cracking, which could result in the loss of structural integrity of the airplane.

DATES: This AD becomes effective December 5, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 5, 2012.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 8, 2012 (77 FR 26996). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A problem was reported during the installation of upper panels on Frame 35 in Airbus A320 final assembly line. Investigations revealed that medium head fasteners, Part Number (P/N) EN6114V3, were installed in lieu of shear head fasteners, P/N ASNA2657V3 and ASNA2043V3, which were previously used. Installation of these medium head fasteners leads to a deeper countersink in the panel. Fatigue and damage tolerance analyses were performed, the results of which demonstrated that this installation could have a fatigue impact on two rows of fasteners between stringers (STGR) 5 and 6, and indicated the need for a specific inspection in this area.
>
> This condition, if not detected and corrected, could impair the structural integrity of the affected aeroplanes.
>
> For the reasons described above, this [European Aviation Safety Agency (EASA)] AD requires repetitive special detailed [high frequency eddy current] inspections [for cracking] of the affected fasteners and, depending on findings, the accomplishment of associated corrective actions [repair].

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

Comments

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

Support for the NPRM (77 FR 26996, May 8, 2012)

Mr. Jason Aldrich stated that it appears from the analysis gathered that the repairs/modifications (proposed by the NPRM (77 FR 26996, May 8, 2012)) could significantly reduce potential damage to the airplane, which would directly result in improved safety for persons.

Request To Clarify Repair Approval

Airbus requested that we revise paragraph (h) of the NPRM (77 FR 26996, May 8, 2012) to clarify that any Repair Approval Sheet (RAS) approved under authority of Airbus Design Organization Approval (DOA) number EASA 21J.031 is acceptable as a repair method for the EASA or its delegated agent.

We disagree to change the AD because a change is not necessary. Paragraph (h) of the AD allows repairs approved by EASA or its delegated agent. We understand that Airbus has discretion to provide repair to their operators that meets the certification basis of the airplane and mitigates the unsafe condition addressed in the AD. We have not changed the AD in this regard.

Request for Terminating Action

Airbus requested that we allow a repair performed according to the proposed requirements in paragraph (h) of the NPRM (77 FR 26996, May 8, 2012) as terminating action, as stated in paragraph (3) of EASA Airworthiness Directive 2011–0176, dated September 13, 2011.

We disagree to allow repairs as terminating action in this AD. The action identified by EASA in its AD is not necessarily terminating action. Under the provision of paragraph (i) of this AD, we will consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that a proposed repair meets an acceptable level of safety as terminating action for the repetitive inspections. We have not changed the AD in this regard.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 26996, May 8, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 26996, May 8, 2012).

Costs of Compliance

We estimate that this AD will affect 44 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $11,220, or $255 per product.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this AD. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 26996, May 8, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–21–17 Airbus: Amendment 39–17233. Docket No. FAA–2012–0427; Directorate Identifier 2011–NM–202–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A320–214 and –232 airplanes; certificated in any category; manufacturer serial numbers 3456, 3503, 3516, 3529, 3591, 3597, 3611, 3631, 3696, 3698, 3714, 3719, 3775, 3777, 3780, 3782, 3786, 3797, 3805, 3812, 3870, 3907, 3909, 3913, 3922, 3929, 3946, 3953, 3975, 3979, 3991, 4010, 4012, 4014, 4027, 4034, 4043, 4046, 4064, 4065, 4084, 4093, 4094, and 4097.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Reason

This AD was prompted by reports that medium-head fasteners were installed in lieu of shear-head fasteners on a certain upper

panel, which manufacturer fatigue and damage tolerance analyses demonstrated could have an effect on panel fatigue life. We are issuing this AD to detect and correct such cracking, which could result in the loss of structural integrity of the airplane.

(f) Compliance

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

(g) Repetitive Inspection

Before the accumulation of 35,900 total flight cycles or 88,100 total flight hours, whichever occurs first: Do a high frequency eddy current inspection for cracking of the two rows of six fasteners at frame 35 between stringers 5 and 6 on the left and right sides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1244, excluding Appendix 1, dated March 17, 2011. Repeat the inspection thereafter at intervals not to exceed 28,100 flight cycles or 56,300 flight hours, whichever occurs first.

(h) Corrective Action

If any crack is detected during any inspection required by paragraph (g) of this AD: Before further flight, repair the crack using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) or its delegated agent.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(j) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0176, dated September 13, 2011; and Airbus Service Bulletin A320–53–1244, excluding Appendix 1, dated March 17, 2011; for related information.

(k) Material Incorporated by Reference

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

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

(i) Airbus Service Bulletin A320–53–1244, excluding Appendix 1, dated March 17, 2011.

(ii) Reserved.

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

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

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

Issued in Renton, Washington, on October 16, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26198 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0592; Directorate Identifier 2011–NM–253–AD; Amendment 39–17230 AD 2012–21–14]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. That AD currently requires a one-time inspection of the shafts of the main landing gear (MLG) side-brace fittings to detect corrosion, and the forward and aft bushings in the left-hand and right-hand MLG side-brace fittings to detect discrepancies. The existing AD also requires corrective and related actions if necessary. This new AD requires repetitive detailed inspections for corrosion and damage of the MLG side-brace fitting, and replacing the side-brace fitting shaft with the re-designed side-brace fitting shaft of the MLG if necessary. This AD also requires eventual replacement of certain side-brace fitting shafts with the re-designed part. Replacement with a re-designed side-brace fitting shaft of the MLG is terminating action for the repetitive inspections. This AD was prompted by reports of failure of the side-brace fitting shaft of the main landing gear (MLG) due to corrosion. We are issuing this AD to prevent fractures of the side-brace fitting shafts of the MLG, and possible collapse of the MLG.

DATES: This AD becomes effective December 5, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 5, 2012.

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

FOR FURTHER INFORMATION CONTACT: Jeffrey Zimmer, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 12, 2012 (77 FR 34870), and proposed to supersede AD 2004–22–23, Amendment 39–13851 (69 FR 64856, November 9, 2004). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Due to the failure of the main landing gear (MLG) side brace fitting shaft, caused by corrosion, [Transport Canada Civil Aviation (TCCA)] Airworthiness Directive (AD) CF–2002–41 was issued to require inspection and

if needed, parts replacement. However, the existing MLG side-brace fitting shafts continued to fail. Failure of the MLG side brace fitting shaft could result in the collapse of the main landing gear.

This [TCCA] directive mandates the repetitive detailed visual inspection [for cracking and corrosion] of the MLG side brace fitting and the incorporation of the re-designed MLG side brace fitting shaft part number (P/N) 601R10247–3 as the terminating action.

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

Comments

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

Request to Reference Revised Service Bulletin

Comair, Inc. requested that we allow the use of Bombardier Service Bulletin 601R–57–052, Revision A, dated October 28, 2011, in the AD. Comair, Inc. provided no reasons for the request.

We agree to reference the most recent service information. Bombardier, Inc. has issued Service Bulletin 601R–57–052, Revision A, dated October 28, 2011. This service bulletin includes editorial changes, but does not add work for airplanes that have done the actions using Bombardier Service Bulletin 601R–57–052, dated July 28, 2011 (which was referenced to as the appropriate source of service information in the NPRM (77 FR 34870, June 12, 2012). Therefore we have revised paragraphs (g)(1), (g)(2), (h)(1), and (h)(2) of this AD to refer to Bombardier Service Bulletin 601R–57–052, Revision A, dated October 28, 2011. We have also added paragraph (i) to this AD to allow credit for actions performed before the effective date of this AD using Bombardier Service Bulletin 601R–57–052, dated July 28, 2011. We have re-designated subsequent paragraphs accordingly.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously and except for minor editorial changes. We have determined that these changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 34870, June 12, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 34870, June 12, 2012).

Costs of Compliance

We estimate that this AD will affect about 584 products of U.S. registry.

We estimate that it will take about 10 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $496,400, or $850 per product.

In addition, we estimate that any necessary follow-on actions would take about 14 work-hours and require parts costing $3,860, for a cost of $5,050 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 34870, June 12, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2004–22–23, Amendment 39–13851 (69 FR 64856, November 9, 2004), and adding the following new AD:

2012–21–14 Bombardier, Inc.: Amendment 39–17230. Docket No. FAA–2012–0592; Directorate Identifier 2011–NM–253–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 5, 2012.

(b) Affected ADs

This AD supersedes AD 2004–22–23, Amendment 39–13851 (69 FR 64856, November 9, 2004).

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; certificated in any category; serial numbers 7003 through 7990 inclusive, and 8000 through 8999 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57: Wings.

(e) Reason

This AD was prompted by reports of failure of the side-brace fitting shaft of the main landing gear (MLG) due to corrosion. We are issuing this AD to prevent fractures of the side-brace fitting shafts of the MLG, and possible collapse of the MLG.

(f) Compliance

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

(g) Inspection of MLG Side-Brace Fitting Shaft and Replacement

(1) At the applicable times specified in paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), and (g)(1)(iv) of this AD, do a detailed inspection for corrosion and damage of each side-brace fitting shaft of the MLG, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–57–052, Revision A, dated October 28, 2011. Repeat the inspections at the applicable times specified in paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), and (g)(1)(iv) of this AD.

(i) For airplanes that average greater than 900 flight hours per year and have side-brace shafts part number (P/N) 601R10237–1 installed in either the left- or right-hand MLG, or if the side-brace shaft part number cannot be identified without removal: Within 1,000 flight hours after the effective date of this AD, do the inspection. Repeat the inspections thereafter at intervals not to exceed 1,000 flight hours until the replacement specified in paragraph (g)(2) or (h) of this AD is done.

(ii) For airplanes that average 900 flight hours or less per year and have side-brace shafts P/N 601R10237–1 installed on either the left- or right-hand MLG, or if the side-brace shaft part number cannot be identified without removal: Within 18 months after the effective date of this AD, do the inspection. Repeat the inspections thereafter at intervals not to exceed 18 months until the replacement specified in paragraph (g)(2) or (h) of this AD is done.

(iii) For airplanes that average greater than 900 flight hours per year and have side-brace shafts P/N 601R10237–3 installed on either the left- or right-hand MLG: Within 36 months after the effective date of this AD, do the inspection. Repeat the inspections thereafter at intervals not to exceed 36 months until the replacement specified in paragraph (g)(2) or (h) of this AD is done.

(iv) For airplanes that average 900 flight hours or less per year and have side-brace shafts P/N 601R10237–3 installed on either the left- or right-hand MLG: Within 60 months after the effective date of this AD, do the inspection. Repeat the inspections thereafter at intervals not to exceed 60 months until the replacement specified in paragraph (g)(2) or (h) of this AD is done.

(2) If any corrosion or damage is found during any inspection required by paragraph (g) of this AD: Before further flight, replace the side-brace fitting shaft with a new shaft P/N 601R10247–3, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–57–052, Revision A, dated October 28, 2011. Doing this replacement terminates the inspection requirements of paragraph (g) of this AD.

(h) Replacement

Do the replacement at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) For any airplanes that have side-brace shafts P/N 601R10237–1 installed, or if the side-brace shaft part number cannot be identified without removal: Within 27 months after the effective date of this AD, replace the side-brace fitting shaft of the MLG with a new shaft having P/N 601R10247–3, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–57–052, Revision A, dated October 28, 2011. Doing this replacement terminates the inspection requirements of paragraph (g) of this AD.

(2) For airplanes that have side-brace shafts P/N 601R10237–3 installed: Within 117 months after the effective date of this AD, replace the side-brace fitting shaft of the MLG with a new shaft P/N 601R10247–3, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–57–052, Revision A, dated October 28, 2011. Doing this replacement terminates the inspection requirements of paragraph (g) of this AD.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 601R–57–052, dated July 28, 2011 (which is not incorporated by reference in this AD).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–39, dated October 25, 2011; and Bombardier Service Bulletin 601R–57–052, dated July 28, 2011; for related information.

(l) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 601R–57–052, Revision A, dated October 28, 2011.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on October 14, 2012.

John P. Piccola,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26088 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0719; Directorate Identifier 2011–NM–240–AD; Amendment 39–17235; AD 2012–21–19]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A330–200 freighter series airplanes; Model A330–200 and –300

series airplanes; and Model A340–200 and –300 series airplanes. This AD was prompted by reports of ram air turbine (RAT) pump failure. This AD requires inspecting the RAT pump anti-stall valve for correct setting, re-identifying the RAT pump, performing a functional ground test of the RAT, and replacing the RAT pump or the RAT assembly with a serviceable part if necessary. We are issuing this AD to detect and correct malfunction of the RAT pump, which could lead to in-flight loss of the RAT-pump pressurization, possibly resulting in reduced control of the airplane.

DATES: This AD becomes effective December 5, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of December 5, 2012.

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 11, 2012 (77 FR 40830). That NPRM proposed to correct an unsafe condition for the specified products. The Mandatory Continuing Airworthiness Information (MCAI) states:

> During a test flight before delivery from production, an A330 aeroplane experienced a RAT [ram air turbine] pump failure, as a result of which, the green hydraulic system could not be fully pressurized.
>
> Investigations concluded that this malfunction was due to poor installation of the anti-stall valve sleeve, causing a shift in the anti-stall speed setting and leading to an inability of the hydraulic pump Part Number (P/N) 5909522 to provide enough hydraulic pressure.
>
> This condition, if not detected and corrected, could lead to the in-flight loss of the RAT-Pump pressurization which, in case of a total engine flame out, could have consequences for the hydraulic circuits, possibly resulting in reduced control of the aeroplane. A340–500/–600 series aeroplanes are not affected by this issue because they are fitted with a different hydraulic pump P/N.
>
> For the reasons described above, this [European Aviation Safety Agency] AD requires a check to ensure correct setting of the RAT anti-stall valve in the pump housing, followed by a RAT functional ground test, and accomplishment of the applicable corrective actions, depending on findings.

Corrective actions include replacing the RAT pump or the RAT assembly with a serviceable part. Required actions include reporting the findings of the inspection. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 40830, July 11, 2012) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 40830, July 11, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 40830, July 11, 2012).

Costs of Compliance

We estimate that this AD will affect 59 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $20,060, or $340 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing up to $405,143, for a cost of up to $405,738 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 40830, July 11, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–21–19 Airbus: Amendment 39–17235. Docket No. FAA–2012–0719; Directorate Identifier 2011–NM–240–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 5, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –223F, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 29: Hydraulic Power.

(e) Reason

This AD was prompted by reports of ram air turbine (RAT) pump failure. We are issuing this AD to detect and correct malfunction of the RAT pump, which could lead to in-flight loss of the RAT-pump pressurization, possibly resulting in reduced control of the airplane.

(f) Compliance

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

(g) Actions

(1) Within the applicable compliance time specified in table 1 to paragraph (g)(1) of this AD, as applicable, check the RAT pump anti-stall valve for correct setting, re-identify the RAT pump, and do a functional ground test of the RAT, except as provided by paragraph (g)(3) of this AD; in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

TABLE 1 TO PARAGRAPH (G)(1) OF THIS AD—COMPLIANCE TIMES

Affected airplanes	Compliance time
For airplanes on which Airbus A330 certification maintenance requirements (CMR) Task 292000–00001–1–C, or Airbus A340–200/–300 CMR Task 292000–A0001–1–C, or Airbus A330/A340 maintenance review board report (MRBR) Task 29.20.00/06, as applicable to the airplane type, has not been accomplished as of the effective date of this AD.	Within 3,000 flight hours or 7 months, whichever occurs first after the effective date of this AD.
For airplanes on which the Airbus A330 CMR Task 292000–00001–1–C, or Airbus A340–200/–300 CMR Task 292000–A0001–1–C, or Airbus A330/A340 MRBR Task 29.20.00/06, as applicable to the airplane type, has already been accomplished as of the effective date of this AD.	Within 24 months after the last accomplishment of Airbus A330 CMR Task 292000–00001–1–C, or Airbus A340–200/–300 CMR Task 292000–A0001–1–C, or Airbus A330/A340 MRBR Task 29.20.00/06, applicable to the airplane type, or 30 days after the effective date of this AD, whichever occurs later.

(i) Airbus Mandatory Service Bulletin A330–29–3117, dated July 19, 2011 (for Model A330 series airplanes).

(ii) Airbus Mandatory Service Bulletin A340–29–4090, dated July 19, 2011 (for Model A340 series airplanes).

(2) If the functional ground test of the RAT, as required by paragraph (g)(1) of this AD, is not successful (as defined by the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD): Before further flight, replace the RAT pump or the RAT assembly with a serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(3) Any airplane equipped with a RAT hydraulic pump marked with an ''X'' or a date (month/year) in the amendment cell C of the identification plate, which has been successfully tested (as defined by the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD) in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD prior to the effective date of this AD, is considered compliant with the requirements of paragraphs (g)(1) and (g)(2) of this AD.

(h) Parts Installation Limitations

As of the effective date of this AD, no person may install any RAT hydraulic pump or RAT assembly on any airplane unless it has been inspected, corrected, and successfully tested (as defined by the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD) in accordance with the requirements of paragraph (g) of this AD, on any airplane.

(i) Definition

A serviceable part is a RAT hydraulic pump or RAT assembly that has been inspected, corrected, and successfully tested (as defined by the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD), in accordance with the Accomplishment Instructions of the applicable service bulletin specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0197, dated October 10, 2011, and the service bulletins specified in paragraphs (k)(1) and (k)(2) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A330–29–3117, dated July 19, 2011.

(2) Airbus Mandatory Service Bulletin A340–29–4090, dated July 19, 2011.

(l) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this

paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(i) Airbus Mandatory Service Bulletin A330–29–3117, dated July 19, 2011.

(ii) Airbus Mandatory Service Bulletin A340–29–4090, dated July 19, 2011.

(3) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on October 12, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26192 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 070726412–1300–02]

RIN 0648–BA24

Expansion of Fagatele Bay National Marine Sanctuary, Regulatory Changes, and Sanctuary Name Change; Notice of Effective Date

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of effective date.

SUMMARY: NOAA published a final rule to add five additional discrete geographical areas to the sanctuary and change the name of the Fagatele Bay National Marine Sanctuary (FBNMS or sanctuary) to the National Marine Sanctuary of American Samoa (NMSAS) on July 26, 2012 (77 FR 43942). NOAA also amended existing sanctuary regulations and applied these regulations to activities in the sanctuary. Pursuant to Section 304(b) of the National Marine Sanctuaries Act (16 U.S.C. 1434(b)) the final regulations take effect after 45 days of continuous session of Congress beginning on July 26, 2012. Through this notice, NOAA is announcing the regulations became effective on October 15, 2012.

DATES: *Effective Date:* The regulations published on July 26, 2012 (77 FR 43942) are effective on October 15, 2012.

FOR FURTHER INFORMATION CONTACT: Gene Brighouse, Sanctuary Superintendent, at (684) 633 6504.

Dated: October 23, 2012.

Holly A. Bamford,

Deputy, Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 2012–26563 Filed 10–30–12; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0851]

Special Local Regulations; Marine Events in the Seventh Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Key West World Championship Special Local Regulations in the Atlantic Ocean, off the tip of Key West, on the waters of the Key West Main Ship Channel, Key West Turning Basin, and Key West Harbor Entrance, from 9 a.m. until 5 p.m. on each of the dates of November 7, 2012; November 9, 2012; and November 11, 2012. This action is necessary to protect race participants, participant vessels, spectators, and the general public from the hazards associated with high-speed boat races. During the enforcement period, no person or vessel may enter the regulated area without permission from the Captain of the Port.

DATES: The regulations in 33 CFR 100.701 will be enforced daily from 9 a.m. until 5 p.m. on each of the dates of November 7, 2012; November 9, 2012; and November 11, 2012.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Marine Science Technician First Class William G. Winegar, Sector Key West Prevention Department, Coast Guard; telephone 305–292–8809, email *William.G.Winegar@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Special Local Regulations for the annual Key West World Championship Super Boat Race in 33 CFR 100.701 on November 7, 2012; November 9, 2012; and November 11, 2012, from 9 a.m. until 5 p.m. These regulations can be found in the 2012 issue of the **Federal Register** 33 CFR 100.701

On November 7, 9, and 11, 2012, Super Boat International Productions, Inc. is hosting the Key West World Championship, a series of high-speed boat races. The event will be held on the waters of the Atlantic Ocean located southwest of Key West, Florida. Approximately 75 high-speed power boats will be participating in the races. It is anticipated that at least 100 spectator vessels will be present during the races.

The special local regulations encompass certain waters of the Atlantic Ocean located southwest of Key West, Florida. The special local regulations will be enforced daily from 9 a.m. until 5 p.m. on November 7, 2012; November 9, 2012; and November 11, 2012. The special local regulations area will consist of the following four sections located within the area as listed in the event application. (1) A race area, where all persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting, anchoring, or remaining. The race area is defined as all waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°32′08″ N, 81°50′19″ W; thence east to Point 2 in position 24°32′23″ N, 81°48′58″ W; thence northeast to Point 3 in position 24°33′14″ N, 81°48′47″ W; thence northeast to Point 4 in position 24°33′54″ N, 81°48′22″ W; thence west to Point 5 in position 24°33′54″ N, 81°48′25″ W; thence southwest back to origin. All persons and vessels, except those persons and vessels participating in the high-speed boat races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area. (2) A buffer zone around the race area, where all persons and vessels, except those persons and vessels enforcing the buffer zone, are prohibited from entering, transiting, anchoring, or remaining. The buffer zone is defined as all waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33′26″ N, 81°49′02″ W; thence southwest to Point 2 in position 24°32′22″ N,

81°50′39″ W; thence south to Point 3 in position 24°31′53″ N, 81°50′39″ W; thence northeast to Point 4 in position 24°32′06″ N, 81°48′35″ W thence northwest to back to origin. All persons and vessels except those persons and vessels enforcing the buffer zone are prohibited from entering, transiting through, anchoring in, or remaining within the buffer zone. (3) Spectator Area 1. Spectator Area 1 consists of all waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33′26″ N, 81°49′02″ W; thence northeast to Point 2 in position 24°33′36″ N, 81°48′49″ W; thence northwest to Point 3 in position 24°33′39″ N, 81°49′26″ W; thence southwest to Point 4 in position 24°33′24″ N, 81°49′28″ W; thence northeast back to origin. All vessels are prohibited from anchoring in Spectator Area 1; any vessel transiting in the area shall travel at idle speed. (4) Spectator Area 2. Spectator Area 2 consists of all waters of the Atlantic Ocean located southwest of Key West encompassed within an imaginary line connecting the following points: Starting at Point 1 in position 24°33′41″ N, 81°48′44″ W; thence northeast to Point 2 in position 24°33′55″ N, 81°48′34″ W; thence southwest to Point 3 in position 24°33′52″ N, 81°48′42″ W; thence southwest back to origin. All vessels are prohibited from anchoring in Spectator Area 2; any vessel transiting in the area shall travel at idle speed. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area, or the buffer zone by contacting the Captain of the Port Key West by telephone at 305–292–8727, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, remain within the race area, or the buffer zone is granted by the Captain of the Port Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Key West or a designated representative. The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.701 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register,** the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via a Broadcast Notice to Mariners.

Dated: October 12, 2012.

A.S. Young, Sr.,

Captain, U.S. Coast Guard, Captain of the Port Key West.

[FR Doc. 2012–26807 Filed 10–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2010–0012]

RIN 1625–AA00

Safety Zone; Large Cruise Ships; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a moving safety zone around large cruise ships as they transit the Lower Mississippi River between the Port of New Orleans Cruise Ship Terminal, mile marker 96.0, and the Southwest Pass Sea Buoy. The moving safety zone extends from bank to bank encompassing one-mile ahead and one-mile astern of each cruise ship. This safety measure is necessary to protect persons and vessels from the potential safety hazards associated with congested maritime traffic on the Lower Mississippi River.

DATES: This rule is effective December 5, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2010–0012. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Brandon Sullivan, Sector New Orleans, U.S. Coast Guard; telephone 504–365–2280, email *Brandon.J.Sullivan@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard published a Notice of Proposed Rulemaking on May 17, 2012, in the **Federal Register**, 77 FR 29254. The Coast Guard received one comment. There were no requests for a Public Meeting.

B. Basis and Purpose

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

The Coast Guard is establishing a moving safety zone around each large cruise ship as it transits the Lower Mississippi River between the Port of New Orleans Cruise Ship Terminal, mile marker 96.0, and the Southwest Pass Sea Buoy to address the increasing risk to safe navigation. For the purpose of this rule, the term ''large cruise ship'' is defined as a vessel over 100 feet in length, carrying more than 500 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories. The marine transportation system on the lower Mississippi river has seen a sustained growth over the years and there are more vessels on the river than ever before. If a marine accident occurs involving a large cruise ship there is a significantly higher potential for loss of life than with any other type of commercial vessel. Therefore to mitigate the risks and consequences associated with higher traffic, the reduction of navigable space, and to protect lives, the Coast Guard is establishing a moving safety zone around each large cruise ship. This rule is intended to establish early passing or overtaking arrangements thus increasing the time available for safe maneuvering.

C. Discussion of Comments, Changes and the Final Rule

One comment was received which proposed a ship's automatic identification system (AIS) or a virtual AIS aid to navigation be incorporated into the proposed regulation. Although AIS is an effective tool to enhance safe navigation it is not specific to this rule making. Therefore, after consideration, the Coast Guard did not see a need to alter the regulation.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The impacts on routine navigation are expected to be minimal. The moving safety zones will not interfere with a vessel's ability to make passing and overtaking arrangements. Routine navigation around and near the safety zones will not be impacted. The moving safety zone is intended to enable early notification of passing or overtaking arrangements, providing additional time and opportunity to negotiate navigational arrangements and to maneuver without causing delay in transit for both the large cruise ship and the other vessels operating in the area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The moving safety zones are intended to enable early notification that passing or overtaking arrangements may be necessary, providing additional time and opportunity to negotiate navigational arrangements, giving both vessels sufficient time to maneuver without causing delay in transit.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Lower Mississippi River between mile marker 96.0, New Orleans, LA and the Southwest Pass Sea Buoy during cruise ship transits.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

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

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.839 to read as follows:

§ 165.839 Safety Zone; Large Cruise Ships; Lower Mississippi River, Southwest Pass Sea Buoy to Mile Marker 96.0, New Orleans, LA.

(a) *Location.* Within the Lower Mississippi River and Southwest Pass, moving safety zones are established around all large cruise ships transiting between the Southwest Pass Entrance Lighted Buoy ''SW'', at approximate position 28°52′42″ N, 89°25′54″ W [NAD 83] and Lower Mississippi River mile marker 96.0 in New Orleans, Louisiana. The moving safety zone extends bank to bank, encompassing all waters one-mile ahead and one-mile astern of a large cruise ship. The zone remains in effect during the entire transit of the large cruise ship.

(b) *Definitions.* As used in this section the term ''large cruise ship'' is defined as a vessel over 100 feet in length, carrying more than 500 passengers for hire, making a voyage lasting more than 24 hours, any part of which is on the high seas, and for which passengers are embarked or disembarked in the United States or its territories.

(c) *Regulations.* (1) In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person or vessel may enter or remain in the Safety Zone except for vessels authorized by the Captain of the Port or Designated Representatives, except as provided for in paragraph (c)(3) of this section.

(2) For this section the Pilot directing the movement of the large cruise ship under the authority of the master has the authority to allow other vessels to enter the safety zone when necessary.

(3) All vessels are prohibited from entering this safety zone unless authorized as follows:

(i) Vessels that have made suitable passing or overtaking arrangements with the pilot onboard the large cruise ship may enter into this safety zone in accordance with those agreed upon arrangements.

(ii) Moored vessels or vessels anchored in a designated anchorage area may remain in their current moored or anchored position while the large cruise ship transits the area.

(iii) Barge Fleets or vessels working a fleet may continue their current operations while the large cruise ship transits the area.

(4) Vessels requiring a deviation from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at (504) 365–2210.

Dated: July 20, 2012.

P.W. Gautier,

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

[FR Doc. 2012–26808 Filed 10–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0904]

RIN 1625–AA00

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

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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

DATES: This rule is effective from 6:00 a.m. on November 3 until 9:00 a.m. on November 10, 2012. This rule will be enforced between 6:00 a.m. and 9:00 a.m. on November 3 and November 10, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–0904 and are available online by going to *www.regulations.gov,* inserting USCG–2012–0904 in the ''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 rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

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

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

B. Basis and Purpose

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

On November 3 and November 10, 2012, Walsh Construction Company will be conducting demolition on portions of the Cline Avenue Bridge in East Chicago, IN. The Captain of the Port, Sector Lake Michigan, has determined that this demolition project will pose a significant risk to public safety and property. Such hazards include loss of life and property in the proximity of explosives, and collisions among vessels and contractors involved in the demolition project.

C. Discussion of Rule

With the aforementioned hazards in mind, the Captain of the Port, Sector Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of persons and vessels during the demolition project on the Cline Ave Bridge. This zone will be effective and enforced between 6:00 a.m. and 9:00 a.m. on November 3 and November 10, 2012.

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

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

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

2. Impact on Small Entities

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

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Indiana Harbor Canal on November 3 and November 10, 2012.

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

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have

analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

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

7. Taking of Private Property

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

8. 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.

9. 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.

10. 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.

11. Energy Effects

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

12. Technical Standards

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

13. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

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

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

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

(b) *Effective and Enforcement Period.* This rule is effective between 6:00 a.m. on November 3 until 9:00 a.m. on November 10, 2012. This rule will be enforced between 6:00 a.m. and 9:00 a.m. on November 3 and November 10, 2012.

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

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

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

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

Dated: October 19, 2012.

M.W. Sibley,

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

[FR Doc. 2012–26821 Filed 10–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0199]

RIN 1625–AA00

Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Navy Pier Southeast Safety Zone in Chicago Harbor at various times on November 24 and December 31, 2012 and January 1, 2013. This action is necessary and intended to ensure safety of life on the navigable waters of the United States immediately prior to, during, and immediately after fireworks events. Enforcement of this safety zone will establish restrictions upon, and control movement of, vessels in a specified area immediately prior to, during, and immediately after various

fireworks events. During the enforcement period, no person or vessel may enter the safety zones without permission of the Captain of the Port, Sector Lake Michigan.

DATES: The regulations in 33 CFR 165.931 will be enforced on November 24, 2012 from 5:00 p.m. through 7:00 p.m.; on December 31, 2012 from 7:00 p.m. through 7:20 p.m.; and on December 31, 2012 from 11:45 p.m. through 12:30 a.m. on January 1, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at 414–747–7148, email *Joseph.P.McCollum@uscg.mil*.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zone; Chicago Harbor, Navy Pier Southeast, Chicago, IL listed in 33 CFR 165.931 for the following events:

(1) *Navy Pier Fireworks;* on November 24, 2012 from 5:00 p.m. through 7:00 p.m.; on December 31, 2012 from 7:00 p.m. through 7:20 p.m.; and on December 31, 2012 from 11:45 p.m. through 12:30 a.m. on January 1, 2013.

All vessels must obtain permission from the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative to enter, move within or exit the safety zone. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.931 and 5 U.S.C. 552 (a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is suspended. If the Captain of the Port, Sector Lake Michigan, determines that the safety zone need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may be contacted via VHF Channel 16.

Dated: October 18, 2012.

M.W. Sibley,

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

[FR Doc. 2012–26817 Filed 10–30–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2011–0695; FRL–9747–2]

Approval and Promulgation of Implementation Plans; New Mexico; Albuquerque/Bernalillo County: Motor Vehicle Inspection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions from the Governor of New Mexico to the State Implementation Plan for Air Quality for the City of Albuquerque/Bernalillo County area pursuant to the Clean Air Act. The revision includes addition of emissions inspections for 1998 and newer diesel vehicles less than 10,001 pounds and all gasoline/electric hybrid vehicles; changes test frequency for some model year vehicles; allows motorists that are financially incapable of paying for certain repairs to apply for a time extension; makes minor test procedure changes; codifies certain regulatory language from the VPMD Procedures Manual; reorganizes 20.11.100 NMAC; and makes numerous non-substantive changes to clarify and improve readability of these rules. This action is being taken under the Clean Air Act (the Act).

DATES: This rule is effective on *December 5, 2012.*

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R06–OAR–2011–0695. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. The Region Office's official hours of business are 8:30 a.m. to 4:30 p.m. weekdays except for Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning today's final action, please contact Ms. Sandra Rennie (6PD–L), Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD–L), Suite 1200, Dallas, Texas 75202–2733, telephone (214) 665–7367; fax number (214) 665–6762; email address *rennie.sandra@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document the following terms have the meanings described below:

''We'', ''us'' and ''our'' refer to EPA.

Table of Contents

I. What is the background for this rule?
II. What comments did we receive on the proposed rule?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this rule?

The State of New Mexico on behalf of the City of Albuquerque submitted revisions to the motor vehicle inspection and maintenance (I/M) program in Bernalillo County and the City of Albuquerque on July 28, 2011. We proposed approval of these revisions on August 1, 2012 (77 FR 45530). For EPA's full analysis of these revisions, the reader is referred to that proposal and the Technical Support Document for this rulemaking, which is available on line at *http://www.regulations.gov,* Docket number EPA–R06–OAR–2011–0695. Among the revisions to the I/M rules at 20.11.100 NMAC are: expanding the vehicle I/M program to cover model year 1998 and newer diesel motor vehicles greater than 1,000 and less than 10,001 pounds; including all hybrid vehicle gasoline engines; changing the test frequency for some model year vehicles; revising an exemption for certain low income vehicle owners from the $300 repair or repair estimate threshold; and revising some test procedures. Regulatory language from the VPMD (Vehicle Pollution Management Division) Procedures Manual is now codified in the I/M rules. Numerous non-substantive ministerial revisions were also proposed for approval because they add clarity and improve readability of the rules.

Although not required by Federal rule, model year 1998 and newer compression ignition powered (diesel)

motor vehicles of a certain size are now included in the vehicle I/M program. Diesel vehicles that are greater than 1,000 pounds gross vehicle weight (GVW) but less than 10,001 pounds GVW are covered by On-Board Diagnostics second generation (OBDII) testing. Testing for this fuel type will start on January 1, 2013, as adopted in the rule. Gasoline/electric hybrids are no longer exempt from testing. Technology improvements have made testing the small gasoline engines found in hybrids now possible.

A clarification is made about the newest model years that are exempt from testing. The term ''two registration periods'' is clarified to mean four (4) years. Model year 1975–1985 vehicles are now required to get tested on a biennial schedule. Previously, these vehicles were on an annual testing schedule. Other provisions in the rule require vehicles in this age group to have annual inspections if their HC (hydrocarbon) or CO (carbon monoxide) emissions are more than 75% of the standard for those pollutants. Motor vehicles 35 years old or older are now exempt from testing.

Minor changes to test procedures include requiring a visual inspection for a catalytic converter on all OBDII-equipped vehicles. The program is also limiting the gas cap pressure check to 1975–2005 vehicles.

The requirement for spending at least $300 for repairs to apply for a time extension has been revised to require a repair estimate of $300 or more from a licensed repair facility and proof that the individual is financially incapable of paying for the needed repairs.

Prior to the rule revision before us, many program procedures were contained in the VPMD Procedures Manual. The Program determined that this manual was out of date but some of the regulatory language needed to be retained. Portions of the manual were codified in the rules *verbatim.* Non-regulatory procedure information is now contained in technical guidance that is not part of the SIP.

As a result of the codification process, some additional terms were added to the definitions section. These include Audit, Clean piping, Clean scanning, Covert audit, Covert surveillance, Emissions analyzer, Emissions inspection system or EIS, Fleet, Gas cap test, Overt audit, Pretesting, and Vehicle information database or VID. Definitions adopted for these terms are those that are commonly used in the industry or similar to terms defined in the federal regulations.

In the process of codifying language from the Procedures Manual, the I/M rules were reorganized with some sections being moved from one numbered section to another. Useless and/or anachronistic references were removed or revised to be more meaningful.

II. What comments did we receive on the proposed rule?

We received no comments on the proposed rule during the 30 day comment period that ended on August 31, 2012.

III. What action is EPA taking?

EPA is finalizing approval of revisions to the New Mexico SIP for the City of Albuquerque/Bernalillo County submitted on July 28, 2011. These include revisions to the fuel type subject to testing, the model years subject to testing, certain test procedures, an opportunity for a time extension for motorists that are financially incapable of paying for repairs of $300 or more, codification of procedures from the Procedures Manual, addition of definitions, and other non-substantive revisions. We believe these revisions enhance the SIP and improve the effectiveness of the I/M program. This action is being taken under section 110 of the Act.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the 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, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 20, 2010. 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 17, 2012.

Ron Curry,

Regional Administrator, Region 6.

Therefore, 40 CFR chapter I is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. Amend the second table in § 52.1620(c) entitled ''EPA Approved Albuquerque/Bernalillo County, NM Regulations'' by revising the entry for ''Part 100 (20.11.100 NMAC), Motor Vehicle Inspection—Decentralized,'' to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

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EPA-APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
*	*	*	*	*
Part 100 (20.11.100 NMAC)	Motor Vehicle Inspection—Decentralized.	5/11/2011	11/5/12, [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2012–26677 Filed 10–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 87

[EPA–HQ–OAR–2010–0687; FRL–9678–1]

RIN 2060–AO70

Control of Air Pollution From Aircraft and Aircraft Engines; Emission Standards and Test Procedures

Correction

In rule document 2012–13828 appearing on pages 36341–36386 in the issue of Monday, June 18, 2012, make the following corrections:

§ 87.23 [Corrected]

1. On page 36382, in § 87.23, the table titled ''Table 3 to § 87.23—Tier 6 NO_X Standards for New Subsonic Turbofan or Turbojet Engines with Rated Output Above 26.7 kN'' should read as set forth below:

TABLE 3 TO § 87.23—TIER 6 NO_X STANDARDS FOR NEW SUBSONIC TURBOFAN OR TURBOJET ENGINES WITH RATED OUTPUT ABOVE 26.7 KN

If the rated pressure ratio is—	and the rated output (in kN) is—	The NO_X emission standard (in g/kN rated output) is—
rPR ≤ 30	26.7 < rO ≤ 89	38.5486 + 1.6823·rPR – 0.2453·rO – 0.00308·rPR·rO
	rO > 89	16.72 + 1.4080·rPR
30 < rPR < 82.6	26.7 < rO ≤ 89	46.1600 + 1.4286·rPR – 0.5303·rO + 0.00642·rPR·rO
	rO > 89	–1.04 + 2.0·rPR
rPR ≥ 82.6	all	32 + 1.6·rPR

2. On page 36383, in § 87.23, the table titled ''Table 4 to § 87.23—Tier 8 NO_X Standards for New Subsonic Turbofan or Turbojet Engines with Rated Output Above 26.7 kN'' should read as set forth below:

TABLE 4 TO § 87.23—TIER 8 NO_X STANDARDS FOR NEW SUBSONIC TURBOFAN OR TURBOJET ENGINES WITH RATED OUTPUT ABOVE 26.7 KN

If the rated pressure ratio is—	and the rated output (in kN) is—	The NO_X emission standard (in g/kN rated output) is—
rPR ≤ 30	26.7 < rO ≤ 89	40.052 + 1.5681·rPR – 0.3615·rO – 0.0018·rPR·rO
	rO > 89	7.88 + 1.4080·rPR
30 < rPR < 104.7	26.7 < rO ≤ 89	41.9435 + 1.505·rPR – 0.5823·rO + 0.005562·rPR·rO
	rO > 89	–9.88 + 2.0·rPR

TABLE 4 TO § 87.23—TIER 8 NO_X STANDARDS FOR NEW SUBSONIC TURBOFAN OR TURBOJET ENGINES WITH RATED OUTPUT ABOVE 26.7 kN—Continued

If the rated pressure ratio is—	and the rated output (in kN) is—	The NO_X emission standard (in g/kN rated output) is—
rPR ≥ 104.7	all	32 + 1.6·rPR

[FR Doc. C1–2012–13828 Filed 10–30–12; 8:45 am]
BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0131; FRL–9362–4]

Calcium Gluconate; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of calcium gluconate when used as an inert ingredient (sequestrant) in pesticide formulations applied to growing crops. ISK Biosciences Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting establishment of an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of calcium gluconate.

DATES: This regulation is effective October 31, 2012. Objections and requests for hearings must be received on or before December 31, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0131, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Roger Chesser, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–8516; email address: *chesser.roger@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0131 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 31, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0131, by one of the following methods:

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

II. Petition for Exemption

In the **Federal Register** of May 2, 2012 (77 FR 25957) (FRL–9346–1), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 1E7900) by ISK Biosciences Corporation, 7470 Auburn Road, Suite A, Concord, OH 44077. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of calcium gluconate (CAS Reg. No. 299–28–5) when used as an inert ingredient (sequestrant) in pesticide formulations applied to growing crops. That notice referenced a summary of the petition prepared by ISK Biosciences Corporation, the petitioner, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Aggregate Risk Assessment and Determination of Safety

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

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

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

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered their validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the adverse effects caused by calcium gluconate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in this unit.

Calcium gluconate has been evaluated by the Joint Food and Agriculture Organization/World Health Organization (FAO/WHO) Expert Committee on Food Additives (JECFA) which determined that calcium gluconate was of very low toxicity and allocated an acceptable daily intake (ADI) of ''not specified''. The JECFA evaluation of calcium gluconate was part of a group—gluconic acid and its inorganic salts, that were assessed together based on the fact that the calcium, magnesium, potassium, and sodium salts of gluconic acid are freely ionizable and that it was appropriate to allocate ADIs on the basis of data on their corresponding anion (gluconic acid) as calcium gluconate dissociates under normal physiologic conditions into gluconic acid. ADI ''not specified'' is used to refer to a food substance of very low toxicity, which, on the basis of available data (chemical, biochemical, toxicological, and other) and the total dietary intake of the substance arising from its use at the levels necessary to achieve the desired effect and from its acceptable background levels in food, does not, in the opinion of the Committee, represent a hazard to health. For that reason, and for reasons stated in individual evaluations, the establishment of an ADI expressed in numerical form is not necessary. Calcium gluconate was added to the CODEX General Standard for Food Additives (GSFA) in 1999.

Toxicological studies considered by JECFA in their evaluation of gluconic acid and its inorganic salts included acute oral toxicity studies in the rat, mouse, rabbit and hamster with LD_{50} values ranging from >2,000 milligrams/kilogram (mg/kg) to 7,850 mg/kg. Gluconic acid and its inorganic salts have been tested in *in vitro* assays (bacterial reverse mutation assays) which demonstrated that gluconic acid was not mutagenic with or without metabolic activation.

In various subchronic, chronic, reproductive and developmental studies evaluated using gluconic acid and its inorganic salts by JECFA, no observable adverse effects were noted at or above limit dose levels (i.e., > 1,000 mg/kg/day). (JECFA 1999).

B. Toxicological Points of Departure/Levels of Concern

As discussed above, there was no hazard identified in repeat dose toxicity and reproductive/developmental studies with gluconic acid and its inorganic salts at the limit dose of 1,000 mg/kg/day to either parental animals or their offspring. Thus, due to its low potential hazard and lack of a hazard endpoint, the Agency has determined that a quantitative risk assessment using safety factors applied to a point of departure protective of an identified hazard endpoint is not appropriate for calcium gluconate.

Calcium gluconate was not mutagenic in an *in vitro* chromosome aberration test, bacterial gene mutation test. In addition, the available *in vitro* and *in vivo* mutagenicity data with glucuronic acid and its inorganic salts were negative. Based on the available information from the mutation studies, it is not anticipated to be carcinogenic.

C. Exposure Assessment

No hazard endpoint of concern for calcium gluconate was identified for the acute and chronic dietary assessment (food and drinking water), or for the short, intermediate, and long term residential assessments (via all exposure routes); therefore, acute and chronic dietary and short-, intermediate-, and long-term residential exposure assessments were not performed.

D. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

While the toxicity of calcium gluconate is expected to be similar to the other inorganic salts of gluconic acid as well as gluconic acid itself, there are no toxicological endpoints of concern identified for any of these substances. Therefore a cumulative risk assessment was not performed.

For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative*.

E. Safety Factor for Infants and Children

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

The toxicity database for calcium gluconate identified no hazard endpoint of concern for calcium gluconate and there is no residual uncertainty regarding prenatal and/or postnatal toxicity. No acute or subchronic neurotoxicity studies are available, but there were no clinical signs of neurotoxicity or any systemic toxicity observed in the available database at doses up to 1,000 mg/kg/day. No developmental or reproductive effects were seen in the available studies at doses up to and including 1,000 mg/kg/day.

Based on this information, there is no concern, at this time, for increased sensitivity to infants and children to calcium gluconate when used as an inert ingredient in pesticide formulations applied to growing crops and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

F. Aggregate Risks and Determination of Safety

Given the lack of concern for hazard posed by calcium gluconate, EPA concludes that there are no dietary or aggregate dietary/non-dietary risks of concern as a result of exposure to calcium gluconate in food and water, or from residential exposure. Residues of concern are not anticipated for dietary exposure (food and drinking water) or for residential exposure from the use of calcium gluconate as an inert ingredient in pesticide products. As discussed in this unit, EPA expects aggregate exposure to calcium gluconate to pose no appreciable dietary risk given that the data show a lack of any systemic toxicity or adverse developmental/reproductive effects at doses up to 1,000 mg/kg/day.

Taking into consideration all available information on calcium gluconate, EPA has determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to calcium gluconate under reasonable foreseeable circumstances. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.920 for residues of calcium gluconate (CAS Reg. No. 299–28–5) when used as an inert ingredient in pesticide formulations applied to growing crops, is safe under FFDCA section 408.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nation Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. The CODEX has not established a MRL for calcium gluconate.

VI. Conclusions

Therefore, an exemption from the requirement of a tolerance is established under 40 CFR 180.920 for calcium gluconate (CAS Reg. No. 299–28–5) when used as an inert ingredient (sequestrant) in pesticide formulations applied to growing crops.

VII. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions

of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VIII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 15, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.920, the table is amended by adding alphabetically the following entry immediately before the entry for ''Camphor (CAS Reg. No. 76–22–2).''

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
* *	*	* *
Calcium gluconate (CAS Reg. No. 299–28–5).	.....	Sequestrant.
* *	*	* *

* * * * *

[FR Doc. 2012–26523 Filed 10–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0225; FRL–9360–9]

Trifloxystrobin; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends tolerances for residues of trifloxystrobin in or on almond hulls; and Vegetable, root, except sugarbeet, subgroup 1B, except radish. Bayer CropScience requested amendments to these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective October 31, 2012. Objections and requests for hearings must be received on or before December 31, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0225, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Dominic Schuler, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0260; email address: *schuler.dominic@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0225 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 31, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding

any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0225, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of July, 25 2012 (77 FR 43565) (FRL–9353–6), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7930) by Bayer CropScience, 2 TW Alexander Dr., RTP, NC 27709. The petition requested that 40 CFR 180.555 be amended by increasing tolerances for residues of the fungicide trifloxystrobin, (benzeneacetic acid, (E,E)-[alpha]-(methoxyimino)-2-[[[[1-[3-(trifluoromethyl)phenyl] ethylidene]amino]oxy] methyl]-methyl ester), in or on almond hulls at 9.0 parts per million (ppm). That notice referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov.* There were no comments received in response to the notice of filing. Bayer CropScience's petition also requested that EPA delete the trifloxystrobin tolerance for ''Vegetable, root, except sugar beet, subgroup 1B, except radish.'' This tolerance was superseded by the establishment of the tolerance ''Vegetable, root, except sugar beet, subgroup 1B'' in the **Federal Register** of January 2, 2008 (73 FR 52). Inadvertently, EPA failed to remove the ''Vegetable, root, except sugar beet, subgroup 1B, except radish'' tolerance when it established the broader ''Vegetable, root, except sugar beet, subgroup 1B'' tolerance.

In addition to the petitioner's requests EPA has deleted the tolerance for almond. The reason for this change is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

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

A. Toxicological Profile

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

Trifloxystrobin exhibits very low toxicity following single oral, dermal and inhalation exposures. It is a strong dermal sensitizer. In repeated dose tests in rats, the liver is the target organ for trifloxystrobin; toxicity is induced following oral and dermal exposure for 28 days. There is no evidence of increased susceptibility following prenatal exposure to rats and rabbits and postnatal exposures to rats. Trifloxystrobin was determined not to be carcinogenic in mice or rats following long-term dietary administration. Trifloxystrobin is positive for mutagenicity in Chinese Hamster V79 cells, albeit at cytotoxic dose levels. However, trifloxystrobin is negative in the remaining mutagenicity studies.

Specific information on the studies received and the nature of the adverse effects caused by trifloxystrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule published in the **Federal Register** of June 11, 2010 (75 FR 33190) (FRL–8829–2), and at *http://www.regulations.gov* in the document ''Trifloxystrobin. Human Health Risk Assessment for a Section 3 Petition Proposing Increased Tolerances for Residues in/on Field, Sweet and Pop Corn,'' pp. 17–21 in docket ID number EPA–HQ–OPP–2009–0278.

B. Toxicological Points of Departure/Levels of Concern

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

the final rule published in the **Federal Register** of June 11, 2010 (75 FR 33190).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to trifloxystrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing trifloxystrobin tolerances in 40 CFR 180.555. EPA assessed dietary exposures from trifloxystrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for trifloxystrobin. In estimating acute dietary exposure for females 13–49 years old, EPA conducted an analysis using the Dietary Exposure Evaluation Model (DEEM™ 7.81), which used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA used tolerance level residues. EPA assumed all commodities with established or proposed tolerances were treated with trifloxystrobin.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance level residues for all commodities with the exception of apples, oranges and grapes. For these commodities EPA used anticipated residues from field residue trials. EPA assumed all commodities with established or proposed tolerances were treated with trifloxystrobin.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that trifloxystrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

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

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for trifloxystrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of trifloxystrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Pesticide Root Zone Model/Exposure Analysis Modeling System (PRZM/EXAMS), and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of trifloxystrobin plus its major degradation product, are estimated to be 47.98 parts per billion (ppb) and 47.31 ppb for surface water for acute and chronic exposures, respectively. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Trifloxystrobin is currently registered for the following uses that could result in residential exposures: Ornamentals and turfgrass. EPA assessed residential exposure under the following exposure scenarios: Adult post application dermal exposure; and children's post-application dermal and/or hand-to-mouth exposure. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* There is no indication of increased susceptibility of rat or rabbits to trifloxystrobin. In the prenatal developmental study in rats, there was no developmental toxicity at the limit dose. In the prenatal developmental study in rabbits, developmental toxicity was seen at a dose that was higher than the dose that caused maternal toxicity. In the 2-generation reproduction study, there was no offspring toxicity at the highest dose tested.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1x. That decision is based on the following findings:

i. The database is complete except for an inhalation study. An immunotoxicity study has been submitted; preliminary examination of the data found no evidence of immunotoxicity. In addition, the entire trifloxystrobin toxicity database was examined and there was no indication that this chemical directly targets the immune system. EPA does not believe that the immunotoxicity study will result in a dose less than the points of departure already used in this risk assessment and an additional database uncertainty factor (UF) for potential immunotoxicity

does not need to be applied. Regarding the requirement for an inhalation toxicity study, the Agency has increased its focus on the uncertainties associated with route-to-route extrapolation (i.e., the use of oral toxicity studies for inhalation risk assessment) and is presently requiring inhalation toxicity studies more frequently. Although an inhalation toxicity study is now required for trifloxystrobin based on the current weight of the evidence approach, residential inhalation exposure is not anticipated; therefore, there are no uncertainties with respect to residential inhalation exposures to trifloxystrobin and no need to retain an additional database uncertainty factor for this safety finding.

ii. There is no indication that trifloxystrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity. A waiver for a subchronic neurotoxicity study has been granted. There is no evidence of neurotoxicity in subchronic and chronic toxicity studies (rats, dogs, mice), in developmental toxicity studies (rats, rabbits), or in a reproductive toxicity study (rats). There is no concern for neurotoxicity for trifloxystrobin based on the available database, limited findings in an acute neurotoxicity study, and lack of neurotoxicity in other fungicides of the strobilurin class.

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

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary exposure assessment was unrefined, and the chronic dietary exposure assessment was partially refined, assuming 100% crop treated and tolerance-level residues for all commodities except for apples, grapes, and oranges where the average field trial residues were used. By using these screening-level assessments with minor refinement, actual exposures/risks from residues in food will not be underestimated. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to trifloxystrobin in drinking water. EPA used similarly conservative assumptions to assess post-application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by trifloxystrobin.

E. Aggregate Risks and Determination of Safety

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

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to trifloxystrobin will occupy 1.9% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to trifloxystrobin from food and water will utilize 64% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of trifloxystrobin is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Trifloxystrobin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to trifloxystrobin.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,100 for adults (dermal residential + dietary food and drinking water exposures); 650 for children 1–2 years (dermal residential + dietary food and drinking water exposures); and 130 for children 1–2 years (incidental oral residential + dietary food and drinking water exposures). Because EPA's level of concern for trifloxystrobin is a MOE of 100 or less, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Trifloxystrobin is not expected to pose an intermediate-term risk based on a short soil half-life (approximately 2 days).

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, trifloxystrobin is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (gas chromatography with nitrogen phosphorus detection (GC/NPD), Method AG–659A and liquid chromatography with tandem mass spectrometry detection (LC/MS/MS), Method No. 200177) is available to enforce the tolerance expression.

The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has established an MRL for trifloxystrobin in or on almond hulls at 3.0 ppm. This MRL is different than the proposed amended tolerance at 9.0 ppm for trifloxystrobin in the United States.

Previously, the domestic tolerance and Codex MRL of trifloxystrobin were harmonized at 3.0 ppm. The proposed amendment, to reduce the preharvest interval of almond hulls from 60 days to 14 days requires an increase in the tolerance level from 3.0 ppm to 9.0 ppm.

C. Revisions to Petitioned-For Tolerances

EPA is deleting the existing tolerance for almonds. The removal of the specific tolerance for almonds is a result of the coverage of almonds within the established tolerance for nut, tree, group 14 at 0.04 ppm.

V. Conclusion

Therefore, the tolerance is amended for residues of trifloxystrobin, (benzeneacetic acid, (E,E)-[alpha]-(methoxyimino)-2-[[[[1-[3 (trifluoromethyl)phenyl]ethylidene] amino] oxy]methyl]-methyl ester), in or on almond, hulls from 3.0 ppm to 9.0 ppm. EPA is also granting the petitioner's request to remove the tolerance for Vegetable, root, except sugar beet, subgroup 1B, except radish. This tolerance should have been removed by EPA in its January 2, 2008 rulemaking, (73 FR 52) (FRL–8342–6), that added a tolerance for ''Vegetable, root, except sugar beet, subgroup 1B.'' The ''Vegetable, root, except sugar beet, subgroup 1B'' tolerance was intended as a replacement for the tolerance ''Vegetable, root, except sugar beet, subgroup 1B, except radish.'' EPA is correcting that error in this action. Finally, the specific tolerance is removed for almonds because this commodity is covered by crop group tolerances.

VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

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

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 15, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.555, in the table in paragraph (a), remove the entries for ''Almond'' and ''Vegetable, root, except sugar beet, subgroup 1B, except radish'' and revise the entry for ''Almond, hulls'' to read as follows:

§ 180.555 Trifloxystrobin; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Almond, hulls	9.0
* * * *	

* * * * *

[FR Doc. 2012–26757 Filed 10–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0279; FRL–9365–3]

A-(P-Nonylphenyl)poly(oxypropylene) Block Polymer With Poly(oxyethylene); Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation amends an exemption from the requirement of a tolerance for residues of α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene); when used as an inert ingredient in a pesticide chemical formulation. Stephan Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the

need to establish a maximum permissible level for residues of α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) on food or feed commodities.

DATES: This regulation is effective October 31, 2012. Objections and requests for hearings must be received on or before December 31, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0279, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: William Cutchin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7099; email address: *cutchin.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0279 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 31, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0279, by one of the following methods.

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

II. Background and Statutory Findings

In the **Federal Register** of July 25, 2012 (77 FR 43562) (FRL–9353–6), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 2E8000) filed by Stephan Company, 22 West Frontage Rd., Northfield Illinois 60093. The petition requested that 40 CFR 180.960 be amended by revising an exemption from the requirement of a tolerance for residues of α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene); CAS No. 37251–69–7. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this final rule and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 1,889 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10 percent oligomeric material below MW 500 and less than 25 percent oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in 40 CFR 723.250, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene).

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) is 1,889 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

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

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene), EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene).

VIII. Other Considerations

A. Existing Exemptions From a Tolerance

There is an existing tolerance for α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene); poly oxyethylene content 30 to 90 moles; molecular weight (in amu) averages 3,000 in 40 CFR 180.960.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is

different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene).

IX. Conclusion

Accordingly, EPA finds that exempting residues of α-(ρ-Nonylphenyl)poly(oxypropylene) block polymer with poly(oxyethylene) from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

Although this action does not require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 15, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In the table to § 180.960, revise the following polymer entry which appears immediately above the polymer entry which reads in part ''Octadecanoic acid, 12-hydroxy-* * *'', with ''CAS No. 58128–22–6,'' to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * *	
α-(ρ-Nonylphenyl)poly (oxypropylene) block polymer with poly(oxyethylene); poly oxyethylene content 30 to 90 moles; minimum number average molecular weight (in amu), 1,889	37251–69–7
* * * * *	

* * * * *

[FR Doc. 2012–26521 Filed 10–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0278; FRL–9365–4]

Residues of Fatty Acids, Tall-Oil, Ethoxylated Propoxylated; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of fatty acids, tall-oil, ethoxylated propoxylated; when used as an inert ingredient in a pesticide chemical formulation. Stephan Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of fatty

acids, tall-oil, ethoxylated propoxylated on food or feed commodities.

DATES: This regulation is effective October 31, 2012. Objections and requests for hearings must be received on or before December 31, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0278, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: William Cutchin, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–7990; email address: *cutchin.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

C. Can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0278 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 31, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0278, by one of the following methods.

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

II. Background and Statutory Findings

In the **Federal Register** of July 25, 2012 (77 FR 43562) (FRL–9353–6), EPA issued a notice pursuant to FFDCA section 408, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 2E7995) filed by Stephan Company, 22 West Frontage Rd., Northfield, Illinois 60093. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of fatty acids, tall-oil, ethoxylated propoxylated; CAS No. 67784–86–5. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other

relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Fatty acids, tall-oil, ethoxylated propoxylated conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 2,009 is greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10 percent oligomeric material below MW 500 and less than 25 percent oligomeric material below MW 1,000, and the polymer does not contain any reactive functional groups.

Thus, fatty acids, tall-oil, ethoxylated propoxylated meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to fatty acids, tall-oil, ethoxylated propoxylated.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that fatty acids, tall-oil, ethoxylated propoxylated could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW (amu) of fatty acids, tall-oil, ethoxylated propoxylated is 2,009 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since fatty acids, tall-oil, ethoxylated propoxylated conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects From Substances With a Common Mechanism of Toxicity

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

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

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of fatty acids, tall-oil, ethoxylated propoxylated, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of fatty acids, tall-oil, ethoxylated propoxylated.

VIII. Other Considerations

A. Existing Exemptions From a Tolerance

There are no existing tolerance exemptions for this polymer.

B. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for fatty acids, tall-oil, ethoxylated propoxylated.

IX. Conclusion

Accordingly, EPA finds that exempting residues of fatty acids, tall-oil, ethoxylated propoxylated from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a

tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

Although this action does not require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: October 15, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.960 is amended by alphabetically adding the following new entry to the table to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * * * *	
Fatty acids, tall-oil, ethoxylated propoxylated, minimum number average molecular weight (in amu), 2,009	67784–86–5
* * * * *	

[FR Doc. 2012–26648 Filed 10–30–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XC324

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amounts of Pacific cod from catcher vessels using trawl gear to American Fisheries Act trawl catcher/processors and Amendment 80 catcher/processors in the Bering Sea and Aleutian Islands management area. This action is necessary to allow the 2012 total allowable catch of Pacific cod to be harvested.

DATES: Effective October 25, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands (BSAI) according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 Pacific cod total allowable catch (TAC) specified for catcher vessels using trawl gear in the BSAI is 51,009 metric tons (mt) as established by the

final 2012 and 2013 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) and a subsequent inseason adjustment to catcher vessels using hook-and-line or pot gear (77 FR 53152, August 31, 2012). The Regional Administrator has determined that catcher vessels using trawl gear will not be able to harvest 3,260 mt of the 2012 Pacific cod TAC allocated to those vessels under § 679.20(a)(7)(ii)(A)(*9*). The Regional Administrator has also determined that this unharvested amount is unlikely to be harvested through the hierarchy set forth in § 679.20(a)(7)(iii)(A). Therefore, in accordance with § 679.20(a)(7)(iii)(A) and § 679.20(a)(7)(iii)(B), NMFS reallocates 1,260 mt to American Fisheries Act (AFA) catcher/processors and 2,000 mt to Amendment 80 catcher/processors.

The harvest specifications for Pacific cod included in the final 2012 harvest specifications for groundfish in the BSAI (77 FR 10669, February 23, 2012) and inseason adjustment (77 FR 53152, August 31, 2012) are revised as follows: 6,621 mt for AFA catcher/processors, 33,232 mt for Amendment 80 catcher/processors, and 47,749 mt for trawl catcher vessels. In accordance with § 679.91(f), NMFS will reissue cooperative quota permits for the reallocated Pacific cod to Amendment 80 catcher/processors following the procedures set forth in § 679.91(f)(3).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the reallocation of Pacific cod specified for catcher vessels using trawl gear to AFA catcher/processors and Amendment 80 catcher/processors. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 24, 2012.

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

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

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

Dated: October 25, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–26659 Filed 10–25–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111213751–2102–02]

RIN 0648–XC320

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific ocean perch in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area. This action is necessary to fully use the 2012 total allowable catch of Pacific ocean perch specified for the Bering Sea subarea of the Bering Sea and Aleutian Islands management area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 26, 2012, through 2400 hrs, A.l.t., December 31, 2012. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 13, 2012.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2012–0214, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0213 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.
- *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Bering Sea and Aleutian Islands management area (BSAI) exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands management area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed the directed fishery for Pacific ocean perch (POP) in the Bering Sea subarea of the BSAI under § 679.20(d)(1)(iii) (77 FR 10669, February 23, 2012).

NMFS has determined that approximately 3,400 metric tons of POP remain in the directed fishing allowance. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2012 total allowable catch of POP in the Bering Sea subarea of the BSAI, NMFS is terminating the previous closure and is opening directed fishing for POP in Bering Sea subarea of the BSAI. This will enhance the socioeconomic well-being of harvesters dependent upon POP in this area. The Administrator, Alaska Region considered the following factors in reaching this decision: (1) the current catch of POP in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels participating in this fishery.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B), as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of POP directed fishing in the Bering Sea subarea of the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 22, 2012.

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

Without this inseason adjustment, NMFS could not allow the fishery for POP in the Bering Sea subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 13, 2012.

This action is required by § 679.20 and § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: October 26, 2012.

William D. Chappell,

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

[FR Doc. 2012–26786 Filed 10–26–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 77, No. 211

Wednesday, October 31, 2012

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2012–0001]

RIN 0579–AD67

Chrysanthemum White Rust Regulatory Status and Restrictions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking; reopening of comment period.

SUMMARY: We are reopening the comment period for our advance notice of proposed rulemaking that solicits public comment on whether and how we should amend our process for responding to domestic chrysanthemum white rust (CWR) outbreaks and the importation of plant material that is a host of CWR. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 30, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0001-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0001, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0001* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Lynn Evans-Goldner, National Program Manager, Pest Management, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737; (301) 851–2286.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2012, we published in the **Federal Register** (77 FR 46339–46340, Docket No. APHIS–2012–0001), an advance notice of proposed rulemaking (ANPR) to solicit public comment on whether and how we should amend our process for responding to domestic chrysanthemum white rust (CWR) outbreaks and the importation of plant material that is a host of CWR. CWR is an economically important disease in both field-grown and greenhouse-grown chrysanthemum plants, as well as cut flower production.

The ANPR specifically asks for comments regarding four options under consideration. These options are: Continuing to manage CWR as a quarantine pest with the objective of continuing to eradicate new infestations; revising the current regulations to designate CWR as a regulated non-quarantine pest; no longer managing CWR as a quarantine pest whose presence requires an eradication-oriented response, but maintaining port of entry restrictions for chrysanthemums destined to those States where CWR is not present and where these States have established an official control program under the Federally Recognized State-Managed Phytosanitary Program; or completely removing CWR as a quarantine pest whose presence requires an eradication-oriented response.

Comments on the ANPR were required to be received on or before October 2, 2012. We are reopening the comment period on Docket No. APHIS–2012–0001 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments. We will also accept comments received between October 3, 2012 (the day after the close of the original comment period) and the date of this notice.

Authority: 7 U.S.C. 450 and 7 U.S.C. 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 25th day of October 2012.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–26730 Filed 10–30–12; 8:45 am]

BILLING CODE 3410–34–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 63, 80, 85, 86, 122, 123, and 412

[EPA–HQ–OAR–2012–0313; EPA–HQ–OAR–2012–0816; EPA–HQ–OW–2012–0813; FRL–9747–7]

Section 610 Reviews of Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; NESHAP: Reinforced Plastic Composites Production; and NPDES Permit Regulation and Effluent Limitations Guidelines Standards for Concentrated Animal Feeding Operations (CAFOs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for comments on three Regulatory Flexibility Act section 610 Reviews.

SUMMARY: This notice announces that EPA will review three regulatory actions pursuant to section 610 of the Regulatory Flexibility Act. Those three actions are: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements (Heavy-Duty 610 Review); NESHAP: Reinforced Plastic Composites Production (Plastics 610 Review); and NPDES Permit Regulation and Effluent Limitations Guidelines Standards for CAFOs (CAFO 610 Review). As part of this review, EPA will consider and solicit comments on the following factors: The continued need for the rules; the nature of complaints or comments received concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate, or conflict with other Federal, State, or local government rules; and the degree to which the technology, economic conditions or other factors have changed in areas affected by the rules.

DATES: Comments must be received on or before December 31, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–0313 (for the Heavy-Duty 610 Review), Docket ID No. EPA–HQ–OAR–2012–0816 (for the Plastics 610 Review), or Docket ID No. EPA–HQ–OW–2012–0813 (for the CAFO 610 Review), by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rfa-sbrefa@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Docket ID No. EPA–HQ–OAR–2012–0313 (for the Heavy Duty 610 Review), Docket ID No. EPA–HQ–OAR–2012–0816 (for the Plastics 610 Review), or Docket ID No. EPA–HQ–OW–2012–0813 (for the CAFO 610 Review); Environmental Protection Agency, EPA Docket Center, Mail code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Docket ID No. EPA–HQ–OAR–2012–0313 (for the Heavy Duty 610 Review), Docket ID No. EPA–HQ–OAR–2012–0816 (for the Plastics 610 Review), or Docket ID No. EPA–HQ–OW–2012–0813 (for the CAFO 610 Review); Environmental Protection Agency, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0313 (for the Heavy Duty 610 Review), Docket ID No. EPA–HQ–OAR–2012–0816 (for the Plastics 610 Review), or Docket ID No. EPA–HQ–OW–2012–0813 (for the CAFO 610 Review). The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the EPA Docket Center—Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The general telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket is (202) 566–1742 and for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning EPA's 610 Review related to Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements, please contact Tad Wysor, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number (734) 214–4332; fax number (734) 214–4816; email address: *wysor.tad@epa.gov.* If you have questions concerning EPA's 610 Review related to NESHAP: Reinforced Plastic Composites Production, please contact Kim Teal, Office of Air Quality Planning and Standards, Environmental Protection Agency, Mailcode D243–04, Research Triangle Park, NC 27711; telephone number (919) 541–5580; fax number (919) 541–5450; email address: *teal.kim@epa.gov.* If you have questions concerning EPA's 610 Review related to NPDES Permit Regulation and Effluent Limitations Guidelines Standards for CAFOs, please contact Hema Subramanian, Office of Wastewater Management, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Mailcode 4203M, Washington, DC 20460; telephone number: (202) 564–5041; fax number (202) 564–6384; email address: *subramanian.hema@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Section 610 of the Regulatory Flexibility Act requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities (SISNOSE). EPA undertakes section 610 reviews to decide whether the agency should continue a rule unchanged, amend it, or withdraw it. We encourage small entities to provide comments on the need to change these rules, and in particular, how the rules could be made clearer, more effective, or if there is need to remove conflicting or overlapping requirements with other Federal or State regulations.

II. Section 610 Review of Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements

On January 18, 2001, EPA established new exhaust emission standards for heavy-duty highway engines and vehicles, and new quality standards for highway diesel fuel (66 FR 5002). As part of this program, new emission standards took effect in model year 2007, and applied to heavy-duty highway engines and vehicles. These standards are based on the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, the rule also reduced the level of sulfur in highway diesel fuel significantly by mid-2006. The program provided substantial flexibility for refiners, especially small refiners, and for manufacturers of engines and vehicles. For example, the program allowed small refiners with simultaneous gasoline sulfur requirements to sequence their sulfur-reduction technology upgrades in the most advantageous way, and also provided general hardship provisions to allow case-by-case relief. While EPA took steps to evaluate and mitigate impacts on small entities as part of the promulgation of this rule, this notice announces that EPA will review the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements rule pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C.

610). As part of this review, EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. Comments must be received within 60 days of this notice. In submitting comments, please reference Docket ID EPA–HQ–OAR–2012–0313 and follow the instructions provided in the **ADDRESSES** section of this document. The results of EPA's review will be summarized in a report and placed in the rulemaking docket referenced above. This docket can be accessed at *www.regulations.gov.*

III. Section 610 Review of National Emissions Standards for Hazardous Air Pollutants (NESHAP): Reinforced Plastic Composites Production

The EPA promulgated NESHAP for reinforced plastic composites production (68 FR 19375) on April 21, 2003. The final rule (40 CFR part 63, subpart WWWW) includes standards for both new and existing sources of hazardous air pollutants (HAP), as well as monitoring, performance testing, recordkeeping, and reporting requirements related to those standards. The NESHAP regulate production and ancillary processes used to manufacture products with thermoset resins and gel coats. The final standards contain a HAP emissions threshold that distinguishes between sources that typically can meet the HAP emissions limits using pollution prevention, and those that must use add-on controls.

Based on SBA size definitions and reported sales and employment data, we identified 279 of the 357 companies owning reinforced plastic composites facilities as small businesses. We also performed an economic impact analysis (EIA) that indicated that 12 percent of facilities owned by small business were at risk of closure because of the final rule, and a SBREFA panel recommended that EPA provide special flexibility to these companies. Provisions to reduce the adverse impact on small business, including minimized reporting and recordkeeping requirements and establishing separate floors for specialty products, were incorporated into the final rule.

This notice announces that EPA will review this action pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. Comments must be received within 60 days of this notice. In submitting comments, please reference Docket ID number EPA–HQ–OAR–2012–0816 and follow the instructions provided in the **ADDRESSES** section of this document. The results of EPA's review will be summarized in a report and placed in the rulemaking docket referenced above. This docket can be accessed at *www.regulations.gov.*

IV. Section 610 Review of National Pollutant Discharge Elimination System (NPDES) Permit Regulation and Effluent Limitations Guidelines Standards for Concentrated Animal Feeding Operations (CAFOs)

EPA promulgated revised regulations for CAFOs on February 12, 2003 (68 FR 7175). The ''2003 CAFO Rule'' expanded the number of operations covered by the CAFO regulations and included requirements to address the land application of manure from CAFOs. The 2003 CAFO Rule required all CAFOs to seek NPDES permit coverage. The EPA developed a Final Regulatory Flexibility Analysis (FRFA) for the 2003 CAFO Rule. In the 2003 CAFO Rule, the EPA took several steps to minimize its impacts on small businesses, including regulatory revisions designed to focus on the largest producers, eliminating the ''mixed'' animal calculation for operations with more than a single animal type for determining which AFOs are CAFOs, raising the duck threshold for dry manure handling duck operations, and adopting a dry-litter chicken threshold higher than proposed.

Subsequently, a series of court decisions based on legal challenges to the rulemaking have limited the requirement for NPDES permit coverage specifically to CAFOs that discharge. In response to these court decisions, the EPA made revisions to the CAFO regulations in 2008 (73 FR 70418) and 2012 (77 FR 44494). In promulgating the 2008 regulatory revision, the EPA certified that the 2008 rule would not have a significant adverse economic impact on a substantial number of small entities. In promulgating the 2012 regulatory revision, the 2012 rule was not subject to the RFA because the RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute, and the 2012 rule was not subject to notice and comment requirements. Both rules reduced the potential impact of the EPA's CAFO regulations on small entities by reducing the universe of CAFOs that must apply for NPDES permits. This notice announces that EPA will review this action pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA will consider and solicit comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. Comments must be received within 60 days of this notice. In submitting comments, please reference Docket ID number EPA–HQ–OW–2012–0813 and follow the instructions provided in the **ADDRESSES** section of this document. The results of EPA's review will be summarized in a report and placed in the rulemaking docket referenced above. This docket can be accessed at *www.regulations.gov.*

Dated: October 25, 2012.

Alexander Cristofaro,

Director, Office of Regulatory Policy and Management.

[FR Doc. 2012–26794 Filed 10–30–12; 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: Internal Agency Docket No. FEMA–B–1171]

Proposed Flood Elevation Determinations for the Unincorporated Areas of Robeson County, NC

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule

concerning proposed flood elevation determinations for the Unincorporated Areas of Robeson County, North Carolina.

DATES: This withdrawal is effective on October 31, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1171, to 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.*

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: On January 20, 2011, FEMA published a proposed rulemaking at 76 FR 3590, proposing flood elevation determinations along one or more flooding sources in Robeson County, North Carolina. FEMA is withdrawing the proposed rulemaking and intends to publish a Notice of Proposed Flood Hazard Determinations in the **Federal Register** and a notice in the affected community's local newspaper following issuance of a revised preliminary Flood Insurance Rate Map and Flood Insurance Study report.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: September 27, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–26734 Filed 10–30–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1223]

Proposed Flood Elevation Determinations for Montgomery County, Alabama and Incorporated Areas

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing its proposed rule concerning proposed flood elevation determinations for Montgomery County, Alabama and Incorporated Areas.

DATES: This withdrawal is effective on November 5, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1223, to 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.*

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: On November 14, 2011, FEMA published a proposed rulemaking at 76 FR 70386, proposing flood elevation determinations along one or more flooding sources in Montgomery County, Alabama. FEMA is withdrawing the proposed rulemaking and intends to publish a Notice of Proposed Flood Hazard Determinations in the **Federal Register** and a notice in the affected community's local newspaper following issuance of a revised preliminary Flood Insurance Rate Map and Flood Insurance Study report.

Authority: 42 U.S.C. 4104; 44 CFR 67.4.

Dated: September 27, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–26754 Filed 10–30–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120416009–2548–01]

RIN 0648–BB78

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to IFQ Program Regulations

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to the vessel ownership requirement of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries in and off of Alaska. The IFQ Program requires that initial recipients of certain classes of quota shares own a minimum of 20-percent interest in any vessel on which they hire a master to fish their IFQ permits. This action proposes to require such quota share holders to have held a minimum of 20-percent ownership interest in the vessel for at least 12 consecutive months prior to the submission of any application to hire a master. This proposed action also would temporarily exempt from the 12-month ownership requirement an initial recipient whose vessel has been totally lost, as by sinking or fire, or so damaged that the vessel would require at least 60 days to be repaired. This action is necessary to maintain a predominantly owner-operated fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Fishery Management Plan for Groundfish of the Gulf of Alaska, and other applicable laws.

DATES: Comments on the proposed rule and supporting documents must be received by November 30, 2012.

ADDRESSES: You may submit comments on this document, identified by FDMS Docket Number NOAA–NMFS–2011–0300, by any one of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal at *www.regulations.gov.* To submit comments via the e-Rulemaking Portal,

enter NOAA–NMFS–2012–0040 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Comment Now'' icon on the right of that line.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Fax comments to (907) 586–7557.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible.

Do not submit confidential business information, or otherwise sensitive or protected information.

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

Electronic copies of the Regulatory Impact Review (RIR) for Amendment 94 and the RIRs for the regulatory amendments to add three communities to the list of CQE eligible communities and allow CQEs in Area 3A to purchase D category halibut QS prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this action may be submitted to NMFS at the above address and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Gwen Herrewig, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Executive Summary

This proposed rule would implement a regulatory amendment to the vessel ownership requirements of the Individual Fishing Quota (IFQ) Program for fixed-gear Pacific halibut and sablefish fisheries in and off of Alaska. The International Pacific Halibut Commission (IPHC) and National Marine Fisheries Service (NMFS) manage fishing for Pacific halibut through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). NMFS manages fishing for sablefish through regulations established under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). IFQ Program regulations may be found at 50 CFR part 679.

The North Pacific Fishery Management Council (Council) designed the IFQ Program to preserve, as much as possible, the historical character of the Pacific halibut and sablefish fisheries. The IFQ Program accomplishes this in part by ensuring that quota share (QS) are held mainly by those who actually do the fishing. Initial recipients of QS, however, are allowed to hire masters to fish their IFQ permits provided that the QS holder owns a minimum of 20-percent interest in the vessel on which the IFQ is fished by the hired master. The Council intended for initial recipients of QS to transfer their QS to other eligible fishermen upon retiring to eventually return to an owner-operated fishery. Current regulations have not prevented some QS holders from circumventing the intent of the vessel ownership requirement by acquiring temporary ownership interest in a vessel expressly for the purpose of hiring a master to fish the QS holder's IFQ permit.

This proposed action would revise the vessel ownership regulations to require QS holders to own a minimum of 20-percent interest in their vessels for at least 12 consecutive months prior to the submission of an application to hire a master to NMFS. This regulatory amendment would prevent QS holders from acquiring temporary vessel ownership in order to circumvent Council intent of an owner-operated fishery.

This proposed rule would also temporarily exempt from the 12-month ownership requirement a QS holder whose vessel has been lost as by sinking or fire, or damaged or is in need of repairs that will take at least 60 days to complete. This exemption would allow owners of such vessels to acquire a temporary 20-percent ownership interest in another vessel for the purpose of hiring a master to fish their IFQ permits from the date of the loss of or damage to the vessel until December 31 of the following year. If approved by the Secretary, the 12-month ownership requirement would not be effective until one year following the effective date of this final rule to give sufficient time for compliance by QS holders.

Background

The IPHC and NMFS manage fishing for Pacific halibut (Hippoglossus stenolepis) through regulations established under the authority of the Halibut Act. The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention). The IPHC's regulations are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). NMFS publishes the IPHC's regulations as annual management measures pursuant to 50 CFR 300.62. Additional management regulations not in conflict with regulations adopted by the IPHC (such as the IFQ Program) may be recommended by the Council and implemented by the Secretary. The Council has exercised this authority most notably in the development of the IFQ Program codified at 50 CFR part 679, subpart D.

The U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) in the exclusive economic zone (EEZ) are managed by NMFS under fishery management plans (FMPs). The FMPs were prepared by the Council under the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and are implemented by regulations at 50 CFR part 679. NMFS manages fishing for sablefish (*Anoplopoma fimbria*) through regulations established under the authority of the Magnuson-Stevens Act. NMFS manages sablefish as a groundfish species under the FMP for Groundfish of the Gulf of Alaska. The fixed-gear sablefish fishery is subject to the same IFQ Program that governs the halibut fishery.

The IFQ Program is a limited access system for managing the fixed-gear fisheries for Pacific halibut and sablefish in waters of the EEZ off of Alaska. The program was recommended

by the Council and, in 1995, implemented by NMFS under the authority of the Magnuson-Stevens Act and the Halibut Act. Intended primarily to reduce excessive fishing capacity, the IFQ Program is also designed to maintain the social and economic character of the fixed-gear fisheries and the coastal communities where many of these fisheries are based. Each year, an amount of QS yields a specific amount of individual harvesting privileges and is issued as an IFQ permit. An annual IFQ permit authorizes the permit holder to harvest a specified amount of an IFQ species in a regulatory area. All QS are categorized according to the size of the vessel (A, B, C, or D) from which IFQ species may be fished and whether IFQ species may be processed aboard the vessel. The vessel categories were designed to ensure that the IFQ Program not radically change the existing fleet structure. The program includes restrictions to prevent the fishery from being dominated by large boats or by any particular vessel class. A description of the specific vessel size classes is provided in regulation at 50 CFR part 679 and is not repeated here.

Various other constraints limit the transfer of QS and the use of IFQ permits to ensure that the privilege of harvesting IFQ species is retained mainly by those commercial fishermen actively fishing. The IFQ Program includes several provisions, such as QS holding caps and vessel use caps, to protect participants from being adversely affected by excessive consolidation. Other provisions of the IFQ Program require IFQ holders to be onboard the vessel to maintain a predominantly ''owner-operated'' fishery with a narrow exemption for initial recipients of QS. The requirement that individual owners of catcher vessel QS (vessel categories B, C, or D) be onboard the vessel during all IFQ fishing ensures that QS remain largely in the hands of active fishermen.

In designing the IFQ Program, however, the Council exempted from this owner-onboard requirement fishermen who received initial allocations of catcher vessel QS at the inception of the program. Many of these fishermen had conducted their fishing businesses by hiring masters to skipper their fishing vessels before the IFQ Program was implemented. So that these fishermen may continue to do so as QS holders, the IFQ Program allows initial recipients of catcher vessel QS to employ hired masters to fish his or her IFQ, but only if the initial recipient owns the vessel on which the IFQ species are harvested. By limiting this exception to initial recipients, the Council anticipated that all initial recipients would eventually retire from fishing, at which time their QS would be transferred to other qualified fishermen and the IFQ fisheries would again become predominantly owner-operated.

Previous Actions

The Council has revised the hired master provisions several times since the implementation of the IFQ Program to ensure the effectiveness of the vessel ownership requirement in maintaining an owner-operated fleet in the IFQ fisheries. In 1999, the Council became aware that some QS holders were circumventing the intent of the vessel ownership requirement by acquiring a nominal ownership interest in a vessel expressly for the purpose of hiring a master. On the Council's recommendation, NMFS revised the IFQ regulations to prevent this practice by defining vessel ownership (for purposes of the hired master provisions) as a minimum of 20-percent interest in any vessel on which a hired master fishes the QS holder's IFQ permit (May 10, 1999; 64 FR 24960).

Then, in 2006, the Council determined that the intent of the vessel ownership restrictions continued to be circumvented. In response, the Council recommended two additional regulatory changes to the IFQ vessel ownership restrictions: first, initial recipients of catcher vessel QS wishing to hire masters must provide NMFS with formal United States Coast Guard or State of Alaska documents verifying their ownership of the vessel; second, those documents must show that the QS holder has held 20-percent ownership interest in the vessel for at least 12 consecutive months prior to applying to NMFS for a permit to employ a hired master to fish the IFQ permit. The Council's recommended action also would have created a temporary exemption from the 12-month ownership requirement for a QS holder whose vessel is lost or damaged irreparably. This exemption would have allowed an initial QS recipient to acquire temporary ownership interest in another vessel in order to continue having his or her IFQ fished by a hired master.

To implement these recommendations from the Council, NMFS included these ownership recommendations in an omnibus package of proposed regulatory changes to the IFQ regulations published at 71 FR 64218 on November 1, 2006. Public comments on that proposed rule, however, identified instances where the proposed 12-month ownership regulations needed greater clarification and definition. The proposed regulations had used the phrase ''constructive total loss,'' which is a term used by insurance companies for property—in this case, fishing vessels—that are damaged to such an extent that the cost of repairs would exceed the value of the property. Public comment on the proposed rule asked that in the final rule the regulations be revised to define the phrase ''constructive total loss'' to include vessels that are out of the fishery for 30 days or longer for repairs. Responding to this comment in the final rule, NMFS acknowledged that the phrase ''constructive total loss'' was not defined in the rule, but noted that the standard definition of the phrase pertains only to vessels that are damaged irreparably (because the cost of repair would exceed the value of the vessel) and not to vessels simply in need of repair (72 FR 44795, August 9, 2007). NMFS noted furthermore that it could not redefine the term to include vessels in need of repair because the Council did not recommend including repair as a condition for exemption from the 12-month ownership requirement. NMFS further noted that the proposed rule had not given notice that such a provision might be adopted, as required by the Administrative Procedure Act.

Public comment on the proposed rule also called attention to a significant, unintended consequence of the 12-month ownership requirement as proposed. At present, in the absence of a 12-month ownership requirement, a QS holder whose vessel is being repaired may acquire a temporary ownership interest in another vessel to have his or her IFQ permit fished by a hired master. Were NMFS to implement the 12-month ownership requirement as described in the proposed rule (71 FR 64218, November 1, 2006), temporary ownership of a vessel would have been allowed for the purpose of hiring a master only in the event of the total loss of the vessel. A QS holder whose vessel is simply under repair would no longer be permitted to acquire temporary ownership of another vessel in order to continue having his or her IFQ permit fished by a hired master. Note that although individual QS holders may always go fishing themselves and are not required to own the vessel as long as they are on board for the fishing of their IFQ permit, corporate QS holders must necessarily hire a skipper (NMFS does not expect an entire corporation will board the vessel to fish the corporate-owned QS, but requires an authorized individual to be on board and responsible for each landing).

However, if a QS holder was not prepared to be on board a vessel for the fishing of his or her IFQ permit, the 12-month ownership requirement, as formerly defined, would have forced QS holders to forego revenue from their IFQ permit during the time that their fishing vessels were out of service for repairs. The proposed 12-month ownership requirement was not intended by the Council to prohibit temporary ownership arrangements to accommodate a QS holder whose vessel needs repair.

The substantive issues that the public raised about the exemption from the ownership provisions could not be resolved under the Council's original recommendation. Accordingly, the final rule published in the **Federal Register** on August 9, 2007 (72 FR 44795) listed the United States Coast Guard or State of Alaska documents a QS holder must submit to NMFS to prove 20 percent ownership of a vessel, but did not include the 12-month ownership requirement and exemption. NMFS removed these two components of the action and returned to the Council for clarification on these issues.

In a letter to the Council dated September 19, 2007, and in view of the public comment, NMFS identified five policy questions for the 12-month ownership requirement that needed to be resolved before proceeding further with rule promulgation:

- If the QS holder suffers a total loss of a vessel, how long is he or she exempt from the ownership requirement?
- For a QS holder to be exempt from the ownership requirement, which vessel owned by the QS holder has to have suffered a total loss?
- What is the definition of the phrase ''constructive total loss''? Should it include a vessel that is repaired after having been declared a ''constructive total loss'' for insurance purposes?
- Should a QS holder be able to hire a master on a vessel that the QS holder does not own if the QS holder's vessel is temporarily out of service for repairs?
- What should be the effective date of the 20-percent/12-month ownership requirement?

At its December 2007 meeting, the Council addressed the five policy questions raised by NMFS and subsequently revised its recommendation to NMFS. The Council clarified that a vessel owner would be exempt from the 12-month ownership requirement only if his or her vessel were totally lost, for example by sinking or fire, or temporarily lost as a result of major repair work that requires at least 60 days to complete. In either case, exception from the 12-month ownership requirement would be limited to a time period from the date of the incident that resulted in the loss or need for repair of the vessel until December 31 of the following year. The vessel owner, or initial QS recipient who qualifies to hire a master, must have previously used the lost or damaged vessel to harvest halibut IFQ or sablefish IFQ in order to be eligible for the exemption. The Council recommended that NMFS delay the effective date of the 20-percent/12-month ownership requirement for 13 months after the publication of the final rule.

NMFS determined that the Council's revised recommendations require publication of a revised proposed rule. The Council introduced a new concept of ''temporary loss'' for the exemption from the 12-month ownership requirement. ''Temporary loss'' is substantially different from ''constructive total loss'' used in the original proposed rule to describe the exemption. Although a 12-month ownership requirement was contemplated in the proposed rule, the proposed exemption from this requirement would have applied only to the actual total loss of a vessel and not to a vessel's temporary loss because of damage that requires major repairs. This proposed rule solicits public comment on this recommendation.

The Need for Action

The Council recommendation that an initial QS holder hold a minimum of 20-percent ownership interest of a vessel for at least 12 consecutive months is meant to maintain a predominantly owner-operated fishery and to prevent the leasing of IFQ permits to the owner or skipper of another vessel. The Council recommended this action in response to public testimony that initial recipients of QS were circumventing the intent of the Council with regard to vessel ownership restrictions and, as a result, impeding the intended transition to an owner-operator fishery. QS holders who are not initial recipients of QS in the IFQ Program are unable to hire a master and must be onboard the vessel while fishing their IFQ permits, except in the case of an emergency medical transfer. An emergency medical transfer may be approved if the applicant demonstrates that he or she is unable to participate in the IFQ fishery because of a severe medical condition. Individuals otherwise eligible to use a hired master may not do so in Areas 2C (for halibut) or SE for sablefish. The Council intended for initial recipients of QS to transfer their QS to other eligible fishermen upon retiring to eventually return to an owner-operated fishery. However, the Council became aware that some initial QS holders who used to be active in the fishery, but since retired, had not transferred their QS to other qualified fishermen. Instead, these initial recipients of QS were using hired masters to fish their IFQ permits.

The Council also became aware that some QS holders were informally acquiring 20-percent ownership interest in a vessel for a de minimus payment (e.g., one dollar) and for a limited period (e.g., for the duration of a fishing trip) solely for the purpose of hiring a master to fish the QS holder's IFQ permit. The 12-month restriction would eliminate the opportunity for QS holders to form short-term agreements which transfer vessel ownership for the duration of a fishing trip or trips. Over the course of the IFQ Program, the number of initial QS holders who may hire a master has declined through attrition, while the reliance on hired masters by those QS holders has increased. While this may appear contradictory, it demonstrates that initial recipients who used to be active in the fishery are retired from active participation and instead are hiring skippers to fish their IFQ permits. The period when formerly active individual QS holders typically hire skippers is (1) during retirement of a formerly active QS holder and, (2) after transfer of QS upon the death of a QS holder to his or her spouse.

The Proposed Action

This proposed action would require that initial recipients of catcher vessel QS (vessel categories B, C, and D) who wish to hire a master to fish their IFQ permit hold a minimum of 20-percent ownership interest in a vessel for at least 12 consecutive months prior to the submission of an Application for IFQ/CDQ Hired Master Permit to NMFS. The QS holder who presumably is an owner of a documented vessel would be required to submit a U.S. Abstract of Title issued by the U.S. Coast Guard upon the submission of an Application for IFQ/CDQ Hired Master Permit to show that the QS holder is at least 20-percent owner of the vessel, and has been for at least 12 consecutive months. A documented vessel is registered and issued a marine certificate by the U.S. Coast Guard. A QS holder who is the owner of an undocumented vessel would be required to submit a State of Alaska boat registration or a commercial vessel license upon the submission of an Application for IFQ/CDQ Hired Master Permit that shows the QS holder has had at least 20-percent ownership interest in the vessel for at least 12 consecutive months. An undocumented

vessel is registered by the Department of Motor Vehicles and does not have a marine certificate issued by the U.S. Coast Guard. If the U.S. Abstract of Title or State of Alaska documents do not prove the required percentage interest and duration, the QS holder would be required to submit additional written documentation to NMFS establishing the required percentage of ownership interest and duration. The additional written documentation that NMFS may request to establish ownership interest and the duration of ownership may include, but is not limited to, a copy of the purchase and sale agreement, or other corporate, partnership, or association documents. The additional documentation must show the required percentage interest of the vessel and duration of ownership. Unlike the situation above for documented vessels, a single record will not prove ownership interest. Therefore, a determination based on other evidence must be made. If NMFS determines that the documentation fails to demonstrate the applicant's required ownership interest in the vessel, NMFS would provide the applicant with an opportunity to provide supporting evidence. If the applicant's ownership interest is unsubstantiated at the end of the evidence period, NMFS would issue an initial administrative determination (IAD). The IAD would describe why NMFS is initially denying some or all of an applicant's claim and would provide instructions on how to appeal the IAD to the NMFS National Appeals Office (NAO).

Current regulations already require an applicant to submit the U.S. Abstract of Title issued by the U.S. Coast Guard, State of Alaska vessel license registration, or additional documentation establishing 20-percent ownership interest in a vessel on an Application for IFQ/CDQ Hired Master Permit. Therefore, the same types of documentation would be required by an applicant as a result of this proposed rule, although more recent documentation may need to be provided for NMFS to determine whether the QS holder has had at least 20-percent ownership interest in the vessel for at least 12 consecutive months.

The proposed regulations, if approved, would not be effective until 13 months after the publication date of the final rule for this action to give sufficient time for compliance by QS holders. The Council considered a range of timeframes from six months to two years for the requirement of continuous ownership in order for QS holders to be eligible to hire a skipper. The Council has selected the period of 13 months following publication of the final rule because it typically incorporates an entire fishing season. Most fishing businesses make operating decisions, including a decision to hire a skipper, on an annual basis.

A temporary exemption from the 12-month ownership requirement would be granted to QS holders whose vessels are totally lost, as by sinking or fire, or whose vessels are in need of repairs from major damage arising from an accident such as sinking, grounding, or fire and that will require the vessel to undergo repair for at least 60 days. The minimum 60-day repair time would only include the time required to repair the damage caused by the accident. In such cases, a QS holder would be exempted from the 12-month ownership requirement from the date of the loss of or damage to the vessel until December 31 of the following year. The Council intended for the temporary disablement of the vessel to result from repairs required from an accident that materially and adversely affect the vessel's seaworthiness or fitness for service, such as a loss of the vessel's primary steering systems or an accidental grounding such as from sinking, grounding, or fire, and not from routine maintenance of the vessel. NMFS would adapt similar vessel loss language from the American Fisheries Act (Public Law 105–277, Title II of Division C) to address the vessel loss provision for the IFQ Program. The vessel that triggers the vessel repair exemption of this provision must be a commercial fishing vessel that has been previously used to harvest halibut IFQ or sablefish IFQ by the QS holder who is qualified to hire a master and not a second vessel used for some other purposes.

The owner of a lost or damaged vessel (documented or undocumented) is required by USCG regulations to submit U.S. Coast Guard (USCG) Form 2692, Report of Marine Accident, Injury, or Death, to the USCG as specified in 46 CFR 4.05. NMFS would require a QS holder seeking an exemption from the 12-month ownership requirement exemption to submit an Application for IFQ/CDQ Hired Master Permit to NMFS and attach a copy of USCG Form 2692. USCG Form 2692 would support the veracity of the need for the 60-day duration of the repair, or claim of total loss of a vessel. NMFS determined that USCG Form 2692 would best provide evidence of the need for repairs or evidence of total loss of a vessel. The form may not be submitted to the U.S. Coast Guard for the notification of routine maintenance of a vessel because vessel maintenance is not associated with a marine accident. The U.S. Coast Guard requires written reports of accidents whenever an accident involves a U.S vessel, or when the accident occurs upon the navigable waters of the U.S. If USCG Form 2692 is not required to be completed for a vessel at the time of an incident that caused the 60-day duration of repair, then the vessel owner would be required to provide additional documentation to NMFS demonstrating that the vessel meets the requirements of this exception. Documentation of vessel repairs or maintenance that do not result from a vessel accident is not sufficient for authorization of the exemption. If NMFS determines that the documentation fails to demonstrate that the vessel meets the requirements of this exception, NMFS would provide the applicant with an opportunity to provide supporting evidence. If the applicant's ownership interest is unsubstantiated at the end of the evidence period, NMFS would issue an IAD. The IAD would describe why NMFS is initially denying some or all of an applicant's claim and would provide instructions on how to appeal the IAD to the NAO.

The exemption to the 12-month ownership requirement would allow the QS holder to acquire a 20-percent ownership interest in another vessel temporarily so that the QS holder would not lose the revenue that would be generated by his or her IFQ during the time needed to repair the damaged vessel or replace the lost one. The exemption for loss of or damage to a vessel applies to the 12-month ownership requirement only, and not the 20-percent ownership requirement. If a QS holder's vessel is damaged and undergoing repairs that will take at least 60 days, the QS holder may acquire temporary interest in another vessel in order to hire a master, but that temporary interest must constitute a minimum of 20 percent ownership of the vessel.

For example, if an individual QS holder loses use of his or her vessel (that was previously used to fish IFQ) at any time during 2014, that person would be exempted from the 12-month ownership requirement until December 31 of the following year, 2015. During this time, an individual QS holder may choose to be onboard a vessel to fish his or her own IFQ permit, and not be required to own any interest in the vessel. However, if that individual QS holder chooses to hire a master, he or she would be required to acquire a 20-percent ownership interest in another vessel during the time that his or her IFQ permit is fished by a hired master. The

length of time the QS holder would be able to use the exemption would depend on when during the year the vessel is lost; if the vessel is lost in January of 2014, the QS holder would have almost two years before he or she would have to once again satisfy the 12-month ownership requirement to be able to hire a master. If the QS holder loses the vessel in December of 2014, however, he or she would have less time—little more than a year—before having to satisfy the 12-month ownership requirement.

NMFS notes that in this latter example, if the QS holder loses a vessel in December 2014 and does not acquire a new vessel until June 1, 2015, he or she will have owned the new vessel for only seven months—from June 1 until December 31—before being required to again satisfy the 12-month ownership requirement. Hence, the QS holder would have to wait another five months before hiring a master to fish an IFQ permit on the new vessel. The IFQ season typically opens in March, but the QS holder will not have owned a vessel for the required 12 months until June, three months after the 2015 IFQ season is likely to open. This could delay the QS holder's hiring a master to fish an IFQ permit on the new vessel until some time after the IFQ season has begun.

Classification

Pursuant to sections 304(b)(1)(A) and 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Halibut Act, the FMPs, the national standards and other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council recommended this action to the Secretary of Commerce for adoption pursuant to its authority under the Magnuson-Stevens Act and the Halibut Act. An RIR/IRFA for the proposed regulatory amendments describes the management background, the purpose and need for the action, the management alternatives, and the socioeconomic impacts of the alternatives (see **ADDRESSES**).

The RIR assesses the costs and benefits of available regulatory alternatives. The Council considered all quantitative and qualitative measures and chose a preferred alternative based on those measures that maximize net benefits to affected individuals and communities under the halibut and sablefish IFQ Program.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA prepared for the action assesses potential impacts on small entities for purposes of the Regulatory Flexibility Act. The Council reviewed multiple alternatives for the action, including a ''no action'' alternative and a preferred alternative in an IRFA that describes the potential adverse impacts of the proposed alternatives on small entities.

The objective of the proposed action is to amend halibut and sablefish IFQ regulations to implement Council intent for the hired skipper privilege. The legal basis for the proposed action is explained in the preamble of this proposed rule. In summary, NMFS manages the North Pacific halibut fisheries in Convention waters under the authority of the Halibut Act and the sablefish fisheries in the waters of the EEZ off Alaska under the authority of the Magnuson-Stevens Act. Regulations at 50 CFR 300.60 through 300.65 govern the Pacific halibut fisheries in the waters of the United States. The annual Pacific halibut management measures for 2011 were published in the **Federal Register** on March 16, 2011 at 76 FR 14300. Regulations at 50 CFR 679.1 through 50 CFR 679.28 govern the sablefish fishery. Regulations at 50 CFR 679.30 through 50 CFR 679.45 govern the halibut and sablefish IFQ and Community Development Quota (CDQ) programs.

For reasons described below, NMFS defines all halibut and sablefish vessels as small businesses for the purpose of this analysis. This proposed action could directly regulate as many as 1,307 entities holding halibut and sablefish QS, which are eligible to hire skippers; however, the actual number of such entities that may be directly regulated is expected to be much smaller, because many of these participants are currently acting in compliance with Council intent and are onboard the vessel when their IFQ is harvested. Only 32 percent of halibut permit holders and 61 percent of sablefish permit holders hired masters in 2010. It is unknown to what extent this action may restrict some eligible QS holders from hiring a skipper in the future, but at most, 214 halibut IFQ hired masters and 118 sablefish IFQ hired masters who were hired in 2010 also would be affected by this action.

The number of small entities operating as fishing vessels in the IFQ fisheries may be deduced from certain restrictions placed on those vessels. The IFQ Program restricts the amount of annual IFQ that may be landed from any individual vessel. A vessel may be used to land up to 1 percent of all IFQ total allowable catch (TAC) issued for halibut in Area 2C (44,000 net lb in 2010); the same percentage cap is set for sablefish in Southeast Alaska (56,879 round lb in 2010). The vessel cap is 0.5 percent of the IFQ issued for halibut in all areas (201,490 net lb in 2010); the same percentage cap is set for sablefish in all Alaska areas (248,767 round lb in 2010). NMFS annually publishes standard prices for halibut and sablefish that are estimates of the ex-vessel prices received by fishermen for their harvests. NMFS uses these prices for calculating IFQ holder cost recovery fee liabilities. In 2010, the most recent year for which complete price data are available, the ex-vessel price per pound for halibut in Area 2C and in all Alaska areas was $5.57 and $5.22, respectively; and for sablefish in Southeast and all Alaska areas it was $4.35 and $4.09, respectively (December 10, 2010: 75 FR 76957). The harvest limits and prices, identified above, reflect the maximum ex-vessel gross revenues in 2010 accruing to a vessel operator who owned the maximum permissible amount of QS units for halibut ($245,000 in Area 2C and $1,090,000 in Area 3A) and sablefish ($247,000 in Southeast and $993,000), respectively. Although some halibut and sablefish IFQ operations participate in other revenue generating activities, the halibut and sablefish IFQ fisheries probably represent their largest single source of annual gross receipts.

Based upon available data and more general economic activity information on vessels in these IFQ fisheries, no vessel subject to these restrictions could have landed more than $4 million in combined gross receipts in 2010. Therefore, all halibut and sablefish vessels are assumed to be small entities, for purposes of the IRFA. However, this simplifying assumption likely overestimates the true number of small entities, since it does not take account of vessel affiliations. No reliable data exists on vessel affiliation. NMFS does not have gross revenue data for halibut and sablefish IFQ operations. The best available data is from the 2011 Stock Assessment and Fishery Evaluation (SAFE) report, which contains data on revenues from all sources for operations harvesting groundfish in 2010. Based on data on the low revenues for average operations harvesting groundfish in 2010, and the low cap on maximum halibut and sablefish revenues, additional revenues from herring, salmon, crab, or shrimp likely would be relatively small for most of this class of

vessels. Therefore, the available data and analysis suggest that there are few, if any, large entities among the directly regulated entities subject to the proposed action.

The requirement for catcher vessel QS holders to be onboard the vessel during harvest and offloading of IFQ species constitutes a key element of the halibut and sablefish IFQ Program. The Council remains concerned about alleged abuses of the regulatory provision allowing vessel owners who received QS at initial allocation to hire masters to harvest their IFQ permits without being onboard the vessel. The objective of this proposed action is to improve implementation of the owner-on-board provisions of the original program, while providing an opportunity to hire a master when appropriate.

The RIR/IRFA notes that none of these small entities would be adversely impacted by this action.

The RIR reviews Alternative 1, the status quo, and Alternative 2, the preferred alternative. Alternative 1 would maintain the current 20-percent vessel ownership requirement for catcher vessel QS holders to hire a master to harvest IFQ permits. Current regulations do not require that QS holders establish that they owned their vessel for any specified period of time prior to their submitting an application to use a hired master. Alternative 2, the preferred alternative, would require that QS holders have owned 20-percent interest in their vessel for a minimum of 12 consecutive months before NMFS may approve an application to employ a hired master to fish the QS holder's IFQ permits. This alternative may result in a loss of fishing opportunity to harvest IFQ pounds for the hired masters; the proposed changes from this alternative would have distributional effects on both parties, which will not affect production from the fisheries noticeably. Net benefits to the nation may increase, to the extent that the Council's objectives for an ''owner-operator'' fishery are more fully realized through this action.

The Council also considered other options, ranging from 6 to 24 months, for the minimum amount of time that QS holders would be required to demonstrate a 20-percent ownership interest in a vessel. In recommending the preferred alternative, the Council determined that the 12-month minimum ownership interest best met its objectives for the action because it would demonstrate a sufficient commitment by a QS holder to vessel ownership while also providing operational flexibility for a QS holder to adapt to changing vessel needs or business plans.

Collection of Information

OMB Control No. 0648–0272

This proposed rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval under OMB Control No. 0648–0272. Public reporting burden for Application for IFQ/CDQ Hired Master Permit is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to (enter office name) at the **ADDRESSES** above, and email to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

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

No additional recordkeeping and reporting requirements are associated with this action. NMFS is not aware of any other federal rules that would duplicate, overlap, or conflict with this action.

According to NOAA Administrative Order (NAO) 216–6, including the criteria used to determine significance; this rule would not have a significant effect, individually or cumulatively, on the human environment beyond those effects identified in the previous National Environmental Protection Act (NEPA) analysis. An environmental impact statement (EIS; dated December 1992) was prepared for the final rule implementing the original halibut and sablefish IFQ and CDQ programs (58 FR 59375; November 9, 1993). The scope of the EIS includes the potential environmental impacts of this proposed rule because the EIS analyzed the original IFQ Program, which included analysis of biological and socioeconomic impacts on the environment, affected fishermen, and affected communities. Based on the nature of the proposed rule and the previous environmental analysis, this proposed rule is categorically excluded from the requirement to prepare an environmental assessment or EIS, in accordance with Section 5.05b of NAO 216–6. Copies of the EIS for the original halibut and sablefish IFQ and CDQ programs and the categorical exclusion for this action are available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: October 26, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

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

2. In § 679.42,

a. Revise paragraphs (i)(1)(i), (i)(1)(ii), (j)(1)(i), and (j)(1)(ii); and

b. Add paragraphs (i)(1)(iv), (i)(1)(v), (i)(6), (i)(7), (j)(i)(iv), (j)(1)(v), (j)(10) and (j)(11) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(i) * * *

(1) * * *

(i) For a documented vessel, continuously owned a minimum 20-percent interest in the vessel for the previous 12 months as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard, and any other documentation that shows the individual as an owner indicating percentage ownership; or

(ii) For an undocumented vessel, continuously owned a minimum 20-percent interest in the vessel for the previous 12 months as shown by a State of Alaska license or registration, and any other documentation that shows the

individual as an owner indicating percentage of ownership; and

* * * * *

(iv) NMFS review of application for exemption—(A) Initial evaluation. The Regional Administrator will evaluate an application for a hired master submitted in accordance with paragraphs (i)(1), (i)(6), and (i)(7) of this section. An applicant who fails to submit the information specified in the application for a hired master will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to an individual entity submitting an application for a hired master submitted in accordance with paragraphs (i)(1), (i)(6), and (i)(7) of this section if the Regional Administrator determines that the information required to be submitted to NMFS is deficient or if the applicant fails to submit the required information. The IAD will indicate the deficiencies with the information submitted. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

(v) Upon request by the Regional Administrator or an authorized officer, a person must submit additional written documentation necessary to establish the required minimum 20-percent interest in the vessel for the previous 12 months .

* * * * *

(6) In the event of the total loss of a vessel owned by an individual who qualifies for the exemption in paragraph (i)(1) of this section, the owner of such vessel may remain exempt under paragraph (i)(1) of this section until December 31 of the year following that which the vessel was lost or damaged, provided that such loss or irreparable damage was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct or negligence of the owner or agent.

(i) The lost vessel must be a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ by the owner who qualifies for the exemption in paragraph (i)(1) of this section.

(ii) As part of the application for exemption, the owner of the lost vessel must submit to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05.

(7) In the event of repairs to a vessel owned by a person who qualifies for the exemption in paragraph (i)(1) of this section, the owner of such vessel may remain exempt under paragraph (i)(1) of this section until December 31 of the year following that which the vessel was damaged, provided that the necessary repairs require at least 60 days to be completed.

(i) The temporary disablement of the vessel must result from repairs required from an accident that materially and adversely affected the vessel's seaworthiness or fitness for service, such as from sinking, grounding, or fire.

(ii) The damaged vessel must be a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ by the owner who qualifies for the exemption in paragraph (i)(1) of this section.

(iii) The owner of the damaged vessel must submit to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05.

(j) * * *

(1) * * *

(i) For a documented vessel, continuously owned a minimum 20-percent interest in the vessel for the previous 12 months as shown by the U.S. Abstract of Title issued by the U.S. Coast Guard, and any other documentation indicating percentage ownership that shows the corporation, partnership, association, or other non-individual entity as an owner and, if necessary to prove the required ownership, other written documentation; or

(ii) For an undocumented vessel, continuously owned a minimum 20-percent interest in the vessel for the previous 12 months as shown by a State of Alaska vessel registration, and any other documentation indicating percentage of ownership that shows the corporation, partnership, association, or other non-individual entity as an owner and, if necessary to prove the required ownership, other written documentation; and

* * * * *

(iv) NMFS review of application for exemption—(A) Initial evaluation. The Regional Administrator will evaluate an application for a hired master submitted in accordance with paragraphs (j)(1), (j)(10), and (j)(11) of this section. An applicant who fails to submit the information specified in the application for a hired master will be provided a reasonable opportunity to submit the specified information or submit a revised application.

(B) *Initial administrative determinations (IAD).* The Regional Administrator will prepare and send an IAD to a non-individual entity submitting an application for a hired master and the additional documentation required in paragraphs (j)(1), (j)(10), and (j)(11) of this section if the Regional Administrator determines that the information required to be submitted to NMFS is deficient or if the applicant fails to submit the required information. The IAD will indicate the deficiencies with the information submitted. An applicant who receives an IAD may appeal under the appeals procedures set out at § 679.43.

(v) Upon request by the Regional Administrator or an authorized officer, a person must submit additional written documentation necessary to establish the required 20-percent interest for the previous 12 months in the vessel.

* * * * *

(10) In the event of the total loss of a vessel owned by a non-individual entity that qualifies for the exemption in paragraph (j)(1) of this section, the owner of such vessel may remain exempt under paragraph (j)(1) of this section until December 31 of the year following that in which the vessel was lost or damaged, provided that such loss or irreparable damage was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct or negligence of the owner or agent.

(i) The lost vessel must be a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ by the owner who qualifies for the exemption in paragraph (j)(1) of this section.

(ii) The owner of the lost vessel must submit to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05.

(11) In the event of repairs to a vessel owned by a non-individual entity that qualifies for the exemption in paragraph (j)(1) of this section, the owner of such vessel may remain exempt under paragraph (j)(1) of this section until December 31 of the year following that in which the vessel was damaged, provided that the necessary repairs require at least 60 days to be completed.

(i) The temporary disablement of the vessel must result from repairs required from an accident that materially and adversely affected the vessel's seaworthiness or fitness for service, such as from sinking, grounding, or fire.

(ii) The damaged vessel must be a commercial fishing vessel that was previously used to harvest halibut IFQ or sablefish IFQ by the owner who qualifies for the exemption in paragraph (j)(1) of this section.

(iii) The owner of the damaged vessel must submit to NMFS a copy of the USCG Form 2692 submitted to the USCG as specified in 46 CFR 4.05.

* * * * *

[FR Doc. 2012–26790 Filed 10–30–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 211

Wednesday, October 31, 2012

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0084]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Unshu Oranges From the Republic of Korea Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of Unshu oranges from the Republic of Korea into the continental United States.

DATES: We will consider all comments that we receive on or before December 31, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0084-0001*.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0084, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0084* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of Unshu oranges from the Republic of Korea into the continental United States, contact Mr. Andrew Wilds, Trade Director, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale, MD 20737; (301) 851–2275. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION: *Title:* Importation of Unshu Oranges from the Republic of Korea into the Continental United States.

OMB Number: 0579–0314.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of citrus fruit from certain parts of the world as provided in ''Subpart—Citrus Fruit'' (7 CFR 319.28).

In accordance with these regulations, APHIS allows the importation of Unshu oranges from Cheju Island, Republic of Korea, into the continental United States under certain conditions to prevent the introduction of plant pests into the United States. These conditions involve the use of information collection activities, including packinghouse registration and a phytosanitary certificate with an additional declaration stating that the fruit has undergone surface sterilization and was inspected and found free of the plant pathogen that causes sweet orange scab. These requirements were put into effect by a final rule published on October 12, 2010 (75 FR 62455–62457, Docket No. APHIS–2010–0022).

Prior to this, the regulations only allowed Unshu oranges from the Republic of Korea to be imported into Alaska. These importations had to be accompanied by a phytosanitary certificate with an additional declaration and had to be in boxes marked to indicate that the oranges could not be shipped to or distributed in any State other than Alaska. These information collection activities were approved by the Office of Management and Budget (OMB) under control number 0579–0314. However, the October 12, 2010, final rule eliminated the box marking requirement and added the packinghouse registration requirement, resulting in a decrease in total estimated annual burden from 31 hours to 19 hours.

We are asking OMB to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.56 hours per response.

Respondents: Importers and the national plant protection organization of the Republic of Korea.

Estimated annual number of respondents: 4.

Estimated annual number of responses per respondent: 8.5.

Estimated annual number of responses: 34.

Estimated total annual burden on respondents: 19 hours. (Due to

averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of October 2012.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–26725 Filed 10–30–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0072]

Notice of Revision and Request for Extension of Approval of an Information Collection; Importation of Live Swine, Pork and Pork Products, and Swine Semen From the European Union

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to revise and extend an information collection associated with regulations for the importation of live swine, pork and pork products, and swine semen from the European Union.

DATES: We will consider all comments that we receive on or before December 31, 2012.

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

$ *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0072-0001.*

$ *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0072, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0072* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the importation of live swine, pork and pork products, and swine semen from the European Union, contact Dr. Lynette Williams-McDuffie, Senior Staff Veterinarian, NCIE, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1236; (301) 851–3300. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Live Swine, Pork and Pork Products, and Swine Semen from the European Union.

OMB Number: 0579–0218.

Type of Request: Revision and extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 92 through 98, of the Code of Federal Regulations (CFR).

Under 9 CFR 94.24 and 98.38, breeding swine, pork and pork products, and swine semen from a defined region of the European Union (''the APHIS-defined EU CSF region'') must be accompanied by certificates stating that certain requirements related to origin, movement, testing, and other matters specified in the regulations have been met.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

This information collection includes information collection requirements currently approved by OMB control numbers 0579–0218, ''Importation of Live Swine, Pork and Pork Products, and Swine Semen from the European Union,'' and 0579–0265, ''Importation of Swine and Swine Products from the European Union.'' After OMB approves and combines the burden for both collections under a single collection titled ''Importation of Live Swine, Pork and Pork Products, and Swine Semen from the European Union'' (0579–0218), the Department will retire number 0579–0265.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Foreign Federal animal health officials.

Estimated annual number of respondents: 18.

Estimated annual number of responses per respondent: 417.

Estimated annual number of responses: 7,506.

Estimated total annual burden on respondents: 7,506 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of October 2012.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–26726 Filed 10–30–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0055]

Notice of Request for Extension of Approval of an Information Collection; Importation of Products of Poultry and Birds

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations restricting the importation of products of poultry and birds into the United States in order to prevent the introduction of poultry disease.

DATES: We will consider all comments that we receive on or before December 31, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0055-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0055, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0055* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding regulations for the importation of products of poultry and birds, contact Dr. Magde S. Elshafie, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3300. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Products of Poultry and Birds.

OMB Number: 0579–0141.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. To carry out this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in title 9, parts 91 through 99, of the Code of Federal Regulations.

Part 94, § 94.6, governs the importation of carcasses, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, and other birds to prevent the introduction of exotic Newcastle disease (END) into the United States. Various conditions for importation apply.

The regulations in § 94.6 include provisions that allow poultry meat that originates in the United States to be shipped, for processing purposes, to a region where END exists and then returned to the United States. These provisions require the use of four information collection activities: (1) A certificate of origin that must be issued, (2) serial numbers that must be recorded, (3) records that must be maintained, and (4) cooperative services agreements that must be signed.

We are asking OMB to approve our use of these information collection activities for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1.0155 hours per response.

Respondents: Foreign animal health authorities.

Estimated annual number of respondents: 6.

Estimated annual number of responses per respondent: 21.5.

Estimated annual number of responses: 129.

Estimated total annual burden on respondents: 131 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: Done in Washington, DC, this 25th day of October 2012.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–26729 Filed 10–30–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0070]

Notice of Request for Extension of Approval of an Information Collection; Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the use of irradiation as a phytosanitary treatment of imported fruits and vegetables.

DATES: We will consider all comments that we receive on or before December 31, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012–0070-0001.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0070, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0070* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the use of irradiation as a phytosanitary treatment of imported fruits and vegetables, contact Dr. Paul Gadh, Senior Risk Manager—Treatments, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2141. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Irradiation Phytosanitary Treatment of Imported Fruits and Vegetables.

OMB Number: 0579–0155.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Animal and Plant Health Inspection Service of the United States Department of Agriculture is authorized, among other things, to regulate the importation of plants, plant products, including fruits and vegetables, and other articles to prevent the introduction of plant pests and noxious weeds into the United States.

Regulations governing the importation of fruits and vegetables are set out in 7 CFR part 319. In accordance with the regulations, some fruits and vegetables from certain regions of the world must be treated for insect pests in order to be eligible for entry into the United States.

The regulations in 7 CFR part 305 provide for the use of irradiation as a phytosanitary treatment for fruits and vegetables imported into the United States. The irradiation treatment provides protection against all insect pests including fruit flies, the mango seed weevil, and others. It may be used as an alternative to other approved treatments for these pests in fruits and vegetables, such as fumigation, cold treatment, heat treatment, and other techniques.

The regulations concerning irradiation treatment involve the collection of information, including a compliance agreement, 24-hour notification, labeling, dosimetry recordings, requests for dosimetry device approval, requests for facility approval, trust fund agreement, and annual work plan, as well as recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.008 hours per response.

Respondents: Foreign plant protection services, irradiation facility personnel, importers.

Estimated annual number of respondents: 105.

Estimated annual number of responses per respondent: 384.8.

Estimated annual number of responses: 40,404.

Estimated total annual burden on respondents: 332 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of October 2012.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–26727 Filed 10–30–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Cancellation of Indianapolis Grain Inspection & Weighing Service, Inc. Designation; Selection of Interim Provider; Opportunity for Designation in the Indianapolis, IN Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis) is designated to provide official inspection service through December 31, 2012, under the United States Grain Standards Act (USGSA), as amended. Indianapolis informed the Grain Inspection, Packers and Stockyards Administration (GIPSA) that it was willing to provide official inspection services through December 31, 2012, but requested that GIPSA find an interim provider as soon as possible. GIPSA notified all official agencies of the interim availability for Indianapolis and selected East Indiana Grain Inspection, Inc. as the interim provider effective October 15, 2012 until a permanent designee is selected. Accordingly, GIPSA is announcing that Indianapolis's designation terminates effective December 31, 2012 and is asking persons or governmental agencies interested in providing official services in the area presently assigned to Indianapolis to submit an application for designation.

DATES: Applications must be received by November 30, 2012.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

• *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA eAuthentication username and password prior to applying.

• *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for

submitting and reading comments are detailed on the site.

- *Mail, Courier or Hand Delivery:* Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.
- *Fax:* Eric J. Jabs, 816–872–1257.
- *Email: Eric.J.Jabs@usda.gov*

Read Applications and Comments: All applications will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Area Open for Designation

Pursuant to Section 79(f)(2) of the United States Grain Standards Act, the following geographic area, in the State of Indiana, is assigned to this official agency.

Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic areas is for the period beginning January 1, 2013 and ending December 31, 2016. To apply for designation or for more information, contact Eric J. Jabs at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–26824 Filed 10–30–12; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of briefing and business meeting.

DATE AND TIME: Friday, November 9, 2012; 9:30 a.m. EDT.

PLACE: 1331 Pennsylvania Ave. NW., Suite 1150, Washington, DC 20425.

Briefing Agenda—9:30 a.m.–1:30 p.m.

This briefing is open to the public.

Topic: The Federal Civil Rights Engagement With Arab and Muslim American Communities Post 9/11.

I. Introductory Remarks by Chairman
II. Panel I: Arab & Muslim American Civil Rights Organizations Panel—Speakers' Remarks and Questions From Commissioners
III. Panel II: Academic Scholar Panel—Speakers' Remarks and Questions From Commissioners
IV. Panel III: Government Panel—Speakers' Remarks and Questions From Commissioners
V. Adjourn Briefing

Meeting Agenda—1:30 p.m.

I. Approval of Agenda
II. Program Planning
- Discussion and Approval of Discovery Plan for the 2013 Statutory Enforcement Report—Sexual Assault in the Military

III. Approval of State Advisory Committee Slates
- Massachusetts
- Texas
- Nebraska SAC Chair

IV. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: October 26, 2012.

TinaLouise Martin,

Director of Management.

[FR Doc. 2012–26842 Filed 10–29–12; 11:15 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–77–2012]

Foreign-Trade Subzone 93G—Oxford, NC; Notification of Proposed Production Activity Revlon Consumer Products Corporation (Cosmetics and Personal Care Products)

Revlon Consumer Products Corporation (Revlon), operator of Subzone 93G, has submitted a notification of proposed production activity for its facility in Oxford, North Carolina. The notification conforming to the requirements of the regulations of the Board (15 CFR 400.22) was received on October 10, 2012.

Revlon's Oxford facility was granted subzone authority in 2006 (Board Order 1433, 71 FR 4112, 1/26/06) for the production of certain cosmetics and personal care products (hair products, fragrances, and skincare products). Revlon is now requesting to add a foreign status component to its FTZ production authority. Production under FTZ procedures could exempt Revlon from customs duty payments on the foreign status components used in export production. On its domestic sales, Revlon would be able to choose the duty rate during customs entry procedures that applies to hair coloring products (duty-free) for the foreign status input noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The sole component sourced from abroad included in this notification is: Oleic acid (duty rate—2.1c/kg + 3.2%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is *December 10, 2012.*

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Kathleen Boyce at *Kathleen.Boyce@trade.gov* or (202) 482–1346.

Dated: October 25, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–26802 Filed 10–30–12; 8:45 am]

BILLING CODE 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 14, 2012, 10:00 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 on single use technology for bioreactors and the type of applications they are being used for.
4. Report on Composite Working Group and other working groups.
5. Report on regime-based activities.
6. Public comments and new business.

Closed Session

7. Discussion of matters determined to 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 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 7, 2012.

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 2, 2012, 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 25, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–26784 Filed 10–30–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Materials Processing Equipment Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Processing Equipment Technical Advisory Committee (MPETAC) will meet on November 13, 2012, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution 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 processing equipment and related technology.

Agenda

Open Session

1. Opening remarks and introductions.
2. Presentation of papers and comments by the Public.
3. Discussions on results from last, and proposals for next Wassenaar meeting.
4. Report on proposed and recently issued changes to the Export Administration Regulations.
5. Other business.

Closed Session

6. Discussion of matters determined to 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 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 6, 2012.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials 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 November 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 matters the premature disclosure of which would be likely to frustrate significantly implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B) 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 24, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–26782 Filed 10–30–12; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry And Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on November 15, 2012, 9:30 a.m., in the 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 transportation and related equipment or technology.

Agenda

Public Session

1. Welcome and Introductions.

2. Status reports by working group chairs.

3. Public comments and Proposals.

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 8, 2012.

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. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Springer via email.

For more information, call Yvette Springer at (202) 482·2813.

Dated: October 25, 2012.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2012–26773 Filed 10–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* October 31, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with September anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to

extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this **Federal Register** notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this **Federal Register** notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews:

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than September 30, 2013.

	Period to be reviewed
Antidumping Duty Proceedings	
India: Certain Lined Paper Products, A–533–843	9/1/11–8/31/12
Abhay International	
Abhinav Paper Products Pvt. Ltd.	
Agility Logistics Private Limited	
Almore Industries	
American Scholar, Inc. and/or I-Scholar	
AR Printing & Packaging (India) Pvt. Ltd.	
Artisan	
Akar Limited	
A.L. Paper House	
Ampoules & Vitals Mfg. Co. Ltd.	
Apl Logistics India Pvt. Ltd.	
Artesign Impex	
Arun Art Printers Pvt. Ltd.	
Aryan Worldwide	
Avm International	
Bafna Exports	
Cargomar Pvt. Ltd.	
Cello International Pvt. Ltd. (M/S Cello Paper Products)	

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Chitra Exports	
Corporate Stationery Pvt. Ltd.	
Crane Worldwide Logistics Ind. Pvt.	
Creative Divya	
D.D. International	
Diki Continental Exports	
Dhote Offset Technokrafts Pvt.	
Eagle Press	
Exel India (Pvt.) Ltd.	
Exim Transtrade (India) Pvt. Ltd.	
Exmart International Pvt. Ltd.	
Espo Trading Pvt. Ltd.	
Expeditors International (India) Pvt/Expeditors Cargo Mgmt. Systems	
Fatechand Mahendrakumar	
FFI International	
Freight India Logistics Pvt. Ltd.	
Gauriputra International Ltd.	
Gayatri International	
Goldenpalm Manufacturers (Pvt.) Ltd.	
Goyal Crafts	
International Greetings Pvt. Ltd.	
Karur K.C.P. Packagings Ltd.	
Kejriwal Paper Ltd. and Kejriwal Exports	
Krati Handcraft	
Lodha Offset Limited	
Luxor International Pvt. Ltd.	
M.S. The Bell Match Company	
Magic International Pvt. Ltd.	
Mahavideh Foundation	
Marisa International	
Navneet Publications (India) Ltd.	
Nemlaxmi Books (India) Pvt. Ltd.	
Noble Shipping Pvt. Ltd.	
Orient Press Ltd.	
Pacific Paper Products	
Paperwise Inc.	
Pathfinder Business Analysis (P) Lt.	
Phalada Agro Research Foundations	
Pioneer Stationery Pvt. Ltd.	
Polaris Software Lab Limited	
Premier Exports	
Pragati Offset Pvt. Ltd.	
Raghunath Exporters	
Rajvansh International	
Ratan Papers Pvt. Ltd.	
Riddhi Enterprises	
SAB International	
SAI Suburi International	
SAR Transport Systems	
SDV Intl Logistics Ltd.	
Seet Kamal International	
SGM Paper Products	
Shivam Handicrafts	
Soham Udyog	
Sonal Printers Pvt. Ltd.	
Sundaram Multi Pap. Ltd. Super Impex	
Super Quality Impex	
Swati Growth Funds Ltd.	
Swift Freight (India) Pvt. Ltd.	
Ultra Engineers	
V&M	
Yash Laminates	
Xylem Papercraft Pvt. Ltd.	
Taiwan: Narrow Woven Ribbons with Woven Selvedge, A–583–844	9/1/11–8/31/12
Apex Ribbon	
Apex Trimmings Inc. (d.b.a. Papillon Ribbon & Bow (Canada))	
Hubschercorp	
Intercontinental Skyline	
Multicolor	
Pacific Imports	
Shienq Huong Enterprise Co., Ltd./Hsien Chan Enterprise Co., Ltd./Novelty Handicrafts Co., Ltd.[3]	
Supreme Laces Inc.	
The People's Republic of China: Certain Kitchen Appliance Shelving and Racks,[4] A–570–941	9/1/11–8/31/12

	Period to be reviewed
Jiangsu Weixi Group Co.	
New King Shan (Zhu Hai) Co., Ltd.	
The People's Republic of China: Certain Lined Paper Products,[5] A–570–901	9/1/11–8/31/12
Hwa Fuh Plastic Co., Ltd./Li Teng Plastics (Shenzhen) Co., Ltd.	
Shanghai Lian Li Paper Products Co., Ltd. ("Lian Li")	
Leo's Quality Products Co., Ltd./Denmax Plastic Stationary Factory	
The People's Republic of China: Certain Magnesia Carbon Bricks,[6] A–570–954	9/1/11–8/31/12
Fengchi Imp. & Exp. Co., Ltd. of Haicheng City	
Yingkou Bayuquan Refractories Co., Ltd.	
The People's Republic of China: Certain New Pneumatic Off-the-Road Tires,[7] A–570–912	9/1/11–8/31/12
Hangzhou Zhongce Rubber Co., Ltd.	
Shandong Linglong Tyre Co., Ltd.	
The People's Republic of China: Freshwater Crawfish Tail Meat,[8] A–570–848	9/1/11–8/31/12
China Kingdom (Beijing) Import & Export Co., Ltd.	
Nanjing Gemsen International Co., Ltd.	
Shanghai Ocean Flavor International Trading Co., Ltd.	
Xiping Opeck Food Co., Ltd.	
Xuzhou Jinjiang Foodstuffs Co., Ltd.	
Yancheng Hi-King Agriculture Developing Co., Ltd.	
The People's Republic of China: Narrow Woven Ribbons with Woven Selvedge,[9] A–570–952	9/1/11–8/31/12
Apex Ribbon	
Apex Trimmings Inc. d/b/a Papillon Ribbon & Bow (Canada)	
Hubscher Ribbon Corp., Ltd. d/b/a Hubschercorp	
Intercontinental Skyline	
Multicolor	
Pacific Imports	
Supreme Laces Inc.	
Weifang Dongfang Ribbon Weaving Co., Ltd.	
Yama Ribbons and Bows Co., Ltd.	
Yangzhou Bestpak Gifts & Crafts Co., Ltd.	
Countervailing Duty Proceedings	
India: Certain Lined Paper Products, C–533–844	1/1/11–12/31/11
Abhay International	
Abhinav Paper Products Pvt. Ltd.	
Agility Logistics Private Limited	
Almore Industries	
American Scholar, Inc. and/or I-Scholar	
AR Printing & Packaging (India) Pvt. Ltd.	
Artisan	
Akar Limited	
A.L. Paper House	
Ampoules & Vitals Mfg. Co. Ltd.	
Apl Logistics India Pvt. Ltd.	
Artesign Impex	
Arun Art Printers Pvt. Ltd.	
Aryan Worldwide	
Avm International	
Bafna Exports	
Cargomar Pvt. Ltd.	
Cello International Pvt. Ltd. (M/S Cello Paper Products)	
Chitra Exports	
Corporate Stationery Pvt. Ltd.	
Crane Worldwide Logistics Ind Pvt.	
Creative Divya	
D.D. International	
Diki Continental Exports	
Dhote Offset Technokrafts Pvt.	
Eagle Press	
Exel India (Pvt.) Ltd.	
Exim Transtrade (India) Pvt. Ltd.	
Exmart International Pvt. Ltd.	
Espo Trading Pvt. Ltd.	
Expeditors International (India) Pvt/Expeditors Cargo Mgmt. Systems	
Fatechand Mahendrakumar	
FFI International	
Freight India Logistics Pvt. Ltd.	
Gauriputra International Ltd.	
Gayatri International	
Goldenpalm Manufacturers (Pvt) Ltd.	
Goyal Crafts	
International Greetings Pvt. Ltd.	
Karur K.C.P. Packagings Ltd.	

	Period to be reviewed
Kejriwal Paper Ltd. and Kejriwal Exports	
Krati Handcraft	
Lodha Offset Limited	
Luxor International Pvt. Ltd.	
M.S. The Bell Match Company	
Magic International Pvt. Ltd.	
Mahavideh Foundation	
Marisa International	
Navneet Publications (India) Ltd.	
Nemlaxmi Books (India) Pvt. Ltd.	
Noble Shipping Pvt. Ltd.	
Orient Press Ltd.	
Pacific Paper Products	
Paperwise Inc.	
Pathfinder Business Analysis (P) Lt.	
Phalada Agro Research Foundations	
Pioneer Stationery Pvt. Ltd.	
Polaris Software Lab Limited	
Premier Exports	
Pragati Offset Pvt. Ltd.	
Raghunath Exporters	
Rajvansh International	
Ratan Papers Pvt. Ltd.	
Riddhi Enterprises	
SAB International	
SAI Suburi International	
SAR Transport Systems	
SDV Intl Logistics Ltd.	
Seet Kamal International	
SGM Paper Products	
Shivam Handicrafts	
Soham Udyog	
Sonal Printers Pvt. Ltd.	
Sundaram Multi Pap Ltd. Super Impex	
Super Quality Impex	
Swati Growth Funds Ltd.	
Swift Freight (India) Pvt. Ltd.	
Ultra Engineers	
V&M	
Yash Laminates	
Xylem Papercraft Pvt. Ltd.	
The People's Republic of China: Certain Kitchen Appliance Shelving and Racks, C–570–942	9/1/11–8/31/12
Jiangsu Weixi Group Co.	
New King Shan (Zhu Hai) Co., Ltd.	
The People's Republic of China: Certain Magnesia Carbon Bricks, C–570–955	1/1/11–12/31/11
Fengchi Imp. & Exp. Co., Ltd. of Haicheng City and Fengchi Refractories Co., of Haicheng City	
Yingkou Bayuquan Refractories Co., Ltd.	

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

[3] The Department received a request for an administrative review of the antidumping duty order on narrow woven ribbons (''NWR'') from Taiwan with respect to Shienq Huong Enterprise Co., Ltd., Hsien Chan Enterprise Co., Ltd. and Novelty Handicrafts Co., Ltd. (collectively, ''the Shienq Huong Group''). NWR produced and exported in any of 26 producer/exporter combinations involving the Shienq Huong Group is excluded from the order. *See Narrow Woven Ribbons With Woven Selvedge From Taiwan and the People's Republic of China: Antidumping Duty Orders,* 75 FR 53632, 53633 (Sept. 1, 2010). This administrative review covers NWR produced or exported by the Shienq Huong Group which is not specifically excluded from the order.

[4] If the above-named company does not qualify for a separate rate, all other exporters of Certain Kitchen Appliance Shelving and Racks from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[5] If the above-named company does not qualify for a separate rate, all other exporters of Certain Lined Paper Products from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[6] If the above-named company does not qualify for a separate rate, all other exporters of Certain Magnesia Carbon Bricks from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[7] If the above-named company does not qualify for a separate rate, all other exporters of Certain New Pnuematic Off-the-Road Tires from the PRC

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: October 23, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

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BILLING CODE 3510–DS–P

who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[8] If the above-named company does not qualify for a separate rate, all other exporters of Freshwater Crawfish Tail Meat from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[9] If the above-named company does not qualify for a separate rate, all other exporters of Narrow Woven Ribbons with Woven Selvedge from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Public Law 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 20, 2012. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 12–038. *Applicant:* Ohio University, 166 Stocker Center, Athens, OH 45701. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study materials such as catalysts and polymers in the nanoscale range, towards applications in energy and environmental technologies. The instrument's high resolution and scanning mode will enable the investigation of the chemical structure, morphology and elemental distribution in different catalyst formulations. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* September 26, 2012.

Docket Number: 12–040. *Applicant:* University of North Carolina Wilmington, 601 South College Rd., Wilmington, NC 28403–5915. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to examine the ultrastructure of biological materials including isolated molecules such as DNA, virus particles, bacteria, isolated cells and complex tissues (epithelia, nervous tissue, muscle tissue and connective tissue). The magnification and resolutions of the instrument coupled with the montage creation feature make it possible to examine cellular and sub-cellular features over a wide field of view, thereby allowing more global analyses than previously possible. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* September 21, 2012.

Docket Number: 12–041. *Applicant:* Institute for Imaging & Analytical Technologies, Mississippi State University, Clay Lyle Entomology Building, 100 Twelve Lane, Mississippi State, MS 39762. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the crystal structure, defect characteristics, and elemental distribution/segregation of single crystals, interfacial voids, polymers, and composites. The instrument will also be used for the characterization of nanoparticles produced by wood, insect sensory receptors, and nanoscale interactions between the internal fauna of beetles, and the translocation of copper in Cu-tolerant fungus. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* September 21, 2012.

Docket Number: 12–042. *Applicant:* Kansas State University College of Veterinary Medicine, K206 Mosier Hall 1800 Denison Ave., Manhattan, KS 66506. *Instrument:* Electron Microscope. *Manufacturer:* FEI, Czech Republic. *Intended Use:* The instrument will be used to study mammalian cell cultures, and the toxic effects of exposure to nanoparticles of different compositions, size, shape and surface coatings. The interactions of these nanoparticles with the body will be investigated, via routes of entry such as topical, perioral, intravenous, inhalation, intramuscular or subcutaneous. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* September 26, 2012.

Docket Number: 12–043. *Applicant:* Cleveland Clinic Foundation, 2111 East 96th St., Cleveland, OH 44106. *Instrument:* Electron Microscope. *Manufacturer:* FEI, Czech Republic. *Intended Use:* The instrument will be

used to characterize differences between healthy and diseased tissues by studying the composition of their ultrastructure. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* October 2, 2012.

Docket Number: 12–044. *Applicant:* University of Colorado, 347 UCB Boulder, CO 80309. *Instrument:* Electron Microscope. *Manufacturer:* FEI, Czech Republic. *Intended Use:* The instrument will be used to examine the consequences of mutations, experimental manipulations or disease states of cells and tissues in various organisms. It will also be used to locate specific proteins within the samples. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* October 9, 2012.

Docket Number: 12–045. *Applicant:* Walter Reed Army Institute of Research, 2460 Linden Lane Bldg #503, Silver Spring, MD 20910. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to observe ultrastructural evidence of infectious agents or to observe the ultrastructural pathology or cellular changes caused by infectious agents or therapeutic agents directed toward a certain cell type or cellular organelle. The objectives include observing how a certain microbe interacts with a cell, certain cellular population(s), or subcellular component; or to further provide ultrastructural classification of an organism. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* October 12, 2012.

Docket Number: 12–046. *Applicant:* Battelle Memorial Institute, 790 6th St, Richland, WA 99354. *Instrument:* Electron Microscope. *Manufacturer:* FEI, Czech Republic. *Intended Use:* The instrument will be used to study the structure and chemistry of inorganic materials such as catalysts, semiconductors, and battery materials, to understand the structure-property or structure-activity of the materials and to provide a feedback loop between synthesis and characterization. *Justification for Duty-Free Entry:* There are no instruments of the same general category manufactured in the United States. *Application accepted by Commissioner of Customs:* October 12, 2012.

Dated: October 25, 2012.

Gregory W. Campbell

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2012–26798 Filed 10–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Decision of Panel.

SUMMARY: On October 25, 2012, the NAFTA Chapter 19 binational panel issued its decision in the review of the final results of the 2005/2006 antidumping administrative review made by the U.S. Department of Commerce, respecting Carbon and Certain Alloy Steel Wire Rod from Canada, NAFTA Secretariat File Number USA–CDA–2008–1904–02. The panel affirmed the U.S. Department of Commerce's Final Determination with regard to the issue of zeroing in this matter. Copies of the panel's decision are available from the U.S. Section of the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Ellen M. Bohon, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter has been conducted in accordance with these Rules.

Panel Decision

On May 11, 2012, the binational panel affirmed the U.S. Department of Commerce's final results of the administrative review determining that the Complainant's sales were made at the same level of trade. The panel remanded to the U.S. Department of Commerce with regard to its practice of ''zeroing'' in the administrative review before the panel, with instructions to provide an explanation consistent with the remand orders in two previous cases. (*Dongbu Steel Co. Ltd.* v. *United States,* 635 F3d 1363 (Fed Cir. 2011); and *JTEKT Corp.* v. *United States,* 642 F3d 1378 (Fed. Cir. 2011)) On October 25, 2012, in accordance with Article 1904.8 of NAFTA, and for reasons set out in the panel's written decision and related order, the panel affirmed the Department of Commerce's Final Determination with regard to the issue of ''zeroing'' in this matter.

Dated: October 25, 2012.

Ellen M. Bohon,

U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2012–26694 Filed 10–30–12; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC289

Receipt of an Application for Incidental Take Permit (16230)

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

ACTION: Supplemental Notice of receipt of application for incidental take permit; availability of draft conservation plan.

SUMMARY: NMFS has received an amended application for an incidental take permit (Permit) from the North Carolina Division of Marine Fisheries (NCDMF) pursuant to the Endangered Species Act of 1973, as amended (ESA). As required by the ESA, NCDMF's application includes a proposed conservation plan designed to minimize and mitigate take of endangered or threatened species. The permit application is for the incidental take of ESA-listed adult and juvenile sea turtles associated with otherwise lawful commercial gillnet fisheries operating in inshore waters of North Carolina. The duration of the proposed permit is for 10 years. NMFS is providing this notice

to allow other agencies and the public an opportunity to review and comment on the revised application and associated proposed conservation plan. All comments received will become part of the public record and will be available for review. An electronic copy of the revised application and proposed conservation plan may be obtained by contacting NMFS Office of Protected Resources (see **FOR FURTHER INFORMATION CONTACT**) or visiting the internet at *www.nmfs.noaa.gov/pr/permits/esa_review.htm.* Public comments received in response to the original Notice of Receipt (76 FR 61670, October 5, 2011) are available on *www.regulations.gov* (see **ADDRESSES**).

DATES: Written comments from interested parties on the permit application and conservation plan must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Eastern daylight time on November 30, 2012.

ADDRESSES: You may submit comments on the permit application and conservation plan, identified by NOAA–NMFS–2011–0231, by any of the following methods during the 30-day comment period:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2011–0231 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Submit written comments to Kristy Long, Office of Protected Resources, 1315 East West Highway, 13th Floor, Silver Spring, MD 20910.
- *Fax:* 301–713–0376; Attn: Kristy Long.

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Kristy Long (ph. 301–427–8402, email *Kristy.Long@noaa.gov;* Dennis Klemm (ph. 727–824–5312, email *Dennis.Klemm@noaa.gov*).

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances, to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are published at 50 CFR 222.307.

Species Covered in this Notice

The following species are included in the conservation plan and Permit application: Loggerhead (*Caretta caretta*), green (*Chelonia mydas*), leatherback (*Dermochelys coriacea*), hawksbill (*Eretmochelys imbricata*), and Kemp's ridley (*Lepidochelys kempii*) sea turtles.

Background

NMFS issued Permit No. 1259 to NCDMF (65 FR 65840, November 2, 2000), Permit No. 1348 (66 FR 51023, October 5, 2001), Permit No. 1398 (67 FR 67150, November 4, 2002), and Permit No. 1528 (70 FR 52984, September 6, 2005) authorizing the incidental take of the foregoing species in certain segments of the commercial fall gill net fisheries for flounder in Pamlico Sound subject to a series of mandatory sea turtle management and monitoring requirements and limits on the numbers of individuals that could be taken annually.

On August 18, 2011, NCDMF submitted a revised application to NMFS for Permit No. 16230, requesting authorization for incidental take of ESA-listed sea turtles associated with commercial and recreational gillnet fisheries in inshore state waters for 3 years. This application includes endangered Kemp's ridley, leatherback, and hawksbill sea turtles and threatened green and loggerhead sea turtles. NMFS published a notice of receipt of the August 2011 application and a request for public comments on October 5, 2011 (76 FR 61670). Based on comments received from the public, independent reviewers, and NMFS, NCDMF subsequently submitted a second revised application on September 6, 2012. This permit, if issued, would allow for the incidental take of specified numbers of sea turtles incidental to the continued commercial harvest of target fish species in gillnets subject to conservation, management and monitoring requirements set forth in the plan and as permit conditions deemed necessary and appropriate by the NMFS over a 10 year period.

Conservation Plan

The conservation plan prepared by NCDMF describes measures designed to monitor, minimize, and mitigate the incidental take of ESA-listed sea turtles. The conservation plan includes managing inshore gill net fisheries by dividing estuarine waters into 6 management units (i.e., A, B, C, D1, D2, E). Each of the management units would be monitored seasonally and by fishery.

Management units were delineated on the basis of three primary factors: similarity of fisheries and management; extent of known protected species interactions in commercial gill net fisheries; and unit size and the ability of the NCDMF to monitor fishing effort. Management Unit A encompasses all estuarine waters north of 35°46.30′ N. to the North Carolina/Virginia state line. This includes all of Albemarle, Currituck, Croatan, and Roanoke sounds as well as the contributing river systems in this area. Management Unit B encompasses all estuarine waters south of 35°46.30′ N., east of 76°30.00′ W. and north of 34°48.27′ N. This Management Unit will include all of Pamlico Sound and the Northern portion of Core Sound. Management Unit C will include the Pamlico, Pungo and Neuse river drainages west of 76°30.00′ W. Management Unit D is divided into two areas, D1 and D2, to allow the NCDMF to effectively address areas of high sea turtle abundance or ''hot spots''. Management Unit D1 encompasses all estuarine waters south of 34°48.27′ N. and east of a line running from 34°40.70′ N.—76°22.50′ W. to 34°42.48′ N.—76°36.70′ W. Management Unit D1 includes Southern Core Sound, Back Sound and North River. Management Unit D2 encompasses all estuarine waters west of a line running from 34°40.70′ N.—76°22.50′ W. to 34°42.48′ N.—76°36.70′ W. to the Highway 58 bridge. Management Unit D2 includes Newport River and Bogue Sound. Management Unit E encompasses all

estuarine waters south and west of the Highway 58 bridge to the North Carolina/South Carolina state line. This includes the Atlantic Intercoastal Waterway and adjacent sounds, and the New, Cape Fear, Lockwood Folly, White Oak, and Shallotte rivers.

The large mesh (≥ 4 inch stretched mesh (10.16 cm)) gillnet fisheries primarily target southern flounder (*Paralicthys lethostigma*), striped bass (*Morone saxatilis*), American shad (*Alosa americana*), hickory shad (*Polomolobus mediocris*), and catfishes (*Ictalurus sp.*). Large mesh gill net fisheries for flounder traditionally operate throughout the majority of the sounds and lower estuarine river systems with peaks in effort in the spring/summer months (April—June), and in the fall months (September–November). Fisheries for striped bass are more limited in time and space due to the anadromous migration pattern of this species. Striped bass gill net fisheries are prosecuted from late October through late April; fishermen are prohibited from targeting striped bass from May through early October. Consequently, the majority of striped bass effort occurs in Albemarle Sound with seasonal effort occurring in the Pamlico Sound and the Pamlico and Neuse River systems. American and hickory shad fishing operations occur almost exclusively from January 1 through April 14 due to their anadromous migration patterns and distribution. Catfish are harvested with large mesh gillnets in rivers and Western Albemarle Sound with the majority of catches occurring during the winter to spring months. The most common mesh size for all large mesh gill net fisheries is 5½ inch (13.97 cm) stretched mesh.

The small mesh (<4 inch stretched mesh (10.16 cm)) gillnet fisheries primarily target spot (*Leiostomus xanthurus*), striped mullet (*Mugil cephalus*), bluefish (*Pomatomus saltatrix*), spotted seatrout (*Cynoscion nebulosus*), weakfish (*Cynoscion regalis*), Atlantic menhaden (*Brevoortia tyrannus*), Spanish mackerel (*Scomberomorus maculates*), white perch (*Morone americana*), and kingfishes (*Menticirrhus sp.*). Peaks in spot landings occur in the spring/summer (April to June) and fall (October to November) months; spot are landed throughout the estuarine waters and river systems. Striped mullet are landed year round with peaks in the fall/winter months (October to January). Bluefish are also landed year round throughout the estuarine and river systems with most landings occurring in the spring during April and May. Spotted seatrout and weakfish are targeted by small mesh gillnet operations primarily in the fall/winter (September to January) months. Weakfish landings may also peak in the spring during April and May. Atlantic menhaden are mostly targeted during the spring (February to May) with another peak in landings occurring in October. Spanish mackerel are primarily targeted during the spring and fall months. White perch are almost exclusively targeted during the winter/spring months (December to April). Kingfishes are targeted primarily in the spring and the fall throughout the estuarine and river systems. Mesh sizes used in small mesh gill net operations vary more than those used in large mesh fisheries. However, the most commonly used small mesh sizes generally fall between 3 inch (7.62 cm) and 3¾; inch (9.53 cm) stretched mesh.

Management measures identified in the proposed conservation plan include: (1) Restricted soak times for large mesh gillnets from one hour before sunset on Monday through Thursday and one hour after sunrise from Tuesday through Friday (i.e., fishing is prohibited from one hour after sunrise on Friday through one hour before sunset on Monday); (2) restrictions on the maximum net length per large mesh fishing operation (i.e., 2,000 yards (1.83 km, 6,000 ft) per operation except south of the NC Highway 58 bridge and Management Area D2 where 1,000 yards (0.91 km, 3,000 ft) is maximum; (3) restrictions on large mesh net-shot lengths to 100 yards (91.44 m, 300 ft) with a 25 yard (22.86 m, 75 ft) separation between each net-shot; (4) requirement for large mesh nets to be low profile (e.g., maximum of 15 meshes in depth, tie-downs prohibited, floats or corks prohibited along float lines north of the NC Highway 58 bridge); and (5) closure of Management Area D1 to unattended large mesh gillnets from May 8–October 14 annually. NCDMF proposes to monitor sea turtle interactions through reports from fishery observers (both traditional and alternative platform), fishermen, and NCDMF Marine Patrol at a minimum of 7% coverage annually for large mesh gillnets and 1–2% annually for small mesh gillnets.

The annual incidental take of sea turtles requested for large mesh and small mesh gillnets in Management Units B, D1, D2, and E is 684 and 74, respectively. Specifically, the requested lethal and non-lethal take by species is 49 lethal and 98 non-lethal Kemp's ridley, 165 lethal and 330 non-lethal green, 22 lethal or non-lethal loggerhead turtles, and 4 lethal or non-lethal takes each of hawksbill and leatherback turtles. In Management Units A and C, the annual incidental lethal or non-lethal take of sea turtles requested for large and small mesh gillnets combined is 16 turtles of any species.

NCDMF is proposing to limit inshore gillnet fisheries such that the impacts on ESA-listed sea turtles will be minimized. NCDMF would use a variety of adaptive fishery management measures and restrictions through their state proclamation authority to reduce sea turtle mortality and prohibit fishing in management units where incidental take thresholds are exceeded. NCDMF considered and rejected five other alternatives, including: (1) A no action alternative; (2) not applying for a permit and closing the fishery; (3) further reducing large mesh effort (e.g., yardage, soak time) and requiring attendance in all Management Areas; (4) restricting large mesh effort in Management Areas A and C similar to B, D1, D2, and E; and (5) reducing small mesh gillnet effort (e.g., yardage, soak time) and requiring attendance in all Management Areas.

National Environmental Policy Act

Issuing a permit would constitute a major Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, *Environmental Review Procedures for Implementing the National Environmental Policy Act* (1999). NMFS intends to prepare an Environmental Assessment (EA) to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from issuing a permit. NMFS will make this EA available for public comment.

Next Steps

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA. The application, supporting documents, public comments, and views already received by the agency as well as those submitted in response to this notice will also be fully considered and evaluated as we prepare the EA and determine whether or not to issue a Finding of No Significant Impact (FONSI). The final NEPA document and permit determinations will not be completed until after the end of the 30-day comment period. If we determine that the requirements of section 10(a) and the procedural requirements of NEPA are met, NMFS will issue a permit for

incidental takes of ESA-listed sea turtles under the jurisdiction of NMFS. NMFS will publish a record of its final action in the **Federal Register**. We will also make any final NEPA documents available to the public.

Dated: October 25, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–26791 Filed 10–30–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC329

Mid-Atlantic Fishery Management Council; Public Hearings

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

ACTION: Notice of intent to prepare an environmental impact statement (EIS); notice of initiation of scoping process; notice of scoping meetings; request for comments.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) announces its intent to prepare an amendment (Amendment 15) to the Fishery Management Plan (FMP) for Atlantic Mackerel, Squid, and Butterfish (MSB) and to prepare an EIS to analyze the impacts of any proposed management measures. The Council is initiating a public process to determine the scope of alternatives to be addressed in the amendment and EIS. This amendment currently will address the following issue: Whether the Council should begin direct federal management of river herrings (alewife and/or blueback herring) and/or shads (American and/or hickory). Additional issues may be added depending on the outcome of the scoping process. NMFS and the Council are alerting the interested public of the commencement of the scoping process and providing for public participation in compliance with environmental documentation requirements.

DATES: Public comments on Amendment 15 scoping must be received no later than 11:59 p.m., eastern standard time, on December 5, 2012. Scoping hearings will be held on the following dates:

- Nov 14, 2012, 6 p.m.–8 p.m.: Internet Webinar: *https://www1.gotomeeting.com/register/268451473;* While anyone with internet access can join the webinar, there will also be a listening post at: Virginia Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, (757) 247–2200.
- Nov 15, 2012, 7 p.m.–9 p.m.: Internet Webinar: *https://www1.gotomeeting.com/register/625483785;* While anyone with internet access can join the webinar, there will also be a listening post at: New York Marine Resources Bureau Headquarters; 205 North Belle Mead Rd., Suite 1, East Setauket, NY 11733, (631) 444–0430.
- Nov 19, 2012, 7 p.m.–9 p.m.: Congress Hall, 251 Beach Ave, Cape May, NJ 08204, 888–944–1816.
- Nov 20, 2012, 7 p.m.–9 p.m.: Radisson Hotel Providence Airport; 2081 Post Road; Warwick, RI 401–739–3000.

ADDRESSES: Written comments on Amendment 15 may be sent by any of the following methods:

- Email to the following address: *nmfs.ner.msbam15@noaa.gov.* Include ''Scoping Comments on MSB 15'' in the subject;
- Mail to Chris Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. Mark the outside of the envelope ''Scoping Comments on MSB 15'' or
- Fax to Chris Moore, Ph.D., (302) 674–5399. Include ''Scoping Comments on MSB 15'' in the fax.

Requests for copies of the scoping document and other information should be directed to Chris Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901, toll-free telephone: (877) 446–2362. The scoping document is also accessible via the Internet at *http://www.mafmc.org/fmp/msb.htm.*

FOR FURTHER INFORMATION CONTACT: Chris Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council. Toll-free telephone: (877) 446–2362.

SUPPLEMENTARY INFORMATION: The purpose of this amendment is to consider measures for direct river herring and shad (RH/S) management by the Council. Currently, RH/S are managed by the Atlantic States Marine Fisheries Commission (ASMFC) but there are interactions with federal fisheries in federal waters. More direct management by the Council may help RH/S conservation efforts, which do not appear to have yet rebuilt many RH/S stocks. The amendment will consider whether the current management framework for river herring and shad is sufficient for conservation and management of these species and whether Federal management under the Magnuson-Stevens Act would address any deficiencies and/or inefficiencies. If management under the Magnuson-Stevens Act can address those issues, the amendment will consider a range of measures for Federal involvement/management. More details on the topics addressed in this supplementary information section may be found in the Amendment 15 scoping document (see above for how to obtain scoping document).

The Council will first gather information during the scoping period. This is the first and best opportunity for members of the public to raise concerns related to the scope of issues that will be considered in Amendment 15. The Council needs your input both to identify management issues and develop effective alternatives. Your comments early in the amendment development process will help us address issues of public concern in a thorough and appropriate manner. Comments can be made in writing, electronically, or during the scoping hearings as described above. If the Council decides to move forward with Amendment 15, the Council will develop a range of management alternatives to be considered and prepare an Environmental Impact Statement (EIS) to analyze the impacts of the management alternatives being considered as required by the National Environmental Policy Act (NEPA). Impacts may be direct, indirect, individual, or cumulative. A draft EIS will be distributed for public review. During a 45-day public comment period (which will also include public hearings) the public may comment on any aspect of the draft EIS. Following a review of the comments, the Council will then choose preferred management measures for submission with the Final EIS to the Secretary of Commerce for publishing of a proposed and then final rule, both of which have additional comment periods.

Special Accommodations: The scoping hearings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Chris Moore, Ph.D. (see contact info above) at least 5 days prior to the meeting date. Please contact Jason Didden at *jdidden@mafmc.org* or (302) 526–5254 at least 5 days prior to the meeting date if you would like to confirm that your computer is set up to access the webinar. The webinar works for most

computers, but sometimes there are technical problems with remote voice communication from online participants. In such cases, participants may still use a chat feature in the webinar to submit written comments or questions.

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

Dated: October 26, 2012.

William D. Chappell,

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

[FR Doc. 2012–26795 Filed 10–30–12; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed revision of the National Service Trust Enrollment Form and National Service Trust Exit Form to update the burden hour information and the Privacy Act statements. Applicants and program staff respond to the questions included in this ICR to enroll in the National Service Trust and to document their service upon completion.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by December 31, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, ATTN: Bruce Kellogg, 8309C, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3492, Bruce Kellogg.

(4) Electronically through *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–6954, or by email at *bkellogg@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

The Enrollment Form is used by AmeriCorps members and program staff to enroll in the National Service Trust. The Exit Form is used by AmeriCorps members and program staff to document the completion of their term of service. This information is also collected electronically.

Current Action

CNCS seeks only to revise the burden hour information to reflect current volume and to amend the Privacy Act statements in these forms.

The information collection will otherwise be used in the same manner as the existing application. CNCS also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on September 30, 2013.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: National Service Trust Enrollment and Exit Forms.

OMB Number: 3045–0006.

Agency Number: None.

Affected Public: AmeriCorps members and program staff.

Total Respondents: 81,000 (Enrollments) and 79,000 (Exits).

Frequency: Once per form.

Average Time per Response: Averages 10 minutes per form.

Estimated Total Burden Hours: 13,500 hours (Enrollment) and 13,166.67 (Exit).

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: October 25, 2012.

Maggie Taylor-Coates,

Chief Trust Operations.

[FR Doc. 2012–26785 Filed 10–30–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare an Environmental Impact Statement for the Disposal and Reuse of Surplus Properties at Naval Station Newport, RI and Notice of Public Scoping Meetings

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), the Department of the Navy (DoN) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental consequences of the disposal and reuse of surplus properties at Naval Station (NAVSTA) Newport, Newport, Rhode Island, per Public Law 101–510, the Defense Base Closure and Realignment (BRAC) Act of 1990, as amended in 2005 (BRAC Law). The surplus properties include: the former Naval

Hospital, the former Navy Lodge, Tank Farms 1 and 2, and the Defense Highway/Stringham Road Corridor. Potential impacts associated with reuse of the surplus properties at NAVSTA Newport, including changes in land use and traffic patterns, will be evaluated and will contribute to the alternatives considered.

DATES: The DoN will conduct public scoping meetings in the Town of Middletown and the City of Newport, Newport County, Rhode Island, to receive comments on the environmental concerns that should be addressed in the EIS. Public scoping open houses will be as follows:

1. Open House: Wednesday, November 14, 2012 4:00pm–8:00pm, Joseph H. Gaudet Middle School Cafeteria located at 1113 Aquidneck Avenue, Middletown, Rhode Island.

2. Open House: Thursday, November 15, 2012 1:00pm–5:00pm, Newport Public Library Program Room located at 300 Spring Street, Newport, Rhode Island.

FOR FURTHER INFORMATION CONTACT: Director, BRAC Program Management Office Northeast, Attn: Newport BRAC EIS, 4911 South Broad Street, Building 679, Philadelphia, PA 19112–1303, telephone 215–897–4900, fax 215–897–4902, email: *david.drozd@navy.mil.*

SUPPLEMENTARY INFORMATION: The BRAC Commission was established by Public Law 101–510, the BRAC Law, to recommend military installations for realignment and closure. Recommendations of the 2005 BRAC Commission were included in a report presented to the President on September 8, 2005. The President approved and forwarded this report to Congress on September 16, 2005, which became effective as public law on November 9, 2005, and must be implemented in accordance with the requirements of the BRAC Law.

As a result of implementation of BRAC Law, on January 5, 2009, certain land and facilities at NAVSTA Newport were declared excess to the needs of the DoN and made available to other Department of Defense components and other Federal agencies. The DoN evaluated all Federal requests and made a decision on property required by the Federal Government. The DoN declared approximately 225 acres of property at NAVSTA Newport as surplus to the needs of the Federal Government on February 9, 2010.

The proposed action for this EIS is the disposal and reuse of surplus property at NAVSTA Newport. Upon completion of the disposal, the surplus property will be redeveloped in a manner consistent with the Aquidneck Island Reuse Planning Authority's (AIRPA) Redevelopment Plan. The EIS will consider the alternatives that are reasonable to accomplish the proposed action. Alternatives to be considered include: (1) Disposal of the surplus property by the DoN and reuse in accordance with the AIRPA Redevelopment Plan; (2) Disposal of the surplus property by the DoN with a high-density reuse scenario; and (3) No Action, in which the DoN would retain ownership in caretaker status and no reuse or redevelopment of the surplus property would occur.

Alternative 1 would allow for the disposal and reuse of surplus property at NAVSTA Newport. Reuse would be conducted in accordance with the AIRPA Redevelopment Plan. The Plan provides a mix of land uses based on existing conditions on the surplus property and in the community, guiding principles for development established by AIRPA, and public participation. It is anticipated that full build-out of the Plan would be implemented over a 20-year period. The Redevelopment Plan calls for the development of the following at each surplus parcel:

- Naval Hospital—This waterfront parcel consists of 7 acres of land and facilities plus 3 acres of submerged land. Existing structures would be demolished prior to redevelopment of the site. Approximately 3.8 acres (54%) of the 7 acres of land-based property would be redeveloped, with a mix of hotel and residential uses in addition to a waterfront park with pedestrian paths and a pier. The remaining 3.2 acres of upland (46%) and 3 acres of submerged land would be maintained as open space and natural areas associated with the waterfront park.
- Navy Lodge—This parcel consists of 3 acres of land with no facilities on the parcel. Approximately 1.8 acres (60%) would be redeveloped with two, one-story retail buildings and associated parking. Approximately 1.2 acres (40%) would be maintained as open space.
- Tank Farms 1 and 2—This parcel consists of 145 acres of land and facilities. Existing structures would be demolished prior to redevelopment of the site. Approximately 31.1 acres (21%) of the overall combined property would be redeveloped with a mix of uses including office space, light industrial, boat storage, multi-modal parking, and a solar array. About 113.9 acres (79%) would remain as passive land use or open space.
- Defense Highway/Stringham Road Corridor—This parcel consists of 67 acres of land, including 4.6 miles of two-lane roads and 15 acres of adjacent open land. The Redevelopment Plan calls for retaining use of the two-lane roads, with the addition of an adjacent multi-use pedestrian pathway in a greenbelt. The remaining land would be used for recreation/open space areas including a shoreline park.

Alternative 2 would also allow for disposal and reuse of the surplus property at NAVSTA Newport. This alternative features a higher density of uses at each parcel and similar to Alternative 1, it is anticipated that full build-out of the high-density scenario would be implemented over a 20-year period. Under Alternative 2, redevelopment at each surplus parcel would include the following:

- Naval Hospital—The residential use proposed under Alternative 1 would be replaced with commercial uses and a conference center would be added to the proposed hotel. The remainder of the site would be developed as described under Alternative 1. This higher density alternative would result in development of approximately 4.1 acres (58%) of the 7-acre land-based portion of the site.
- Navy Lodge—The higher density alternative calls for the development of two, two-story retail buildings and an increase in parking compared with Alternative 1. Alternative 2 would result in development of approximately 2.1 acres (70%) of the overall site.
- Tank Farms 1 and 2—Redevelopment would occur with the same mix of uses as under Alternative 1 however, the amount of office space and light industrial would be increased resulting in development of 34.1 acres (24%) of the overall site.
- Defense Highway/Stringham Road Corridor—The higher density alternative calls for greater expansion of the proposed shoreline park.

Alternative 3 is required by NEPA and is the No Action Alternative. Under this alternative, the property would be retained by the U.S. government in caretaker status. No reuse or redevelopment would occur at the surplus property.

The EIS will address potential direct, indirect, short-term, long-term, and cumulative impacts on the human and natural environments, including potential impacts on topography, geology and soils, water resources, biological resources, air quality, noise, infrastructure and utilities, traffic, cultural resources, land use, socioeconomics, environmental justice, and waste management. Known areas of concern associated with the BRAC action include impacts on cultural resources, impacts on local traffic patterns resulting from reuse scenarios,

and the clean-up of installation remediation sites.

The DoN is initiating the scoping process to identify community concerns and issues that should be addressed in the EIS. Agencies and the public are encouraged to provide written comments at scheduled public scoping meetings. Comments should clearly describe specific issues or topics that the EIS should address. Written comments must be postmarked or emailed by midnight December 2, 2012, and should be sent to: Director, BRAC Program Management Office Northeast, Attn: Newport BRAC EIS, 4911 South Broad Street, Building 679, Philadelphia, PA 19112–1303, telephone 215–897–4900, fax 215–897–4902, email: *david.drozd@navy.mil.*

Requests for special assistance, sign language interpretation for the hearing impaired, language interpreters, or other auxiliary aids for scheduled public scoping meetings must be sent by mail or email by November 5, 2012, to Ms. Katie Dixon, Ecology and Environment, Inc., 368 Pleasant View Drive, Lancaster, NY 14086, telephone 716–684–8060, email: *kdixon@ene.com.*

Dated: October 25, 2012.

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–26755 Filed 10–30–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DoD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary, into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. The executive session of this meeting from 11:00 a.m. to 12:00 p.m. on December 3, 2012, will include discussions of disciplinary matters, law enforcement investigations into allegations of criminal activity, and personnel issues at the Naval Academy, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. For this reason, the executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on December 3, 2012, from 8:30 a.m. to 11:00 a.m. The closed session of this meeting will be the executive session held from 11:00 a.m. to 12:00 p.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room at the Naval Academy in Annapolis, MD. The meeting will be handicap accessible.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Travis Haire, USN, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, 410–293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The executive session of the meeting from 11:00 a.m. to 12:00 p.m. on December 3, 2012, will consist of discussions of law enforcement investigations into allegations of criminal activity, new and pending administrative/minor disciplinary infractions and nonjudicial punishments involving the Midshipmen attending the Naval Academy to include but not limited to individual honor/conduct violations within the Brigade, and personnel issues. The discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public.

Accordingly, the Under Secretary of the Navy has determined in writing that the meeting shall be partially closed to the public because the discussions during the executive session from 11:00 a.m. to 12:00 p.m. will be concerned with matters coming under sections 552b(c) (5), (6), and (7) of title 5, United States Code.

Dated: October 22, 2012.

C.K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–26811 Filed 10–30–12; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Performance Review Board Membership

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), the Department of Navy (DoN) announces the appointment of members to the DoN's Senior Executive Service (SES) Organizational Pay Pools (PPs) and the DoN Performance Review Board (PRB). The purpose of the PPs/PRB is to provide fair and impartial review of the annual SES performance appraisal prepared by the senior executive's immediate and second level supervisor; to make recommendations to appointing officials regarding acceptance or modification of the performance rating; and to make recommendations for performance bonuses. Composition of the specific PPs and PRB will be determined on an ad hoc basis from among the individuals listed below.

Ackley, Victor Mr.
Adams, Patricia A. Ms.
Allard, Terry T. Dr.
Andress, Mark Mr.
Balderson, Diane M. Ms.
Benedict, Terry Mr.
Bianco, Margaret R. Ms.
Branch, Elliott B. Mr.
Brennan, Anne M. Ms.
Brotherton, Andrea E. Ms.
Cali, Robert T. Mr.
Chudoba, Phillip Mr.
Commons, Gladys Hon.
Davis, Anne R. Ms.
Decker, Jo A. Ms.
Duryea, David M. RDML
Easter, Steffanie B. Ms.
Eccles, Thomas RADM
Flattery, Katherine E. Ms.
Floyd, Kenneth E. RADM
Garcia, Juan Hon.
Gibbs, Robert C. Mr.
Gilpin, Richard S. Mr.
Goodhart, John C. Mr.
Hogue, Robert D. Mr.
Honecker, Mark W. Mr.
Hunt, Richard W. VADM
Iselin, Steven R. Mr.
Jabaley, Michael E. RDML
Jaynes, CJ RDML
Johnson, David C. RADM
Jones, Walter F. Dr.
Keeney, Carmela A. Ms.
Kessler, Gary K. Mr.
Kistler, Michael R. Mr.
Ledvina, Thomas N. Mr.
Leikach, Kalmen I. Mr.
Lewis, David H. RDML
Ligler, Frances S. Dr.
Maguire, Margaret M. Ms.
McCarthy, James F. Mr.
McCormack, Donald F. Jr. Mr.
McCurdy, Jesse W. Jr. Mr.
Montgomery, John A. Dr.
Moore, Thomas J. RDML
Murdoch, James A RDML
Murray, Sheryl E. Ms.
O'Neil, Scott M. Mr.
Persons, Brian J. Mr.
Punderson, Jerome F. Mr.
Ridley, Mark D. Mr.
Rixey, Joseph RADM

Schuette, Lawrence C. Mr.
Shannon, James J. RDML
Skinner, Walter M. VADM
Smith, Roderick F. Mr.
Smoot, Sharon H. Ms.
Stiller, Allison F. Ms.
Syring, James D. RDML
Tesch, Thomas G. Mr.
Thackrah, John S. Mr.
Thomsen, James E. Mr.
Wears, Thomas G. RDML
Whitney, Mark R. RDML
Work, Robert Hon.
Zangardi, John Dr.

FOR FURTHER INFORMATION CONTACT: Ms. Bernadina Reyes, Office of Civilian Human Resources, telephone 703–693–0222.

Dated: October 23, 2012.

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2012–26758 Filed 10–30–12; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Extension of Hearing Record Closure Date

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Extension of hearing record closure date.

SUMMARY: The Defense Nuclear Facilities Safety Board (Board) published a document in the **Federal Register** on August 15, 2012, (77 FR 48970), as amended, September 7, 2012, (77 FR 55196), concerning notice of a public hearing and meeting on October 2, 2012, regarding safety-related aspects of the design and factors that could affect the timely execution of the Uranium Processing Facility (UPF) project at the Y–12 National Security Complex. The Board stated in the August 15, 2012 notice that the hearing record would remain open until November 2, 2012, for the receipt of additional materials. The Board made the same representation at the conclusion of the hearing on October 2, 2012.

Extension of Time: The Board now extends the period of time for which the hearing record will remain open to January 2, 2013, to further accommodate submission of answers to questions taken for the record during the course of the public hearing.

Contact Person for Further Information: Debra H. Richardson, Deputy General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

Dated: October 25, 2012.

Peter S. Winokur,

Chairman.

[FR Doc. 2012–26703 Filed 10–30–12; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–1586–002.
Applicants: Southwest Power Pool, Inc.
Description: Compliance Filing—Rate Schedule 13—Western Area Power Administration JOA to be effective 6/20/2012.
Filed Date: 10/18/12.
Accession Number: 20121018–5109.
Comments Due: 5 p.m. ET 11/8/12.

Docket Numbers: ER12–1630–001.
Applicants: California Independent System Operator Corporation.
Description: 2012–10–19 Compliance Filing in Docket No. ER12–1630 to be effective 5/1/2013.
Filed Date: 10/19/12.
Accession Number: 20121019–5102.
Comments Due: 5 p.m. ET 11/9/12.

Docket Numbers: ER12–2591–001.
Applicants: Monongahela Power Company.
Description: Compliance to filing 20 to be effective 9/1/2012.
Filed Date: 10/19/12.
Accession Number: 20121019–5090.
Comments Due: 5 p.m. ET 11/9/12.

Docket Numbers: ER13–157–000.
Applicants: New York State Electric & Gas Corporation.
Description: Bath Fairview Attachment C Annual Update to be effective 1/1/2013.
Filed Date: 10/18/12.
Accession Number: 20121018–5102.
Comments Due: 5 p.m. ET 11/8/12.

Docket Numbers: ER13–158–000.
Applicants: New York State Electric & Gas Corporation.
Description: NYSEG–DCEC Attachment C Annual Update to be effective 1/1/2013.
Filed Date: 10/18/12.
Accession Number: 20121018–5107.
Comments Due: 5 p.m. ET 11/8/12.

Docket Numbers: ER13–159–000.
Applicants: Imperial Valley Solar 1, LLC.
Description: Co-Tenancy and Shared Use Agreement Cancellation to be effective 10/19/2012 under ER13–159 Filing Type: 270.
Filed Date: 10/19/12.
Accession Number: 20121019–5089.
Comments Due: 5 p.m. ET 10/23/12.

Docket Numbers: ER13–160–000.
Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.
Description: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: Interconnection Agreement (LGIA) no. 1916 Among NYISO, NiMo and Allegany Wind to be effective 10/5/2012.
Filed Date: 10/19/12.
Accession Number: 20121019–5137.
Comments Due: 5 p.m. ET 11/9/12.

Docket Numbers: ER13–161–000.
Applicants: Puget Sound Energy, Inc.
Description: Puget Sound Energy, Inc. submits tariff filing per 35.13(a)(2)(iii: BPA NITSA for Blaine No 491 to be effective 10/19/2012.
Filed Date: 10/19/12.
Accession Number: 20121019–5140.
Comments Due: 5 p.m. ET 11/9/12.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH13–2–000.
Applicants: Valener Inc.
Description: Notice of Material Change in Facts of Valener Inc. under PH13–2.
Filed Date: 10/18/12.
Accession Number: 20121018–5093.
Comments Due: 5 p.m. ET 11/8/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 19, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26722 Filed 10–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4628–004.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing per 9/20/2012 Order in ER11–4628 (version effective 5/15/2012) to be effective 5/15/2012.
Filed Date: 10/22/12.
Accession Number: 20121022–5108.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: ER11–4628–005.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing per 9/20/2012 Order in ER11–4628 (version effective 6/30/2012) to be effective 6/30/2012.
Filed Date: 10/22/12.
Accession Number: 20121022–5112.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: ER11–4628–006.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing per 9/20/2012 Order in ER11–4628 (version effective 12/17/2012) to be effective 12/17/2012.
Filed Date: 10/22/12.
Accession Number: 20121022–5115.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: ER12–1664–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: 10–22–12 Order 755 Compliance to be effective 12/17/2012.
Filed Date: 10/22/12.
Accession Number: 20121022–5138.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: ER13–56–001.
Applicants: Westar Energy, Inc.
Description: Amendment, Missouri Joint Municipal Electric Utility Commission to be effective 12/10/2012.
Filed Date: 10/23/12.
Accession Number: 20121023–5107.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: ER13–174–000.
Applicants: California Independent System Operator Corporation.
Description: 2012–10–23 CAISO Amendment to Counterparty Provisions in ISO Tariff to be effective 11/1/2012.
Filed Date: 10/23/12.
Accession Number: 20121023–5108.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: ER13–175–000.
Applicants: AEP Texas Central Company.
Description: TCC-Midway Farms Wind IA to be effective 9/24/2012.
Filed Date: 10/23/12.
Accession Number: 20121023–5111.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: ER13–176–000.
Applicants: AEP Texas Central Company.
Description: TCC-Sendero Wind Energy PDA to be effective 10/16/2012.
Filed Date: 10/23/12.
Accession Number: 20121023–5112.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: ER13–177–000.
Applicants: AEP Texas North Company.
Description: TNC-Higher Power Energy SUA Amend 2 to be effective 9/24/2012.
Filed Date: 10/23/12.
Accession Number: 20121023–5116.
Comments Due: 5 p.m. ET 11/13/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26749 Filed 10–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–20–000.
Applicants: WPS Empire State, Inc., WPS Beaver Falls Generation, LLC, WPS Syracuse Generation, LLC, Lakeside New York, LLC.
Description: Joint Application for Authorization Under Section 203 of the Federal Power Act for Disposition of Jurisdictional Facilities and Request for Confidential Treatment of the WPS Entities and Lakeside New York, LLC.
Filed Date: 10/24/12.
Accession Number: 20121024–5054.
Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: EC13–21–000.
Applicants: LWP Lessee, LLC.
Description: Application of LWP Lessee, LLC for Approval under Section 203 of the Federal Power Act and Requests for Expedited Consideration and Confidential Treatment.
Filed Date: 10/24/12.
Accession Number: 20121024–5090.
Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: EC13–22–000.
Applicants: Wellhead Power Delano, LLC, W Power, LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Consideration of Wellhead Power Delano, LLC and W Power, LLC.
Filed Date: 10/24/12.
Accession Number: 20121024–5092.
Comments Due: 5 p.m. ET 11/14/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2563–001.
Applicants: Wisconsin Electric Power Company.
Description: Amendment to Application of Wisconsin Electric Power Company—Triennial Market Power Analysis.
Filed Date: 9/14/12.
Accession Number: 20120914–5058.
Comments Due: 5 p.m. ET 11/5/12.

Docket Numbers: ER12–2233–000.
Applicants: Berry Petroleum Company.
Description: Refund Report to be effective N/A.
Filed Date: 10/24/12.
Accession Number: 20121024–5005.
Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: ER12–2640–001.
Applicants: Electric Energy, Inc.
Description: Electric Energy, Inc. submits tariff filing per 35: Rate Schedule to be effective 1/1/2013.
Filed Date: 10/24/12.
Accession Number: 20121024–5014.
Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: ER13–167–001.
Applicants: Caerus Energy, LLC.
Description: Caerus Energy, LLC Market Based Rate Tariff Amendment to be effective 10/24/2012.
Filed Date: 10/24/12.
Accession Number: 20121024–5076.
Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: ER13–178–000.
Applicants: Southwest Power Pool, Inc.

Description: Revisions to Attachment M—Westar Energy, Inc. Loss Factor Update to be effective 9/1/2012.

Filed Date: 10/24/12.

Accession Number: 20121024–5049.

Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: ER13–179–000.

Applicants: Southwest Power Pool, Inc.

Description: Submission of Notice of Cancellation of 1903 Novus Wind II, LLC LGIA to be effective 1/8/2013.

Filed Date: 10/24/12.

Accession Number: 20121024–5052.

Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: ER13–180–000.

Applicants: Southern California Edison Company.

Description: Amended Eldorado Co-Tenancy Agmt & Amended Eldorado Operating Agmt to be effective 10/25/2012.

Filed Date: 10/24/12.

Accession Number: 20121024–5060.

Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: ER13–181–000.

Applicants: AEP Texas Central Company.

Description: TCC-South Texas EC IA Amend 3 to be effective 9/24/2012.

Filed Date: 10/24/12.

Accession Number: 20121024–5087.

Comments Due: 5 p.m. ET 11/14/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26750 Filed 10–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–175–000

Applicants: Granite State Gas Transmission, Inc.

Description: NAESB Standards Version 2.0 to be effective 11/1/2012.

Filed Date: 10/23/12.

Accession Number: 20121023–5055.

Comments Due: 5 p.m. ET 11/5/12.

Docket Numbers: RP13–176–000.

Applicants: Viking Gas Transmission Company.

Description: Conforming Backhaul Agreements—NSP.

Filed Date: 10/23/12.

Accession Number: 20121023–5100.

Comments Due: 5 p.m. ET 11/5/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–101–001.

Applicants: Portland Natural Gas Transmission System.

Description: NAESB 2.0 Compliance RP13–101 to be effective 12/1/2012.

Filed Date: 10/24/12.

Accession Number: 20121024–5013.

Comments Due: 5 p.m. ET 11/5/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26752 Filed 10–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RC11–6–003]

North American Electric Reliability Corporation; Notice of Filing

Take notice that on October 12, 2012, the North American Electric Reliability Corporation (NERC) submitted a compliance filing in accordance with the Federal Energy Regulatory Commission's Order (FERC or Commission) in *North American Electric Reliability Corporation,* 140 FERC ¶ 61,215 (2012) (September 20 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 13, 2012.

Dated: October 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–26713 Filed 10–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–3–000]

Michigan Consolidated Gas Company; Notice of Filing

Take notice that on October 19, 2012, Michigan Consolidated Gas Company (MichCon) filed to revise its Statement of Operating Conditions (SOC) for transportation services. The revisions include a revised definition of ''Fuel Use and Gas Lost and Unaccounted For,'' and to add several new sections to the SOC as more fully described in the filing.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Thursday, November 1, 2012.

Dated: October 24, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–26714 Filed 10–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–167–000]

Caerus Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Caerus Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 13, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 24, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26721 Filed 10–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–5–000]

Kinder Morgan Pony Express Pipeline LLC, Hiland Crude, LLC; Notice of Petition For Declaratory Order

Take notice that on October 19, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Kinder Morgan Pony Express Pipeline LLC and Hiland Crude, LLC, filed a petition seeking a declaratory order approving the specified rate structures, services and prorationing terms, as described in filing.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Tuesday, November 13, 2012.

Dated: October 23, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–26751 Filed 10–30–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2012–0757, FRL–9748–3]

Agency Information Collection Activities; Proposed Collection; Comment Request; Part B Permit Application, Permit Modifications, and Special Permits

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Part B Permit Application, Permit Modifications, and Special Permits'' (EPA ICR No. 1573.13, OMB Control No. 2050–0009) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through February 28, 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.

DATES: Comments must be submitted on or before January 4, 2013.

ADDRESSES: Submit your comments, referencing by Docket ID No. EPA–HQ–RCRA–2012–0757, online using *www.regulations.gov* (our preferred method), by email to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Toshia King, Office of Resource Conservation and Recovery, mailcode 5303P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–7033; fax number: 703–308–8617; email address: *king.toshia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal facilities (TSDFs) to obtain a permit. To obtain the permit, the TSDFs must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under Sections 3004 and 3005.

Form Numbers: None.

Respondents/affected entities: Business or other for-profit; as well as State, Local, or Tribal governments.

Respondent's obligation to respond: Mandatory (RCRA 3005).

Estimated number of respondents: 97.

Frequency of response: On occasion.

Total estimated burden: 33,260 Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $7,956,839, which includes $2,254,188 annualized labor costs and $5,702,651 annualized capital or O&M costs.

Changes in Estimates: The burden hours are likely to stay substantially the same.

Dated: October 23, 2012.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2012–26789 Filed 10–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R09–RCRA–2011–0103; [FRL–9743–7]

Adequacy of Arizona Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing and continued opportunity to comment.

SUMMARY: The Environmental Protection Agency Region IX will hold a public hearing concerning the agency's tentative determination to approve a modification to Arizona's municipal solid waste landfill (MSWLF) permit program to allow the State to issue research, development, and demonstration (RD&D) permits for new and existing MSWLF units and lateral expansions. EPA published its tentative determination on February 22, 2011 and offered an opportunity for a public hearing. Initially, EPA closed its comment period on April 25, 2011 and announced it would not hold a public hearing. Since that time, in response to public interest and updates to Arizona's RD&D permit program, EPA decided to hold a public hearing, extend the comment period through the date of the public hearing, and make available for public review the updated information submitted by Arizona in support of its RD&D program.

DATES: EPA will hold a public hearing on December 18, 2012 at 6:00 p.m. in Room 145 on the first floor of the office of the Arizona Department of Environmental Quality at 1110 West Washington Street, Phoenix, Arizona. Comments must be received on or before December 18, 2012. EPA will accept all comments received between February 22, 2011 and December 18, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–RCRA–2011–0103 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ueno.karen@epa.gov.*
- *Fax:* (415) 947–3530.
- *Mail:* Karen Ueno (WST–7), Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.
- *Hand Delivery:* Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–RCRA–2011–0103. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, or any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information disclosure of which is restricted by statute. Certain other materials, such as the State's prior applications for MSWLF permit program approval, are available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. This Docket facility is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. It is located in a secured building. To review docket materials at the Docket facility, it is recommended that an appointment be made in advance by calling the Docket facility at (415) 947– 4406 during normal business hours.

FOR FURTHER INFORMATION CONTACT: Karen Ueno, Waste Management Division, WST–7, Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901; telephone number: (415) 972–3317; fax number: (415) 947–3530; email address: *ueno.karen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Background

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria at 40 CFR 258.4 to allow for Research, Development, and Demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time. Specifically, the rule allows the Director of an EPA-approved State permit program to issue a time-limited RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to use innovative and new methods which vary from either or both of the following: (1) The run-on control systems at 40 CFR 258.26, and/or (2) the liquids restrictions at 40 CFR 258.28(a), provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30 cm depth of leachate on the liner. The rule also allows the Director of an EPA-approved State permit program to issue a time-limited RD&D permit for which the owner or operator proposes to use innovative and new methods that vary from the final cover criteria at 40 CFR 258.60(a) (1) and (2), and (b) (1), provided that the owner or operator demonstrates that the alternative cover system will not contaminate groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm. An RD&D permit cannot exceed three years and a renewal of an RD&D permit cannot exceed three years. Although multiple renewals of an RD&D permit can be issued, the total term for an RD&D permit including renewals cannot exceed twelve years.

RD&D permits are only available in states with EPA-approved MSWLF permit programs that have been modified to incorporate the RD&D permit authority. Although a state is not required to seek approval for the RD&D permit provision, a state must obtain EPA approval before it may issue such a permit. Requirements for EPA's determination of a state program's adequacy and the approval procedures are contained in 40 CFR Part 239.

In 1994, EPA Region IX approved the State of Arizona's municipal solid waste landfill (MSWLF) permit program pursuant to Subtitle D of the federal Resource Conservation and Recovery Act (RCRA). By application dated June 28, 2010, updated on January 26, 2011 and September 27, 2012, the State of Arizona is seeking EPA approval for a modification to the State's existing MSWLF permit program to include RD&D permits. On February 22, 2011, EPA published a tentative approval of Arizona's RD&D permit program modification. (76 FR 9772).

Following the close of the public hearing and the public comment period, and after consideration of comments received, EPA will issue a final determination. If EPA grants approval, Arizona will be able to issue variances for run-on control systems, liquid restrictions, and final cover criteria to allow for innovative and new methods, such as bioreactor landfills. The approval of the program modification will allow the Director of Arizona's program to provide a variance from certain MSWLF criteria, provided that the MSWLF owner/operator demonstrates that compliance with the RD&D permit will not increase risk to human health and the environment. The Director may provide a variance from existing requirements of MSWLF criteria for run-on control systems, liquids restrictions, and final cover. EPA is seeking public comment on its tentative determination of the adequacy of Arizona's RD&D modification to its MSWLF permit program.

B. Submitting Comments on EPA's Tentative Determination

Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

Submitting Confidential Business Information (CBI). Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

Docket Copying Costs. Copying arrangements will be made through the Docket facility and billed directly to the recipient. Copying costs may be waived depending on the total number of pages copied.

Authority: Sections 2002, 4005, and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945, and 6949(a). Delegation 8–46. State/Tribal Permit Programs for Municipal Solid Waste Landfills.

Dated: October 22, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–26792 Filed 10–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2012–0771; FRL–9366–4]

Notice of Receipt of Pesticide Products; Registration Applications To Register New Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register new uses for pesticide products containing currently registered active ingredients pursuant to the provisions of section 3(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This notice provides the public with an opportunity to comment on the applications.

DATES: Comments must be received on or before November 30, 2012.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–2012–0771 and the EPA Registration Number or EPA File Symbol of interest as shown in the body of this document, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: A contact person is listed at the end of each registration application summary and may be contacted by telephone, email, or mail. Mail correspondence to the Registration Division (RD) (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When Submitting Comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications. For actions being evaluated under the Agency's public participation process for registration actions, there will be an additional opportunity for a 30-day public comment period on the proposed decision. Please see the Agency's public participation Web site for additional information on this process *http://www.epa.gov/pesticides/regulating/registration-public-involvement.html.* EPA received the following applications to register new uses for pesticide products containing currently registered active ingredients:

1. *EPA Registration Number:* 10308–11. *Docket ID Number:* EPA–HQ–OPP–2011–1012. *Applicant:* Valent USA Corporation, 1600 Riviera Avenue, Suite 200, Walnut Creek, CA 94556 on behalf of Sumitomo Chemical Company, LTD., 1300 Dillon Heights Avenue, Baltimore, MD 21228. *Active ingredient:* Pyriproxyfen. *Product Type:* Insecticide. *Proposed Uses:* Bulb vegetable group 3–07; fruiting vegetable group 8–10; citrus vegetable group 10–10; pome fruit group 11–10; caneberry subgroup 13–07A; bushberry subgroup 13–07B; low growing berry, except strawberry subgroup 13–07H; and herb subgroup 19A. *Contact:* Kevin Sweeney, RD, (703) 305–5063, email address: *sweeney.kevin@epa.gov.*

2. *EPA Registration Numbers:* 59639–95, 59639–96, 59639–114, 59639–115, 59639–160, and 59639–163. *Docket ID Number:* EPA–HQ–OPP–2011–1012. *Applicant:* Valent USA Corporation. *Active ingredient:* Pyriproxyfen. *Product Type:* Insecticide. *Proposed Uses:* Bulb vegetable group 3–07; fruiting vegetable group 8–10; citrus vegetable group 10–10; pome fruit group 11–10; caneberry subgroup 13–07A; bushberry subgroup 13–07B; low growing berry, except strawberry subgroup 13–07H; and herb subgroup 19A. *Contact:* Kevin Sweeney, RD, (703) 305–5063, email address: *sweeney.kevin@epa.gov.*

3. *File Symbols:* 7969–GGL and 7969–GGT. *Docket ID Number:* EPA–HQ–OPP–2012–0772. *Applicant:* BASF Corporation, P.O. Box 13528, Research Triangle Park, NC 27709. *Active ingredient:* Cyflumetofen. *Product Type:* Insecticide. *Proposed Uses:* Almond; fruit, citrus, group 10; citrus, oil; grape; fruit, pome, group 11; strawberry; tomato; and nut, tree, group 14. *Contact:* Driss Benmhend, RD, (703) 308–9525, email address: *benmhend.driss@epa.gov.*

4. *EPA Registration Numbers:* 71711–18 and 71711–19. *Docket ID Number:* EPA–HQ–OPP–2012–0771. *Applicant:* Nichino America, Inc., 4550 New Linden Hill Road, Suite 501, Wilmington, DE 19808. *Active ingredient:* Fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl]benzoate and its Z-isomer, (Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl]benzoate. *Product Type:* Insecticide. *Proposed Uses:* Corn. *Contact:* Driss Benmhend, RD, (703) 308–9525, email address: *benmhend.driss@epa.gov.*

5. *EPA Registration Numbers:* 71711–18, 71711–19, and 71711–4. Docket ID Number: EPA–HQ–OPP–2012–0771. *Applicant:* Nichino America, Inc. *Active ingredient:* Fenpyroximate, (E)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl]benzoate and its Z-isomer,(Z)-1,1-dimethylethyl 4-[[[[(1,3-dimethyl-5-phenoxy-1H-pyrazol-4-yl)methylene]amino]oxy]methyl]benzoate. *Product Type:* Insecticide. *Proposed Uses:* Stone fruit group 12–12, tuberous and corm subgroup 1C, and small fruit vine climbing subgroup 13–07F. *Contact:* Driss Benmhend, RD, (703) 308–9525, email address: *benmhend.driss@epa.gov.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 12, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2012–26652 Filed 10–30–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice 2012–0535]

Application for Final Commitment for a Long-term Loan or Financial Guarantee in Excess of $100 million; 25 Day Comment Period

AGENCY: Export-Import Bank of the United States.

ACTION: Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason For Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP086105XX.

Purpose and Use: Brief description of the purpose of the transaction:

To support the export of semiconductor manufacturing equipment to Germany.

Brief non-proprietary description of the anticipated use of the items being exported:

Equipment supports the manufacture of logic semiconductors.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties: Principal Suppliers: Applied Materials, Inc., KLA-Tencor Corporation, LAM Research International Sarl.

Obligor: GLOBALFOUNDRIES Inc.

Guarantor(s): GLOBALFOUNDRIES Singapore Pte. Ltd.; GLOBALFOUNDRIES Netherlands Holding B.V.; GLOBALFOUNDRIES U.S. Inc.; GLOBALFOUNDRIES Singapore (Tampines) Pte. Ltd.; GLOBALFOUNDRIES Management Services LLC & Co. KG; GLOBALFOUNDRIES Dresden Module One LLC; GLOBALFOUNDRIES Dresden Module One Holding GmbH; GLOBALFOUNDRIES Dresden Module One LLC & Co. KG; GLOBALFOUNDRIES Dresden Module

Two LLC; GLOBALFOUNDRIES Dresden Module Two Holding GmbH; GLOBALFOUNDRIES Dresden Module Two LLC & Co. KG and any other relevant subsidiaries.

Description of Items Being Exported: Various semiconductor manufacturing equipment manufactured by Applied Materials, Inc., Axcelis Technologies, Inc., FEI Co., KLA-Tencor Corporation, Lam Research International Sarl, Novellus Systems, and Varian.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before *November 26, 2012* to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *WWW.REGULATIONS.GOV.*

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–26728 Filed 10–30–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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 ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 31, 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: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0678.

Title: Part 25 of the Federal Communications Commission's Rules Governing the Licensing of, and Spectrum Usage by, Commercial Earth Stations and Space Stations.

Form No.: FCC Form 312; Schedule S.

Type of Review: Revision of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,248 respondents; 1,248 responses.

Estimated Time per Response: 0.25–22 hours per response.

Frequency of Response: On occasion and annual reporting requirements; third-party disclosure requirement; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 301, 302, 303, 307, 309, 332 and 705 unless otherwise noted.

Total Annual Burden: 9,765 hours.

Annual Cost Burden: $22,375,860.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: On September 28, 2012, the Federal Communications Commission (''Commission'') released a Report and Order (R&O) titled, ''In the Matter of 2006 Biennial Regulatory Review—Revision of Part 25,'' FCC 12–116. With two exceptions, the amendments are non-substantive; that is, they neither impose new requirements nor eliminate or alter existing requirements. The two substantive amendments adopted in the R&O do not increase paperwork burdens. Therefore, the number of respondents, number of responses, annual burden hours and annual costs have not been amended from the previous submission to the Office of Management and Budget (OMB) on September 2, 2010.

In this Report and Order, the Commission amended various provisions of Part 25 of its rules pertaining to licensing and operation of satellite service radio stations. Among other things, the Commission added definitions for several technical terms that appear in Part 25 but are not defined there, and it deleted definitions of terms that are not used in Part 25. The Commission also eliminated redundant text from several rule sections, revised the wording of other provisions that were ambiguous or unduly confusing, updated cross-references to Commission rules or recommendations of the International Telecommunication Union (ITU), and corrected grammatical, spelling, and typographical errors. The two substantive amendments the Commission adopted in this Report and Order amended the rules in minor ways by: (1) Eliminating requirements to identify a radio service and station location in correspondence in 47 CFR 25.110 and (2) codifying an established practice of allowing applicants to cross-reference, rather than re-submit, previously filed information regarding non-U.S.-licensed satellites in 47 CFR 25.137. Collectively, the changes adopted in this Report and Order will facilitate preparation of earth and space station applications, promote compliance with the Commission's operating rules, and ease administrative burdens for applicants, licensees, and the Commission.

The information collection requirements accounted for in this collection are necessary to determine the technical and legal qualifications of applicants or licensees to operate a station and to determine whether the

authorization is in the public interest, convenience and necessity. Without such information, the Commission could not determine whether to permit respondents to provide telecommunications services in the United States. Therefore, the Commission would not be able to fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended, and the obligations imposed on parties to the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–26698 Filed 10–30–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning 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; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; 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 ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before December 31, 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: Direct all PRA comments to the Federal Communications Commission via email to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0316.

Title: 47 CFR Sections 76.1700, Records to be maintained locally by Cable System Operators; 76.1702, Equal Employment Opportunity; 76.1703, Commercial Records on Children's Programs; 76.170, Leased Access; 76.1711, Emergency Alert System (EAS) Tests and Activation.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 3,000 respondents and 3,000 responses.

Estimated Hours per Response: 25 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 75,000 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 4(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: Confidentiality is not required with this collection of information.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Commission is revising this collection to remove the requirements for 47 CFR 76.1704(a) from this collection. It has been discovered that this rule section has already been approved under collection 3060–0289, so we are removing the requirements for Section 76.1704(a) from this collection to avoid duplication.

OMB Control Number: 3060–0419.

Title: Network Non-duplication Protection and Syndication Exclusivity: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notifications; 76.106, Exceptions; 76.107, Exclusivity Contracts; and 76.1609, Non-Duplication and Syndicated Exclusivity.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,555 respondents; 208,460 responses.

Estimated Time per Response: 0.5–2.0 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 4(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 193,012.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

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

Needs and Uses: The Commission is requesting that the Office of Management and Budget (OMB) approve the revision of this collection for a three year time period. This collection is being revised to receive approval for the information collection requirements that are contain in 47 CFR 76.105(b). Section 76.105(b) states that broadcasters entering into contracts on or after August 18, 1988, which contain syndicated exclusivity protection shall notify affected cable systems within sixty calendar days of the signing of such a contract. Broadcasters who have entered into contracts prior to August 18, 1988, and who comply with the requirements specified in § 76.109 shall notify affected cable systems on or before June 19, 1989.

OMB Control Number: 3060–0844.

Title: Carriage of the Transmissions of Television Broadcast Stations: Section 76.57, Channel positioning; Section 76.59, Modification of television markets; Section 76.61, Disputes concerning carriage; Section 76.64, Retransmission consent.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 818 respondents and 15,932 responses.

Estimated Time per Response: 1 to 40 hrs.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 1, 4(i) and (j), 325, 336, 614 and 615 of the Communications Act of 1934, as amended.

Total Annual Burden: 15,932 hours.

Total Annual Cost: $43,972.

Nature and Extent of Confidentiality: No need for confidentiality required with this collection of information.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission is requesting that the Office of Management and Budget (OMB) approve the revision of this collection for a three year time period. This collection is being revised to receive approval for the information collection requirements that are contain in 47 CFR 76.57(e), as well as modified to remove collections which have already been approved under OMB Control Nos. 3060–0419 (Network Non-duplication Protection and Syndication Exclusivity: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notifications; 76.106, Exceptions; 76.107, Exclusivity Contracts; and 76.1609, Non Duplication and Syndicated Exclusivity), 3060–0548 (Cable Television System Signal Carriage Obligation Recordkeeping: Section 76.1708, Principal Headend; Sections 76.1709 and 76.1620, Availability of Signals; Section 76.1614, Identification of Must-Carry Signals), and 3060–0652 (Section 76.309, Customer Service Obligations; Section 76.1602, Customer Service—General Information, Section 76.1603, Customer Service—Rate and Service Changes and 76.1619, Information and Subscriber Bills).

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–26699 Filed 10–30–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.*, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On August 1, 2012 (77 FR 45609), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: Temporary Liquidity Guarantee Program—Emergency Guarantee Facility. No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before November 30, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Temporary Liquidity Guarantee Program—Emergency Guarantee Facility.

OMB Number: 3064–0172.

Estimated Number of Respondents:

—Application to access emergency guarantee facility submitted by insured depository institutions (IDIs)-8.

—Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the Debt Guarantee Program (DGP)–4.

Frequency of Response:

—Application to access emergency guarantee facility submitted by IDIs-once.

—Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP-once.

Affected Public: IDIs; thrift holding companies, bank and financial holding companies, and affiliates of IDIs that issued debt under the DGP.

Average Time per Response:

—Application to access emergency guarantee facility submitted by IDIs–4 hours.

—Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP–4 hours.

Estimated Annual Burden:

—Application to access emergency guarantee facility submitted by IDIs–32 hours.

—Application to access emergency guarantee facility submitted by non-IDIs that issued FDIC-guaranteed debt under the DGP–16 hours.

Total Annual Burden: 48 hours.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of October 2012.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2012–26760 Filed 10–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On August 16, 2012 (77 FR 49444), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: ID Theft Red Flags. No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before November 30, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Identity Theft Red Flags and Address Discrepancies under the Fair and Accurate Credit Transactions Act of 2003 (FACT Act).

OMB No.: 3064–0152.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 4546.

Estimated Time per Response: 16 hours.

Estimated Total Annual Burden: 72,736 hours.

General Description of the Collection: 12 CFR 334.82, 334.90, 334.91 and Appendix J to Part 334 implement sections 114 and 315 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Public Law 108–159 (2003). Section 114 amended section 615 of the Fair Credit Reporting Act (FCRA) to require the OCC, FRB, FDIC, OTS, NCUA, and FTC (Agencies) to issue jointly (i) Guidelines for financial institutions and creditors regarding identity theft with respect to their account holders and customers; (ii) regulations requiring each financial institution and creditor to establish reasonable policies and procedures for implementing the guidelines to identify possible risks to account holders or customers or to the safety and soundness of the institution or creditor; and (iii) regulations generally requiring credit and debit card issuers to assess the validity of change of address requests under certain circumstances. Section 315 amended section 605 of the FCRA to require the Agencies to issue regulations providing guidance regarding reasonable policies and procedures that a user of consumer reports must employ when a user receives a notice of address discrepancy from a consumer reporting agency (CRA). The information collections in Sec. 334.90 require each financial institution and creditor that offers or maintains one or more covered accounts to develop and implement a written Identity Theft Prevention Program (Program). In developing the Program, financial institutions and creditors are required to consider the guidelines in Appendix J to Part 334 and include those that are appropriate. The initial Program must be approved by the board of directors or an appropriate committee thereof. The board, an appropriate committee thereof or a designated employee at the level of senior management must be involved in the oversight of the Program. In addition, staff must be trained to carry out the Program. Pursuant to Sec. 334.91, each credit and debit card issuer is required to establish and implement policies and procedures to assess the validity of a change of address request under certain circumstances. Before issuing an additional or replacement card, the card issuer must notify the cardholder or use another means to assess the validity of the change of address. The information collections in Sec. 41.82 require each user of consumer reports to develop and implement reasonable policies and procedures designed to enable the user to form a reasonable belief that a consumer report relates to the consumer about whom it requested the report when the user receives a notice of address discrepancy from a CRA. A user of consumer reports must also develop and implement reasonable policies and procedures for furnishing an address for the consumer that the user has reasonably confirmed to be accurate to the CRA from which it receives a notice of address discrepancy when (1) The user can form a reasonable belief that the consumer report relates to the consumer about whom the user has requested the report; (2) the user establishes a continuing relationship with the consumer; and (3) the user regularly and in the ordinary course of business furnishes information to the CRA from which it received the notice of address discrepancy.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of October 2012.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2012–26763 Filed 10–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On June 29, 2012 (77 FR 38816), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before November 30, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).

OMB Number: 3064–0093.

Form Number: G–FIN; G–FINW; G–FIN4 & G–FIN5.

Affected Public: Insured state nonmember banks acting as government securities brokers and dealers.

Estimated Number of Respondents: 17.

Frequency of Response: On occasion.

Estimated Annual Burden Hours per Response: 1 hour.

Estimated Total Annual Burden Hours: 17 hours.

General Description of Collection: The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their Federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirements by Treasury Department regulation.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 25th day of October 2012.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2012–26765 Filed 10–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On August 23, 2012 (77 FR 51025), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: FACTA. No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before November 30, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently-approved collection of information:

Title: Procedures to Enhance the Accuracy and Integrity of Information Furnished to Consumer Reporting Agencies (Insured State Nonmember Banks) (FACTA).

OMB Number: 3064–0161.

Affected Public: State nonmember banks.

Estimated Number of Respondents: 4522.

Number of frivolous or irrelevant dispute notices: 88,686.

Estimated burden per respondent:

24 hours to implement written policies and procedures and training associated with the written policies and procedures.

8 hours to amend procedures for handling complaints received directly from consumers.

8 hours to implement the new dispute notice requirement.

Estimated burden per frivolous or irrelevant dispute notice: 14 minutes.

Estimated Total Annual Burden Hours: 201,573 hours.

General Description of Collection: FDIC is required by section 312 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) to issue guidelines for use by furnishers regarding the accuracy and integrity of the information about consumers that they furnish to consumer reporting agencies and prescribe regulations requiring furnishers to establish reasonable policies and procedures for implementing the guidelines. Section 312 also requires the Agencies to issue regulations identifying the circumstances under which a furnisher must reinvestigate disputes about the accuracy of information contained in a consumer report based on a direct request from a consumer.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of October 2012.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2012–26767 Filed 10–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On June 6, 2012 (77 FR 33457), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: External Audits. No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before December 5, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently-Approved Collection of Information

Title: External Audits.

OMB Number: 3064–0113.

Frequency of Response: Annually.

Affected Public: All insured financial institutions with total assets of $500 million or more, and other insured financial institutions with total assets of less than $500 million that voluntarily choose to comply.

General Description of Collection: FDIC's regulations at 12 CFR 363 establish annual independent audit and reporting requirements for financial institutions with total assets of $500 million or more. The requirements include the submission of an annual report on their financial statements, recordkeeping about management deliberations regarding external auditing and reports about changes in auditors. The information collected is used to facilitate early identification of problems in financial management at financial institutions.

Explanation of burden estimates: The estimates of annual burden are based on the estimated burden hours for FDIC-supervised institutions within each asset classification ($1 billion or more, $500 million or more but less than $1 billion, and less than $500 million) to comply with the requirements of Part 363 regarding the annual report, audit committee, other reports, and the notice of change in accountants. The number of respondents reflects the number of FDIC-supervised institutions in each asset classification. The number of annual responses reflects the estimated number of submissions for each asset classification. The annual burden hours reflects the estimated number of hours for FDIC-supervised institutions within each asset classification to comply with the requirements of Part 363.

a. FDIC-Supervised Institutions with Assets of $1 Billion or More.

Number of Respondents: 311

Annual Responses: 1,011

Annual Burden Hours: 69,751

b. FDIC-Supervised Institutions with Assets of $500 Million or More but Less than $1 Billion.

Number of Respondents: 416

Annual Responses: 1,352

Annual Burden Hours: 11,388

c. FDIC-Supervised Institutions with Assets Less than $500 Million.

Number of Respondents: 3,850

Annual Responses: 11,550

Annual Burden Hours: 2,887

Total Annual Burden Hours: 84,026

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of October 2012.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2012–26768 Filed 10–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On August 16, 2012 (77 FR 49444), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: Notice Regarding Unauthorized Access to Customer Information. No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before November 30, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently-approved collection of information:

Title: Notice Regarding Unauthorized Access to Customer Information.

OMB Number: 3064–0145.

Frequency of Response: On occasion.

Affected Public: Insured state nonmember banks.

Number of FDIC regulated banks that will notify customers: 93

Estimated Time per Response: 29 hours.

Annual Burden: 2,697 hours.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of October 2012.

Federal Deposit Insurance Corporation

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2012–26766 Filed 10–30–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On May 31, 2012 (77 FR 32114), the FDIC solicited public comment for a 60-day period on the renewal of the following information collection: Home Mortgage Disclosure Act. No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before November 30, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html*
- *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room NYA–5046, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted

to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collection of Information

Title: Home Mortgage Disclosure Act.
OMB Number: 3064–0046.
Affected Public: Insured state nonmember banks.
Frequency of Response: On occasion.
Estimated Number of Respondents: 2,773
Estimated Number of Responses: 1,063,700.
Estimated Time per Response: 5 minutes.
Estimated Total Annual Burden: 88,642 hours.
General Description: To permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember banks are required by FDIC Regulation 12 CFR 338 to maintain various data on home loan applicants.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 25th day of October 2012.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 2012–26764 Filed 10–30–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 010979–050.
Title: Caribbean Shipowners Association.
Parties: CMA CGM, S.A.; Seaboard Marine, Ltd.; Seafreight Line, Ltd.; and Zim Integrated Shipping Services, Ltd.
Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor, 1627 I Street NW.; Washington, DC 20006.
Synopsis: The amendment removes Bernuth Lines, Ltd. and Crowley Liner Services/Crowley Caribbean Services, LLC as parties to the agreement.

Agreement No.: 011953–012.
Title: Florida Shipowners Group Agreement.
Parties: The member lines of the Caribbean Shipowners Association and the Florida-Bahamas Shipowners and Operators Association.
Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW; Suite 1100; Washington, DC 20006.
Synopsis: The amendment reflects the resignation of Bernuth Lines, Ltd. and Crowley Liner Services, Inc./Crowley Caribbean Services, LLC as parties to the Caribbean Shipowners Association.

Agreement No.: 011960–008.
Title: The New World Alliance Agreement.
Parties: American President Lines, Ltd.; APL Co. Pte, Ltd.; Hyundai Merchant Marine Co., Ltd.; and Mitsui O.S.K. Lines, Ltd. (''MOL'').
Filing Parties: Eric Jeffrey, Esq., Goodwin Proctor LLP, 901 New York Ave. NW., Washington, DC 20001.
Synopsis: The amendment would extend the terms of the agreement through March 1, 2016, add principles for allocating capacity, clarify the provisions regarding compliance with laws, and update and clarify other aspects of the agreement.

Agreement No.: 012073–002.
Title: MSC/CSAV Group Vessel Sharing Agreement.
Parties: MSC Mediterranean Shipping Company SA; Compañia Sud Americana de Vapores S.A.; Companhia Libra de Navegacao; and Compania Libra de Navegacion Uruguay S.A..
Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street, NW; Suite 1100; Washington, DC 20006–4007.
Synopsis: The amendment would add Jamaica to the scope of the agreement, increase the size of the vessels that can be deployed under the agreement and revise the parties' space allocations accordingly, add language temporarily adjusting the provision of the vessels, and update the addresses of some of the parties.

By Order of the Federal Maritime Commission.

Dated: October 26, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–26717 Filed 10–30–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 12–09]

Century Metal Recycling PVT. LTD v. Dacon Logistics, LLC dba CODA Forwarding, Great American Alliance Insurance Company, Avalon Risk Management, HAPAG Lloyd America, Inc., and Mitsui OSK Lines; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Century Metal Recycling Pvt. Ltd d/b/a/CMR American, LLC (Century Metal), hereinafter ''Complainant,'' against Dacon Logistics, LLC dba Coda Forwarding (Dacon); Great American Alliance Insurance Company; Avalon Risk Management; Hapag Lloyd America, Inc. (Hapag Lloyd); and Mitsui OSK Lines (Mitsui), hereinafter ''Respondents.'' Complainant asserts that it is a private limited company registered in the State of Connecticut. Complainant alleges that: Respondent Dacon is an ocean freight forwarder licensed by the Commission and registered in the State of New Jersey; Respondents Great American Alliance Insurance Company and/or Avalon Risk Management provide insurance bond coverage to Dacon and are located in Cincinnati, OH; Respondent Hapag Lloyd is an ocean carrier ''duly registered/licensed'' with the Commission, headquartered in Hamburg, Germany and registered in New Jersey; and Respondent Mitsui is a Japanese corporation operating as a vessel operating common carrier in the U.S. foreign trades.

Complainant alleges that Respondent Dacon, with whom Complainant contracted to ship containers containing aluminum and zinc, has failed to pay Hapag Lloyd and Mitsui for ocean freight resulting in refusal by the ocean carriers to release thirty containers.

Complainant alleges it is ''being charged approximately $3,000–$4,000 per day in detention fees * * *.'' Therefore Complainant alleges that Respondent Dacon has violated 46 U.S.C. 41102(c) through ''egregious actions * * * and the deprivation of Century Metal's high value property.''

Complainant requests that the Commission issue the following relief:

''(a) An Order compelling Dacon to make payment in the amounts owed to Hapag-Lloyd and Mitsui to facilitate the release of Century Metal's containers; (b) An Order compelling Dacon to pay the injured Century Metal by way of reparations in the amount of actual injury to be determined at hearing, including the amounts paid to suppliers and compensatory damages, including interest paid to bankers on such payments; (c) An Order requiring Dacon to compensate Century Metal for its attorneys' fees and expenses incurred in this matter; (d) An order requiring the release of the bond posted by Dacon with this Commission in favor of Century Metal; (e) An interim ex parte order requiring the shipping line respondents to release the containers to the complainant at the discharge port and to allow waiver of applicable detention charges pending final disposition of this matter; (f) Such other and further relief as the Commission deems just and proper.''

The full text of the complaint can be found in the Commission's Electronic Reading Room at *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 25, 2013 and the final decision of the Commission shall be issued by February 24, 2014.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–26702 Filed 10–30–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov.*

ACM Logistics & Consulting, Inc. (OFF), 19221 IH–45 South, #185, The Woodlands, TX 77385, Officer: John C. Heimsath, President (QI), Application Type: New OFF License;

Airlift (U.S.A.), Inc. dba Airlift Container Line (NVO & OFF), 11099 S. La Cienega Blvd., Suite 151, Los Angeles, CA 90045, Officer: Ganesh Murthy, President (QI), Application Type: Add OFF Service;

Americas Interactiva, Inc. (OFF), 8810 Commodity Circle, #30, Orlando, FL 32819, Officers: Francisco J. Seijas, President (QI), Glendys D. Gonzalez, Vice President, Application Type: New OFF License;

Asecomer International Corporation dba Interworld Freight Inc., dba Junior Cargo, Inc. dba Intercontinental Lines Corp. (NVO & OFF), 8225 NW 80th Street, Miami, FL 33166, Officers: John O. Crespo, President (QI), Graciela Crespon, Application Type: Add OFF Service;

Atpex Logistica Corp (NVO & OFF), 908 E. Osceola Parkway, Kissimmee, FL 34744, Officers: Douglas Hernandez, President (QI), Irrael Dominguez, Vice President, Application Type: New NVO & OFF License;

Cars U.S.A., Inc. (NVO & OFF), 3640 South Fulton Avenue, #1209, Hapeville, GA 30354, Officers: Oy P. McPeters, Assistant Secretary (QI), Jeremy Bullock, President, Application Type: New NVO & OFF License;

Don Kennon McSwain dba Ship A Pallet (OFF), 16840 Clay Road, #118, Houston, TX 77084, Officer: Don K. McSwain, Sole Proprietor, Application Type: New OFF License;

Highland Project Logistics, Inc. (NVO & OFF), 35 Constitution Drive, Suite A, Bedford, NH 03110, Officer: Radek Maly, President (QI), Application Type: New NVO & OFF License;

Hybrid International Forwarding, LLC (NVO & OFF), 1222 Virginia Avenue NE., #C, Atlanta, GA 30306, Officer: Andy Heller, Member (QI), Application Type: New NVO & OFF License;

International Van Lines, Inc. dba IVL (NVO), 3957 NW 126th Avenue, Coral Springs, FL 33065, Officer: Joshua Morales, President (QI), Application Type: New NVO License;

Koch Maritime, Inc (NVO & OFF), 2230 Energy Park Drive, St. Paul, MN 55108, Officers: Yvonne M. Ecklund, Vice President (QI), Randy Koch, CEO, Application Type: QI Change;

Nippon Concept America, LLC (OFF), 2203 Timberloch Place, Suite 218D, The Woodlands, TX 77380, Officers: Jeffrey K. Bonner, Special Manager (QI), Martine L. Plunkett, Manager, Application Type: Additional QI;

Radiant Global Logistics, Inc. dba Radiant Container Lines (NVO & OFF), 405 114th Avenue SE., Third Floor, Bellevue, WA 98004, Officers: Michael Von Loesch, Vice President (QI), Bohn H. Crain, President, Application Type: Add OFF Service;

Royal Shipping Company, LLC (NVO), 491 North James Road, Columbus, OH 43219, Officer: Nicholas Armah, Managing Member (QI), Application Type: New NVO License;

Star Cluster Logistics (NVO & OFF), 263 E. Gardena Blvd., Gardena, CA 90248, Officers: James J. Park, Vice President (QI), Hee Kab Park, CEO, Application Type: New NVO & OFF License;

TC Shipping LLC (OFF), 206 Central Place, Orange, NJ 07050, Officers: Terry Christie, Managing Member (QI), Coretta General, Member, Application Type: New OFF License;

Vector Global Logistics LLC (NVO & OFF), 887 West Marietta Street NW., #M201, Atlanta, GA 30318, Officers: Marshall W. Martin, Manager (QI), Brian R. Oxley, Manager, Application Type: New NVO & OFF License;

Worldwide Freight LLC (OFF), 800 Grotto Street North, Saint Paul, MN 55106, Officers: Kimberly A. Coppola, Secretary (QI), Todd R. Nimmo, President, Application Type: New OFF License.

By the Commission.

Dated: October 25, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–26701 Filed 10–30–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 15, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *The Philip G. Amundson 2012 Irrevocable Grantor Trust, Sioux Falls, South Dakota; Matt Amundson, Trustee, Hendricks, Minnesota; Angie Mixner, Trustee, Sioux Falls, South Dakota; and Blair Folkens, Trustee, Brandson, South Dakota;* all to join the Amundson Family Group, and thereby acquire voting shares of Beulah Bancorporation, Inc., Sioux Falls, South Dakota, and indirectly acquire voting shares of First Security Bank—West, Beulah, North Dakota, and Valley Bank and Trust, Mapleton, Iowa.

Board of Governors of the Federal Reserve System, October 26, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–26777 Filed 10–30–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 26, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Bank of the Ozarks, Inc.,* Little Rock, Arkansas; to acquire 100 percent of the voting shares of Genala Banc, Inc., and thereby indirectly acquire voting shares of Citizens Bank, both in Geneva, Alabama.

Board of Governors of the Federal Reserve System, October 26, 2012

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–26776 Filed 10–30–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''Using Health Information Technology in Practice Redesign: Impact of Health Information Technology on Workflow.'' In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by December 31, 2012.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov*.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRO.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Proposed Project

Using Health Information Technology in Practice Redesign: Impact of Health Information Technology on Workflow

The Agency for Healthcare Research and Quality (AHRQ) is a lead Federal agency in developing and disseminating evidence and evidence-based tools on how health information technology (IT) can improve health care quality, safety, efficiency, and effectiveness.

Health IT has the potential to improve the quality, safety, efficiency, and effectiveness of care. In particular, health IT can aid health care professionals in improving care delivery by redesigning care processes to be more effective and efficient (*e.g.,* engaging care settings in practice redesign). The use of health IT to support practice redesign requires a deep understanding of the interaction between health IT and workflow, ideally through a human factors and socio-technical framework. Unfortunately, these health IT-workflow interactions are poorly understood and the research to date has largely focused on large academic medical centers and large health maintenance organizations, while the impact of health IT on workflow in smaller, ambulatory care practices is not well studied.

To that end, AHRQ conducted an in-depth study of existing research and evidence in the area of the impact of health IT on workflow, its linkage to clinician adoption, and its links to the safety, quality, efficiency, and effectiveness of care delivery. However, most of the articles found were not

focused directly on workflow, so the quality of evidence related to workflow change varied substantially. The majority of studies described research completed in large clinics affiliated with academic medical centers, health maintenance organizations or national health systems outside the U.S., limiting applicability to other settings, particularly small and medium-sized primary care and other ambulatory care settings. Also, most of the studies did not use a scientifically rigorous design. Finally, most of the literature did not include descriptions of the socio-technical context of health IT implementations and use, making it difficult to understand the role of potentially conflating or mediating factors such as training, technical support, and organizational culture.

These gaps and limitations of existing research study designs and findings related to health IT and workflow limit the relevance and quality of the available evidence for health care organizations wishing to effectively implement health IT systems to support current work without negatively affecting existing workflow processes. The existing evidence is of equally limited utility to those organizations seeking to use health IT systems to support redesign of their ambulatory care settings.

The goal of the project is to understand the impact of implementing health IT-enabled care coordination on workflow within small community-based primary care clinics in various stages of practice redesign. The focus of this study is the interaction of health IT and care coordination workflow in the context of practice redesign. This study will focus on clinic staff caring for patients with diabetes within small primary care clinics to understand enablers and barriers to care coordination workflow through the use of health IT.

The study will be conducted over a 14-month period in six Vanderbilt University Medical Center (VUMC) affiliated-clinics that each have an electronic health record (EHR) but are in different phases of introducing the health IT component of a care coordination redesign program called My Health Team (MHT). MHT was launched at Vanderbilt University Medical Center to redesign ambulatory care delivery for patients with three chronic conditions (diabetes, hypertension, and congestive heart failure) through intensified patient engagement, dedicated care coordinators, and specific health IT tools to facilitate scalable chronic disease management. The health IT component of MHT, layered on a mature EHR, enables (1) diabetes, hypertension and congestive heart failure registries, (2) a shared view of the care plan for the patient among clinical staff, (3) alerts and reminders to track patients' acute care episodes, (4) closed-loop feedback of patient self-management through at-home physiological monitoring and two-way electronic clinical messaging (via the patient portal), and (5) frequent patient contact with coordinators in between physician visits by telephone and using a secure patient portal.

This study is intended to address existing gaps and generate findings of particular relevance to health IT and workflow by employing a mixed-methods, theoretically-grounded research design that focuses on the socio-technical factors in smaller, ambulatory care settings.

Combining this formal approach with iterative observations and analysis across six clinics for 14 months will generate a detailed understanding of changes in health IT workflow interaction for each clinic over time, and across clinics in various implementation phases (pre-MHT, early-MHT, or mature-MHT). Each clinic will be observed at two time points: the first (time = 0 months) to capture baseline interactions, and the second (time = 12 months) to capture interactions later in adoption. Although each clinic will be observed over a period of 12 months, the total study period will span 14 months to allow for staggered observation windows for the clinics. All clinics are anticipated to exhibit changes to health IT-workflow interactions over time given that learning and efforts to streamline workflow at each practice are ongoing. The early-MHT clinics, engaged actively in practice redesign, will be observed at a third time point—midway between the first and second observation period—since more changes, and possibly more rapid changes in workflow and the use of health IT could occur. The 6-month interval between observation periods was chosen based on prior experience with MHT implementation in which many adoption changes occur during a 3–5 month period during practice redesign. Thus, in clinics anticipated to experience slower change, an observation period of one year is anticipated to allow capture of workflow patterns that have occurred; in fast-changing clinics, a 6-month observation interval will improve capture of key interactions.

This study is being conducted by AHRQ through its contractor, RTI International, pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the quality, effectiveness, efficiency, appropriateness and value of health care services and with respect to quality measurement and improvement. 42 U.S.C. 299a(a)(1) and (2).

Method of Collection

To achieve the goals of this project the following activities will be carried out:

(1) Project orientation meeting—Researchers will hold an orientation meeting for clinic staff to introduce them to the study. Up to ten staff members at each clinic will be asked to participate in the orientation meetings. During the orientation meeting, research staff will explain the purpose of the study, provide an overview of the study schedule, explain processes for recruiting individual clinic staff to participate, and answer any questions that clinic staff might have.

(2) Direct observation by researchers of clinic staff performing care coordination activities with patients, caregivers, and providers to capture their workflow, health IT usage, and work processes. A total of 14 observation periods will take place across the six clinics. Each site will have an initial observation period that occurs over several weeks, with an estimated 60 hours of observation time per site. The two sites in the early MHT phase of implementation will also have a middle observation period (at 6 months), and all six sites will have a final observation period (at 12 months). The middle and final observation periods, which build on data gathered during the initial observation period, are shorter—approximately 30 hours of observation per site, because observations will be more targeted as a result of the previously collected contextual data. Observations will be recorded on the Direct Observation Field Notes Form. This data collection will not burden the clinic staff and is not included in the burden estimates in Exhibit 1.

(3) Artifact and spatial data collection—Artifacts such as paper notes or forms, or reminder postcards identified by researchers during direct observations as relevant to understanding workflow and health IT, will be collected.

Spatial data, such as still photographs of the workplace and/or objects in the workplace, will be collected to augment observation data. These will enable the researcher to capture spatial relationships and other dimensions, such as the proximity of work stations, exam rooms, and technology. For

example, a health IT tool may include the functionality to print information to give to the patient, but if the printer is not conveniently located for the user, busy clinic staff may choose not to use this function. An image or drawing of this spatial relationship can be included in the data and will be coded in the data analysis phase. The choice of using a photograph or a drawing will be dependent upon the type of information that is needed to better understand the context of the workflow. For example, to capture the overall configuration of the workspace, photographs will be taken. When other information such as process flows are being captured, the observer will draw a sketch of that process. This may include the steps that a nurse takes to retrieve a patient chart, call the patient from the waiting room, escort the patient to a station where vital signs are measured, and escort them to an exam room.

Artifacts and spatial data will be used to enrich the understanding of the environment in which care coordination activities and health IT interact and will add information that is important for modeling workflow. This data collection will not burden the clinic staff and is not included in the burden estimates in Exhibit 1.

(4) Semi-structured individual interviews and surveys with clinic staff to further understand their use of health information technology and work routines. During each observation period, up to six staff members at each clinic will be asked to participate in semi-structured interviews and to complete the Technology Assessment Model (TAM) survey. The interview will address up to five key topic areas: Demographics; general experience with technology; work routines; interactions with computers in the work context; and strategies for dealing with unanticipated health IT or workflow challenges. The survey will be used to consistently assess the staff attitudes that may impact their experience of using health IT and adapting workflow to their needs.

(5) Semi-structured interviews and surveys with patients with diabetes to gather information from patients as participant-observers of clinical workflow and health IT, to understand the impact of work processes on their experience of care, and to identify enablers and barriers in clinic work processes from their perspective. During the initial observation period in each clinic, and during the final observation period in two of the clinics (early-MHT), eight patients with diabetes will be invited to participate in semi-structured interviews and to complete the Patient Activation Measure and Summary of Diabetes Self-Care Activities surveys (64 patients total). Since fewer changes are anticipated in the pre-MHT and mature-MHT clinics, patients will be interviewed at baseline only in these four clinics. Since the pre-MHT and mature-MHT clinics will not undergo changes in technology during the study period, it is anticipated that saturation of patient experiences and observations of workflow, technology use and interactions will occur during the initial observation period. Greater changes are anticipated at the early-MHT clinics as they adopt MHT, therefore, patient interviews will be conducted at these two clinics twice. The purpose of the patient interviews is to gather information from patients as participant-observers of clinical workflow and health IT, to understand the impact on their experience of care, and to identify enablers and barriers in work processes from their perspective. The interviews will address six key areas related to care coordination, including (1) general care experience; (2) patient workflow; (3) information needs; (4) barriers; (5) strategies; (6) evaluation. The Patient Activation Measure (PAM) and Summary of Diabetes Self-Care Activities (SDSCA) surveys will be used to understand patient motivation for self-care and the potential impact on care processes and workflows.

The focus of this research is anticipated to be relevant to many other settings in which health IT is used to support care coordination activities for diabetes and other chronic conditions. This focus is especially important given the cost and illness burden of diabetes. Information collected by the study will help researchers and practitioners better understand the impact of workflow and health IT in ambulatory care practices.

The lessons learned from this research may be used in a variety of ways: 1) to identify additional workflow components that ambulatory practices should consider when implementing health IT systems; 2) to identify issues to address in best practice guidelines health IT implementation; and 3) to identify issues for consideration in the design and evaluation of other health IT tools.

The study findings will be widely disseminated to health IT researchers and implementers via AHRQ's National Resource Center for Health IT Web site, email alerts, and conference presentations.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annual burden hours for each respondent's time to participate in this study.

A total of up to 60 persons will participate in the project orientation meeting across the six clinics (up to 10 per clinic), which will last up to 30 minutes.

The staff semi-structured interviews will be completed by a total of up to 36 persons across the six clinics (up to 6 per clinic) and requires one hour. Those same individuals will also be asked to complete Technology Acceptance Model surveys; each survey response is estimated to take 30 minutes. Clinic staff interviews and administration of surveys will take place at the clinics either two or three times. Staff interviews will be conducted twice at each of the pre-MHT and mature-MHT clinics, at the initial and final observation periods (eight total sets of interviews), for a total of up to 48 staff interviews. Staff interviews will be conducted three times at the two early-MHT clinics, during the initial, middle, and final observation periods, for up to 36 staff interviews across the two early-MHT clinics for all observation periods. In total, up to 84 interviews of clinic staff will be conducted with up to 36 individual staff for an average of 2.33 responses per staff member, as shown in Exhibit 1.

Up to 64 patients will be asked to participate in the patient-semi structured interview, which should take no longer than 1 hour. Those same patients will be asked to complete the Patient Activation Measures survey, which is estimated to take 12 minutes, and the Summary of Diabetes Self Care Activities survey, which should take no longer than 18 minutes. Patient interviews and surveys will take place at the clinics either once or twice. Up to eight patients will be interviewed during the initial observation period at each of the clinics for a total of 48 patient interviews across all six clinics. Up to 8 patients will be interviewed during the final observation period at each of the two early-MHT clinics, for a total of 16 patient interviews during the final observation period across the two early-MHT clinics. In total, up to 64 patient interviews and surveys will be conducted. The total annual burden is estimated to be 252 hours.

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this research. The total annual burden is estimated to be $6,670.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form Name	Maximum number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Project orientation meeting	60	1	30/60	30
Staff Semi-Structured Interviews	36	[a] 2.33	1	84
Technology Acceptance Model Survey	36	[a] 2.33	30/60	42
Patient Semi-Structured Interviews	64	1	1	64
Patient Activation Measures Survey	64	1	12/60	13
Summary of Diabetes Self Care Activities Survey	64	1	18/60	19
Total	324	na	na	252

[a] This is an average based on the study design and the number of interviews that respondents will complete. Two thirds of respondents will participate in two interviews. One third will participate in three interviews.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form Name	Maximum number of respondents	Total burden hours	Average hourly wage rate*	Total cost burden
Project orientation meeting	60	30	$34.80	$1,044
Staff Semi-Structured Interviews	36	84	32.03	2,691
Technology Acceptance Model Survey	36	42	32.03	1,345
Patient Semi-Structured Interviews	64	64	16.57	1,060
Patient Activation Measures Survey	64	13	16.57	215
Summary of Diabetes Self Care Activities Survey	64	19	16.57	315
	324	252	na	6,670

* Based upon the mean of the average wages, a National Compensation Survey: Occupational wages in the United States May 2011, ''U.S. Department of Labor, Bureau of Labor Statistics.'' For the project orientation meeting, the hourly rate is a weighted average of two physicians or surgeons, all other ($88.78), two registered nurses ($33.32), two licensed practical nurses ($19.79), two medical assistants ($13.99), one health care support worker other ($14.80), and one health care practitioners and technician other ($21.61). For the interviews and surveys with clinic staff, hourly wage is an average including one physician or surgeon, all other ($88.78), one registered nurse ($33.32), one licensed practical nurse ($19.79), one medical assistant ($13.99), one health care support worker other ($14.80), and one health care practitioners and technician other ($21.61). For patient interviews and surveys, median U.S. hourly wage was used.

Estimated Annual Costs to the Federal Government

The total cost of this study is $799,929 over a 36-month time period for an annualized cost of $266,643. Exhibit 3 provides a breakdown of the estimated total and average annual costs by category.

EXHIBIT 3—ESTIMATED TOTAL AND ANNUALIZED COST*

Cost component	Total cost	Annualized cost
Development of Research Plan	$32,520	$10,840
Development of Analysis Plan	24,028	8,009
Compliance with PRA Requirements	21,252	7,084
Conduct Research Study	271,916	90,639
Conduct Data Analysis	279,009	93,003
Develop Final Report of Findings	62,237	20,746
Develop Presentation of Findings	28,670	9,557
Project Administration	58,976	19,659
Coordination with Other AHRQ Offices and Contractors	15,195	5,065
Ensure High Quality 508 Compliant Deliverables	6,125	2,042
Total	799,929	266,643

* Costs are fully loaded including overhead and G&A.

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 12, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–26596 Filed 10–30–12; 8:45 am]

BILLING CODE M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10 (a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. 2), announcement is made of an Agency for Healthcare Research and Quality (AHRQ) Special Emphasis Panel (SEP) meeting on ''AHRQ NATIONAL RESEARCH SERVICE AWARDS (NRSA) INSTITUTIONAL RESEARCH TRAINING GRANTS (T32)''.

DATES: November 14–15, 2012 (Open on November 14 from 8:00 a.m. to 8:30 a.m. and closed for the remainder of the meeting).

ADDRESSES: Gaithersburg Marriott, RIO, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

FOR FURTHER INFORMATION CONTACT: Anyone wishing to obtain a roster of members, agenda or minutes of the non-confidential portions of this meeting should contact: Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Room 2038, Rockville, Maryland 20850, Telephone: (301) 427–1554.

Agenda items for this meeting are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by the Agency for Healthcare Research and Quality (AHRQ), and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support.

Individual members of the Panel do not attend regularly-scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

Substantial segments of the SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. App. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for ''AHRQ NATIONAL RESEARCH SERVICE AWARDS (NRSA) INSTITUTIONAL RESEARCH TRAINING GRANTS (T32)'' are to be reviewed and discussed at this meeting. 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.

Dated: October 12, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–26597 Filed 10–30–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From PDR Secure, LLC

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), Public Law 109–41, 42 U.S.C. 299b–21–b–26, provides for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety and Quality Improvement Final Rule (Patient Safety Rule), 42 CFR Part 3, authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule, or when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. AHRQ has accepted a notification of voluntary relinquishment from PDR Secure, LLC of its status as a PSO, and has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on August 31, 2012.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/index.html*.

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *pso@AHRQ.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity is to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule (PDF file, 450 KB. PDF Help) relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found no longer to meet the requirements of the Patient Safety Act and Patient Safety Rule, or when a PSO chooses to voluntarily relinquish its status as a PSO for any reason. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from PDR Secure, LLC, PSO number P0098, which is a component entity of PDR Network, LLC, to voluntarily relinquish its status as a PSO. Accordingly, PDR Secure, LLC was delisted effective at 12:00 Midnight ET (2400) on August 31, 2012. PDR Network, LLC represents that it has patient safety work product (PSWP) in its possession. The PSO is obligated to meet the requirements of section 3.108(c)(2)(i) of the Patient Safety Rule to notify the sources from which it received PSWP of the PSO's intention to cease PSO operations and activities, to relinquish voluntarily its status as a PSO, to request that these other entities

cease reporting or submitting any further information to the PSO as soon as possible, and to inform them that any information reported after the effective date and time of delisting will not be protected as PSWP under the Patient Safety Act. In addition, according to section 3.108(c)(2)(ii) of the Patient Safety Rule regarding disposition of PSWP, the PSO has 90 days from the effective date of delisting and revocation to complete the disposition of PSWP that is currently in the PSO's possession.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html*.

Dated: October 12, 2012.

Carolyn M. Clancy,

Director.

[FR Doc. 2012–26598 Filed 10–30–12; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–13–0488]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Ron Otten, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

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 a practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Restriction on Interstate Travel of Persons (OMB Control No. 0920–0488 Exp. 3/31/2013)—Revision—National Center Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention is requesting OMB approval to extend the information collection request, ''Restriction on Interstate Travel of Persons'' (OMB Control No. 0920–0488).

This information collection request is scheduled to expire on March 31, 2013. CDC is authorized to collect this information under 42 CFR 70.5 (Certain communicable diseases; special requirements). This regulation requires that any person who is in the communicable period for cholera, plague, smallpox, typhus, or yellow fever or having been exposed to any such disease is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

Control of disease transmission within the States is considered to be the province of state and local health authorities, with Federal assistance being sought by those authorities on a cooperative basis without application of Federal regulations. The regulations in 42 Part 70 were developed to facilitate Federal action in the event of large outbreaks requiring a coordinated effort involving several states, or in the event of inadequate local control. While it is not known whether, or to what extent situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is now commonplace. Should these situations arise, CDC will use the reporting and recordkeeping requirements contained in the regulations to carry out quarantine responsibilities as required by law.

There is no cost to respondents other than their time.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Traveler	42 CFR 70.3 Application to the State of destination for a permit.	2,000	1	15/60	500
Attending physician	42 CFR 70.3 Copy of material submitted by applicant and permit issued by State health authority.	2,000	1	15/60	500
State health authority	42 CFR 70.3 Copy of material submitted by applicant and permit issued by State health authority.	8	250	6/60	200
Master of a vessel or person in charge of a conveyance.	42 CFR 70.4 Report by specified respondent of a communicable disease during interstate travel (Paper Form if requested by CDC during public health emergency).	1,500	1	15/60	375
State health authority	42 CFR 70.4 Copy of material submitted to state/local authority (Paper Form if requested by CDC, public health emergency).	20	75	6/60	150
Master of a vessel or person in charge of a conveyance.	42 CFR 70.4 Report by specified respondent of a communicable disease during interstate travel (Radio or other telecommunication for routine reporting).	200	1	15/60	50

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State health authority	42 CFR 70.4 Copy of material submitted to state or local health authority under this provision (Radio or other telecommunication for routine reporting).	200	1	15/60	50
Traveler	42 CFR 70.5 Application for a permit to move from State to State while in the communicable period.	3,750	1	15/60	938
Attending physician	42 CFR 70.5 Application for a permit to move from State to State while in the communicable period.	3,750	1	15/60	938
Total					3,701

Dated: October 25, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–26826 Filed 10–30–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day-13–11EC]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Epidemiologic Study of Health Effects Associated With Low Pressure Events in Drinking Water Distribution Systems—New—National Center for Emerging and Zoonotic Infectious Diseases—Office of Infectious Diseases, Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In the United States, drinking water distribution systems are designed to deliver safe, pressurized drinking water to our homes, hospitals, schools and businesses. However, the water distribution infrastructure is 50–100 years old in much of the U.S. and an estimated 240,000 water main breaks occur each year. Failures in the distribution system such as water main breaks, cross-connections, back-flow, and pressure fluctuations can result in potential intrusion of microbes and other contaminants that can cause health effects, including acute gastrointestinal illness (AGI) and acute respiratory illness (ARI).

Approximately 200 million cases of AGI occur in the U.S. each year, but we lack reliable data to assess how many of these cases are associated with drinking water. Further, data are even more limited on the human health risks associated with exposure to drinking water during and after the occurrence of low pressure events (such as water main breaks) in drinking water distribution systems. A study conducted in Norway from 2003–2004 found that people exposed to low pressure events in the water distribution system had a higher risk for gastrointestinal illness. A similar study is needed in the United States.

The purpose of this data collection is to conduct an epidemiologic study in the U.S. to assess whether individuals exposed to low pressure events in the water distribution system are at an increased risk for AGI or ARI. This study would be, to our knowledge, the first U.S. study to systematically examine the association between low pressure events and AGI and ARI. Study findings will inform the Environmental Protection Agency (EPA), CDC, and other drinking water stakeholders of the potential health risks associated with low pressure events in drinking water distribution systems and whether additional measures (e.g., new standards, additional research, or policy development) are needed to reduce the risk for health effects associated with low pressure events in the drinking water distribution system.

We will conduct a cohort study among households that receive water from five water utilities across the U.S. The water systems will be geographically diverse and will include systems that use chlorine and monochloramine as secondary disinfectants. These water utilities will provide information about low pressure events that occur during the study period using a standardized form (approximately 12–13 events per utility). Utilities will provide address listings of households in areas exposed to the low pressure event and comparable households in an unexposed area to CDC staff, who will randomly select participants and send them a survey consent document and questionnaire. After consenting to participate, the selected households will be asked to respond to questions about symptoms of AGI and acute respiratory illness (ARI) that occurred during the 3-week period following the low pressure event. Respondents will also be asked about relevant exposures during the 3-week period, such as their household water use, changes noted in their water service, international travel, children or adult household member employed at daycare, pets in the household and other animal contact, and recreational water exposure. Study participants will be able to choose among two methods of survey response: a mail-in paper survey and a web-based survey. Participation in this study will be voluntary. No financial compensation will be provided to study participants. The study duration is anticipated to last 24 months. For the multi-site study, utility personnel will provide information on each of 65 low pressure events, collect and ship water samples to the CDC, and provide line listings of affected and unaffected customers to CDC. An estimated 6,750 households will be contacted, and we anticipate 4,050 surveys will be completed and

returned, providing data on 8,100 utility customers (18 years of age or older). We will conduct a pilot study of 6 low pressure events (duration approximately 3 months) prior to launching the multi-site study. An estimated 630 households will be contacted and we anticipate 756 adults (18 years of age or older) will consent to participate in the pilot study and provide data on individuals. There are no costs to respondents other than their time. The total estimated annualized burden hours are 588.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Form name/respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Multi-Site Study			
Web-based questionnaire—individual customers	1,215	1	12/60
Paper-based questionnaire—individual customers	810	1	12/60
Low pressure event form & samples—utility employees	5	7	45/60
Line listings—utility employees	5	7	3
Pilot Study			
Web-based questionnaire—individual customers	114	1	12/60
Paper-based questionnaire—individual customers	76	1	12/60
Low pressure event form & samples—utility employees	1	3	45/60
Line listings—utility employees	1	3	3

Dated: October 25, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–26834 Filed 10–30–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.508]

Announcement of the Award of Four Single-Source Program Expansion Supplement Grants To Support Activities Associated With the Tribal Early Learning Initiative

AGENCY: Office of Child Care, ACF, HHS.

ACTION: Notice of award of four single-source program expansion supplement grants to Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) grantees to support their activities as participants in the Tribal Early Learning Initiative.

SUMMARY: The Administration for Children and Families, Office of Child Care, announces the award of single-source program expansion supplement grants to four grantees in the Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV) program to support their participation in the Tribal Early Learning Initiative. Each of the following grantees is receiving a supplement in the amount of $15,750.

Grantee	Location
Choctaw Nation of Oklahoma.	Durant, OK
Pueblo of San Felipe	San Felipe, NM
Confederated Tribes of Salish and Kootenai.	Pablo, MT
White Earth Band of Chippewa Indians.	White Earth, MN

The program expansion supplement awards will support expanded services to identify and analyze systems that will improve effectiveness and efficiencies across early childhood programs. The grantees will share action plans to improve outcomes and developing peer learning relationships.

DATES: September 29, 2012–September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Moushumi Beltangady, Office of the Deputy Assistant Secretary for Early Childhood Development, 901 D Street SW., Washington, DC 20447. Telephone: (202) 260–3613; Email: *moushumi.beltangady@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The program expansion supplemental grants will support the effective identification and analysis of actual and potential systems issues faced by tribes receiving all three ACF early learning grants: Head Start/Early Head Start, Tribal Child Care, and Tribal Maternal, Infant, and Early Childhood Home Visiting (MIECHV). The program expansion supplements will support coordination and collaboration activities such as, identifying obstacles that could block efforts to build and maintain partnerships, piloting more effective coordination of Tribal Early Learning Programs, and development of alternative interventions and strategies in line with tribal community values, traditions, and priorities. The Tribal Early Learning Initiative is expected to accomplish the following:

- Identify and analyze systems issues, including obstacles that could block efforts to build and maintain partnerships in tribal communities, to fully and effectively coordinate Tribal Head Start/Early Head Start, Tribal Child Care, and Tribal MIECHV programs (Tribal Early Learning Programs), and to develop a menu of alternative interventions and strategies in line with tribal community values, traditions, and priorities.
- Develop tribally-driven goals and concrete objectives in each local tribal community for building effective and efficient early childhood systems and improved outcomes for young children and families including strategies to support parent, family, and community engagement.
- Develop and carry out concrete community plans for supporting and strengthening cooperation, coordination, and resource sharing and leveraging among programs that support young children and families in the tribal community.
- Share plans of action, barriers and challenges, opportunities and solutions, and the results of action plans with other tribal communities in an effort to further develop peer learning relationships.

The Office of Head Start will separately announce the award four single-source program expansion supplement grants of up to $15,750 to the same grantees to support Head Start-related activities as part of the Tribal Early Learning Initiative.

Statutory Authority: Section 511(h)(2)(A) of Title V of the Social Security Act, as added by Section 2951 of the Patient Protection and Affordable Care Act, Pub. L. 111–148, also known as the Affordable Care Act (ACA).

Shannon L. Rudisill,

Director, Office of Child Care.

[FR Doc. 2012–26743 Filed 10–30–12; 8:45 am]

BILLING CODE 4184–43–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.623]

Award of a Single-Source Replacement Grant to SOS Children's Villages Illinois in Chicago, IL

AGENCY: Family and Youth Services Bureau, ACYF, ACF, HHS.

ACTION: The Administration of Children and Families (ACF) Administration on Children, Youth, and Families (ACYF) Family and Youth Services Bureau (FYSB) announces the award of a single-source replacement grant to SOS Children's Villages Illinois in Chicago, IL.

SUMMARY: The Family and Youth Services Bureau (FYSB), Administration on Children, Youth and Families (ACYF) awarded a Fiscal Year 2010 Basic Center Program (BCP) grant to Boys Town Chicago, Inc. in Chicago, IL. During the project period, Boys Town Chicago, Inc. submitted a letter relinquishing their grant. ACYF/FYSB has designated SOS Children's Villages Illinois, a 501(c)(3) non-profit organization, as the single-source replacement grantee that will assume the programmatic and financial responsibility for the original project.

SUPPLEMENTARY INFORMATION: SOS Children's Villages Illinois will continue to provide crisis intervention, reunification counseling and temporary housing for Runaway and Homeless Youth under the terms and conditions of the grant award. The designated grantee continues to provide uninterrupted services and programming to youth and families in their catchment area.

SOS Children's Villages Illinois is located in Back of the Yards neighborhood on the Southwest side of Chicago. In a unique partnership that blends resources of the community with SOS Children's Villages Illinois, their emergency shelter offers temporary assistance for runaway and homeless youth who are trapped in a cycle of violence and poverty and have little or no family support.

Without Federal BCP funding, there would be a break in needed critical services that assist runaway and homeless youth in Back of the Yards. Without continued Federal funding, the physical and mental health of the affected families and youth would be at risk and the BCP in this locality would be seriously jeopardized.

Subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Federal Government, SOS Children's Villages Illinois would be eligible to receive a continuation award that will address costs for the program during the final year of the original project period (September 2012–September 2013).

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/fysb.*

December 29, 2011–September 29, 2012.

FOR FURTHER INFORMATION CONTACT: Curtis O. Porter, Director, Runaway and Homeless Youth Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 1250 Maryland Ave. SW., Suite 800, Washington, DC 20024, Telephone: 202–205–8306.

Statutory Authority: Authority for this Award is Public Law 110–378.

Bryan Samuels,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 2012–26745 Filed 10–30–12; 8:45 am]

BILLING CODE 4182–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Joint T32.

Date: November 27, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

Contact Person: Phillip F. Wiethorn, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–5388, *wiethorp@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Summer Research Experience Programs (R25).

Date: November 27, 2012.

Time: 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Raul A. Saavedra, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, *saavedrr@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Blueprint SEP.

Date: December 5, 2012.

Time: 7:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Palomar Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Richard D. Crosland, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–594–0635, *Rc218u@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 23, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26695 Filed 10–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–0598]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0027, Vessel Documentation and 1625–0104, Barges Carrying Bulk Hazardous Materials. Additionally, the U.S. Coast Guard requests an extension of its approval for the following collection of information: 1625–0052, Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges. Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before November 30, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–0598] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov* .

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Hand Delivery:* To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, US COAST GUARD, 2100 2ND ST SW., STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2012–0598], and must be received by November 30, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2012–0598], indicate the specific section of the document to which each comment applies, providing a reason for each comment. You may submit your comments and material online (via *http://www.regulations.gov*), by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online *via www.regulations.gov*, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2012–0598'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov*, click on the

''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–0598'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Numbers: 1625–0027, 1625–0052 and 1625–0104.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (77 FR 40624, July 10, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

1. *Title:* Vessel Documentation.
OMB Control Number: 1625–0027.
Type of Request: Revision of a currently approved collection.
Respondents: Owners/builders of yachts and commercial vessels of at least 5 net tons.
Abstract: The information collected will be used to establish the eligibility of a vessel to: (a) Be documented as a ''vessel of the United States,'' (b) engage in a particular trade, and/or (c) become the object of a preferred ship's mortgage. The information collected concerns citizenship of owner/applicant and build, tonnage and markings of a vessel.
Forms: CG–1258, CG–1261, CG–1270, CG–1280, CG–1340, CG–1356, CG–4593, CG–5542, CG–7042, and CG–7043.
Burden Estimate: The estimated burden has increased from 54,466 hours to 67,882 hours a year.

2. *Title:* Nondestructive Testing of Certain Cargo Tanks on Unmanned Barges.
OMB Control Number: 1625–0052.
Type of Request: Extension of a currently approved collection.
Respondents: Owners of tank barges.
Abstract: The Coast Guard uses the results of nondestructive testing to evaluate the suitability of older pressure-vessel-type cargo tanks of unmanned barges to remain in service. Such a tank, on an unmanned barge, 30 years old or older is subjected to nondestructive testing once every ten years.
Forms: None.
Burden Estimate: The estimated burden remains 130 hours a year.

3. *Title:* Barges Carrying Bulk Hazardous Materials
OMB Control Number: 1625–0104.
Type of Request: Revision of a currently approved collection.
Respondents: Owners and operators of tank barges.
Abstract: This information is needed to ensure the safe shipment of bulk hazardous liquids in barges. The requirements are necessary to ensure that barges meet safety standards and to ensure that barges' crewmembers have the information necessary to operate barges safely.
Forms: None.
Burden Estimate: The estimated burden has decreased from 29,281 hours a year to 28,958 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: October 24, 2012.

R. E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–26718 Filed 10–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0113]

Agency Information Collection Activities: InfoPass System, No Form Number; Extension, Without Change, of a Currently Approved Collection

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information or new collection of information. In accordance with the Paperwork Reduction Act of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for sixty days until December 31, 2012.

ADDRESSES: Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to: DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. Comments may be submitted to DHS via email at *uscisfrcomment@uscis.dhs.gov* and must include OMB Control Number 1615–0113 in the subject box. Comments may also be submitted via the Federal eRulemaking Portal Web site at *http://www.Regulations.gov* under e-Docket ID number USCIS–2009–0024.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* InfoPass System.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No Agency Form Number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The InfoPass system allows an applicant or petitioner to schedule an interview appointment with USCIS through USCIS' Internet Web site.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,043,319 respondents with an estimated burden of .1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 104,332 Hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.regulations.gov.* We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529, Telephone number 202–272–8377.

Dated: October 25, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–26704 Filed 10–30–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Guarantee of Payment

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0127.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Guarantee of Payment (CBP Form I–510). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13).

DATES: Written comments should be received on or before December 31, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Guarantee of Payment.

OMB Number: 1651–00127.

Form Number: Form I–510.

Abstract: Section 253 of the Immigration and Nationality Act (INA) requires that an alien crewman found to be or suspected of being afflicted with any of the diseases named in section 255 of the INA shall be placed in a hospital for treatment and/or observation with the expense of such observation and/or treatment being borne by the carrier. The guarantee of payment for medical and other related expenses required by section 253 of the Act shall be executed by the owner, agent, consignee, commanding officer or master of the vessel or aircraft on CBP Form I–510, *Guarantee of Payment.* No vessel or aircraft can be granted clearance until such expenses are paid or their payment appropriately guaranteed.

CBP Form I–510 collects information such as the name of the owner, agent, commander officer or master of the vessel or aircraft; the name of the crewman; the port of arrival; and signature of the guarantor. This form is provided for by 8 CFR 253.1 and is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_i510.pdf*

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to CBP Form I–510.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 100.

Estimated Total Annual Responses: 100.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 8.

Dated: October 25, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–26742 Filed 10–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Delivery Ticket

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0081.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Delivery Ticket (CBP Form 6043). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13).

DATES: Written comments should be received on or before December 31, 2012, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Delivery Ticket.

OMB Number: 1651–0081.

Form Number: CBP Form 6043.

Abstract: CBP Form 6043, *Delivery Ticket,* is used to document transfers of imported merchandise between parties. This form collects information such as the name and address of the consignee; the name of the importing carrier; lien information; the location of where the goods originated and where they were delivered; and information about the imported merchandise. CBP Form 6043 is filled out by warehouse proprietors, carriers, Foreign Trade Zone operators and others involved in transfers of imported merchandise. This form is authorized by 19 U.S.C. 1551a and 1565, and provided for by 19 CFR 4.34, 4.37 and 19.9. It is accessible at: *http://forms.cbp.gov/pdf/CBP_Form_6043.pdf*

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 1000.

Estimated Number of Annual Responses per Respondent: 200.

Estimated Number of Total Annual Responses: 200,000.

Estimated Time per Response: 20 minutes.

Estimated Total Annual Burden Hours: 66,000.

Dated: October 25, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–26738 Filed 10–30–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, With Change, of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; File No. 10–002, Electronic Funds Transfer Waiver Request; OMB Control No. 1653–0043.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on August 20, 2012, Vol. 77 No. 161, 20300 allowing for a 60 day comment period. No comments were received during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Comments are encouraged and will be accepted for thirty days until November 30, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to becollected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension, with change, of an existing information collection.

(2) Title of the Form/Collection: Electronic Funds Transfer Waiver Request.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: (No. Form 10–002); U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or Households, Business or other nonprofit. The information collected on the Form 10–002 is necessary for U.S. Immigration and Customs Enforcement (ICE) to determine if an individual or business is exempt from the Electronic Funds Transfer requirements of the Debt Collection Improvement Act by meeting certain conditions.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 650 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 325 annual burden hours. Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Scott Elmore, Forms Manager, U.S. Immigration and Customs Enforcement, 801 I Street NW., Stop 5800, Washington, DC 20536; (202) 732–2601.

Dated: October 24, 2012.

Scott Elmore,

Forms Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–26706 Filed 10–30–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; File No. G–146, Non-Immigrant Checkout Letter; OMB Control No. 1653–0020.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on August 20, 2012 Vol. 77 No. 161, 20302 allowing for a 60 day comment period. No comments were received during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Comments are encouraged and will be accepted for thirty days until November 30, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension, without change, of a currently approved information collection.

(2) Title of the Form/Collection: Non-Immigrant Checkout Letter.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: (No. Form G–146); U.S. Immigration and Customs Enforcement.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individual or Households. When an alien (other than one who is required to depart under safeguards) is granted the privilege of voluntary departure without the issuance of an Order to Show Cause, a control card is prepared. If, after a certain period of time, a verification of departure is not received, actions are taken to locate the alien or ascertain his or her whereabouts. Form G–146 is used to inquire of persons in the United States or abroad regarding the whereabouts of the alien.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 20,000 responses at 10 minutes (.16 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 3,220 annual burden hours. Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Scott Elmore, Forms Manager, U.S. Immigration and Customs Enforcement, 801 I Street NW., STOP 5800, Washington, DC 20536–5800.

Dated: October 24, 2012.

Scott Elmore,

Forms Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–26707 Filed 10–30–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension, Without Change, of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection for Review; File No. I–515A, Notice to Student or Exchange Visitor; OMB Control No. 1653–0037.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), will submit the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. The information collection was previously published in the **Federal Register** on

August 20, 2012; Vol. 77 No. 161, 20297 allowing for a 60 day comment period. No comments were received during this period. The purpose of this notice is to allow an additional 30 days for public comments.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

Comments are encouraged and will be accepted for thirty days until November 30, 2012. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension, without change, of a currently approved information collection.

(2) Title of the Form/Collection: Notice to Student or Exchange Visitor.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: (No. Form I–515A) U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. When an academic student (F–1), vocational student (M–1), exchange visitor (J–1), or dependent (F–2, M–2 or J–2) is admitted to the United States as a nonimmigrant alien under section 101(a)(15) of the Immigration and Nationality Act (Act), he or she is required to have certain documentation. If the student or exchange visitor or dependent is missing documentation, he or she is provided with the Form I–515A, Notice to Student or Exchange Visitor. The Form I–515A provides a list of the documentation the student or exchange visitor or dependent will need to provide to the Department of Homeland Security (DHS), Student and Exchange Visitor Program (SEVP) office within 30 days of admission.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 8,000 responses at 10 minutes (0.1667 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,333.6 annual burden hours. Comments and/or questions; requests for a copy of the proposed information collection instrument, with instructions; or inquires for additional information should be directed to: Scott Elmore, Forms Manager, U.S. Immigration and Customs Enforcement, 801 I Street NW., Stop 5800, Washington, DC 20536–5800; (202) 732–2601.

Dated: October 24, 2012.

Scott Elmore,

Forms Manager, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. 2012–26708 Filed 10–30–12; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection: Payments in Lieu of Taxes

AGENCY: Office of Budget, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Budget, Office of the Secretary, Department of the Interior (DOI), announces that it has submitted a request for proposed extension of an information collection required by the Payments in Lieu of Taxes Act (PILT) to the Office of Management and Budget and requests public comments on this submission.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by *November 30, 2012,* in order to be assured of consideration.

ADDRESSES: Send your written comments by facsimile to (202) 395–5806 or email (*OIRA_submission@omb.eop.gov*) to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1093–0005). Also, please send any comments by facsimile to (202) 208–3911, Attn: Niall O'Connor. Comments may also be mailed to: Niall O'Connor at U.S. Department of the Interior, Office of the Secretary, Office of Budget, 1849 C St. NW., MS 4106 MIB, Washington, DC 20240. Comments may also be emailed to *Niall_O'Connor@ios.doi.gov.* Individuals providing comments should reference OMB Control Number 1093–0005, ''Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, 43 CFR 44.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information on this renewed information collection should be directed to Niall O'Connor at U.S. Department of the Interior, Office of the Secretary, Office of Budget, 1849 C St. NW., MS 4106 MIB, Washington, DC 20240. You may also fax requests for further information to (202) 208–3911, or email at *Niall_O'Connor@ios.doi.gov.* To see a copy of the entire ICR submitted to OMB, go to: *http://www.reginfo.gov* and select Information Collection Review, Currently Under Review.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations in 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995 (Pub.L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that the Office of Budget is planning to submit to OMB for extension or re-approval.

Public Law 97–258 (31 U.S.C. 6901–6907), as amended, the Payments in Lieu of Taxes (PILT) Act, was designed by Congress to help local governments recover some of the expenses they incur in providing services on public lands. These local governments receive funds under various Federal land payment

programs such as the National Forest Revenue Act, the Mineral Lands Leasing Act, and the Taylor Grazing Act. PILT payments supplement the payments that local governments receive under these other programs. The President signed the Transportation bill (H.R. 4348) on July 6, 2012, which reauthorizes PILT for 2013, so this necessitates renewing the collection authority for another 3 years beyond 2012.

The PILT Act requires that the Governor of each State furnish the Department of the Interior with a listing of payments disbursed to local governments by the States on behalf of the Federal Government under 12 statutes described in Section 6903 of 31 U.S.C. The Department of the Interior uses the amounts reported by the States to reduce PILT payments to units of general local governments from that which they might otherwise receive. If such listings were not furnished by the Governor of each affected State, the Department would not be able to compute the PILT payments to units of general local government within the States in question.

In fiscal year 2004, administrative authority for the PILT program was transferred from the Bureau of Land Management to the Office of the Secretary of the Department of the Interior. Applicable DOI regulations pertaining to the PILT program to be administered by the Office of the Secretary were published as a final rule in the **Federal Register** on December 7, 2004 (69 FR 70557). The Office of Budget, Office of the Secretary is now planning to extend the information collection approval authority in order to enable the Department of the Interior to continue to comply with the PILT Act.

II. Data

(1) Title: Payments in Lieu of Taxes (PILT Act), Statement of Federal Land Payments, 43 CFR 44.

OMB Control Number: 1093–0005.

Current Expiration Date of Collection Authority: December 31, 2012.

Type of Review: Information Collection Renewal.

Affected Entities: State, local, or tribal government.

Estimated annual number of respondents: 43.

Frequency of Response: Annual.

(2) Annual reporting and record keeping burden: Average reporting burden per application: 53 hours.

Total annual reporting: 2,279 hours.

(3) Description of the need and use of the information: The statutorily-required information is needed to compute payments due units of general local government under the PILT Act (31 U.S.C. 6901–6907). The Act requires that the Governor of each State furnish a statement as to amounts paid to units of general local government under 12 revenue-sharing statutes in the prior fiscal year. The President signed the Transportation bill (H.R. 4348) on July 6, 2012, which reauthorizes PILT for 2013, so continued authority is needed.

III. Request for Comments

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on June 19, 2012 (77 FR 36568). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed renewal of this information collection activity.

Comments are again invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

All written comments will be available for public inspection in the Main Interior Building, 1849 C Street NW., Washington, DC during normal business hours, excluding legal holidays. For an appointment to inspect comments, please contact Niall O'Connor by telephone on (202) 513–7785, or by email at *Niall_O'Connor@ios.doi.gov* to make an appointment. Valid picture identification is required for entry into the Department of the Interior.

Public Comment Policy: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us, in your comment, to withhold your personal identifying information from public view, we cannot guarantee that we will be able to do so.

Pam Haze,

Deputy Assistant Secretary, Budget, Finance, Performance, and Acquisition.

[FR Doc. 2012–26732 Filed 10–30–12; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

[GX.13.GG00.99600.00]

Agency Information Collection Activities: Comment Request

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0051).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for respondents to submit proposals and fulfill assistance reporting requirements for research in earthquake hazard assessments and earthquake occurrence under the Earthquake Hazards Reduction Act of 1977, as amended, Public Law 95–124, 42 U.S.C. 7701 *et. seq.* To submit a proposal, three standard OMB forms and a project narrative must be completed and submitted via *Grants.gov.* This collection is scheduled to expire on February 28, 2013. This notice provides the public an opportunity to comment on the paperwork burden of these forms.

DATES: You must submit comments on or before December 31, 2012.

ADDRESSES: You may submit comments on this information collection to the Information Collection Clearance Officer, U.S. Geological Survey, 12201 Sunrise Valley Drive MS 807, Reston, VA 20192 (mail); (703) 648–7199 (fax);

or *smbaloch@usgs.gov* (email). Please Reference Information 1028–0051 in the subject line.

FOR FURTHER INFORMATION CONTACT: To request additional information about this IC, Elizabeth Lemersal, Earthquake Hazards Program, (703) 648–6716.

SUPPLEMENTARY INFORMATION:

Title: Earthquake Hazards Program Research and Monitoring.

OMB Control Number: 1028–0051.

Type of Request: Extension of a currently approved collection.

Abstract: Research and monitoring findings are essential to fulfilling USGS's responsibility under the Earthquake Hazards Reduction Act to develop earthquake hazard assessments and recording and reporting earthquake activity nationwide. Residents, emergency responders, and engineers rely on the USGS for this accurate and scientifically sound information. Respondents to Program Announcements submit proposals to support research and monitoring related to earthquake hazard assessments, earthquake causes and effects, and earthquake monitoring. This information is used as the basis for selection and award of projects meeting the USGS's Earthquake Hazards Program objectives. Final reports of research and monitoring findings are required for each funded proposal; annual progress reports are required for awards of a two- to five-year duration. Final reports are made available to the public at the Web site *http://earthquake.usgs.gov/research/external/.*

Responses are voluntary. No questions of a ''sensitive'' nature are asked.

Affected Public: Research scientists, engineers, and the general public.

Respondent Obligation: Voluntary; necessary to receive benefits.

Frequency of Collection: Annually: Grant proposals and reporting; Every two to five years: Cooperative Agreement proposals and reporting.

Estimated Annual Number of and Description of Respondents: 250 Educational institutions, and profit and non-profit organizations.

Estimated Annual Number of Responses: 350 (250 applications and narratives and 100 annual and final reports).

Estimated Completion Time: 45 hours per application response and 12 hours per final report.

Estimated Annual Burden Hours: 12,450 (11,250 hours for applications and 1,200 hours for final reports).

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the public reporting burden will average 45 hours per application response. This includes time to develop project goals, write the statement of work, perform internal proposal reviews, and submit the proposal through *grants.gov.* We estimate the public reporting burden will average 12 hours per final or annual report response. This includes summarizing accomplishments for the past year's funded efforts.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have not identified any ''non-hour cost'' burdens associated with this collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Comments: We are soliciting comments as to: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) how to enhance the quality, usefulness, and clarity of the information to be collected; and (d) how to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. Please note that the comments submitted in response to this notice are a matter of public record. 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 we will be able to do so.

Dated: October 23, 2012.

William Leith,

Senior Science Advisor for Earthquake and Geologic Hazards.

[FR Doc. 2012–26736 Filed 10–30–12; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Indian Meridian, Oklahoma (OK)

The plat, in six sheets, representing the dependent resurvey and survey in Township 14 North, Range 19 East, of the Indian Meridian, accepted September 11, 2012, for Group 67 OK.

The plat, in three sheets, representing the dependent resurvey and survey in Township 15 North, Range 20 East, of the Indian Meridian, accepted September 28, 2012, for Group 67 OK.

The plat, in two sheets, representing the dependent resurvey and survey in Township 14 North, Range 20 East, of the Indian Meridian, accepted September 28, 2012, for Group 67 OK.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at *mmontoya@blm.gov,* for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. These plats are to be scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication. If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys

must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/ GeoSciences.

[FR Doc. 2012–26771 Filed 10–30–12; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC069 L1711.0000 AL.0000 025B]

Notice of Public Meeting of the Carrizo Plain National Monument Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Carrizo Plain National Monument Advisory Council (MAC) will meet as indicated below.

DATES: The meeting will be held on Saturday, December 1, 2012, at the Carrisa Plains Elementary School, located approximately 2 miles northwest of Soda Lake Road on Highway 58. The meeting will begin at 10:00 a.m. and finish at 2:00 p.m. The meeting will focus on the proposed Travel Management Plan. There will be a public comment period from 1:00 p.m. to 2:00 p.m. Lunch will be available for under $10.

FOR FURTHER INFORMATION CONTACT: The BLM, Johna Hurl, Monument Manager, Bakersfield Field Office, 3801 Pegasus Drive, Bakersfield, CA 93308, (661) 391–6093, *jhurl@blm.gov.*

SUPPLEMENTARY INFORMATION: The ten-member MAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with public land management in the Carrizo Plain National Monument in Central California. At this meeting, Monument staff will present the proposed Travel Management Plan for the monument. This meeting is open to the public. Depending on the number of persons wishing to comment and the time available, the time allotted for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: October 23, 2012.

Timothy Z. Smith,

Field Manager, Bakersfield Field Office.

[FR Doc. 2012–26820 Filed 10–30–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD01000 L12200000.AL 0000]

Meeting of the California Desert District Advisory Council

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council (DAC) to the Bureau of Land Management (BLM), U.S. Department of the Interior, will meet in formal session on Saturday, December 1, 2012, from 8 a.m. to 4:30 p.m. at the Cal Works Bldg., 2895 S 4th St, El Centro, CA 92243. There also will be a field trip on Friday, November 30, from 8 a.m. to 4:30 p.m. on BLM-administered lands. Field trip details will be posted on the DAC Web page, *http://www.blm.gov/ca/st/en/info/rac/dac.html,* when finalized.

Agenda topics for the Saturday meeting will include a focus on cultural resource management, as well as updates by council members, the BLM California Desert District manager, five field office managers, and council subgroups. Final agenda items will be posted on the DAC Web page listed above.

SUPPLEMENTARY INFORMATION: All DAC meetings are open to the public. Public comment for items not on the agenda will be scheduled at the beginning of the meeting Saturday morning. Time for public comment may be made available by the council chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

While the Saturday meeting is tentatively scheduled from 8:00 a.m. to 4:30 p.m., the meeting could conclude prior to 4:30 p.m. should the council conclude its presentations and discussions. Therefore, members of the public interested in a particular agenda item or discussion should schedule their arrival accordingly. Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, External Affairs, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION CONTACT: David Briery, BLM California Desert District External Affairs, (951) 697–5220.

Dated: *October 23, 2012.*

Teresa A. Raml,

District Manager, California Desert District.

[FR Doc. 2012–26796 Filed 10–30–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR–936000–L14300000–ET0000; HAG12–0229; OROR–46473]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Policy, Management and Budget proposes to extend the duration of Public Land Order (PLO) No. 6963 for an additional 20-year term. PLO No. 6963 withdrew 257.60 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws, but not from leasing under the mineral leasing laws, to protect the natural values of the Florence Sand Dunes (FSD). This notice also amends the land description and acreage in PLO No. 6963 and gives an opportunity to comment on the proposed action and to request a public meeting.

DATES: Comments must be received on or before January 29, 2013.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/ Washington State Director, Bureau of Land Management (BLM), P.O. Box 2965, Portland, OR 97208–2965.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Oregon/ Washington State Office, 503–808–6155, or Tracy Maahs, BLM Eugene District Office, 541–683–6376. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach either of the contacts stated above. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with

either of the above individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The withdrawal created by PLO No. 6963 (58 FR 19212 (1993)), will expire on April 12, 2013, unless it is extended. The BLM filed a petition\application to extend PLO No. 6963 for an additional 20-year term. The PLO withdrew 257.60 acres of public land from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Chapter 2), but not from leasing under the mineral leasing laws, to protect the existing natural values of the FSD. This notice amends the legal land description and acreage in PLO No. 6963 as a result of a 1995 dependent resurvey and subdivision of sec. 3, T. 18 S., R. 12 W., Willamette Meridian. The land withdrawn by PLO No. 6963 is now described as follows:

Willamette Meridian

T. 18 S., R. 12 W.,
Sec. 3, lots 5 to 10, inclusive;
Sec. 15, SE¼NE¼.

The areas described aggregate 250.66 acres in Lane County.

The purpose of the proposed withdrawal extension is to continue the protection of the existing natural values of the FSD.

The use of a right-of-way, interagency or cooperative agreement, Special Recreation Management Area, or Area of Critical Environmental Concern designation does not provide adequate protection. There are no suitable alternative sites available.

No water rights would be needed to fulfill the purpose of the requested withdrawal extension.

For a period until January 29, 2013, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing to the BLM State Director at the address indicated above.

Comments, including names and street addresses of respondents, will be available for public review at the address indicated above during regular business hours.

Individual respondents may request confidentiality. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that a public meeting can be held in connection with the proposed withdrawal extension. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request to the BLM State Director at the address indicated above by January 29, 2013. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a local newspaper at least 30 days before the scheduled date of the meeting.

The withdrawal extension application will be processed in accordance with the regulations set forth in 43 CFR 2310.4.

Fred O'Ferrall,

Chief, Branch of Land, Mineral, and Energy Resources.

[FR Doc. 2012–26700 Filed 10–30–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–MIIN–11234; 9360–726]

Minor Boundary Revision at Minidoka National Historic Site

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460*l*–9(c)(1)(ii), the boundary of Minidoka National Historic Site is modified to include 88.51 acres of land identified as Tract 01–107, tax parcels numbered RP08S19E2300A and RP08S19E329001A. A conservation easement interest in the land will be donated to the United States. The land is located in Jerome County, Idaho, immediately adjacent to the current western boundary of Minidoka National Historic Site. The boundary revision is depicted on Map No. 194/114484 dated May 2012. The map is available for inspection at the following locations: National Park Service, Columbia Cascades Land Resources Program Center, 168 South Jackson Street, Seattle, Washington 98104, and National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: National Park Service, Chief, Columbia Cascades Land Resources Program Center, 168 South Jackson Street, Seattle, Washington 98104, telephone (206) 220–4100.

DATES: The effective date of this boundary revision is October 31, 2012.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460*l*–9(c)(1)(ii) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Natural Resources, the Secretary of the Interior is authorized to make this boundary revision upon publication of notice in the **Federal Register**. The Committees have been notified of this boundary revision. The inclusion and acquisition of a conservation easement interest in this property will enable the National Park Service to preserve the open space and viewsheds of the general area and thereby more accurately interpret the events that took place during the Japanese-American internment here from 1942 to 1945.

Dated: September 25, 2012.

Patricia L. Neubacher,

Acting Regional Director, Pacific West Region.

[FR Doc. 2012–26810 Filed 10–30–12; 8:45 am]

BILLING CODE 4312–DC–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–671–673 (Third Review)]

Silicomanganese From Brazil, China, and Ukraine

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) [2] determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C 1675(c)), that revocation of the antidumping duty order on silicomanganese from Brazil would not be likely to lead to continuation or recurrence of material injury to an industry in the United

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Meredith Broadbent did not participate in these reviews.

States within a reasonably foreseeable time [3] and that revocation of the antidumping duty orders on silicomanganese from China and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Background

The Commission instituted these reviews on August 1, 2011 (76 FR 54272) and determined on November 4, 2011 that it would conduct full reviews (76 FR 72212, November 22, 2011). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on April 13, 2012 (77 FR 22344). The hearing was held in Washington, DC, on September 5, 2012, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on October 24, 2012. The views of the Commission are contained in USITC Publication 4354 (October 2012), entitled *Silicomanganese from Brazil, China, and Ukraine: Investigation Nos. 731–TA–671–673 (Third Review).*

Issued: October 26, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–26747 Filed 10–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–746]

Certain Automated Media Library Devices; Notice of Commission Decision Remanding the Investigation as To U.S. Patent Nos. 6,328,766 and 6,353,581; Extension of Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to remand to the presiding administrative law judge (''ALJ'') with respect to U.S. Patent Nos. 6,328,766 (''the '766 patent'') and 6,353,581 (''the '581 patent''), and the target date for completion of the investigation is extended to March 25, 2013.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2392. 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 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.* 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: This investigation was instituted on November 24, 2010, based upon a complaint filed by Overland Storage, Inc. of San Diego, California (''Overland'') on October 19, 2010, and supplemented on November 9, 2010. 75 FR 71735 (Nov. 24, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) by reason of infringement of certain claims of the '766 patent and the '581 patent (collectively, ''the Asserted Patents''). The notice of investigation named as respondents BDT AG of Rottweil, Germany; BDT Solutions GmbH & Co. KG of Rottweil, Germany; BDT Automation Technology (Zhuhai FTZ), Co., Ltd. of Zhuhai Guandang, China; BDT de Mexico, S. de R.L. de C.V., of Jalisco, Mexico; BDT Products, Inc., of Irvine, California; Dell Inc. of Round Rock, Texas (''Dell''); and International Business Machines Corp. of Armonk, New York (''IBM''). The Office of Unfair Import Investigations was not named as a party.

The ALJ granted BDT Solutions GmbH & Co. KG's motion for summary determination of no violation on September 2, 2011. *See* Notice of Commission Determination Not to Review an Initial Determination Granting BDT Solutions' Motion for Summary Determination of No Violation of Section 337 (Sep. 21, 2011). On December 5, 2011, the ALJ granted a joint motion to terminate IBM and Dell from the investigation. *See* Notice of Commission Determination to Affirm an Initial Determination Granting a Joint Motion For Termination of the Investigation by Settlement as to Respondents International Business Machines Corp. and Dell Inc. (Jan. 27, 2012). BDT AG; BDT Automation Technology (Zhuhai FTZ), Co., Ltd.; BDT de Mexico, S. de R.L. de C.V.; and BDT Products, Inc. (collectively, ''the BDT Respondents'') remain as respondents in the investigation.

On June 20, 2012, the ALJ issued his final ID, finding no violation of section 337 by the BDT Respondents with respect to any of the asserted claims. Specifically, the ALJ found no violation of section 337 by the BDT Respondents in connection with claims 1–3 and 7–9 of the '766 patent and claims 1–2, 5–7, 9–10, 12, and 15–16 of the '581 patent. The ALJ also found that the asserted claims were not shown to be invalid except for claim 15 of the '581 patent. The ALJ further found that a domestic industry in the United States exists that practices the '766 patent. The ALJ, however, found that a domestic industry in the United States does not exist that practices the '581 patent. The ALJ also rejected the BDT Respondents' patent exhaustion defense.

On July 5, 2012, the BDT Respondents filed a joint petition for review of certain aspects of the final ID's findings concerning infringement of the '766 patent, and invalidity and patent exhaustion with respect to the Asserted Patents. Also on July 5, 2012, Overland filed a petition for review of certain aspects of the final ID's findings concerning claim construction, invalidity, and domestic industry with respect to the '581 patent, and infringement of the Asserted Patents. On July 13, 2012, Overland and the BDT Respondents each filed a response.

On August 20, 2012, the Commission determined to review the final ID in part and requested briefing on several issues it determined to review, and on remedy, the public interest and bonding. 77 FR. 51573 (August 24, 2012). Specifically, with respect to the '766 patent, the Commission determined to review the ALJ's finding that Overland did not prove the BDT Respondents possessed the requisite knowledge required for contributory infringement. The Commission also determined to review the ALJ's finding that the IBM documents related to certain IBM tape libraries do not qualify as printed publications under 35 U.S.C. 102, and the ALJ's invalidity analysis concerning any IBM documents that are found to

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[3] Commissioner Dean A. Pinkert dissenting.

[4] Commissioner Daniel R. Pearson dissenting with regard to Ukraine.

qualify as printed publications. With respect to the '581 patent, the Commission determined to review the ALJ's construction of the claim term ''linear array,'' and the ALJ's findings on infringement and invalidity in view of the proper construction of that claim term. The Commission also determined to review the ALJ's finding that no domestic industry exists with respect to the '581 patent. The Commission further determined to review the ALJ's rejection of the BDT Respondents' patent exhaustion defense. The Commission determined not to review the remaining issues decided in the ID.

On September 4, 2012, the parties filed written submissions on the issues under review, remedy, the public interest, and bonding. On September 12, 2012, the parties filed reply briefs. The Commission did not receive any non-party submissions.

Having examined the record of this investigation, including the ALJ's final ID and the parties' submissions, the Commission has determined to remand the investigation to the ALJ with respect to the '766 and the '581 patents, and to extend the target date.

Specifically, the Commission affirms, with modified reasoning, the ALJ's finding that the BDT Respondents did not contributorily infringe the asserted claims of the '766 patent. In particular, the Commission finds that Overland waived its right to argue that the requisite knowledge required for contributory infringement can be presumed. The Commission also finds that Overland has not proven that the BDT Respondents imported, sold for importation, or sold after importation within the United States, any Accused Products that contributed to IBM's or Dell's direct infringement after the BDT Respondents had knowledge of the '766 patent. In addition, the Commission reverses the ALJ's finding that the IBM documents related to the IBM 3570, 7331, 7336, and 3494 tape libraries do not qualify as ''printed publications'' under 35 U.S.C. 102, but affirms the ALJ's finding that the IBM documents related to the IBM 3575 tape library do not qualify as ''printed publications.'' Accordingly, the Commission remands the investigation to the ALJ to consider whether the IBM documents that qualify as prior art anticipate or, in combination with their associated IBM tape library and/or U.S. Patent No. 6,434,090, render obvious the asserted claims of the '766 patent.

With respect to the '581 patent, the Commission finds that the limitation ''linear array'' as recited in claims 1, 2, 5, 6, 7, 9, 10, 12, and 16 means ''media element storage locations [or cells] arranged in one or more straight lines.'' The Commission affirms, with modified reasoning, the ALJ's finding of noninfringement. The Commission also affirms, with modified reasoning, the ALJ's finding that the '581 patent was not shown to be invalid. In addition, the Commission reverses the ALJ's finding that Overland has failed to satisfy the technical prong of the domestic industry requirement. Specifically, the Commission finds that Overland has sustained its burden of showing by a preponderance of the evidence that at least its NEO 2000, 2000e, 4000, and 4000e tape libraries practice one or more claims of the '581 patent. Accordingly, the Commission remands the investigation to the ALJ to consider whether Overland has satisfied the economic prong of the domestic industry requirement. Finally, the Commission affirms, with modified reasoning, the ALJ's rejection of the BDT Respondents' patent exhaustion defense.

The Commission has extended the target date for completion of this investigation to March 25, 2013.

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 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

By order of the Commission.

Issued: October 25, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–26709 Filed 10–30–12; 8:45 am]

BILLING CODE 7020–02–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting and Hearing Notice No. 09–12]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR 503.25) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings as follows:

Thursday, November 8, 2012

10:00 a.m.—Oral hearings on Objection to Commission's Proposed Decisions in Claim No. LIB–II–174;

11:00 a.m.—Issuance of Proposed Decisions in claims against Libya and Albania;

1:00 p.m.—Oral hearings on Objection to Commission's Proposed Decisions in Claim No.—LIB–II–181;

2:00 p.m.—LIB–II–146.

Friday, November 9, 2012

9:00 a.m.—LIB–II–154;

10:00 a.m.—LIB–II–177.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Judith H. Lock, Executive Officer, Foreign Claims Settlement Commission, 600 E Street NW., Suite 6002, Washington, DC 20579. Telephone: (202) 616–6975.

Jaleh F. Barrett,

Chief Counsel.

[FR Doc. 2012–26851 Filed 10–29–12; 11:15 am]

BILLING CODE 4410–BA–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 77 FR 38336. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.*

Comments: Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science

Foundation, 725–17th Street NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to *splimpto@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton at (703) 292–7556 or send email to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

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

SUPPLEMENTARY INFORMATION:

Title of Collection: Monitoring for the National Science Foundation's Math and Science Partnership (MSP) Program.

OMB Control No.: 3145–0199.

1. Abstract

This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Math and Science Partnership (MSP) program. The goals for the program are to (1) ensure that all K–12 students have access to, are prepared for, and are encouraged to participate and succeed in challenging curricula and advanced mathematics and science courses; (2) enhance the quality, quantity, and diversity of the K–12 mathematics and science teacher workforce; and (3) develop evidence-based outcomes that contribute to our understanding of how students effectively learn mathematics and science. The motivational force for realizing these goals is the formation of partnerships between institutions of higher education (IHEs) and K–12 school districts. The role of IHE content faculty is the cornerstone of this intervention. In fact, it is the rigorous involvement of science, mathematics, and engineering faculty—and the expectation that both IHEs and K–12 school systems will be transformed—that distinguishes MSP from other education reform efforts.

The components of the overall MSP portfolio include active projects whose initial awards were made prior MSP competitions: (1) Comprehensive Partnerships that implement change in mathematics and/or science educational practices in both higher education institutions and in schools and school districts, resulting in improved student achievement across the K–12 continuum; (2) Targeted Partnerships that focus on improved K–12 student achievement in a narrower grade range or disciplinary focus within mathematics or science; (3) Institute Partnerships: Teacher Institutes for the 21st Century that focus on the development of mathematics and science teachers as school—and district-based intellectual leaders and master teachers; and (4) Research, Evaluation and Technical Assistance (RETA) projects that build and enhance large-scale research and evaluation capacity for all MSP awardees and provide them with tools and assistance in the implementation and evaluation of their work.

The MSP monitoring information system, comprised of eight web-based surveys and one paper survey, collects a common core of data about each component of MSP. The Web application for MSP has been developed with a modular design that incorporates templates and self-contained code modules for rapid development and ease of modification. A downloadable version will also be available for respondents who prefer a paper version that they can mail or fax to the external contractor.

Use of the information: This information is required for effective program planning, administration, communication, program and project monitoring and evaluation, and for measuring attainment of NSF's program, project and strategic goals, as required by the President's Management agenda as represented by the Office of Management and Budget's (OMB) Program Assessment Rating Tool (PART); the Deficit Reduction Act of 2005 (Pub. L. 109–171) which established the Academic Competitiveness (ACC) and the NSF's Strategic Plan. The Foundation's FY 2006–2011 Strategic Plan describes four strategic outcome goals of Discovery, Learning, Research Infrastructure, and Stewardship. NSF's complete strategic plan may be found at: *http://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf0648.*

2. Expected Respondents

Individuals or households, not-for-profit institutions, business or other for profit, and Federal State, local or tribal government. The expected respondents are principle investigators of all partnership and RETA projects; STEM and education faculty members and administrators who participated in MSP; school districts and IHEs that are partners in an MSP project; and teachers participating in Institute Partnerships.

3. Burden on the Public

Number of Respondents: 2,348

Burden of the Public: The total estimate for this collection is 52,082 annual burden hours.

This figure is based upon the previous 3 years of collecting information under this clearance and anticipated collections. The average annual reporting burden is estimated to be between 2 and 22 hours per respondent depending on whether a respondent is a direct participant who is self-reporting or representing a project and reporting on behalf of many project participants. The majority of respondents (60%) are estimated to require fewer than two hours to complete the survey. The burden on the public is negligible because the study is limited to project participants that have received funding from the MSP Program.

Dated: October 25, 2012.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2012–26716 Filed 10–30–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361–LA, 50–362–LA; ASLBP No. 12–923–01–LA–BD01]

Southern California Edison Company; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission, *see* 37 FR 28,710 (Dec. 29, 1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.105, 2.300, 2.309, 2.313, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Southern California Edison Company (San Onofre Nuclear Generating Station, Units 2 and 3)

This proceeding involves a license amendment request by Southern California Edison Company to convert

the Current Technical Specifications to be consistent with the most recently approved version of the Standard Technical Specifications for Combustion Engineering Plants, NUREG–1432, for its San Onofre Nuclear Generating Station, Units 2 and 3, located in San Diego County, California. In response to a notice of opportunity to request a hearing published in the **Federal Register** on August 16, 2012 (77 FR 49,463), a hearing request was submitted by Raymond Lutz on behalf of Citizens Oversight, Inc.

The Board is comprised of the following administrative judges:

Alex S. Karlin, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001;

Nicholas G. Trikouros, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 25th day of October 2012.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 2012–26818 Filed 10–30–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–0036; NRC–2012–0262]

Westinghouse Electric Company, LLC., Hematite Decommissioning Project, Festus, Missouri

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment request; opportunity to request a hearing and to petition for leave to intervene.

DATES: A request for a hearing or petition for leave to intervene must be filed by December 31, 2012.

ADDRESSES: Please refer to Docket ID NRC–2012–0262 when contacting the NRC about the availability of information regarding this proposed action. You can access publicly available documents related to this notice using any of the following methods:

- *Federal Rulemaking Web site:* GO to *http://www.regulations.gov* and search for Docket ID NRC–2012–0262. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS Accession Number for each publicly available document referenced below regarding the proposed action is provided the first time the document is referenced. The license amendment request is available under ADAMS Package Accession No. ML120170452.
- *NRC's Public Document Room (PDR):* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John J. Hayes, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–5928; email: *John.Hayes@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has received a license amendment application from Westinghouse Electric Company, LLC. (WEC or the licensee), dated August 16, 2012, requesting an exemption and an amendment of NRC License Number SNM–00033 (the Hematite license). The requested exemption pertains to section 70.24 of Title 10 of the *Code of Federal Regulations* (10 CFR) requirements for criticality monitoring systems at WEC Hematite Decommissioning Project (HDP) site in Missouri.

The Hematite license authorizes the licensee to conduct decommissioning activities. The NRC's letter to WEC, dated November 9, 2011, (ADAMS Accession No. ML112200209), issued Amendment 59 to the Hematite license, approving the Westinghouse Hematite Physical Security Plan, Category I Contingency Safeguards Contingency Response and Contingency Security Training and Qualification Plans, dated July 28, 2011, and Fundamental Nuclear Material Control Plan, dated February 18, 2011. Amendment 59 included license condition 15 which exempts WEC from the requirements to 10 CFR 70.24 regarding its HDP activities where the risk of a criticality accident was not considered credible.

In support of its August 16, 2012, request, WEC provided a revised license application with additional proposed 10 CFR 70.24 exemption provisions; justification for these provisions; a proposed revision to license condition 15; and the justification for revising license condition 15.

An NRC administrative review, documented in a letter to WEC dated August 31, 2012, (ADAMS Accession No. ML12243A378) found the application acceptable to begin a technical review. If the NRC approves the requested exemption and license amendment, such approval will be documented in a Safety Evaluation Report, which will contain the findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations.

II. Opportunity To Request a Hearing and Leave To Intervene

Requirements for submitting 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, located at One White Flint North, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. You may also call the PDR at 1–800–397–4209 or 301–415–4737. The NRC's regulations are also accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.*

Pursuant to 10 CFR 2.309(a), 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 request for hearing and 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. Pursuant to 10 CFR 2.309(d), the petition must provide the name, address, and telephone number of the petitioner; and explain the reasons why intervention should be permitted with particular reference to: (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 decision or order that may be entered in the proceeding on the petitioner's interest.

A request for hearing or petition for leave to intervene must also identify specific contentions that the petitioner seeks to have litigated in the proceeding. As required by 10 CFR 2.309(f), 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. The petitioner also must demonstrate that the issue raised by each contention is within the scope of the proceeding, and is material to the findings that the NRC must make to support the granting of a license in response to the application. In addition, 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 the 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 License Amendment (LA) that the petitioner disputes and the supporting reasons for each dispute; or, if the petitioner believes that the LA 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. A petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing 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's regulations, policies, and procedures. The Licensing Board will set the time and place for any pre-hearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Request for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1) and (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 December 31, 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 under 2.309(h)(2) State and Federally-recognized Indian tribes do not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. A State, local governmental body, Federally-recognized Indian tribe, or agency thereof may also have the opportunity to participate under 10 CFR 2.315(c).

If a hearing is granted, any person who does not wish to become a party to the proceeding may, in the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a), by making an oral or written statement of his or her position on the issues at any session of the hearing or at any pre-hearing conference, within the limits and conditions fixed by the presiding officer. However, that person may not otherwise participate in the proceeding.

III. 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 counselor 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 counselor 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 the 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 the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then

submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format in accordance with the NRC's guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counselor representative) must apply for and receive a digital lD certificate before a hearing request/petition for leave 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/contact-us-eie.html* by email at *MSHOResource@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 the 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.

Dated at Rockville, Maryland, this 24, day of October 2012.

For the Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–26761 Filed 10–30–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2010–1; Order No. 1517]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 19. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 2, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On October 23, 2012, the Postal Service filed notice that it has agreed to an amendment to the existing Priority Mail Contract 19 subject to this docket.[1] The Postal Service includes one attachment in support of its notice:

- Attachment A—a redacted copy of the amendment to the existing Priority Mail Contract 19.

The Postal Service also filed the unredacted amendment under seal. It asserts that the ''supporting financial documentation and financial certification initially provided in this docket remain applicable.'' It also seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of customer-identifying information that it has filed under seal.

The amendment requires the customer to manifest pieces for eligible customized pricing under the contract using a separate permit number and use Electronic Verification Systems and Endicia for shipment of such pieces. *Id.* Attachment A at 1. The Postal Service intends for the amendment to become effective on the day after the date that the Commission completes its review of the notice. *Id.*

The Postal Service filed certain supporting materials, including the related contract, under seal. *Id.* at 1.

II. Notice of Filing

Interested persons may submit comments on whether the changes presented in the Postal Service's notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than November 2, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

[1] Notice of United States Postal Service of Amendment to Priority Mail Contract 19, With Portions Filed Under Seal, October 23, 2012 (Notice).

The Commission appoints James F. Callow to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission shall review the Notice of United States Postal Service of Amendment to Priority Mail Contract 19 with Portions Filed Under Seal, filed on October 23, 2012 in Docket No. CP2010–1.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in these proceedings are due no later than November 2, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–26705 Filed 10–30–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–49; File No. S7–10–12]

Privacy Act of 1974: Systems of Records.

AGENCY: Securities and Exchange Commission.

ACTION: Notice to establish a new system of records and to revise two existing systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission (''Commission'' or ''SEC'') proposes to establish a new system of records, ''Backup Care Employee and Family Records (SEC–66).'' Additionally, two existing systems of records are being revised: ''Freedom of Information Act Requests (SEC–24)'' last published in the **Federal Register** Volume 62, Number 176 on Thursday, September 11, 1997 and ''Child Care Subsidy Program (SEC–41)'', last published in the **Federal Register** Volume 65, Number 155 on Thursday, August 10, 2000.

DATES: The proposed systems will become effective December 10, 2012 unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments or if changes are made based on comments received. To be assured of consideration, comments should be received on or before November 30, 2012.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7—10–12 on the subject line.

Paper Comments

Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7 -10–12. This file number should be included on the subject line if email is used. To help us 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/other.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Todd Scharf, Acting Chief Privacy Officer, Office of Information Technology, 202–551–8800.

SUPPLEMENTARY INFORMATION: The Commission proposes to establish a new system of records, ''Backup Care Employee and Family Records (SEC–66)'', and to revise two existing systems of records, ''Freedom of Information Act Requests (SEC–24)'' and ''Child Care Subsidy Program (SEC–41)''. The Backup Care Employee and Family Records (SEC–66) system of records contains records of current SEC employees who voluntarily sign up for backup care benefits and their family members for whom care is needed.

The Freedom of Information Act Requests (SEC–24) system of records consists of records used by Commission staff to process FOIA and Privacy Act requests and appeals, and to prepare reports to the Department of Justice, the Office of Management and Budget, and other oversight entities on the Commission's FOIA and PA activities. Minor administrative changes to SEC–24 have been incorporated to update the Commission's current address in the following sections: System Location, and Notification, Access and Contesting Records Procedures. Substantive changes to the notice have been made to the following sections: (1) System Name, changing the title to: ''Freedom of Information and Privacy Act Requests (SEC–24)''; (2) Categories of Individuals, updating the types of individuals whose personally identifiable information is contained in the system; (3) Categories of Records, updating the types of records maintained in the system; (4) Routine Uses, updating existing routine uses and adding new routine uses as applicable to this system of records (those numbered 1 through 16); and (5) Record Source, updating the sources from which records are received.

The Child Care Subsidy Program (SEC–41) system of records consist of records used to determine eligibility for, and the amount of, the child care tuition subsidy for eligible SEC employees. Minor administrative changes to SEC–41 have been incorporated to update the Commission's current address in the following sections: Notification, Access and Contesting Records Procedures. Substantive changes to the notice have been made to the following sections: (1) System Location, updating the current locations where records are maintained; and (2) Routine Uses, updating existing routine uses and adding new routine uses as applicable to this system of records (those numbered 1 through 5).

The Commission has submitted a report of the new system of records and the amended existing systems of records to the appropriate Congressional Committees and to the Director of the Office of Management and Budget (''OMB'') as required by 5 U.S.C. 552a(r) (Privacy Act of 1974) and guidelines issued by OMB on December 12, 2000 (65 FR 77677).

Accordingly, the Commission is proposing to establish one new system of records and revise two existing systems of records to read as follows:

SEC–66

SYSTEM NAME:

Backup Care Employee and Family Records.

SYSTEM LOCATION:

Bright Horizons Family Solutions, 200 Talcott Avenue, Watertown, MA 02472. Records may also be maintained at subcontracted childcare center locations. Electronic Reports of SEC

employees' registrations and uses are maintained at the Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current SEC employees who voluntarily sign up for backup care benefits and their family members for whom care is needed.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain employee name, email address, home address, home and cell telephone numbers, and date of birth; family member's name, address, date of birth, physician medical form, and medical identification number; photos of child, and individuals authorized to pick up child; and provider's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 590

PURPOSE(S):

The records are used to determine an employee's eligibility to request backup care benefits for family members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552 a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

3. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

4. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

5. To members of Congress, the Government Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

6. To a commercial contractor in connection with benefit programs administered by the contractor on the Commission's behalf, including, but not limited to, supplemental health, dental, disability, life and other benefit programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Records are retrieved by the individual's name.

SAFEGUARDS:

Records are safeguarded in a secured environment. The records are kept in limited access areas and/or locked offices or file rooms at all other times. Computerized records are safeguarded through use of access codes and information technology security. Access is limited to those personnel whose official duties require access. Contractors and other recipients providing services to the Commission shall be required to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director, Office of Human Resources, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–3901.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

RECORD ACCESS PROCEDURE:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

CONTESTING RECORD PROCEDURE:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

All information is provided by SEC employees registering for the services.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

SEC–24

SYSTEM NAME:

Freedom of Information and Privacy Act Requests.

SYSTEM LOCATION:

Securities and Exchange Commission, Office of Freedom of Information Act (FOIA) Services, 100 F Street NE., Washington, DC 20549. Other offices involved in the processing of requests may also maintain copies of the requests and related internal administrative records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on persons requesting information from the Commission pursuant to provisions of the Freedom of Information Act; persons who are the subject of Freedom of Information Act requests; individuals who have submitted requests for information about themselves or on behalf of an individual under the

provisions of the Privacy Act of 1974; and individuals filing an administrative appeal of a denial, in whole or part, of any such request.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records received, created or compiled in processing FOIA and PA requests or appeals, including internal memoranda, correspondence to or from other Federal agencies, correspondence and response letters, appeal of denials under the FOIA, request for amendment of records under the Privacy Act, appeal for denials under the Privacy Act, appeal determinations, and electronic tracking data. These records may contain personal information retrieved in response to a request including requesters' and their attorneys' or representatives' names, addresses, email, telephone numbers, and FOIA and PA case numbers; office telephone numbers of SEC employees and contractors; Names, telephone numbers, and addresses of the submitter of the information requested; Unique case identifier; Social security number; or other identifier assigned to the request or appeal.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, and 552a; Executive Order 9397.

PURPOSE(S):

The records are used by Commission staff to process FOIA and Privacy Act requests and appeals, and to prepare reports to the Department of Justice, the Office of Management and Budget, and other oversight entities on the Commission's FOIA and PA activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING

CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To other federal, state, local, or foreign law enforcement agencies; securities self-regulatory organizations; and foreign financial regulatory authorities to assist in or coordinate regulatory or law enforcement activities with the SEC.

3. To national securities exchanges and national securities associations that are registered with the SEC, the Municipal Securities Rulemaking Board; the Securities Investor Protection Corporation; the Public Company Accounting Oversight Board; the federal banking authorities, including, but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation; state securities regulatory agencies or organizations; or regulatory authorities of a foreign government in connection with their regulatory or enforcement responsibilities.

4. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

5. To a federal, state, local, tribal, foreign, or international agency in response to its request for information concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the letting of a contract; or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

6. To any persons during the course of any inquiry, examination, or investigation conducted by the SEC's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

7. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

8. To members of advisory committees that are created by the Commission or by Congress to render advice and recommendations to the Commission or to Congress, to be used solely in connection with their official designated functions.

9. To respond to subpoenas in any litigation or other proceeding.

10. To a third party authorized in writing to receive such information by the individual about whom the information pertains.

11. To another Federal agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, (b) verify the identify of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records, or (c) to process payment of fees associated with FOIA/PA requests.

12. To the Department of Justice (DOJ) in order to obtain that department's advice on FOIA matters or regarding the agency's FOIA disclosure obligations.

13. To the Office of Management and Budget for the purpose of obtaining its advice on Privacy Act matters.

14. To the public pursuant to the provisions of the FOIA, 5 U.S.C. 552.

15. To the Office of Government Information Services (OGIS) National Archives and Records Administration, in connection with mediation of FOIA requests.

16. To members of Congress, the Government Accountability Office, or others charged with monitoring the work of the Commission or conducting records management inspections.

17. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

18. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.735–1 to 200.735–18, and who assists in the investigation by the Commission of

possible violations of the federal securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(47)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

19. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

20. In connection with any litigation challenging or seeking to enjoin actions by the Commission under the Freedom of Information Act, as amended.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

Electronic files and paper format records are indexed and retrieved by a unique case number assigned to the request. Records may also be retrieved by the requestor name and/or the subject of the request.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission shall be required to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records are maintained in accordance with general records schedules of the National Archives and Records Administration, General Records Schedule 14.

SYSTEM MANAGER(S) AND ADDRESS:

FOIA/PA Officer, Office of FOIA Services, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

RECORD ACCESS PROCEDURE:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

CONTESTING RECORD PROCEDURE:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

Persons requesting information from the Commission pursuant to the Freedom of Information Act and the Privacy Act; agency employees assigned to handle processing the requests; agency records searched and identified as responsive in the process of responding to such requests; other agencies or entities that have referred to SEC requests concerning SEC records, or that have consulted with SEC regarding handling of particular requests; and submitters or subjects of records or information that have provided assistance to SEC in making access or amendment determinations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–41

SYSTEM NAME:

Child Care Subsidy Program.

SYSTEM LOCATION:

Childcare Subsidy Program Applications: Federal Employee Education and Assistance Fund (FEEA)—SEC Child Care Subsidy, 8441 W. Bowles Ave, Suite 200, Littleton, CO 80123–9501. Utilization reports and other related records: Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former SEC employees and their children and child care providers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records contain (1) employee's name, social security number, telephone numbers, address, grade, gross annual salary, gross family income that was reported on the latest Federal income tax return, and number of dependent children; (2) employee's child's name, date of birth, social security number, weekly tuition cost, amount of child care tuition subsidy from state or local government; and (3) employee's child care provider's name, address, telephone number, tax identification number, and license number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 590(g); Executive Order 9397.

PURPOSE(S):

To determine eligibility for, and the amount of, the child care tuition subsidy for lower income SEC employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the Commission as a routine use pursuant to 5 U.S.C. 552 a(b)(3) as follows:

1. To appropriate agencies, entities, and persons when (a) it is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the SEC has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the SEC or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the SEC's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

2. To produce summary descriptive statistics and analytical studies, as a data source for management information, in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies; may also be used to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act.

3. To a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

4. To members of Congress, the Government Accountability Office, or

others charged with monitoring the work of the Commission or conducting records management inspections.

5. To a commercial contractor in connection with benefit programs administered by the contractor on the Commission's behalf, including, but not limited to, supplemental health, dental, disability, life and other benefit programs. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

6. To interns, grantees, experts, contractors, and others who have been engaged by the Commission to assist in the performance of a service related to this system of records and who need access to the records for the purpose of assisting the Commission in the efficient administration of its programs, including by performing clerical, stenographic, or data analysis functions, or by reproduction of records by electronic or other means. Recipients of these records shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a.

7. To any Federal, state, or local government authority implementing child care subsidy programs or investigating a violation or potential violation of a statute, rule, regulation, or order.

8. To the Office of Personnel Management to be used for evaluating the child care subsidy program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper format. Electronic records are stored in computerized databases and/or on computer disc. Paper records and records on computer disc are stored in locked file rooms and/or file cabinets.

RETRIEVABILITY:

These records are retrieved by the employee name or social security number.

SAFEGUARDS:

Records are safeguarded in a secured environment. Buildings where records are stored have security cameras and 24 hour security guard service. The records are kept in limited access areas during duty hours and in locked file cabinets and/or locked offices or file rooms at all other times. Access is limited to those personnel whose official duties require access. Computerized records are safeguarded through use of access codes and information technology security. Contractors and other recipients providing services to the Commission shall be required to maintain equivalent safeguards.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with records schedules of the United States Securities and Exchange Commission and as approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Executive Director, Office of Human Resources, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3901

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

RECORD ACCESS PROCEDURE:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of these records may contact the FOIA/PA Officer, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–2736.

CONTESTING RECORD PROCEDURE:

See Record access procedures above.

RECORD SOURCE CATEGORIES:

Applications for child care subsidy and supporting records, which are voluntarily submitted by employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

By the Commission.

Dated: October 25, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–26724 Filed 10–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68104; File No. SR–OCC–2012–16]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Accelerated Approval of Proposed Rule Change To Accommodate Equity Options That Have a Unit of Trading of 10 Shares

October 25, 2012.

I. Introduction

On September 12, 2012, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2012–16. The proposed rule change, which was filed pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] was published for comment in the **Federal Register** on September 28, 2012.[2] The Commission received no comment letters regarding the proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change on an accelerated basis.

II. Description

The proposed rule change will accommodate Mini Options, which are equity options that have a unit of trading of 10 shares.[3] OCC proposes to amend its By-Law provision that sets forth the minimum amount of a cash dividend or distribution (''Distribution'') on an underlying equity security that will result in an adjustment of outstanding options on that underlying equity security.

In June 2012, the International Securities Exchange and NYSE Arca filed proposed rule changes with the Commission to list and trade Mini Options on a select number of liquid, high-priced and actively traded securities.[4] Mini Options are intended

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 67917 (September 24, 2012), 77 FR 59687 (September 28, 2012). In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements, which the Commission has modified, is incorporated into the discussion of the proposed rule change in Section II below.

[3] No other changes to OCC's rules are needed to clear Mini Options, as the definition of ''unit of trading'' in Article I of OCC's By-Laws is sufficiently flexible to permit OCC to designate a unit of trading other than the standard 100 shares for particular series or classes of options. Similarly, OCC's risk management systems will take the number of underlying shares into consideration.

[4] Securities Exchange Act Release Nos. 67284 (June 27, 2012), 77 FR 39545 (July 3, 2012) (SR–

Continued

to expand the choices available to participants in the options markets. Other than the difference in the unit of trading, Mini Options have the same terms, use, and characteristics as standard equity options (''Standard Options''), which cover 100 shares. The Commission approved the exchanges' request to list and trade Mini Options on September 28, 2012.[5]

Under OCC's By-Laws, equity options may be adjusted upon the occurrence of certain corporate actions, including Distributions. Currently, OCC's By-Laws stipulate that a Distribution must be in excess of $12.50 *per contract* in order for OCC to consider adjusting any type of option contract. Some Distributions, however, would exceed the adjustment threshold in the case of Standard Options, but would not exceed the adjustment threshold in the case of a Mini Option. The reason for this is that the per contract Distribution on the Mini Option would be only 1/10th of the Distribution on the Standard Option, and the adjustment threshold is stated on a *per contract* basis rather than a *per share* basis. OCC does not believe this result to be appropriate given that Mini Options are intended to be identical to Standard Options, but for the smaller unit of trading.

Instead, OCC believes that it is appropriate to fashion a new adjustment policy such that a Distribution that would result in an adjustment on a Standard Option would also result in an adjustment on a Mini Option. Moreover, the exchanges that will list Mini Options, as well as OCC clearing members, have expressed a preference for OCC to design an adjustment policy under which OCC makes consistent and parallel adjustments to both Mini Options and Standard Options. Therefore, OCC has proposed to amend the adjustment threshold in Article VI, Section 11A of OCC's By-Laws to $.125 *per share* from $12.50 *per contract.*

Furthermore, OCC does not intend for this rule change to affect options contracts that were originally listed with units of trading in excess of 100 shares. The Securities Committee[6] made this determination because, if OCC applied a $.125 per share threshold to all option contracts, OCC might not adjust an option contract that has a unit of trading of 1,000 shares for certain Distributions even though such a Distribution may represent a significant dollar amount on a per contract basis.[7] For example, in the case of an option contract with a unit of trading of 1,000 shares, a Distribution of $.12 per share would not trigger an adjustment even though the amount of the Distribution would be $120 on a single 1,000 share contract—far in excess of the existing $12.50 per contract *de minimis* threshold. To address this adjustment issue, OCC has proposed to retain the existing adjustment threshold of $12.50 per contract in Article VI, Section 11A of its By-Laws for options contracts that were originally listed in share amounts greater than 100 shares.

III. Discussion

Section 19(b)(2)(C) of the Act[8] directs the Commission to approve a self-regulatory organization's proposed rule change if it determines that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[9] requires, among other things, that the rules of a clearing agency be designed to further several goals, including, among other things: (i) Promoting the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts and transactions; (ii) encouraging cooperation and coordination with persons engaged in the clearance and settlement of securities transactions; and (iii) safeguarding securities and funds that are in a clearing agency's custody or control, or for which it is responsible.

The Commission concludes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to OCC. By assuring that traders of Mini Options will receive appropriate adjustments when corporate Distributions are made, the proposed rule change will foster the prompt and accurate clearance and settlement of options contracts, facilitate cooperation with exchanges and others involved in the clearance and settlement of these contracts, and ensure the safety and proper allocation of securities and funds for which OCC is responsible.

Further, the Commission concludes that there is good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. As noted above, the Commission has approved proposals by the International Securities Exchange and NYSE Arca to list and trade Mini Options.[11] Accelerated approval of this proposed rule change will facilitate the prompt and accurate clearance and settlement of options contracts by ensuring that OCC is fully prepared to clear and settle Mini Options as soon as they begin to trade.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, in particular with the requirements of Section 17A of the Act[12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–OCC–2012–16) be, and hereby is, *approved* on an accelerated basis.[14]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–26711 Filed 10–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68105; File No. SR–CBOE–2012–097]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

October 25, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

ISE–2012–58); 67283 (June 27, 2012), 77 FR 39535 (July 3, 2012) (SR–NYSE Arca–2012–64). For example, Mini Options are proposed to be listed on SPY (SPDR S&P 500), GLD (SPDR Gold Trust) and AAPL (Apple, Inc.).

[5] *See* Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60753 (October 4, 2012).

[6] The Securities Committee is authorized under OCC By-Law Article VI Section 11(a) to determine contract adjustments in particular cases and to formulate adjustment policy or interpretations having general applicability. The Securities Committee is comprised of representatives of OCC's participant options exchanges and authorized representatives of OCC.

[7] OCC has rules to accommodate options with a unit of trading of 1,000 shares, although no such options currently trade.

[8] 15 U.S.C. 78s(b)(2)(C).

[9] 15 U.S.C. 78q–1(b)(3)(F).

[10] 15 U.S.C. 78s(b)(2).

[11] *See* Securities Exchange Act Release No. 67948 (September 28, 2012), 77 FR 60753 (October 4, 2012).

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78s(b)(2).

[14] 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).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on October 16, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx),* at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 18, 2010, the Exchange established an SPX Tier Appointment Fee (the ''Fee'').[3] The Fee is assessed to any Market-Maker Trading Permit Holder that either (a) has an SPX Tier Appointment at any time during a calendar month; or (b) conducts any open outcry transactions in SPX or SPX Weeklys at any time during a calendar month.[4]

CBOE Rule 24.19 permits the execution of Multi-Class Broad-Based Index Option Spread Orders (''Multi-Class Spread Orders''), which are generally defined as orders to buy a stated number of contracts of a broad-based index option or ETF/ETN option derived from a broad-based index and to sell an equal number, or an equivalent number of contracts of a different broad-based index option or ETF/ETN option derived from a broad-based index. These orders may be represented at the trading station of either option involved, subject to the conditions in Rule 24.19.[5] For example, a common Multi-Class Spread Order involves executing an OEX (which is based on the S&P 100) order along with an SPX (which is based on the S&P 500) order. This is often executed by Market-Makers who have an OEX Tier Appointment but not an SPX Tier Appointment, and who do not otherwise engage in SPX transactions.

The Fee was not enacted with the intention of assessing it to Market-Makers to whom it would only apply due to their execution of Multi-Class Spread Orders that included an SPX component; the Fee was intended to be assessed on Market-Makers holding an SPX Tier Appointment and those doing regular SPX trades in the SPX trading crowd. As such, on July 6, 2010, the Exchange put out a regulatory circular (the ''Regulatory Circular'') that stated that the Fee is not applicable to Multi-Class Spread Orders executed by Market-Makers that include SPX options (the ''Exclusion'') because these spread transactions also include non-SPX options.[6] In order to avoid being assessed the Fee as a result of the execution of Multi-Class Spread Orders with an SPX component, Market-Makers to which the Fee is not otherwise applicable were directed to submit a form to the Exchange within three business days following the execution of the applicable spread transaction(s).[7]

The Exchange believed, upon releasing the Regulatory Circular, that the Exclusion was fairly and reasonably implied from the language in the Fees Schedule that describes the Fee. As such, the Exchange did not, at the time, include the Exclusion in such language in the Fees Schedule. However, the Exchange now proposes to codify the Exclusion in the Fees Schedule by stating that the Fee will not be assessed to a Trading Permit Holder Market Maker who (i) does not have an SPX Tier Appointment, (ii) only executes SPX or SPX Weeklys open outcry transactions as part of multi-class broad-based index spread transactions, and (iii) submits the SPX Tier Appointment Fee Exclusion for Multi-Class Broad-Based Index Spread Transactions Form (the ''Form'') within three business days of execution of the applicable spread transaction(s). Upon effectiveness of this rule change, the Exchange will issue another Regulatory Circular which will explain the Exclusion and provide directions on how Market-Makers may access and submit the Form.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Codifying the Exclusion prevents any potential confusion regarding whether or not Market-Makers trading Multi-Class Spread Orders that include an SPX component will be assessed the Fee. This elimination of any potential confusion serves to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[10] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exclusion itself is reasonable because it allows Market-Makers to whom the Fee would apply only due to their execution of Multi-Class Spread Orders with an SPX component to avoid having to pay the Fee. The Exclusion is equitable and not unfairly discriminatory because the Fee is intended to be assessed on those Market-Makers who hold an SPX Tier Appointment or conduct open outcry transactions in SPX or SPX Weeklys (*i.e.,* Market-Makers who are engaging in regular SPX trades), since those Market-Makers are engaging in transactions for which executing SPX trades is the primary purpose of such transactions (or are signing up to do so). Market-Makers who only engage in SPX transactions through the execution of Multi-Class

[3] *See* Securities Exchange Act Release No. 62386 (June 25, 2012) 75 FR 38566 (July 2, 2012) (SR–CBOE–2012–060) [sic].

[4] *See* CBOE Fees Schedule, table on Trading Permit and Tier Appointment Fees.

[5] *See* CBOE Rule 24.19.

[6] *See* CBOE Regulatory Circular RG10–80.

[7] *See* CBOE Regulatory Circular RG10–80.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(4).

Spread Orders with an SPX component are not engaging in such transactions with primary purpose of executing an SPX order, but instead are just executing an SPX order as part of a larger Multi-Class Spread Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) [11] of the Act and paragraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–097. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–097 and should be submitted on or before November 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–26712 Filed 10–30–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68108; File No. SR–NYSEArca–2012–117]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the Pring Turner Business Cycle ETF Under NYSE Arca Equities Rule 8.600

October 25, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19b 4 thereunder,[2] notice is hereby given that, on October 17, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): The Pring Turner Business Cycle ETF. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the Pring Turner Business Cycle ETF (''Fund'') under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares.[3] The Shares will be offered by AdvisorShares Trust (the

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

''Trust'') [4], a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment adviser to the Fund is AdvisorShares Investments, LLC (the ''Adviser''). Pring Turner Capital Group (''Sub-Adviser'') is the Fund's sub-adviser and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC (the ''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon (the ''Administrator'') serves as the administrator, custodian, transfer agent and fund accounting agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[6] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

According to the Registration Statement, the Fund's investment objective is to seek long-term total return from capital appreciation and income. The overriding investment goal of the Fund is to protect the value of the Fund's portfolio during unfavorable market conditions and to grow the value of the Fund's portfolio in favorable market conditions. Utilizing its proprietary business cycle research, the Sub-Adviser proactively will change the Fund's asset allocation and sector emphasis in seeking to minimize the Fund's portfolio risk and to optimize portfolio returns throughout the business cycle. The Sub-Adviser will invest the Fund's portfolio in securities that provide diversified exposure to the three primary asset classes (*i.e.,* stocks, bonds and commodities) across a wide range of economic sectors.

In seeking its objective, the Fund may invest in U.S. and foreign equity securities; debt securities; exchange-traded products (''Underlying ETPs'');[7] and cash and cash equivalents, as described below. The Fund may invest in equity securities of any capitalization range and in any market sector at any time as necessary to seek to achieve the Fund's investment objective.

Investment Process and Portfolio Construction

According to the Registration Statement, the Sub-Adviser will utilize Pring Turner's ''six-stage'' business cycle strategy as its basis for developing strategic asset allocation and sector emphasis decisions for the Fund's portfolio. The investment strategy dynamically allocates among stock, bond, commodity and cash segments based on a proprietary model that accounts for the current stage of the economic business cycle. The methodology is substantially similar to the investment process developed and utilized by Pring Turner Capital Group since 1988.

In managing the Fund, the Sub-Adviser will consider multiple layers of analysis of the three primary asset classes. The Sub-Adviser will use a multi-step process to build and dynamically manage the Fund's portfolio to optimize portfolio returns as financial markets sequentially rotate through the typical four to five year business cycle swings.

First, the Sub-Adviser will take a broad look at each of the three primary asset classes to determine whether each is in either a secular bull market or a secular bear market. Next, utilizing its

[4] The Trust is registered under the 1940 Act. On October 12, 2012, the Trust filed with the Commission an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[5] The Commission has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF); and 65468 (October 3, 2011), 76 FR 62873 (October 11, 2011) (SR–NYSEArca–2011–51) (order approving Exchange listing and trading of TrimTabs Float Shrink ETF).

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (the ''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600), and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of Underlying ETPs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The Underlying ETPs in which the Fund may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index. While the Fund may invest in inverse Underlying ETPs, the Fund will not invest in leveraged (*e.g.,* 2X, −2X, 3X or −3X) Underlying ETPs.

robust historical business cycle research, the current condition of the business cycle will be determined. Given the three primary asset classes, each of which will either be in a cyclical bull or bear market, there will be a total of six possible turning points, or ''Six Stages'' of a business cycle. The Sub-Adviser has developed three models or barometers, one for each asset class, constructed from a combination of trend following, momentum, and inter-asset relationships, in order to identify the current stage of a business cycle. The barometers are designed to identify significant market turning points (cyclical peaks and troughs) for each asset class as early in a new trend as possible.

Then the Sub-Adviser will determine the broad asset allocation levels for the Fund's portfolio utilizing a stage analysis. Generally, throughout the business cycle stages, the Fund's portfolio will consist of the following allocation changes: Equity—approximately 30%–90%; [8] bond—approximately 0%–50%; commodities—approximately 0%–20%; [9] and cash balances—approximately 0%–40%. In seeking to achieve the Fund's investment objective, the Sub-Adviser will make gradual asset allocation shifts and sector emphasis adjustments as the business cycle progresses.

Once the current business cycle stage and asset allocation level is determined, the Sub-Adviser once again will utilize historical performance data to determine which economic sectors outperform or underperform in the specific stage. For instance, in the deflationary part of the business cycle consumer staples and utilities may be appropriate sectors to emphasize, and in the inflationary part of the cycle energy and industrials may be outperformers. Since not every cycle is the same, historical performance data will be compared with actual sector behavior in the current cycle. The Sub-Adviser may utilize technical analysis tools including relative strength, trend and chart reading to determine timely sector emphasis (and de-emphasis) candidates.

The Sub-Adviser then will utilize a combination of intermediate trend (two to six month time frame) technical market indicators to further manage risk and enhance the Fund's portfolio returns. The Sub-Adviser will use gradual asset allocation and sector emphasis shifts to better manage risks and generate consistent returns.

The final step of the investment process will be the selection of appropriate individual securities and/or Underlying ETPs to best take advantage of the business cycle stage and preferred economic sectors. In addition to technical analysis methods like relative strength, trend and charting disciplines, the Sub-Adviser will utilize fundamental analysis to determine quality, value, and income characteristics. The Sub-Adviser will attempt to emphasize holdings in those securities that show positive fundamental attributes and dependable income.

Fund Investments

According to the Registration Statement, the equity securities in which the Fund may invest include common and preferred stock, Master Limited Partnerships, rights,[10] U.S.-listed REITs, and depositary receipts, including American Depositary Receipts (''ADRs''), as well as Global Depositary Receipts (''GDRs''), which are certificates evidencing ownership of shares of a foreign issuer. Depositary receipts may be sponsored or unsponsored.[11] The Fund may invest in issuers located outside the United States, or in financial instruments that are indirectly linked to the performance of foreign issuers. Examples of such financial instruments include ADRs, GDRs, European Depositary Receipts (''EDRs''), International Depository Receipts (''IDRs''), ''ordinary shares,'' and ''New York shares'' issued and traded in the United States.[12] The U.S. equity securities in which the Fund will invest will be listed on a national securities exchange, except that the Fund may invest up to 10% of total assets in ADRs that are not listed on any national securities exchange and that are traded over-the-counter.[13] The Fund also may invest in equity securities of foreign issuers; the foreign equity securities, including any depositary receipts, in which the Fund may invest will be limited to securities that trade in markets that are members of the Intermarket Surveillance Group (''ISG''), which includes all U.S. national securities exchanges and certain foreign exchanges, or are parties to a comprehensive surveillance sharing agreement with the Exchange.[14]

From time to time, the Sub-Adviser may invest a portion of the Fund's portfolio in unleveraged inverse ETFs to stabilize the Fund's portfolio values. An unleveraged inverse ETF is designed to provide a return opposite of an index or other benchmark, typically for a single trading day.

The Fund may invest in debt securities. A debt security is a security consisting of a certificate or other evidence of a debt (secured or unsecured) on which the issuing company or governmental body promises to pay the holder thereof a fixed, variable, or floating rate of interest for a specified length of time, and to repay the debt on the specified maturity date. Some debt securities, such as zero coupon bonds, do not make regular interest payments but are issued at a discount to their principal or maturity value. Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. Investments in non-investment grade debt securities will be limited to 15% of the Fund's net assets.

[8] U.S.-listed real estate investment trusts (''REITs'') will be included in the Fund's equity allocation.

[9] The Fund will not hold physical commodities or commodity futures. The Fund's commodity exposure may be achieved through a combination of commodity-related Underlying ETPs and/or commodity-related equity securities.

[10] As described in the Registration Statement, a right is a privilege granted to existing shareholders of a corporation to subscribe to shares of a new issue of common stock before it is issued. Rights normally have a short life of usually two to four weeks, are freely transferable and entitle the holder to buy the new common stock at a lower price than the public offering price. Generally, rights do not carry the right to receive dividends or exercise voting rights with respect to the underlying securities, and do not represent any rights in the assets of the issuer. In addition, their value does not necessarily change with the value of the underlying securities, and they cease to have value if they are not exercised on or before their expiration date.

[11] The Fund generally will invest in sponsored ADRs but it may invest up to 10% of total assets in unsponsored ADRs.

[12] ADRs are U.S. dollar denominated receipts representing interests in the securities of a foreign issuer, which securities may not necessarily be denominated in the same currency as the securities into which they may be converted. ADRs are receipts typically issued by United States banks and trust companies which evidence ownership of underlying securities issued by a foreign corporation. Generally, ADRs in registered form are designed for use in domestic securities markets and are traded on exchanges or over-the-counter in the United States. GDRs, EDRs, and IDRs are similar to ADRs in that they are certificates evidencing ownership of shares of a foreign issuer, however, GDRs, EDRs, and IDRs may be issued in bearer form and denominated in other currencies, and are generally designed for use in specific or multiple securities markets outside the U.S. EDRs, for example, are designed for use in European securities markets while GDRs are designed for use throughout the world. Ordinary shares are shares of foreign issuers that are traded abroad and on a United States exchange. New York shares are shares that a foreign issuer has allocated for trading in the United States. ADRs, ordinary shares, and New York shares all may be purchased with and sold for U.S. Dollars.

[13] *See* note 12, *supra.*

[14] *See* note 12, *supra* and note 29, *infra.*

The Fund may invest in variable and floatingrate securities.[15]

The Fund may invest in U.S. government securities and U.S. Treasury zero-coupon bonds. Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance; U.S. Treasury bills, which have initial maturities of one-year or less; U.S. Treasury notes, which have initial maturities of one to ten years; and U.S. Treasury bonds, which generally have initial maturities of greater than ten years.[16]

According to the Registration Statement, to respond to adverse market, economic, political or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through Underlying ETPs. The Fund may be invested in this manner for extended periods depending on the Sub-Adviser's assessment of market conditions. These short-term debt instruments and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, and U.S. government securities. The Fund, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (*i.e.,* delivery and payment can take place between a month and 120 days after the date of the transaction). These securities are subject to market fluctuation and no interest accrues to the purchaser during this period. At the time the Fund makes the commitment to purchase securities on a when-issued or delayed-delivery basis, the Fund will record the transaction and thereafter reflect the value of the securities, each day, in determining the Fund's net asset value (''NAV''). The Fund will not purchase securities on a when-issued or delayed-delivery basis if, as a result, more than 15% of the Fund's net assets would be so invested.

The Fund may engage in short sales transactions in which the Fund sells a security it does not own.

The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans.[17] The Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy.[18] However, the Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33⅓% of its assets.

Investment Policies and Restrictions

According to the Registration Statement, the Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of this policy, the issuer of a depositary receipt will be deemed to be the issuer of the respective underlying security.[19]

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. For purposes of this policy the issuer of ADRs will be deemed to be the issuer of the respective underlying security.[20]

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[21]

[15] Variable and floating rate instruments involve certain obligations that may carry variable or floating rates of interest, and may involve a conditional or unconditional demand feature. Such instruments bear interest at rates which are not fixed, but which vary with changes in specified market rates or indices. The interest rates on these securities may be reset daily, weekly, quarterly, or some other reset period, and may have a set floor or ceiling on interest rate changes. There is a risk that the current interest rate on such obligations may not accurately reflect excising market interest rates. A demand instrument with a demand notice exceeding seven days may be considered illiquid if there is no secondary market for such security.

[16] Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as Fannie Mae, Freddie Mac, the Government National Mortgage Association (''Ginnie Mae''), the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the Student Loan Marketing Association, the National Credit Union Administration and the Federal Agricultural Mortgage Corporation (''Farmer Mac'').

[17] The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. It is the current policy of the Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets.

[18] Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price. Generally, the effect of such a transaction is that the Fund can recover all or most of the cash invested in the portfolio securities involved during the term of the reverse repurchase agreement, while the Fund will be able to keep the interest income associated with those portfolio securities. Such transactions are advantageous only if the interest cost to the Fund of the reverse repurchase transaction is less than the cost of obtaining the cash otherwise. Opportunities to achieve this advantage may not always be available, and the Fund intends to use the reverse repurchase technique only when it will be advantageous to the Fund. The Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents or other portfolio securities equal in value to the Fund's obligations in respect of reverse repurchase agreements. Such reverse repurchase agreements could be deemed to be a borrowing, but are not senior securities.

[19] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[20] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[21] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to

Continued

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company (''RIC'') under the Internal Revenue Code.[22]

Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Net Asset Value

The Fund will calculate its NAV by: (i) taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of shares owned by shareholders.

The Fund will calculate NAV once each business day as of the regularly scheduled close of normal trading on the New York Stock Exchange, LLC (the ''NYSE'') (normally, 4:00 p.m., Eastern Time).

In calculating NAV, the Fund generally will value its investment portfolio at market prices. For exchange-traded Fund assets, the Fund will use closing prices from the applicable exchanges; for non-exchange-traded Fund assets, the Fund will use market data vendor quotations or a valuation agent. If market prices are unavailable or the Fund believes that they are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Trust's Board of Trustees.

Creation and Redemption of Shares

According to the Registration Statement, the Fund will issue and redeem Shares on a continuous basis at the NAV only in a large specified number of Shares called a ''Creation Unit.'' The Shares of the Fund that trade on the Exchange will be ''created'' at their NAV by market makers, large investors and institutions only in block-size Creation Units of at least 25,000 Shares. A ''creator'' will enter into an authorized participant agreement with the Distributor or use a Depository Trust Company participant who has executed such a participant agreement, and will deposit into the Fund a portfolio of securities closely approximating the holdings of the Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for at least 25,000 Shares of the Fund (or multiples thereof).

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Administrator and only on a business day. The Trust will not redeem Shares in amounts less than Creation Units. Unless cash redemptions are available or specified for the Fund, the redemption proceeds for a Creation Unit generally consist of ''Fund Securities''—as announced by the Administrator on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities, less a redemption transaction fee. The Administrator, through the National Securities Clearing Corporation, will make available immediately prior to the opening of business on the Exchange (currently 9:30 a.m., Eastern Time) on each business day, the Fund Securities that will be applicable to redemption requests received in proper form on that day.

According to the Registration Statement, if it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem such Shares in cash, and the redeeming beneficial owner will be required to receive its redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit.[23] In either case, the investor will receive a cash payment equal to the NAV of its Shares based on the NAV of Shares of the Fund next determined after the redemption request is received in proper form (minus a redemption transaction fee and additional charge for requested cash redemptions, as described in the Registration Statement). The Fund may also, in its sole discretion, upon request of a shareholder, provide such redeemer a portfolio of securities which differs from the exact composition of the Fund Securities but does not differ in NAV. Redemptions of Shares for Fund Securities will be subject to compliance with applicable federal and state securities laws and the Fund (whether or not it otherwise permits cash redemptions) reserves the right to redeem Creation Units for cash to the extent that the Fund could not lawfully deliver specific Fund Securities upon redemptions or could not do so without first registering the Fund Securities under such laws. An authorized participant or an investor for which it is acting subject to a legal restriction with respect to a particular stock included in the Fund Securities applicable to the redemption of a Creation Unit may be paid an equivalent amount of cash.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. Consistent with NYSE Arca Equities Rule 8.600(d)(2)(B)(ii), the Adviser will implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material non-public information regarding the actual components of the Fund's portfolio. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3[24] under the Exchange Act, as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (the ''Bid/Ask Price''),[25] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in

Rule 2a-7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act.

[22] 26 U.S.C. 851.

[23] The Adviser represents that, to the extent the Trust effects the redemption of Shares in cash, such transactions will be effected in the same manner for all authorized participants.

[24] 17 CFR 240.10A–3.

[25] The Bid/Ask Price of the Fund is determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day.[26]

On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information: ticker symbol (if applicable); name and, when available, the individual identifier (CUSIP) of the security and/or financial instrument; number of shares and dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file (*i.e.,* the Fund Securities), which includes the security names and share quantities(as applicable) required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The basket will represent one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports will be available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and, for the underlying securities that are exchange-listed, will be available from the national securities exchange on which they are listed. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[27] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[28] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[29] In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the

[26] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

[27] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values taken from CTA or other data feeds.

[28] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[29] For a list of the current members of ISG, *see www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All Underlying ETPs and securities in which the Fund may invest will be listed on securities exchanges, all of which are members of ISG or are parties to a comprehensive surveillance sharing agreement with the Exchange, provided that the Fund may invest up to 10% of total assets in ADRs traded over-the-counter. *See* note 12, *supra.*

Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [30] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. All Underlying ETPs and securities in which the Fund may invest will be listed on securities exchanges, all of which are members of ISG or have entered into a comprehensive surveillance sharing agreement with the Exchange, provided that the Fund may invest up to 10% of total assets in ADRs that are not listed on any national securities exchange and are traded over-the-counter. The Fund may not purchase or hold illiquid securities if, in the aggregate, more than 15% of its net assets would be invested in illiquid securities. The Fund will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) Underlying ETPs. Consistent with the Exemptive Order, the Fund will not invest in options contracts, futures contracts or swap agreements. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last sale information for the Shares will be available via the CTA high-speed line. In addition, the Portfolio Indicative Value will be widely disseminated by the Exchange at least every 15 seconds during the Core Trading Session. The Fund's Web site will include a form of the prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol, name and, when available, the individual identifier (CUSIP) of the security and/or financial instrument; number of shares or dollar value of securities and financial instruments held in the portfolio; and percentage weighting of the security and/or financial instrument in the portfolio. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[30] 15 U.S.C. 78f(b)(5).

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–NYSEArca–2012–117 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–NYSEArca–2012–117. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of 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–NYSEArca–2012–117 and should be submitted on or before November 21, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–26740 Filed 10–30–12; 8:45 am]

BILLING CODE 8011–01–P

[31] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 8078]

60-Day Notice of Proposed Information Collection: Office of Language Services Contractor Application Form

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *December 31, 2012.*

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

- *Web:* Persons with access to the Internet may use the Federal Docket Management System (FDMS) to comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Public Notice ####'' in the Search bar. If necessary, use the Narrow by Agency filter option on the Results page.
- *Email: LSApplications@state.gov.*
- *Mail:* Department of State, Office of Language Services SA–1, Fourteenth Floor, 2401 E Street NW., Washington, DC 20522.

You must include the DS form number (if applicable), information collection title, and the OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Martha Allen at 2401 E Street NW., Fourteenth Floor, Washington, DC 20522, who may be reached on 202–261–8800 or at *AllenML2@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Office of Language Services Contractor Application Form.
- *OMB Control Number:* 1405–0191.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Administration (A/OPR/LS).
- *Form Number:* DS–7651.
- *Respondents:* Individuals Applying for Translator and/or Interpreter Contract Positions.
- *Estimated Number of Respondents:* 1,100.
- *Estimated Number of Responses:* 1,100.
- *Average Time per Response:* Thirty minutes.
- *Total Estimated Burden Time:* 550 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: The information collected is needed to ascertain whether respondents are valid interpreting and/or translating candidates, based on their work history and legal work status in the United States. If candidates successfully become contractors for the U.S. Department of State, Office of Language Services, the information collected is used to initiate security clearance background checks and for processing payment vouchers. Respondents are typically members of the general public with varying degrees of experience in the fields of interpreting and/or translating. The collection is authorized by 5 U.S.C. 3109.

Methodology: OLS makes the ''Office of Language Services Contractor Application Form'' available via the OLS Internet site. Respondents can submit it via email.

Dated: October 12, 2012.

Thomas F. Hufford,

Director, Office of Language Services, Department of State.

[FR Doc. 2012–26775 Filed 10–30–12; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF STATE

[Public Notice 8079]

The Secretary of State's International Council on Women's Business Leadership; Notice of Open Meeting

The Secretary of State's International Council on Women's Business Leadership (ICWBL) will meet from 3:00 p.m. to 4:00 p.m. on Tuesday, November 27, 2012, in the Harry S. Truman Building at the U.S. Department of State, 2201 C Street NW., Washington, DC. The meeting will be hosted by U.S. Secretary of State Hillary Rodham Clinton. The ICWBL serves the U.S. Government in a solely advisory capacity, and provides advice and assistance in the formulation of U.S. policy, positions, proposals and strategies for multilateral and bilateral negotiations, business outreach, and commercial diplomacy, particularly pertaining to the economic empowerment of women for global economic prosperity, where the State Department has the lead negotiating authority. The meeting will focus on Women and the Economy. Subcommittee discussions will be led by the Access to Markets Subcommittee, the Access to Capital Subcommittee, the Capacity Building and Skills Training Subcommittee, and the Leadership Subcommittee.

This meeting is open to public participation, via live webcast on the Internet at *http://www.state.gov/e/eb/adcom/icwbl/.* The public is invited to submit written statements to the Secretary of State's International Council on Women's Business Leadership by C.O.B. November 20, 2012, by either of the following methods:

Send electronic statements to the Secretary of State's International Council on Women's Business Leadership at *SGWI_ICWBL@state.gov;* send paper statements via facsimile to 202–632–9232, attention: Secretary of State's International Council on Women's Business Leadership (ICWBL).

All statements will be posted on the Secretary of State's ICWBL Web site without change, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

Meeting summaries of the Council's discussion will be available within 90 days on the ICWBL Web site *http://www.state.gov/e/eb/adcom/icwbl/.*

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic and Business Affairs, at (202) 647–1682 or *Smith-NissleyN@state.gov.*

Dated: October 17, 2012.

Todd Schwartz,

Special Representative, Acting Office of Commercial and Business Affairs, U.S. Department of State.

[FR Doc. 2012–26778 Filed 10–30–12; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate for the use of non-domestic Technologie Alpine De Securite (TAS) Gazex® Avalanche Exploder in the State of Utah and TAS O'Bell Avalanche Initiating Blaster for the State of Wyoming.

DATES: The effective date of the waiver is November 6, 2012.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *gerald.yakowenko@dot.gov.* For legal questions, please contact Mr. Michael Harkins, FHWA Office of the Chief Counsel, (202) 366–4928, or via email at *michael.harkins@dot.gov.* Office hours for the FHWA are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the

Federal Register's home page at: *http://www.archives.gov* and the

Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America policy in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not sufficiently available. This notice provides information regarding the FHWA's finding that a Buy America waiver is appropriate to use non-domestic TAS Gazex® Avalanche Exploder for the State of Utah and TAS O'Bell Avalanche Initiating Blaster for the State of Wyoming.

In accordance with Title I, Division C, section 122 of the ''Consolidated and Further Continuing Appropriations Act, 2012'' (Pub. L. 112–55), the FHWA published a notice of intent to issue a waiver on its Web site for TAS Gazex® Avalanche Exploder for the State of Utah (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=69*) on March 6, and TAS O'Bell Avalanche Initiating Blaster for State of Wyoming. (*http://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=71*) on March 22. The FHWA received two comments in response to the Utah publication, and no comment in response to Wyoming publication. Both comments received in response to the Utah publication urged the use of domestic manufacturers, when possible, but did not provide any suggested manufacturers. During the 15-day comment periods, the FHWA conducted additional nationwide review to locate potential domestic manufacturers of TAS Gazex® Avalanche Exploder and TAS O'Bell Avalanche Initiating Blaster. The National Institute of Standards and Technology-Manufacturing Extension Partnership MEP also conducted supplier scouting on the Avalanche Initiating Blasters and reported that they could not find domestic matching items. Based on all the information available to the agency, the FHWA concludes that there are no domestic manufacturers of TAS Gazex® Avalanche Exploder for the State of Utah and TAS O'Bell Avalanche Initiating Blaster for the State of Wyoming.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), the FHWA is providing this notice as its finding that a waiver of Buy America

requirements is appropriate. The FHWA invites public comment on this finding for an additional 15 days following the effective date of the finding. Comments may be submitted to the FHWA's Web site via the link provided to the Utah and Wyoming waiver pages noted above.

Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410.

Issued on: October 25, 2012.

Victor M. Mendez,

Administrator.

[FR Doc. 2012–26797 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on the Tappan Zee Hudson River Crossing Project in New York

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and Other Federal Agencies.

SUMMARY: This notice announces actions taken by the FHWA and other Federal Agencies that are final within the meaning of 23 U.S.C. § 139(l)(1). The actions relate to the Tappan Zee Hudson River Crossing Project located in Rockland and Westchester Counties, New York. Those actions grant approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before [Insert date 150 days after publication in the **Federal Register**]. If this date falls on a Saturday, Sunday, or legal holiday, parties are advised to file their claim no later than the business day preceding this date. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Jonathan D. McDade, Division Administrator, Federal Highway Administration, Leo W. O'Brien Federal Building, 11A Clinton Avenue, Suite 719, Albany, New York 12207, Telephone (518) 431–4127; or Michael Anderson, P.E., Project Director, New York State Department of Transportation, 4 Burnett Boulevard, Poughkeepsie, New York 12603, Telephone (877) 892–3685; or Ted Nadratowski, P.E., Interim Project Manager, New York State Thruway Authority, 200 Southern Boulevard, Albany, New York, 12209, Telephone (518) 436–2700.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal Agencies have taken final agency actions by issuing approvals for the following highway project in the State of New York: Tappan Zee Hudson River Crossing Project, which crosses the Hudson River between the Village of South Nyack in Rockland County on the west and the Village of Tarrytown in Westchester County on the east. The bridge carries Interstate 87 (New York State Thruway) and Interstate 287. The Tappan Zee Hudson River Project involves the replacement of the existing bridge with two new structures (one each for eastbound and westbound traffic), to the north of its existing location. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) for the project, approved on July 27, 2012, in the FHWA Record of Decision (ROD) issued on September 25, 2012, and in other documents in the FHWA administrative record. The FEIS, ROD, and other documents in the FHWA administrative record file are available by contacting the FHWA, the NYSDOT, or the NYSTA at the addresses provided above. The FHWA FEIS and ROD can be viewed and downloaded from the project Web site at *www.newnybridge.com* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 USC 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. Air: Clean Air Act, 42 U.S.C. 7401–7671(q) (Transportation Conformity).
3. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303].
4. Wildlife: Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661–667(d)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 et seq.].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) et seq.].
6. Social and Economic: Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)].
7. Water Resources: Coastal Zone Management Act, 16 U.S.C. 1451–1465.
8. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 13175 Consultation and Coordination with Indian Tribal Governments.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 39(l)(1), as amended by Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, § 1308, 126 Stat. 405 (2012).

Issued on: October 24, 2012.

Jonathan D. McDade,

Division Administrator, Albany, NY.

[FR Doc. 2012–26799 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2012–0219]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 14 individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective October 31, 2012. The exemptions expire on October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's Privacy Act Statement for the Federal Docket Management System (FDMS) published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

On September 12, 2012, FMCSA published a notice of receipt of Federal diabetes exemption applications from 14 individuals and requested comments from the public (77 FR 56258). The public comment period closed on October 12, 2012, and no comments were received.

FMCSA has evaluated the eligibility of the 14 applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current requirement for diabetes in 1970 because several risk studies indicated that drivers with diabetes had a higher rate of crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441), **Federal Register** notice in conjunction with the November 8, 2005 (70 FR 67777), **Federal Register** notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These 14 applicants have had ITDM over a range of 1 to 28 years. These applicants report no severe hypoglycemic reactions resulting in loss of consciousness or seizure, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning symptoms, in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the past 5 years. In each case, an endocrinologist verified that the driver has demonstrated a willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision requirement at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the September 12, 2012, **Federal Register** notice and they will not be repeated in this notice.

Discussion of Comments

FMCSA did not receive any comments in this proceeding.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes requirement in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes requirement in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Conclusion

Based upon its evaluation of the 14 exemption applications, FMCSA exempts Edward K. Belcher (KY), Phillip C. Brooks, Jr. (VA), Michael R. Conley (WI), Patrick J. Conners (MA), John C. Halabura (PA), Paul L. Harrison III (NY), Daniel T. Kelly (NY), Timothy L. Leavelle, Sr. (VA), Robert D. Marshall (PA), John W. Martinson (ND), William Z. Polk (GA), Thomas E. Swayne (KS), Anthony Williams (NJ), Mark S. Wilt (WV) from the ITDM requirement in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the 1/exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA

for a renewal under procedures in effect at that time.

Issued on: October 25, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–26737 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0347]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

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

ACTION: Notice of applications for exemption from the diabetes mellitus requirement; request for comments.

SUMMARY: FMCSA announces receipt of applications from 12 individuals for exemption from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate CMVs in interstate commerce.

DATES: Comments must be received on or before November 30, 2012.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0347 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The 12 individuals listed in this notice have recently requested such an exemption from the diabetes prohibition in 49 CFR 391.41(b) (3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Jamie J. Duncan

Mr. Duncan, age 32, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Duncan understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Duncan meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A Commercial Driver's License from Missouri.

Thomas L. Graber

Mr. Graber, 37, has had ITDM since 1993. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Graber understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Graber meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Aubrey W. Heath

Mr. Heath, 28, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Heath understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Heath meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Texas.

Jeremiah S. Johnson

Mr. Johnson, 35, has had ITDM since 1992. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Johnson understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Johnson meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class C operator license from Oregon.

Stephanie A. Kaczynski

Ms. Kaczynski, 23, has had ITDM since 2002. Her endocrinologist examined her in 2012 and certified that she has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. Her endocrinologist certifies that Ms. Kaczynski understands diabetes management and monitoring, has stable control of her diabetes using insulin, and is able to drive a CMV safely.

Ms. Kaczynski meets the vision requirements of 49 CFR 391.41(b)(10). Her ophthalmologist examined her in 2012 and certified that she does not have diabetic retinopathy. She holds a Class C operator's license from Pennsylvania.

Henry P. Musgrove Jr.

Mr. Musgrove, 57, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Musgrove understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Musgrove meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Washington.

Henry W. Rutschow

Mr. Rutschow, 54, has had ITDM since 2012. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Rutschow understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Rutschow meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

Michael L. Sabin

Mr. Sabin, 57, has had ITDM since 2009. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Sabin understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Sabin meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from Illinois.

Patrick E. Snyder

Mr. Snyder, 54, has had ITDM since 2011. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Snyder understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely.

Mr. Snyder meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New York.

Daniel C. Tow

Mr. Tow, 41, has had ITDM since 1986. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Tow understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Tow meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he has stable proliferative diabetic retinopathy. He holds a Class A CDL from Washington.

Donald P. Wells

Mr. Wells, 51, has had ITDM since 2002. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Wells understands diabetes management and monitoring, has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Wells meets the vision requirements of 49 CFR 391.41(b)(10). His optometrist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Kansas.

Odell Williams

Mr. Williams, 72, has had ITDM since 2004. His endocrinologist examined him in 2012 and certified that he has had no severe hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 12 months and no recurrent (2 or more) severe hypoglycemic episodes in the last 5 years. His endocrinologist certifies that Mr. Williams understands diabetes management and monitoring,

has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Williams meets the vision requirements of 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2012 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from North Carolina.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the notice.

FMCSA notes that section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) elimination of the requirement for 3 years of experience operating CMVs while being treated with insulin; and (2) establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

The FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 notice, except as modified by the notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: October 24, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–26739 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–EX–P

[1] Section 4129(a) refers to the 2003 notice as a ''final rule.'' However, the 2003 notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0216]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 7 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective October 31, 2012. The exemptions expire on October 31, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)–366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf*.

Background

On September 12, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 56261). That notice listed 7 applicants' case histories. The 7 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 7 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but

have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 7 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including corneal scarring, fibrotic scarring, a traumatic ruptured globe, amblyopia, and loss of vision. In most cases, their eye conditions were not recently developed. Four of the applicants were either born with their vision impairments or have had them since childhood.

The three individuals that sustained their vision conditions as adults have had it for a period of 4 to 22 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 7 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 44 years. In the past 3 years, none of the drivers was involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 12, 2012 notice (77 FR 56261).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 7 applicants, none of the drivers was involved in crashes or convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 7 applicants listed in the notice of September 12, 2012 (77 FR 56261).

We recognize that the vision of an applicant may change and affect his/her

ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 7 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 7 exemption applications, FMCSA exempts Donald L. Blakeley II (NV), Paul M. Griffey (MO), Roger S. Hardin (AL), Stephen J. Hodge (ME), Matthew J. Mantooth (KY), James J. Monticello (IN), and Michael J. Wells (NC) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: October 24, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–26733 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0073]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated August 20, 2012, the Norfolk Southern Corporation (NS) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2012–0073.

Applicant: Norfolk Southern Corporation, Mr. Brian Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street NE., Atlanta, GA 30309.

NS seeks approval of the proposed discontinuance of automatic signals within traffic control signal (TCS) territory and the installation of a cab signal system without wayside signals on the NS Port Road Branch from Perrysburg, MD, Milepost (MP) PD–0.3, to Enola, PA, MP EP–68.2. The discontinuance would include automatic signals: PD 1.9, PD 6.4, PD 9.7, PD 15.7, PD 18.7, PD 23.6, PD 28.8, PD 35.7, EP 35.2, EP 40.0, EP 42.4, EP 47.6, EP 49.5, EP 53.6, EP 54.0, EP 58.3, EP 62.8, EP 67.1.

The installation of cab signals without wayside signals will include ''Block Clear'' signals at all control points in the event of an onboard cab signal failure en route. The reasons given for the proposed changes are that the installation of cab signals without wayside signals will improve train operations and will facilitate the installation of Positive Train Control on the Port Road Branch.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 17, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on October 26, 2012.

Brenda Moscoso,

Director, Office of Safety Analysis.

[FR Doc. 2012–26819 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0076]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated June

18, 2012, the Locomotive and Tower Preservation Fund, Ltd. (L&TPF) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained in 49 CFR part 230—Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2012–0076.

Steam Locomotive Number 2719 is a former Soo Line class H–23 4–6–2 ''Pacific'' type locomotive built by the American Locomotive Company in 1923. L&TPF restored Steam Locomotive Number 2719 and completed the current 1,472-service-day inspection (SDI) in accordance with 49 CFR 230.17–*One thousand four hundred seventy-two (1472) service day inspection* in July 1998. As of September 2006, Steam Locomotive Number 2719 has been operated by the Lake Superior Railroad Museum and the North Shore Scenic Railroad.

To date, Steam Locomotive Number 2719 has accumulated 224 days of service, with the possibility of an additional 25–29 service days for the remainder of 2012, and another 25–29 service days for the 2013 operating season. Its second 1,472 SDI is due at the expiration of the 15 years permitted by 49 CFR 230.17.

L&TPF requests relief from 49 CFR 230.17(a) with respect to the timeframe for the inspection. The current 1,472 SDI period ends on July 30, 2013. The request is for permission to extend the current 1,472 SDI for 60 calendar days to allow Steam Locomotive Number 2719 to finish the late summer/early fall operating season at the end of September 2013. This would allow for an additional four weekends of service. The annual inspection will be performed as required in July 2013. Granting the waiver will allow Steam Locomotive Number 2719 to operate during its normal seasonal operation, and will move the 15-year 1,472 SDI date so that it occurs after the operating season. L&TPF states that granting the relief will permit the locomotive to finish its operating season, generate income to use for the SDI, and will not decrease the safety for the locomotive, railroad employees, or the public.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov/.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by December 20, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on October 26, 2012.

Ron Hynes,

Director, Office of Safety Assurance and Compliance.

[FR Doc. 2012–26812 Filed 10–30–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35683]

ABE Fairmont, LLC—Acquisition and Operation Exemption—BNSF Railway Company

ABE Fairmont, LLC (ABE), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from BNSF Railway Company (BNSF) and to operate an approximately 1.0-mile rail line between BNSF milepost 1.7 and a point of connection with BNSF's main line at milepost 114.73, at or near Fairmont, Fillmore County, Neb.[1]

The transaction may be consummated on or after November 14, 2012 (30 days after the notice of exemption was filed).

ABE certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than November 7, 2012 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35683, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas F. McFarland, 208 South LaSalle St., Suite 1890, Chicago, IL 60604.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: October 25, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–26780 Filed 10–30–12; 8:45 am]

BILLING CODE 4915–01–P

[1] ABE was previously granted authority to acquire and operate an approximately two-mile rail line between a point of connection with BNSF at BNSF's milepost 1.7 and the north property line of County Road H, at or near Fairmont. *See ABE Fairmont, LLC—Acquis. and Operation Exemption—Fillmore Western Railway Company,* FD 35673 (STB served Sept. 21, 2012). ABE states the line it acquired in that proceeding connects with the line it seeks to acquire here, forming an approximately three-mile north-south branch line between Fairmont and BNSF's east-west main line.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35686]

Pioneer Railcorp—Continuation in Control Exemption—Rail Switching Services, Inc.

Pioneer Railcorp (Pioneer) and its subsidiaries [1] have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Rail Switching Services, Inc. (RSS), upon RSS's becoming a Class III rail carrier.

This transaction is related to a concurrently filed verified notice of exemption in *Rail Switching Services, Inc.—Operation Exemption—Pemiscot County Port Authority,* Docket No. FD 35685, wherein RSS seeks Board approval to operate over approximately 4.9 miles of rail line (the Line) owned by Pemiscot County Port Authority (PCPA) between the BNSF Railway Co. interchange at milepost 212.32, at Hayti, Mo., and milepost 217.22, at Pemiscot Port Harbor, on the Mississippi River between Hayti and Caruthersville, Mo.

The transaction may be consummated on or after November 14, 2012 (30 days after the notice of exemption was filed).

Pioneer represents that: (1) The Line does not connect with any railroads in the corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the Line with other railroads in the corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than November 7, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35686, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Daniel A. LaKemper, Pioneer Railcorp, 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: October 23, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–26787 Filed 10–30–12; 8:45 am]

BILLING CODE 4915–01–P

[1] Pioneer states that it owns 100% of the common stock of its 17 Class III rail carrier subsidiaries: West Michigan Railroad Co., originally West Jersey Railroad Co.; Fort Smith Railroad Co.; Shawnee Terminal Railroad Co., Inc.; Mississippi Central Railroad Co., originally Natchez Trace Railroad; Alabama & Florida Railway Co., Inc., d/b/a Ripley & New Albany Railroad Co, Inc.; Decatur Junction Railway Co.; Vandalia Railroad Company; Keokuk Junction Railway Co.; Keokuk Union Depot Company; Michigan Southern Railroad Company, originally Wabash & Grand River Railway Co.; Elkhart & Western Railroad Co.; Kendallville Terminal Railroad Co.; Pioneer Industrial Railway Co.; The Garden City Western Railway, Inc.; Indiana Southwestern Railway Co.; Gettysburg & Northern Railroad Co.; and Georgia Southern Railway Co.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35685]

Rail Switching Services, Inc.—Operation Exemption—Pemiscot County Port Authority

Rail Switching Services, Inc. (RSS), a noncarrier, filed a verified notice of exemption under 49 CFR 1150.31 [1] to operate approximately 4.9 miles of rail line owned by Pemiscot County Port Authority (PCPA) between the BNSF Railway Co. (BNSF) interchange at milepost 212.32, at Hayti, Mo., and milepost 217.22, at Pemiscot Port Harbor, on the Mississippi River between Hayti and Caruthersville, Mo (the Line).

According to RSS, it began performing contract switching services for PCPA in 2008 but has handled only empty storage cars. RSS states that, at the time, it was unaware that PCPA had obtained construction authority and was a common carrier. *See Pemiscot Cnty. Port Auth.—Constr. Exemption—Pemiscot Cnty., Mo.,* FD 34117 (STB served Aug. 26, 2003). According to RSS, at least one customer has located on the Line and wishes to receive shipments from the BNSF interchange. RSS now seeks an operation exemption for authority to operate over the Line.

This transaction is related to a concurrently filed verified notice of exemption in *Pioneer Railcorp—Continuance in Control Exemption—Rail Switching Services, Inc.,* Docket No. FD 35686, in which Pioneer Railcorp seeks to continue in control of RSS, upon RSS's becoming a Class III rail carrier.

The transaction may be consummated on or after November 14, 2012 (30 days after the notice of exemption was filed).

RSS certifies that its projected annual revenues as a result of this transaction will not result in RSS's becoming a Class I or Class II rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 7, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35685, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Daniel A. LaKemper, Rail Switching Services, Inc., 1318 S. Johanson Road, Peoria, IL 61607.

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV*.''

Decided: October 25, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–26788 Filed 10–30–12; 8:45 am]

BILLING CODE 4915–01–P

[1] RSS states that it is seeking an operation exemption pursuant to 49 CFR 1150.41. However, because RSS is not yet a Class III carrier, it must seek this authority pursuant to 49 CFR 1150.31. As such, the notice will be considered filed under 49 CFR 1150.31 instead.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Council to the Internal Revenue Service; Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Internal Revenue Service Advisory Council (IRSAC) will hold a public meeting on Thursday, November 15, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Maria Jaramillo, Program Analyst, National Public Liaison, CL: NPL, 7559, 1111 Constitution Avenue NW., Washington, DC 20224. Telephone: 202–622–6725 (not a toll-free number). Email address: **public_liaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), a public meeting of the IRSAC will be held on Thursday, November 15, 2012, from 9:00 a.m. to 1:15 p.m. at the Embassy Suites Hotel, 1250 22nd Street NW., Ballroom, Washington, DC 20037. Issues to be discussed include, but not limited to: *The IRS Must Continue to Combat Refund Fraud and Identity Theft While Continuing to Balance Compliance and Tax Enforcement, Streamling the Audit Process, Managing Knowledge in the Issue Practice Groups and International Practice Networks, How Lien Withdrawal Processing should be made more efficient to the Benefit of the IRS and Taxpayers, Electronic Completion and Filing Should be Available For Form 1099 Miscellaneous, Encourage Taxpayers to Correct Form 1099 and W–2 Underreporting, Reporting of Dispositions of Capital Assets on Forms 1099–B (Proceeds from Broker and Barter Exchange Transactions), 8949 (Sales and Other Disposition of Capital Assets), and Schedule D (Capital Gains and Losses) (Form 1040), Increase BMF Electronic Filing, Guidance Respecting Obligations of Tax Practitioner Under Circular 230 and of Preparers Under the Internal Revenue Code and Practitioner Competency.* Reports from the four IRSAC subgroups, Large Business and International, Small Business/Self-Employed, Wage & Investment, and the Office of Professional Responsibility will also be presented and discussed. Last minute agenda changes may preclude advanced notice. The meeting room accommodates approximately 80 people, IRSAC members and Internal Revenue Service officials inclusive. Due to limited seating, please call Maria Jaramillo to confirm your attendance. Ms. Jaramillo can be reached at 202–622–6725. Attendees are encouraged to arrive at least 30 minutes before the meeting begins. Should you wish the IRSAC to consider a written statement, please write to Internal Revenue Service, Office of National Public Liaison, CL:NPL:7559, 1111 Constitution Avenue NW., Washington, DC 20224, or email **public_liaison@irs.gov.*

Dated: October 24, 2012.

Candice Cromling

Director, National Public Liaison.

[FR Doc. 2012–26696 Filed 10–30–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Patient Medical Record—VA'' (24VA19) as set forth in the **Federal Register** 74 FR 60040. VA is amending the system by revising the System Number, Categories of Individuals Covered by the System, Categories of Records in the System, and Routine Uses of Records Maintained in the System.

DATES: Comments on the amendment of this system of records must be received no later than November 30, 2012. If no public comment is received, the amended system will become effective November 30, 2012.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02Reg), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The system number is changed from 24VA19 to 24VA10P2 to reflect the current organizational alignment.

Categories of Individuals Covered by the System is being amended to add a new section 8 entitled Caregivers. Categories of Records in the System is being amended to add Bed Management Solution (BMS), and certain clinically oriented information associated with My HealtheVet such as secure messages.

In addition, routine use fifty-one (51) is amended to add the words ''health plan'' and ''organizations.'' Routine use fifty-two (52) duplicates routine use one (1) and will therefore be replaced with a new routine use, which provides that disclosure of identifying information, including name, address, and date of birth, as needed to verify the identity of an individual or to facilitate delivery of benefits or services, may be made to travel agencies, transportation carriers, or others authorized to act on behalf of VA to provide or arrange travel for examination, treatment, or care, or in connection with vocational rehabilitation or counseling services.

Routine use fifty-three (53) is added to state that VA may disclose relevant information, including but not limited to, patient name, address, and social security number, to a state prescription drug monitoring program (PDMP), or similar program, for the purpose of submitting to or receiving from the program information regarding prescriptions to an individual for controlled substances, as required under the applicable state law. This routine use will allow VA to participate in a PDMP.

Routine use fifty-four (54) is added to state that VA may disclose relevant health information to the Centers for Medicare and Medicaid Services (CMS) and/or their designee to evaluate compliance with Medicare or Medicaid health care standards. This routine use permits disclosure to CMS when determining any deficiencies and/or severity of deficiencies for health care oversight activities.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by the Privacy Act, 5 U.S.C. 552a(r), and guidelines issued by OMB, 65 FR 77677 (Dec. 12, 2000).

Approved: October 1, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

24VA10P2

SYSTEM NAME:

Patient Medical Record—VA

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

* * * * *

(8): Caregivers.

CATEGORIES OF RECORDS IN THE SYSTEM:

* * * * *

(iii) Subsidiary record information (e.g., Bed Management Solution (BMS), tumor registry, certain clinically oriented information associated with My HealtheVet such as secure messages, dental, pharmacy, nuclear medicine, clinical laboratory, radiology, and patient scheduling information).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

51. VA may disclose relevant information to health plans, quality review and/or peer review organizations in connection with the audit of claims or other review activities to determine quality of care or compliance with professionally accepted claims processing standards.

52. VA may disclose identifying information, including name, address, and date of birth, as needed to verify the identity of an individual or to facilitate delivery of benefits or services to travel agencies, transportation carriers, or others authorized to act on behalf of the Department of Veteran Affairs (VA) to provide or arrange travel for examination, treatment, or care, or in connection with vocational rehabilitation or counseling services.

53. VA may disclose relevant information, including but not limited to, patient name, address, and social security number, to a state prescription drug monitoring program (PDMP), or similar program, for the purpose of submitting to or receiving from the program information regarding prescriptions to an individual for controlled substances, as required under the applicable state law.

54. VA may disclose relevant health information to the Centers for Medicare and Medicaid Services (CMS) and/or their designee to evaluate compliance with Medicare or Medicaid health care standards.

[FR Doc. 2012–26801 Filed 10–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of Amendment to System of Records.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e), notice is hereby given that the Department of Veterans Affairs (VA) is amending the system of records currently entitled ''Veterans Health Information Systems and Technology Architecture (VistA) Records-VA'' (79VA19) as set forth in the **Federal Register** 75 FR 4454. VA is amending the system by revising the System Number, and Routine Uses of Records Maintained in the System.

DATES: Comments on the amendment of this system of records must be received no later than December 5, 2012. If no public comment is received, the amended system will become effective December 5, 2012.

ADDRESSES: Written comments may be submitted through *www.regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02Reg), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Veterans Health Administration (VHA) Privacy Act Officer, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; telephone (704) 245–2492.

SUPPLEMENTARY INFORMATION: The system number is changed from 79VA19 to 79VA10P2 to reflect the current organizational alignment.

Routine use twenty-eight (28) is added to state that VA may disclose relevant provider information to a state prescription drug monitoring program, or similar program, for the purpose of submitting to or receiving from the program information regarding prescriptions to an individual for controlled substances, as required under the applicable state law. This routine use will allow VA to participate in state prescription drug monitoring program (PMDP) for monitoring narcotics.

The Report of Intent to Amend a System of Records Notice and an advance copy of the system notice have been sent to the appropriate Congressional committees and to the Director of the Office of Management and Budget (OMB) as required by the Privacy Act, 5 U.S.C. 552a(r), and guidelines issued by OMB, 65 FR 77677 (Dec. 12, 2000).

Approved: October 12, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

79VA10P2

SYSTEM NAME:

Veterans Health Information Systems and Technology Architecture (VistA) Records-VA

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

28. VA may disclose relevant provider information to a state prescription drug monitoring program, or similar program, for the purpose of submitting to or receiving from the program information regarding prescriptions to an individual for controlled substances, as required under the applicable state law.

[FR Doc. 2012–26804 Filed 10–30–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2010–BT–TP–0039]

RIN 1904–AC01

Energy Conservation Program: Test Procedures for Residential Dishwashers, Dehumidifiers, and Conventional Cooking Products

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) establishes new test procedures for residential dishwashers and dehumidifiers, and amends the currently applicable test procedure for conventional cooking products under the Energy Policy and Conservation Act. The new test procedures include provisions for measuring standby mode and off mode energy consumption, and update the provisions for measuring active mode energy consumption and, for dishwashers, water consumption. This final rule also amends the certification, compliance, and enforcement requirements for dishwashers, dehumidifiers and conventional cooking products, amends certain provisions in the currently applicable dishwasher test procedure, and eliminates an obsolete energy efficiency metric in the dishwasher test procedure and provisions in the cooking products test procedure that have become obsolete due to the elimination of standing pilot lights.

DATES: *Effective date:* The effective date of this rule is December 17, 2012.

Compliance Dates: The new test procedures for dishwashers and dehumidifiers and the final rule changes to the currently applicable test procedure for conventional cooking products will be mandatory to demonstrate compliance with the applicable energy conservation standards starting on the compliance date of any amended standards for dishwashers, dehumidifiers, and conventional cooking products. For dishwashers, this date will be May 30, 2013, the compliance date of the direct final rule published on May 30, 2012, unless the direct final rule is withdrawn as a result of adverse comment. Use of the replacement items for obsolete dishware, flatware, and food items in the currently applicable dishwasher test procedure will be required on December 17, 2012. Voluntary early use of the new dishwasher and dehumidifier test procedures and the final rule changes to the currently applicable test procedure for conventional cooking products to demonstrate compliance with applicable energy conservation standards or for representations of energy use (including the new standby mode and off mode provisions) is permissible on or after December 17, 2012.

The incorporation by reference of certain publications listed in this rulemaking is approved by the Director of the Office of the Federal Register as of December 17, 2012.

ADDRESSES: The docket is available for review at *regulations.gov,* including **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure. The docket Web page can be found at: *www.regulations.gov/#!docketDetail;rpp=10;po=0;D=EERE-2010-BT-TP-0039.* This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Wes Anderson, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–7335. Email: *Wes.Anderson@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into parts 429 and 430 the following industry standards:

(1) ANSI/AHAM DW–1–2010, American National Standard, ''Household Electric Dishwashers.''

(2) ANSI/AHAM DH–1–2008. American National Standard, ''Dehumidifiers.''

Copies of AHAM standards can be obtained from the Association of Home Appliance Manufacturers, 1111 19th Street NW., Suite 402, Washington DC 20036, 202 872–5955, or *www.aham.org.*

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I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.*; ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007)). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' These include residential dishwashers, dehumidifiers, and conventional cooking products,[1] the subject of today's final rule. (42 U.S.C. 6292(a)(6) and (10); 6295(cc))

Under EPCA, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and for making representations about the efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

[1] The term ''conventional cooking products,'' as used in this notice, refers to residential electric and gas kitchen ovens, ranges, and cooktops (other than microwave ovens).

A. General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e))

EPCA, in relevant part, requires DOE to amend the test procedures for all residential covered products to include measures of standby mode and off mode energy consumption. Specifically, EPCA provides definitions of ''standby mode'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)). The statute requires integration of such energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that—

(i) The current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or

(ii) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A))

Any such amendment must consider the most current versions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' and IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment.''[2] *Id.*

B. Summary of Current Test Procedures

1. Dishwashers

DOE's test procedure for dishwashers is found in the Code of Federal Regulations (CFR) at 10 CFR part 430, subpart B, appendix C. DOE originally established its test procedure for dishwashers in 1977. 42 FR 39964 (Aug. 8, 1977). Since that time, the dishwasher test procedure has undergone a number of amendments, as discussed below. In 1983, DOE amended the test procedure to revise the representative average-use cycles to more accurately reflect consumer use and to address dishwashers that use 120 degrees Fahrenheit (°F) inlet water. 48 FR 9202 (Mar. 3, 1983). DOE amended the test procedure again in 1984 to redefine the term ''water heating dishwasher.'' 49 FR 46533 (Nov. 27, 1984). In 1987, DOE amended the test procedure to address models that use 50 °F inlet water. 52 FR 47549 (Dec. 15, 1987). In 2001, DOE revised the test procedure's testing specifications to improve testing repeatability, changed the definitions of ''compact dishwasher'' and ''standard dishwasher,'' and reduced the average number of use cycles per year from 322 to 264. 66 FR 65091, 65095–97 (Dec. 18, 2001). In 2003, DOE again revised the test procedure to more accurately measure dishwasher efficiency, energy use, and water use. The 2003 dishwasher test procedure amendments included the following revisions: (1) The addition of a method to rate the efficiency of soil-sensing products; (2) the addition of a method to measure standby power; and (3) a reduction in the average-use cycles per year from 264 to 215. 68 FR 51887, 51899–903 (Aug. 29, 2003). The current version of the test procedure includes provisions for determining estimated annual energy use (EAEU), estimated annual operating cost (EAOC), energy factor (EF) expressed in cycles per kilowatt-hour (kWh), and water consumption expressed in gallons per cycle. 10 CFR 430.23(c).

2. Dehumidifiers

The DOE test procedure for dehumidifiers is found at 10 CFR part 430, subpart B, appendix X. EPCA specifies that the dehumidifier test procedure must be based on the U.S.

[2] DOE also considered IEC Standard 62087, which addresses the methods of measuring the power consumption of audio, video, and related equipment and is therefore not applicable to the products at issue in this rulemaking.

Environmental Protection Agency's (EPA) test criteria used under the ENERGY STAR [3] program unless revised by DOE. (42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria effective in January 2001 require that American National Standards Institute (ANSI)/ Association of Home Appliance Manufacturers (AHAM) Standard DH–1, ''Dehumidifiers,'' be used to measure capacity and that the Canadian Standards Association (CAN/CSA) standard CAN/CSA–C749–1994 (R2005), ''Performance of Dehumidifiers,'' be used to calculate EF. DOE adopted those test criteria, along with related definitions and tolerances, as its test procedure for dehumidifiers. 71 FR 71340, 71347, 71366–68 (Dec. 8, 2006). The DOE test procedure provides methods for determining the EF for dehumidifiers, which is expressed in liters (l) of water condensed per kWh.

3. Conventional Cooking Products

DOE's test procedures for conventional ranges, cooktops, and ovens (including microwave ovens) are found at 10 CFR 430, subpart B, appendix I. DOE first established the test procedures included in appendix I in a final rule published in the **Federal Register** on May 10, 1978. 43 FR 20108, 20120–28. DOE revised its test procedure for cooking products to more accurately measure their efficiency and energy use, and published the revisions as a final rule in 1997. 62 FR 51976 (Oct. 3, 1997). These test procedure amendments included: (1) A reduction in the annual useful cooking energy; (2) a reduction in the number of self-cleaning oven cycles per year; and (3) incorporation of portions of IEC Standard 705–1988, ''Methods for measuring the performance of microwave ovens for household and similar purposes,'' and Amendment 2–1993 for the testing of microwave ovens. *Id.* The test procedure for conventional cooking products establishes provisions for determining EAOC, cooking efficiency (defined as the ratio of cooking energy output to cooking energy input), and EF (defined as the ratio of annual useful cooking energy output to total annual energy input). 10 CFR 430.23(i); 10 CFR 430 subpart B, appendix I. There is currently no EnergyGuide [4] labeling program for cooking products.

With respect to today's rulemaking, DOE issues a final rule amending its cooking products test procedure for conventional cooking products without addressing power consumption for microwave ovens. DOE is considering establishing a test procedure for active mode microwave oven energy use. (77 FR 33106 (June 5, 2012)) [5] DOE has also initiated a separate test procedure rulemaking to address standby mode and off mode power consumption for microwave ovens. See 73 FR 62134 (Oct. 17, 2008); 75 FR 42612 (July 22, 2010); 76 FR 12825 (March 9, 2011) (hereafter referred to as the March 2011 Interim Final Rule). 76 FR 72332 (Nov. 23, 2011); 77 FR 28805 (May 16, 2012).

C. Summary of the Current Rulemaking

1. The December 2010 NOPR

On December 2, 2010, DOE published a Notice of Proposed Rulemaking (NOPR) (hereafter referred to as the December 2010 NOPR) in which it proposed to incorporate by reference into the test procedures for dishwashers, dehumidifiers, and conventional cooking products specific provisions from IEC Standard 62301 ''Household electrical appliances—Measurement of standby power,'' First Edition 2005–06 (IEC Standard 62301 (First Edition) or ''First Edition'') regarding test conditions and test procedures for measuring standby mode and off mode power consumption. 75 FR 75290, 75295–97. DOE also proposed to incorporate into each test procedure definitions of ''active mode,'' ''standby mode,'' and ''off mode'' based on the definitions for those terms provided in the most current draft of an updated version of IEC Standard 62301. *Id.* at 75297–300. Further, DOE proposed to include in each test procedure additional language that would clarify the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power consumption.[6] *Id.* at 75300–04. DOE held a public meeting on December 17, 2010 (hereafter referred to as the NOPR Public Meeting) to receive comments on the December 2010 NOPR, and accepted written comments, data, and information until February 15, 2011. Commenters to the December 2010 NOPR suggested that the draft updated version of IEC Standard 62301 would provide practical improvement to the mode definitions and testing methodology for the test procedures that are the subject of this rulemaking.

2. The September 2011 Supplemental Notice of Proposed Rulemaking (SNOPR)

The IEC adopted and published IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01 (IEC Standard 62301 (Second Edition) or ''Second Edition'') on January 27, 2011. DOE reviewed this latest version of the IEC standard and determined that it improves some measurements of standby mode and off mode energy use. Accordingly, DOE proposed in an SNOPR published in the **Federal Register** on September 20, 2011 (76 FR 58346) (hereafter referred to as the September 2011 SNOPR), to incorporate certain provisions of the IEC Standard 62301 (Second Edition), along with clarifying language, into the DOE test procedures for residential dishwashers, dehumidifiers, and conventional cooking products. Other than the specific amendments proposed in the September 2011 SNOPR, the test procedure amendments in the December 2010 NOPR were not affected.

3. The May 2012 SNOPR

In response to comments received on the September 2011 SNOPR, DOE published an SNOPR on May 25, 2012 (77 FR 31444) (hereafter referred to as the May 2012 SNOPR). DOE proposed to amend the dishwasher test procedure to remove an obsolete efficiency metric and to include measures of energy consumption in fan-only mode, measures of energy and water consumption due to periodic water softener regeneration, and clarified specifications for the normal cycle, power supply, energy test cycle, detergent dosing, and test load requirements. DOE also proposed amendments to the cooking products test procedure to measure energy consumption in conventional oven fan-only mode and remove obsolete provisions for gas pilot lights in the cooking products test procedure. For dehumidifiers, DOE proposed to update the industry test method specified in the test procedure. These proposals addressed comments received from interested parties in response to the December 2010 NOPR and September 2011 NOPR, and incorporated methods provided in test procedure waivers granted by DOE for certain water-softening dishwashers. (*See* 75 FR

[3] For more information on the ENERGY STAR program, see: *www.energystar.gov.*

[4] For more information on the EnergyGuide labeling program, see: *www.access.gpo.gov/nara/cfr/waisidx_00/16cfr305_00.html.*

[5] DOE repealed its previous test procedure to measure the active mode energy use for microwave ovens after determining that the procedure did not procedure accurate and repeatable results. 75 FR 42579 (July 22, 2010).

[6] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedure to include standby mode and off mode energy consumption. See 42 U.S.C. 6295(gg)(2)(A). DOE considered IEC Standard 62087 and determined that the standard addresses the methods of measuring the power consumption of audio, video, and related equipment and is therefore not applicable to the products addressed in today's proposal.

62127 (Oct. 7, 2010) and 77 FR 33450 (June 6, 2012))

4. The August 2012 SNOPR

In response to comments received on the May 2012 SNOPR and during a public meeting held June 1, 2012 (hereafter referred to as the 2012 Public Meeting), DOE published an SNOPR on August 15, 2012 (77 FR 49064) (hereafter referred to as the August 2012 SNOPR) proposing to update certain obsolete dishware, flatware and food items used in the dishwasher test procedure;[7] amend the definition of the normal cycle, update the ambient temperature and preconditioning requirements; and update the referenced industry test method in the dishwasher test procedure. DOE also proposed to add water pressure, drain height, rack position, loading, rinse aid container, and soil preparation specifications to the dishwasher test procedure. DOE additionally proposed, for both dishwashers and cooking products, a revised test procedure to measure energy use in fan-only mode based on DOE analysis and comments received on the May 2012 SNOPR.

II. Summary of the Final Rule

In this final rule, DOE establishes new test procedures for residential dishwashers and dehumidifiers, and amends the test procedures for conventional cooking products, to incorporate by reference provisions from IEC Standard 62301 (Second Edition) for the measurement of energy use in standby mode and off mode, and, for dishwashers and conventional cooking products, methodology for the measurement of fan-only mode energy use, in the energy efficiency metrics.

In the new dishwasher test procedure established in today's final rule, DOE also: (1) Adds a measure of the annual energy and water use associated with periodic water softener system regeneration for those dishwashers equipped with such systems; and (2) incorporates by reference the updated industry test standard AHAM DW–1–2009, which upon acceptance by ANSI was designated as ANSI/AHAM DW–1–2010, American National Standard, ''Household Electric Dishwashers.''

The final rule also clarifies in the new dishwasher test procedure: (1) The definitions of normal cycle, soil-sensing dishwasher, and non-soil-sensing dishwasher; (2) power supply requirements during testing; (3) energy test cycle requirements for soil-sensing dishwashers; (4) test load specifications and soiling requirements; (5) detergent dosing specifications; (6) rinse aid dosing specifications; and (7) length of time soils may sit before they are applied to dishware.

The final rule also amends the testing conditions in the new dishwasher test procedure by: (1) Specifying the use of two pre-conditioning cycles to ensure the turbidity sensor is calibrated, (2) establishing maximum allowable time for the water pressure to reach the specified test conditions for improved repeatability and reproducibility, and (3) specifying drain height and rack position in the absence of manufacturer's instructions to improve reproducibility.

In today's final rule, DOE also amends the current dishwasher test procedure to replace the obsolete flatware, dishware, and food items specified in the current test procedure with those proposed in Table 1 of the August 2012 SNOPR, except that the current cup and saucer and alternate fruit bowl specifications are retained and the product numbers are updated. The same replacement items are specified in the new dishwasher test procedure.

The final rule also updates the industry test method specified in the new dehumidifier test procedure. As noted above, EPCA specifies that the dehumidifier test procedure must be based on EPA's test criteria used under the ENERGY STAR program unless revised by DOE. (42 U.S.C. 6293(b)(13)) The ENERGY STAR test criteria effective in January 2001 require that ANSI/AHAM Standard DH–1, ''Dehumidifiers,'' be used to measure energy use. DOE incorporates the most current version of the DH–1 standard (DH–1–2008) into the new test procedure for dehumidifiers.

Finally, today's final rule eliminates an obsolete metric from the dishwasher test procedure and provisions in the cooking products test procedure that have become obsolete due to the elimination of standing pilot lights. For cooking products, DOE eliminates measures of pilot light energy consumption from the test procedure. In a final rule published April 8, 2009, DOE established standards that prohibit constant-burning pilot lights in gas cooking products manufactured on or after April 9, 2012. 74 FR 16040. For dishwashers, DOE removes the calculation of EF from the dishwasher test procedure because the current dishwasher energy conservation standards no longer require it for compliance or representations.

III. Discussion

A. Products Covered by the Proposed Test Procedure Amendments

The amendments adopted in today's final rule to the DOE test procedures cover dishwashers, which DOE currently defines as follows:

Dishwasher means a cabinet-like appliance which with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means and discharges to the plumbing drainage system. (10 CFR 430.2)

Today's amendments to the DOE test procedures also cover dehumidifiers, which DOE currently defines as follows:

Dehumidifier means a self-contained, electrically operated, and mechanically refrigerated encased assembly consisting of—

(1) A refrigerated surface (evaporator) that condenses moisture from the atmosphere;

(2) A refrigerating system, including an electric motor;

(3) An air-circulating fan; and

(4) Means for collecting or disposing of the condensate. *Id.*

Finally, today's amendments to the DOE test procedures also cover cooking products, specifically conventional cooking products, which are currently defined as:

Cooking products means consumer products that are used as the major household cooking appliances. They are designed to cook or heat different types of food by one or more of the following sources of heat: Gas, electricity, or microwave energy. Each product may consist of a horizontal cooking top containing one or more surface units and/or one or more heating compartments. They must be one of the following classes: conventional ranges, conventional cooking tops, conventional ovens, microwave ovens, microwave/conventional ranges and other cooking products.[8]

Conventional cooking top means a class of kitchen ranges and ovens which is a household cooking appliance consisting of a horizontal surface containing one or more surface units which include either a gas flame or electric resistance heating.

Conventional oven means a class of kitchen ranges and ovens which is a household cooking appliance consisting of one or more compartments intended for the cooking or heating of food by means of either a gas flame or electric resistance heating. It does not include portable or countertop ovens which use electric resistance heating for the cooking or heating of food and are designed for an electrical supply of approximately 120 volts.

Conventional range means a class of kitchen ranges and ovens which is a household cooking appliance consisting of a

[7] The terms ''obsolete'' or ''nearly obsolete'' used in this context mean that the test load item, food item, or detergent is unavailable on the market or is available in such limited supply that it is not sufficiently available for testing purposes.

[8] As stated in Section I, DOE is addressing test procedures for microwaves in separate rulemaking proceedings.

conventional cooking top and one or more conventional ovens. *Id.*

DOE did not propose any amendments to these definitions in the December 2010 NOPR, the September 2011 SNOPR, the May 2012 SNOPR, or the August 2012 SNOPR.

Whirlpool Corporation (Whirlpool) commented that the definitions of conventional cooking top, conventional oven, and conventional range should include electromagnetic induction as a means of cooking or heating, so that induction cooking products would be covered. (Whirlpool, No. 12 at p. 2) [9] DOE may consider amendments to its cooking products test procedure to address active, standby, and off mode energy use of induction cooking products in a separate rulemaking.

BSH Home Appliances (BSH) asked how double ovens, microwave ovens, combination microwave ovens, and other combination products would be treated under this test procedure. (BSH, NOPR Public Meeting Transcript, No. 10 at pp. 21–22) [10] DOE proposed in the December 2010 SNOPR that the integrated energy factor of combinations of ovens and cooktops other than a kitchen range (i.e., a cooktop and oven combined), which would include products with two conventional ovens, would be the sum of the annual useful cooking energy output of each component divided by the sum of the total integrated annual energy consumption of each component, according to calculations newly provided in the test procedure. 75 FR 75290, 75333 (Dec. 2, 2010). DOE did not receive further comments or information regarding combination conventional cooking products, and this proposal was not affected by the subsequent SNOPRs. As discussed in Section I, DOE is addressing microwave ovens, including combination microwave ovens, in a separate rulemaking.

In the absence of additional comments or input, DOE does not amend its current definitions of dishwasher, dehumidifier, conventional cooking product, conventional cooking top, conventional oven, or conventional range in today's final rule.

B. Compliance Date

In the December 2010 NOPR, DOE proposed that the amended test procedures for residential dishwashers, dehumidifiers, and conventional cooking products would become effective 30 days after the test procedure final rule is published in the **Federal Register**. Any added procedures and calculations for standby mode and off mode energy consumption resulting from implementation of EISA 2007, however, would not need to be performed to determine compliance with the current energy conservation standards. Manufacturers would be required to use the standby mode and off mode provisions to demonstrate compliance with DOE's energy conservation standards on the mandatory compliance date of a final rule establishing amended energy conservation standards for dishwashers, dehumidifiers, and conventional cooking products that address standby mode and off mode energy consumption. As of 180 days after publication of a test procedure final rule, any representations related to the standby mode and off mode energy consumption of these products would be required to be based upon results generated under the applicable provision of these test procedures, in accordance with 42 U.S.C. 6293(c)(2). 75 FR 75290, 75294–95 (Dec. 2, 2010).

In the May 2012 SNOPR, DOE proposed amendments clarifying the dishwasher test procedure that would apply on the effective date of the amended dishwasher test procedure (*i.e.,* 30 days after the date of publication of the test procedure final rule in the **Federal Register**). 77 FR 31444, 31450–52 (May 25, 2012). DOE also proposed methods by which the energy and water use of dishwasher water softener regeneration would be measured, as well as provisions to measure dishwasher and conventional cooking products fan-only mode energy consumption that would be required to be included in the energy efficiency metrics upon the compliance date of any updated dishwasher and conventional cooking product energy conservation standards addressing standby mode and off mode energy use. 77 FR 31444, 31451 (May 25, 2012). In the August 2012 SNOPR, DOE proposed additional amendments to specify test load and soil items in place of obsolete or potentially obsolete items in the dishwasher test procedure that would be required 30 days after publication of the test procedure final rule in the **Federal Register**, and sought comment on whether the specified items could be procured in 30 days. (77 FR 49064, 49065 (Aug, 15, 2012)).

AHAM, BSH, Samsung Electronics America, Inc. (Samsung), and Whirlpool commented that DOE should clarify when the dishwasher test procedure amendments that could impact measured energy use, particularly the fan-only mode and water softener regeneration energy measurements, would be required for compliance with dishwasher energy conservation standards. These commenters stated that energy consumption in these modes should be included in the final metric to determine compliance with a future standard that has not yet been proposed, and not for compliance with the standard in the recent direct final rule. However, if these modes are included in the metric used to determine compliance with the standards in the direct final rule, the commenters stated that DOE must ensure that the stringency of the standards does not change. (AHAM, No. 20 at p. 3; AHAM, No. 27 at pp. 2–3; AHAM, No. 35 at p. 2; BSH, No. 28 at p. 1; Samsung, No. 33 at p. 1; Whirlpool, No. 26 at pp. 1–2) According to BSH, adequate time will be needed to test all the different base models using the amended dishwasher test procedure and to determine whether sensor decisions need to be changed, which may include adjusting software and conducting additional tests. BSH also stated that time should be allowed to use any parts in the supply chain before manufacturers are required to use the new test procedure. In addition, BSH stated that past accepted test data that were based on the previous test procedure should continue to be accepted until production ceases. (BSH, No. 36 at pp. 1–2)

The energy use of dishwasher water softener regeneration must be measured to demonstrate compliance with current energy conservation standards for dishwashers. In the test procedure waivers granted for water softening dishwashers, DOE has required that such models meet the current energy conservation standards with the additional energy and water use associated with water softener regeneration included in the annual

[9] A notation in the form ''Whirlpool, No. 12 at p. 2'' identifies a written comment: (1) Made by Whirlpool Corporation; (2) recorded in document number 12 that is filed in the docket of the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking (Docket No. EERE–2010–BT–TP–0039) and available for review at *www.regulations.gov;* and (3) which appears on page 2 of document number 12.

[10] A notation in the form ''BSH, NOPR Public Meeting Transcript, No. 10 at pp. 21–22'' identifies an oral comment that DOE received during the December 17, 2010, NOPR public meeting, was recorded in the public meeting transcript in the docket for the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking (Docket No. EERE–2010–BT–TP–0039), and is available for review at *www.regulations.gov.* This particular notation refers to a comment (1) made by BSH Home Appliances during the public meeting; (2) recorded in document number 10, which is the public meeting transcript that is filed in the docket of the residential dishwasher, dehumidifier, and conventional cooking products test procedures rulemaking; and (3) which appears on pages 21–22 of document number 10.

energy use and per-cycle water consumption metrics. (75 FR 62127 (Oct. 7, 2010) and 77 FR 33450 (June 5, 2012)). In accordance with the approach specified in these waivers, DOE determines that the energy and water use must be included in the metrics used to demonstrate compliance with any amended dishwasher energy conservation standards, including those in the direct final rule. Compliance with the direct final rule will be required on May 30, 2013 unless the direct final rule is withdrawn as a result of adverse comment. 77 FR 31918 (May 30, 2012).

DOE has determined that use of the test procedures to measure the energy use in fan-only mode on the compliance date of any amended standards is appropriate. Compliance with the dishwasher standards published on May 30, 2012 will be required on May 30, 2013 unless DOE withdraws the direct final rule. The energy use in these modes is estimated to be less than 5 percent of the total energy use of standard dishwashers. Given that 65 percent of all standard dishwashers currently on the market meet or exceed the minimum energy conservation standards established in the direct final rule, inclusion of this small amount of energy use would not impact compliance with the revised standard. 77 FR 31918, 31948–31949. Therefore, DOE has determined that the energy use in fan-only mode is *de minimus* and insufficient to alter in a material manner the measured energy use of dishwashers. Therefore, DOE is not considering amending the standards set forth in the direct final rule.

DOE is requiring that the clarifications to the dishwasher test procedure described in the May 2012 SNOPR, which include the definition of the normal cycle, energy test cycle selection, power supply requirements, test load specifications and soiling requirements (except for the specification of replacement items for some obsolete dishware and flatware) and detergent dosing specifications, be used on the compliance date of any amended standards for dishwashers (May 30, 2013 unless the direct final rule is withdrawn). While DOE had earlier proposed that these requirements be mandatory 30 days after publication of the test procedure final rule in the **Federal Register**, DOE is adopting, as discussed below, amendments to the existing test procedure that specify replacement items for obsolete test load and soil items and technical corrections that will be required for use on or after 45 days after publication of the test procedure final rule in the **Federal Register**. The remaining clarifications to the dishwasher test procedure, as well as the same specifications for replacement items, are provided in a new test procedure that will be required to be used on the compliance date of any amended standards for dishwashers (May 30, 2013 unless the direct final rule is withdrawn).

For the replacement of obsolete items, DOE did not receive any comments regarding the proposed requirement for the use of certain test load and soil items in place of obsolete or potentially obsolete items in the dishwasher test procedure 30 days after publication of the test procedure final rule in the **Federal Register**, nor did it receive comment on whether the specified items could be procured in 30 days. Because certain test load items may require purchase outside of the United States, however, 30 days may not allow sufficient time for acquisition. DOE concludes, therefore, that requiring the use of replacement test load and soil items 45 days after the publication of the final rule best weighs the need for manufacturers and test laboratories to utilize comparable testing items against the timeframe potentially required for obtaining the items.

In sum, with the exception of requirements for the use of replacement items for obsolete dishware, flatware, and food items specified as amendments to the current dishwasher test procedure, the final rule changes will be mandatory to demonstrate compliance with the applicable energy conservation standard starting on the compliance date of any amended standards for dehumidifiers, dishwashers, and cooking products, as required under 42 U.S.C. 6295(s). For the amendments to the current dishwasher test procedure related to obsolete dishware, flatware, and food items, DOE has determined that use of these amended test procedure provisions would not alter a dishwasher's measured energy efficiency or measured energy use pursuant to 42 U.S.C. 6293(e)(1). DOE has concluded that today's final rule accords manufacturers with sufficient time to implement the test procedure changes contained herein.

In summary, DOE establishes a new dishwasher test procedure at 10 CFR part 430, subpart B, appendix C1 that incorporates these final rule changes, including the use of replacement items. By amending the current test procedure to also include the use of replacement items, appendix C may continue to be used until the compliance date of amended dishwasher energy conservation standards. Similarly, DOE establishes a new dehumidifier test procedure at 10 CFR part 430, subpart B, appendix X1, but allows for the use of the current dehumidifier test procedure until the compliance date of amended dehumidifier energy conservation standards. Because the current energy conservation standards for conventional cooking products consist of a prescriptive design requirement prohibiting the use of constant-burning pilot lights, which do not require the use of the DOE test procedure to demonstrate compliance, DOE incorporates the final rule changes as amendments to the existing conventional cooking products test procedure codified at 10 CFR part 430, subpart B, appendix I.

For dishwashers, the date upon which the use of new appendix C1 will be required will be May 30, 2013, the compliance date of the direct final rule published on May 30, 2012, unless the direct final rule is withdrawn. Until that date, manufacturers may continue to use appendix C to certify compliance with the current dishwasher energy conservation standards. Any products manufactured on or after that date must be certified to demonstrate compliance with the amended energy conservation standards using appendix C1. However, use of the replacement items for obsolete dishware, flatware, and food items in the amendments to the currently applicable dishwasher test procedure will be required on December 17, 2012.

Today's final rule also clarifies that as of April 29, 2013, any representations related to the standby mode and off mode energy consumption of these products must be based upon results generated under the applicable provisions of appendix C1, appendix I, and appendix X1. Manufacturers may use the new dishwasher and dehumidifier test procedures and amended conventional cooking products test procedure prior to this date consistent with DOE guidance available at: *http://www1.eere.energy.gov/buildings/appliance_standards/pdfs/tp_faq_2012–06–29.pdf.*

C. Incorporation of IEC Standard 62301 (Second Edition) for Measuring Standby Mode and Off Mode Power Consumption

The December 2010 NOPR proposed to incorporate in the test procedures for dishwashers, dehumidifiers, and conventional cooking products relevant provisions from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power. The amended test procedures would use these measured wattages in calculations to incorporate standby mode and off

mode energy consumption into the test procedures. DOE reviewed the IEC Standard 62301 (First Edition) and tentatively concluded that it would be generally applicable to dishwashers, dehumidifiers, and conventional cooking products, although some clarification would be needed. Specifically, DOE proposed in the December 2010 NOPR for standby mode and off mode power measurements to provide a stabilization period of at least 30 minutes followed by an energy use measurement period of not less than 10 minutes for each of the covered products. 75 FR 75290, 75295–300 (Dec. 2, 2010). Additionally, for conventional cooking products, DOE proposed a specific standby mode power measurement methodology for units in which power varies as a function of displayed time. 75 FR 75290, 75302–04 (Dec. 2, 2010). With these clarifications, the December 2010 NOPR proposed to reference IEC Standard 62301 (First Edition) for the standby mode and off mode wattage measurements. DOE also proposed in the December 2010 NOPR to amend the dishwasher, dehumidifier, and conventional cooking products test procedures to include new definitions of ''standby mode,'' ''off mode,'' and ''active mode'' based on the most current draft version of the Second Edition at that time (IEC Standard 62301 (FDIS)). 75 FR 75290, 75296–97 (Dec. 2, 2010).

In response to comments on the December 2010 NOPR, and because IEC Standard 62301 (Second Edition) was issued on January 27, 2011, DOE evaluated in the September 2011 SNOPR the applicability of the Second Edition for measuring standby mode and off mode energy use in the dishwasher, dehumidifier, and conventional cooking products test procedures. Commenters noted that IEC Standard 62301 (Second Edition) is an internationally-accepted test procedure for measuring standby power in residential appliances, and stated that they supported harmonizing the mode definitions with those in IEC Standard 62301 (FDIS), which are substantively the same as those in IEC Standard 62301 (Second Edition). 76 FR 58346, 58350 (Sep. 20, 2011). DOE thus maintained in the September 2011 SNOPR the definitions for active mode, standby mode, and off mode that it had proposed in the December 2010 NOPR for dishwashers and dehumidifiers.

The definitions for standby mode and off mode energy use for cooking products, as well as a slightly modified definition of active mode, were established in the cooking products test procedure by the March 2011 Interim Final Rule for microwave ovens. The definition of active mode established by the March 2011 Interim Final Rule includes the statement that delay start mode is a one-off, user-initiated, short-duration function that is associated with an active mode.[11] The May 2012 SNOPR added reference to fan-only mode functions in active mode for dishwashers and cooking products. Detailed discussion of each of these mode definitions, including comments from interested parties, is presented in section III.D.

DOE determined that the updated version of IEC Standard 62301 provides clarification to certain sections as compared to the First Edition. In particular, DOE proposed to incorporate by reference in the dishwasher, dehumidifier, and conventional cooking products test procedures the following provisions from IEC Standard 62301 (Second Edition): (1) The room ambient air temperature requirements in section 4, paragraph 4.2; (2) the electrical supply voltage requirements in section 4, paragraph 4.3.2; (3) the power equipment specifications in section 4, paragraph 4.4; (4) the instructions for allowing the product to enter a lower power state prior to the test measurement in section 5, paragraph 5.1, note 1; and (5) portions of the installation and setup procedures in section 5, paragraph 5.2. DOE also proposed that the measurement of standby mode and off mode power be made according to section 5, paragraph 5.3.2 in each of the test procedures, except in the case of conventional cooking products in which power varies as a function of the clock time displayed in standby mode. For such products, DOE tentatively concluded that the application of the test methodology from the Second Edition would cause manufacturers to incur significant burden that would not be warranted by any potential improved accuracy of the test measurement. Thus, DOE maintained its original proposal from the December 2010 NOPR for 10-minute and 12-hour test methods for these products in the conventional cooking products test procedure, in which case testers would be allowed to choose measuring standby power by means of either of the following methods:

(a) 10-Minute Test

(1) Allow the product to stabilize according to section 5, paragraph 5.3 of IEC Standard 62301 (First Edition), which requires a minimum of 5 minutes;

(2) Set the clock time to 3:23;

(3) Allow another stabilization period until the clock time reaches 3:33;

(4) Use the average power approach in section 5, paragraph 5.3.2(a) to measure standby mode power for a period of 10 minutes +0/−2 seconds; or

(b) 12-Hour Test

(1) At any clock time, allow the product to stabilize according to section 5, paragraph 5.3 of IEC Standard 62301 (First Edition), which requires a minimum of 5 minutes;

(2) Use the average power approach in section 5, paragraph 5.3.2(a) to measure standby mode power for a period of 12 hours +0/−30 seconds.

According to the proposal, manufacturers could elect to conduct either a 10-minute test, a 12-hour test, or both. Based on DOE testing, use of the 10-minute test period produced results that were within ±2 percent of the results for the full 12-hour test. Therefore, DOE proposed that, for verification and enforcement purposes, results of the 10-minute test that are within ±2 percent of the results for the 12-hour test would be deemed to be representative of average energy use. 75 FR 75290, 75302–304 (Dec. 2, 2010); 76 FR 58346, 58349–53 (Sep. 20, 2011).

The Appliance Standards Awareness Project (ASAP), American Council for an Energy Efficient Economy (ACEEE), and National Consumer Law Center (NCLC), jointly (hereafter referred to as the ''SNOPR Joint Comment''), AHAM, and Whirlpool support the incorporation by reference of IEC Standard 62301 (Second Edition). AHAM stated that the Second Edition contains important clarifications and would reduce test burden, while Whirlpool commented that the Second Edition provides more complete mode definitions and more robust measurements. AHAM and the SNOPR Joint Comment stated that the Second Edition would allow for international harmonization. (AHAM, No. 20 at pp. 1–2; SNOPR Joint Comment, No. 22 at p. 1; Whirlpool, No. 21 at p. 2)

DOE acknowledges the clarity and improvement in the measurement of standby mode and off mode power consumption through the use of IEC Standard 62301 (Second Edition), as well as the benefits of harmonization with international testing methods and the associated reduction in test burden for those manufacturers that sell products internationally by not requiring multiple standby power tests to be conducted according to different testing methods in different countries.

[11] Because DOE accepted comments on the March 2011 Interim Final Rule until shortly before publication of the September 2011 SNOPR, DOE continued to include the cooking products mode definitions in this proposal.

For these reasons, in today's final rule, DOE incorporates by reference into the new dishwasher and dehumidifier and amended conventional cooking products test procedures the previously noted provisions from IEC Standard 62301 (Second Edition), including mode definitions, qualified as discussed in section 0 for the specific products, testing conditions, equipment, and methodology.

DOE did not receive comments objecting to the proposed incorporation by reference of provisions from IEC Standard 62301 (First Edition) for standby mode power measurement for conventional cooking products with power consumption that varies as a function of the time displayed. DOE determines that the lower test burden for manufacturers is not warranted by any potential improved accuracy of the test measurement if the Second Edition were to be used. Therefore, DOE adopts in today's final rule the average power method from IEC Standard 62301 (First Edition) for these products.

D. Determination and Classification of Operational Modes

1. Active Mode, Standby Mode, and Off Mode

As noted previously, EPCA provides definitions of ''active mode,'' ''standby mode,'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)) and permits DOE to amend these definitions in the context of a given product (42 U.S.C. 6295(gg)(1)(B)).

EPCA defines ''active mode'' as the condition in which an energy-using product:

- Is connected to a main power source;
- Has been activated; and
- Provides one or more main functions.

(42 U.S.C. 6295(gg)(1)(A)(i)).

EPCA defines ''standby mode'' as the condition in which an energy-using product:

- Is connected to a main power source; and
- Offers one or more of the following user-oriented or protective functions:
  - To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer;
  - Continuous functions, including information or status displays (including clocks) or sensor-based functions.

(42 U.S.C. 6295(gg)(1)(A)(iii)).

This definition of ''standby mode'' differs from the one provided in IEC Standard 62301 (First Edition) by permitting the inclusion of multiple standby modes.

EPCA defines ''off mode'' as the condition in which an energy-using product:

- Is connected to a main power source; and
- Is not providing any standby mode or active mode function.

(42 U.S.C. 6295(gg)(1)(A)(ii)).

In the December 2010 NOPR, DOE discussed that the statutory definitions for ''active mode,'' ''standby mode,'' and ''off mode'' were developed to be broadly applicable for many energy-using products. For specific products with multiple functions, these broad definitions could lead to multiple interpretations. Therefore, DOE proposed to amend the test procedures to include definitions for these modes based on the definitions provided in IEC Standard 62301 (FDIS), with added provisions specific to dishwashers, dehumidifiers, and conventional cooking products.

a. Active Mode

In the December 2010 NOPR, DOE proposed the following clarifications for the range of main functions that would be classified as active mode for each product:

Dishwashers—''Active mode'' means a mode in which the dishwasher is connected to a mains power source, has been activated, and is performing the one of the main functions of washing, rinsing, or drying (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means, or is involved in functions necessary for these main functions, such as admitting water into the dishwasher or pumping water out of the dishwasher.

Conventional Cooking Products—''Active mode'' means a mode in which a conventional cooking top, conventional oven, or conventional range is connected to a mains power source, has been activated, and is performing the main function of producing heat [12] by means of either a gas flame or electric resistance heating.

Dehumidifiers—''Active mode'' means a mode in which a dehumidifier is performing the main functions of removing moisture from ambient air by drawing moist air over a refrigerated coil using a fan, circulating air through activation of the fan without activation of the refrigeration system, or defrosting the refrigerant coil. 75 FR 75290, 75297–98 (Dec. 2, 2010).

For the September 2011 SNOPR, DOE's proposal included a revised version of the active mode definition in the cooking products test procedure, based upon updates adopted by the March 2011 Interim Final Rule. Although that rulemaking addressed microwave ovens, the mode definitions in the test procedure at appendix I cover all cooking products, including microwave ovens and conventional cooking products. Therefore, in the September 2011 SNOPR, DOE proposed for cooking products that ''active mode means a mode in which the product is connected to a mains power source, has been activated, and is performing the main function of producing heat by means of a gas flame, electric resistance heating, or microwave energy. Delay start mode is a one-off, user-initiated, short-duration function that is associated with an active mode.'' 76 FR 58346, 58363 (Sep. 20, 2011).

Northwest Energy Efficiency Alliance (NEEA) agreed with DOE's proposed definitions of active mode for each product. (NEEA, No. 11 at p. 2) Whirlpool also agreed with DOE's proposed definition of active mode for dehumidifiers and conventional cooking products, provided that delay start is part of active mode. Whirlpool also agreed with DOE's proposed definition of active mode for dishwashers as long as cycle finished mode is a part of active mode. (Whirlpool, No. 12 at p. 2) DOE evaluates delay start mode and cycle finished mode in the product-specific discussions in section III.D.2, and notes that the amendments adopted in today's final rule provide for measurement of all active mode, standby mode, and off mode energy use, including delay start mode and cycle finished mode, in the dishwasher, dehumidifier, and conventional cooking products test procedures.

As discussed in sections III.F.2 and III.F.3, DOE further proposed in the May 2012 SNOPR that active mode for dishwashers would additionally include the functions of circulating air (fan-only mode) and regenerating a built-in water softening system. Therefore, DOE proposed a revised definition of active mode in the dishwasher test procedure that would include these functions. For cooking products, DOE proposed that circulating air in fan-only mode would be an active mode function, and accordingly proposed to add air circulation to the active mode functions. 77 FR 31444, 31447–49, 31462 (May 25, 2012).

[12] In the preamble to the December 2010 NOPR, DOE discussed that the main function of producing heat may be used for cooking, heating, proofing, or holding the cooking load. Such specificity was not included in the proposed regulatory text in appendix I.

DOE did not receive comments objecting to the definitions of active mode for each of the covered products that were proposed in the May 2012 SNOPR, Thus, in today's final rule, DOE incoporates in the new dishwasher and dehumidifier test procedures and the amendments to the conventional cooking product test procedure the definition of active mode as proposed in the May 2012 SNOPR.

b. Standby Mode

DOE also proposed in the December 2010 NOPR to define ''standby mode'' for dishwashers, dehumidifiers, and conventional cooking products as any mode in which the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

- To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;
- Continuous functions, including information or status displays (including clocks) or sensor-based functions. 75 FR 75290, 75290 (Dec. 2, 2010).

In the December 2010 NOPR, DOE also proposed the additional clarification that a timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.*, switching) and that operates on a continuous basis. *Id.*

AHAM stated that it supported the standby mode definition based on IEC Standard 62301 (FDIS), although IEC Standard 62301 (Second Edition) should be the basis for the definition once the Second Edition was issued. AHAM and Whirlpool also requested that DOE require that all products default to the standby mode, as delivered from the factory. (AHAM, No. 14 at p. 3; AHAM, NOPR Public Meeting Transcript, No. 10 at p. 36; Whirlpool, No. 12 at pp. 2, 4) DOE notes that its test procedures are used to measure the energy consumption of covered products in active, standby, and off modes, and do not prescribe specific operational characteristics for those products.

DOE proposed in the December 2010 NOPR to amend the ''standby mode'' definition in the dishwasher test procedure based on the definition provided in IEC Standard 62301 (FDIS), but also proposed to retain and redesignate the current DOE definition of standby mode for dishwashers as a ''simplified standby mode'' to allow manufacturers to continue to use the existing standby mode provisions to determine compliance with the current dishwasher energy conservation standards until the compliance date of amended standards that address standby mode and off mode energy use. *Id.*

Whirlpool commented that the retention of a simplified standby mode as a bridging step from the current DOE dishwasher test procedure is unnecessary. (Whirlpool, No. 12 at p. 2) In this final rule, DOE is retaining the existing methodology for measuring energy use in this ''simplified standby mode'' in appendix C. Use of the new standby mode provisions in appendix C1 will be required on May 30, 2013, unless the direct final rule published on May 30, 2012 is withdrawn.

In the December 2010 NOPR, DOE proposed to define ''inactive mode'' for dishwashers, dehumidifiers, and conventional cooking products as a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display. *Id.*

AHAM and NEEA supported DOE's proposed definition of inactive mode. (AHAM, No. 14 at p. 4; NEEA, No. 11 at p. 3) For the December 2010 NOPR, DOE derived the proposed mode definitions from IEC Standard 62301 (FDIS), which were retained for IEC Standard 62301 (Second Edition). DOE retains this definition of inactive mode in this final rule.

c. Off Mode

In the December 2010 NOPR, DOE also proposed to amend the test procedures for residential dishwashers, dehumidifiers, and conventional cooking products to define ''off mode'' as a mode in which the product is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that shows the user only that the product is in the off positions would be included within the classification of off mode. This definition of ''off mode'' was based on the definitions provided in IEC Standard 62301 (FDIS), and DOE stated that it would be useful in terms of expanding the scope of the EPCA mode definitions to clarify which functions are associated with off mode. 75 FR 75290, 75299 (Dec. 2, 2010).

Under these proposed definitions, a dishwasher, dehumidifier, or conventional cooking product equipped with a mechanical on/off switch that can disconnect power to the display and/or control components would be considered as operating in the off mode when the switch is in the ''off'' position, provided that no other standby mode or active mode functions are energized. An energized light-emitting diode (LED) or other indication that shows the user only that the product is in the off position would be considered part of off mode under the proposed definition, again provided that no other standby mode or active mode functions are energized. However, if any energy is consumed by the appliance in the presence of a one-way remote control, the unit would be considered to be operating in standby mode because the remote control would be used to activate or deactivate other mode(s). Electrical leakage and any energy consumed for electrical noise reduction, which are not specifically categorized as standby power functions, would be considered part of off mode. *Id.*

NEEA supports the proposed definition of off mode for dishwashers, dehumidifiers, and conventional cooking products, to the extent that it is consistent with IEC Standard 62301. (NEEA, No. 11 at pp. 4–5) Whirlpool stated that the EPCA definition of off mode is adequate for each of these products. (AHAM, No. 12 at pp. 2–3) DOE determined that the definition of off mode that is consistent with the definition in IEC Standard 62301 (Second Edition) is an important expansion to the EPCA definition that provides clarity for testing, and adopts in today's final rule the proposed definition of off mode for the new dishwasher and dehumidifier test procedures and the amended conventional cooking products test procedure.

AHAM and Whirlpool do not support classifying the energy use of a one-way remote control as part of standby mode, even though the EPCA definition of standby mode includes activation by means of remote control. According to these commenters, a standard remote that powers a product ''off'' actually powers the unit down, such that it can be turned on again through the use of the remote. A one-way remote does not put the product in standby mode; it only allows the product to be turned off. AHAM commented that there are few, if any, one-way remotes in the United States. AHAM believes that including one-way remotes in off mode instead of standby mode will encourage manufacturers to design products with one-way remotes, which could decrease energy use. (AHAM, No. 14 at p. 4; Whirlpool, No. 12 at p. 3) DOE agrees that once the one-way remote turns the product off, such that there is no standby function present and the unit cannot be returned to either active or standby mode by means of the remote,

the unit would be considered to be operating in off mode. However, if the product is consuming energy without being in active mode while waiting for a signal from the one-way remote, the product would be classified as operating in standby mode because the remote would be available for deactivation of the main unit, regardless of whether other standby functions were present. Therefore, DOE clarifies that if energy is consumed by the appliance in the presence of a one-way remote control prior to turning the unit off from a non-active mode, the unit would be considered to be operating in standby mode because the remote control would be used to deactivate other mode(s). Once the product is turned off by the one-way remote, it would be deemed to be operating in either standby mode or off mode, depending on the functions present in the appliance other than the remote control function, because the one-way remote would not be able to activate or deactivate other mode(s) at that point.

2. Additional Product-Specific Modes

In addition to the general mode definitions, DOE discussed in the December 2010 NOPR its analysis of various product-specific modes for dishwashers, dehumidifiers, and conventional cooking products to determine whether they would be properly characterized as active mode, standby mode, or off mode functions, as follows:

a. Dishwashers

In the December 2010 NOPR, DOE stated that it is aware of two additional relevant modes for dishwashers: (1) Delay start mode; and (2) cycle finished mode. ''Delay start mode'' would be defined as a mode in which activation of an active mode is facilitated by a timer. ''Cycle finished mode'' would be defined as a mode that provides continuous status display following operation in active mode.

As discussed earlier, because delay start mode is not a mode that may persist for an indefinite time, delay start mode would not be considered part of standby mode, but instead would be a form of active mode. DOE did not propose amendments to the dishwasher test procedure to define ''delay start mode'' or to measure power consumption in this mode. DOE stated that it may consider amendments addressing delay start mode issues in a future dishwasher test procedure rulemaking. 75 FR 75290, 75298 (Dec. 2, 2010).

Based on the ''standby mode'' definition proposed in the December 2010 NOPR, cycle finished mode, which provides a continuous status display and may persist for an indefinite time, would be considered as part of a standby mode. Therefore, DOE proposed in the December 2010 NOPR to define cycle finished mode for dishwashers as ''a mode which provides continuous status display following operation in active mode.'' *Id.* For the May 2012 SNOPR, DOE also identified fan-only mode for dishwashers (77 FR 31444, 31447–49 (May 25, 2012)), which is discussed separately in section III.F.2 of this notice, as well as dishwasher water softener regeneration (77 FR 31444, 31449–50 (May 25, 2012)), which is discussed in section III.F.3 of this notice.

ASAP, ACEEE, NCLC, and Natural Resources Defense Council (NRDC), jointly (hereafter referred to as the ''NOPR/SNOPR2 Joint Comment''), Southern California Edison, Southern California Gas Company, and San Diego Gas and Electric Company, jointly (hereafter the ''California Utilities''), AHAM, NEEA, Pacific Gas and Electric Company (PG&E), and Whirlpool agree with DOE's proposal that delay start mode should be classified as a form of active mode. AHAM supported DOE's decision not to propose amendments to the dishwasher test procedure to measure energy use in delay start mode, while the California Utilities, the NOPR/SNOPR2 Joint Comment, and PG&E stated that DOE should include measures of delay start mode energy use in the dishwasher test procedure. The NOPR/SNOPR2 Joint Comment believes that if energy consumption in delay start mode is not measured, manufacturers will have no incentive to reduce it. (AHAM, No. 14 at p. 5; AHAM, NOPR Public Meeting Transcript, No. 10 at p. 41; California Utilities, No. 16 at p. 2; NEEA, No. 11 at p. 2; NOPR/SNOPR2 Joint Comment, No. 13 at pp. 2–3; PG&E, No. 17 at p. 2; Whirlpool, No. 12 at p. 2) DOE retains the classification of delay start mode as part of active mode for dishwashers in today's final rule. Although DOE is not adopting specific provisions to measure energy use in delay start mode alone, DOE is including provisions in the dishwasher test procedure at appendix C1 to measure the energy use in all low-power modes combined, which includes modes other than the active washing and drying cycle, fan-only mode, and water softener regeneration. (*See* section III.F.1).

AHAM and Whirlpool disagree with DOE's proposal to classify cycle finished mode for dishwashers as a standby mode. According to Whirlpool, any function begun by the user when initiating the active mode includes all power consumed until the full conclusion of that operation. Whirlpool stated that cycle-finished mode actions include vent opening/closing, a signal to the consumer that the dishes are clean, or other modest users of energy. Whirlpool believes that establishing a separate cycle finished mode adds complications and cost to the dishwasher test procedure without any corresponding improvement in energy consumption or value to the consumer. (AHAM, No. 14 at p. 5; AHAM, NOPR Public Meeting Transcript, No. 10 at pp. 41–42; Whirlpool, No. 12 at p. 2) NEEA stated that DOE should define cycle finished mode as the portion of the active mode between the end of the active washing mode and the beginning of the inactive mode. However, NEEA interpreted cycle finished mode to mean the period in which a fan operates after the end of the active washing and drying cycle. NEEA noted that after the fan run time, the dishwasher reverts to a status display (inactive) mode that will persist indefinitely until the user opens the door. NEEA believes that the status display (inactive) mode is a standby mode. NEEA further commented that if DOE defines such a status display mode as ''cycle finished mode,'' that the cycle finished period of some specified average duration should be added to the active mode test procedure. (NEEA, No. 11 at pp. 2–3)

DOE notes that in its proposals, it narrowly defined cycle finished mode for dishwashers as providing continuous status display following operation in active mode. Because the function specified in this definition is a status display that may persist for an indefinite time until the user opens the door, cycle finished mode for dishwashers would be classified as a standby mode under the general definition of ''standby mode'' adopted in today's final rule for the new dishwasher test procedure. DOE has also determined that any period of fan operation after the end of the active washing and drying cycle would be classified as a ''fan-only mode'' that is part of active mode. As discussed in section III.F.2 of today's final rule, DOE includes in the new dishwasher test procedure provisions to measure the energy use in fan-only mode if the dishwasher is capable of such operation. In today's final rule, DOE also adds definitions of cycle finished mode and fan-only mode to the dishwasher test procedure to aid the tester in differentiating these modes and to clarify that the energy use in cycle finished mode is included in the

combined low-power energy use measurement, as discussed in section III.F.1 of this notice.

b. Dehumidifiers

In the December 2010 NOPR, DOE stated that it is aware of three additional relevant modes for dehumidifiers: (1) Delay start mode; (2) off-cycle mode; and (3) bucket full/removed mode. DOE proposed that the definition for ''delay start mode'' for dehumidifiers would be the same as that for dishwashers. ''Off-cycle mode'' would be defined as a mode in which a dehumidifier has cycled off its main function by humidistat or humidity sensor, does not have its fan or blower operating, and will reactivate the main function according to the humidistat or humidity sensor signal. ''Bucket full/removed mode'' would be defined as a mode in which the dehumidifier has automatically powered off its main function by detecting when the water collection bucket is full or has been removed.

For the same reasons discussed earlier for dishwashers, delay start mode would not be considered a standby mode, but instead would be a form of active mode. DOE did not propose in the December 2010 NOPR amendments to define or to measure power consumption in delay start mode. DOE stated that it may consider amendments addressing delay start mode issues in a future dehumidifier test procedure rulemaking. 75 FR 75290, 75298 (Dec. 2, 2010).

DOE discussed in the December 2010 NOPR that off-cycle mode and bucket full/removed mode are modes that may persist for an indefinite time and, under the proposed definition, would be considered as part of standby mode. DOE proposed amending its dehumidifier test procedure to include definitions of ''off-cycle mode'' and ''bucket full/removed mode.'' 75290, 75298–99 (Dec. 2, 2010).

The NOPR/SNOPR2 Joint Comment, the California Utilities, AHAM, NEEA, PG&E, and Whirlpool agree with DOE's proposal that delay start mode should be classified as a form of active mode for dehumidifiers. AHAM supported DOE's decision not to propose amendments to the dehumidifier test procedure to measure energy use in delay start mode. The California Utilities, the NOPR/SNOPR2 Joint Comment, and PG&E stated that DOE should include measures of delay start mode energy use in the dehumidifier test procedure. The NOPR/SNOPR2 Joint Comment stated that if energy consumption in delay start mode is not measured, manufacturers will have no incentive to reduce it. (AHAM, No. 14 at p. 5; AHAM, NOPR Public Meeting Transcript, No. 10 at p. 45; California Utilities, No. 16 at p. 2; NEEA, No. 11 at p. 2; NOPR/SNOPR2 Joint Comment, No. 13 at pp. 2–3; PG&E, No. 17 at p. 2; Whirlpool, No. 12 at p. 2) DOE maintains this determination that delay start mode is part of active mode for dehumidifiers in today's final rule. DOE includes provisions in the new dehumidifier test procedure to measure the energy use in all low-power modes combined, which includes all modes other than active dehumidification mode (*i.e.,* delay start mode, bucket full/removed mode, inactive mode, off-cycle mode, and off mode.) (*See* section III.F.1).

Several commenters objected to DOE's proposed classification of bucket full/removed mode as a standby mode. GE Consumer & Industrial (GE) and NEEA consider bucket full/removed mode as a cycle finished mode, and while it may persist for an indefinite period of time, it is associated with the active mode cycle, much like the dishwasher cycle finished mode. NEEA further stated that DOE should consider bucket full/removed mode as the portion of the active mode between the end of the active cycle and the beginning of the inactive mode when the user empties and/or replaces the bucket. (GE, NOPR Public Meeting Transcript, No. 10 at p. 45; NEEA, No. 11 at pp. 3–4) Whirlpool and AHAM also consider bucket full/removed mode to be part of active mode. (Whirlpool, No. 12 at p. 2; AHAM, No. 14 at p. 5) However, in the event that DOE retains bucket full/removed mode as a standby mode, AHAM suggested that the definition of bucket full/removed mode should clarify that the dehumidifier has automatically powered off its main function by detecting when the water bucket is full or has been removed, and does not have its fan or blower operating. (AHAM, No. 14 at p. 5)

DOE agrees that the bucket full/removed mode can be associated with the active mode function in which moisture is removed from the air and collected in the bucket. However, bucket full/removed mode can also occur when the bucket is removed, regardless of whether the dehumidifier was actively removing moisture or circulating air at the time the bucket was removed. For example, the bucket may be removed during off-cycle mode, which is a standby mode. In addition, bucket full/removed mode may persist indefinitely with a continuous status display and no main function, which would meet the definition of a standby mode. DOE maintains its determination that bucket full/removed mode is a standby mode for today's final rule. DOE agrees that the fan or blower shall not be operating during bucket full/removed mode, because such operation would result in the dehumidifier circulating air as part of active mode, but does not adopt a definition of bucket full/removed mode in the new dehumidifier test procedure because bucket full/removed mode energy use is included in the combined measurement of all low-power mode energy use.

Whirlpool agreed with DOE's proposal to classify off-cycle mode as a standby mode. (Whirlpool, No. 12 at p. 2) In today's final rule, DOE includes the proposed definition of off-cycle mode in appendix X1, and includes off-cycle mode in the measurement of energy use in the combined low-power modes.

c. Conventional Cooking Products

DOE stated in the December 2010 NOPR that it is aware of three additional relevant modes for conventional cooking products: (1) Delay start mode; (2) cycle finished mode; and (3) Sabbath mode. ''Delay start mode'' and ''cycle finished mode'' would be the same as defined for dishwashers. ''Sabbath mode'' would be defined as a mode in which the automatic shutoff is overridden to allow for warming of pre-cooked foods during such periods as the Jewish Sabbath.

For the same reasons as discussed for dishwashers and dehumidifiers, delay start mode would not be considered a standby mode, but instead would be a form of active mode. In addition, the Sabbath mode function of warming food would also be considered part of the active mode. DOE did not propose in the December 2010 NOPR amendments to define or to measure power consumption in ''delay start mode'' or ''Sabbath mode.'' DOE stated that it may consider amendments addressing delay start mode and Sabbath mode issues in a future cooking products test procedure rulemaking 75 FR 75290, 75299 (Dec. 2, 2010).

DOE discussed in the December 2010 NOPR that cycle finished mode is a mode that may persist for an indefinite time and, under the proposed definition, would be considered as part of standby mode. DOE proposed to amend its conventional cooking products test procedure to include a definition of ''cycle finished mode.'' 75 FR 75290, 75299 (Dec. 2, 2010). For the May 2012 SNOPR, DOE also identified fan-only mode for conventional cooking products, which is discussed in section III.F.2 of this notice.

The NOPR/SNOPR2 Joint Comment, the California Utilities, AHAM, NEEA, PG&E, and Whirlpool commented that

delay start mode should be considered part of active mode for conventional cooking products. The California Utilities, the NOPR/SNOPR2 Joint Comment, and PG&E stated that DOE should include measures of delay start mode energy use in the test procedure. The NOPR/SNOPR2 Joint Comment believes that if energy consumption in delay start mode is not measured, manufacturers will have no incentive to reduce it. (AHAM, No. 14 at p. 5; AHAM, NOPR Public Meeting Transcript, No. 10 at p. 46; California Utilities, No. 16 at p. 2; NEEA, No. 11 at p. 2, NOPR/SNOPR2 Joint Comment, No. 13 at pp. 2–3; PG&E, No. 17 at p. 2; Whirlpool, No. 12 at p. 2) NEEA and Whirlpool also agree with DOE that Sabbath mode is part of active mode. (NEEA, No. 11 at p. 4; Whirlpool, No. 12 at p. 3)

For the reasons discussed in section III.F.1 of this notice, DOE amends the cooking products test procedure to add provisions for measuring the combined low-power energy use, which will account for all energy use outside of the active cooking cycle [13] and fan-only mode.

AHAM and Whirlpool disagree with DOE's proposal to classify cycle finished mode for conventional cooking products as a standby mode. According to Whirlpool, any function begun by the user when initiating the active mode includes all power consumed until the full conclusion of that operation. Whirlpool believes that establishing a separate cycle finished mode adds complications and cost to the conventional cooking products test procedure without any corresponding improvement in energy consumption or value to the consumer. (AHAM, No. 14 at p. 5; AHAM, NOPR Public Meeting Transcript, No. 10 at pp. 46–47; Whirlpool, No. 12 at pp. 2–3) NEEA stated that operation of the cooling fan that protects the electronic controls comprises cycle finished mode, with its duration being directly related to the temperature at which the active cooking function was conducted. According to NEEA, DOE should define cycle finished mode as the portion of the active mode between the end of the active cooking mode and the beginning of the inactive mode, when the cooling fan stops. (NEEA, No. 11 at pp. 2–4)

As with dishwashers, DOE's proposals narrowly defined cycle finished mode for conventional cooking products as providing continuous status display following operation in active mode. Because the function specified in this definition is a status display that may persist for an indefinite time until the user takes action, cycle finished mode for conventional cooking products would be classified as a standby mode under the general definition of ''standby mode'' adopted in today's final rule for the conventional cooking products test procedure. DOE has also determined that any period of fan operation after the end of the active cooking cycle would be classified as a ''fan-only mode'' that is part of active mode. As discussed in section III.F.2 of today's final rule, DOE includes in its amendments to the cooking products test procedure provisions to measure the energy use in fan-only mode if the conventional cooking product is capable of such operation. In today's final rule, DOE also adds definitions of cycle finished mode and fan-only mode to the cooking products test procedure.

3. Network Mode

Section 3.7 of IEC Standard 62301 (FDIS) defines ''network mode'' as a mode category that includes ''any product modes where the energy using product is connected to a mains power source and at least one network function is activated (such as reactivation via network command or network integrity communication) but where the primary function is not active.'' Section 3.7 of IEC Standard 62301 (FDIS) also provides a note, stating that ''[w]here a network function is provided but is not active and/or not connected to a network, then this mode is not applicable. A network function could become active intermittently according to a fixed schedule or in response to a network requirement. A 'network' in this context includes communication between two or more separately independently powered devices or products. A network does not include one or more controls which are dedicated to a single product. Network mode may include one or more standby functions.''

DOE acknowledged in the December 2010 NOPR that in the future, products that are the subject of this rulemaking could incorporate a network mode for either communication with technicians for repair and performance monitoring, or for interaction with the electric grid. At the time of the December 2010 NOPR, however, DOE was unaware of any data that would enable it to determine appropriate testing procedures and mode definitions for incorporation into test procedures for network mode in dishwashers, dehumidifiers, and conventional cooking products. As a result, DOE could not evaluate networked units, even in terms of categorizing network mode as a standby mode or off mode function. In particular, DOE was unaware of methods for appropriately configuring networks or methods for collecting data about the energy use of appropriately configured networks. DOE also had no information as to whether network connection speed or the number and type of network connections affect power consumption for these products. DOE also had no information as to whether wireless network devices in such products would have different levels of power consumption when a device is establishing a connection versus when the network connection is established. DOE stated in the December 2010 NOPR that it was also unaware of how the energy consumption for dishwashers, dehumidifiers, and conventional cooking products in a network environment may be affected by their product design and user interaction, as well as network interaction. These effects would need to be measured if the network function could become active intermittently according to a fixed schedule or in response to a network requirement. For these reasons, the amendments proposed in the December 2010 NOPR did not include provisions for testing network mode energy consumption in dishwashers, dehumidifiers, and conventional cooking products. DOE noted that provisions for testing power consumption in network mode could be incorporated into the test procedure through future amendments once the appropriate data and testing methodologies become available. 75 FR 75290, 75299 (Dec. 2, 2010).

AHAM and Whirlpool agreed with DOE that there are no dishwashers, dehumidifiers, or conventional cooking products on the market currently that are capable of operation in network mode, and that there is no way for DOE to gather data on this mode. Thus, these commenters agreed with DOE's proposal not to address network mode until such time that sufficient data are available. AHAM and Whirlpool also stated that network mode would be distinct from standby or off mode. (AHAM, No. 14 at p. 6; AHAM, NOPR Public Meeting Transcript, No. 10 at pp. 48, 50; Whirlpool, No. 12 at p. 4)

The NOPR/SNOPR2 Joint Comment, the California Utilities, ASAP, NEEA, and PG&E urged DOE to develop test methodology for network mode. According to these commenters, a number of major manufacturers are developing network-enabled

[13] In the December 2010, DOE proposed to allocate the 8.9 estimated annual Sabbath mode hours to the active cooking mode. 75 FR 75290, 75309–10 (Dec. 2, 2010).

dishwashers and cooking products, and these products are expected to be available on the market when the amended test procedures become effective. Further, these commenters stated that products with network capability may consume significant energy in network mode. ASAP and the NOPR/SNOPR2 Joint Comment stated that the energy use in network mode should be captured regardless of whether the product is actually connected to a network. NEEA noted that IEC Standard 62301 defines network mode as part of inactive mode, and that DOE should adopt a definition of network mode consistent with the one in IEC Standard 62301, along with methodology to measure network mode energy use during inactive mode testing. The SNOPR Joint Comment stated that the definition of standby mode is sufficiently broad to encompass energy use in network mode. (ASAP, NOPR Public Meeting Transcript, No. 10 at pp. 49–50; California Utilities, No. 16 at p. 3; NOPR/SNOPR2 Joint Comment, No. 13 at pp. 3–4; SNOPR Joint Comment, No. 22 at p. 1; NEEA, No. 11 at pp. 4–5; PG&E, No. 17 at p. 3)

In response to these comments, DOE observes that it is still not aware of any network-equipped dishwashers, dehumidifiers, and conventional cooking products that could allow sufficient analysis on which to categorize the functionality of network mode in these products, nor did commenters provide information or data on which to develop test methodology for measuring energy use in a network mode. Therefore, for the same reasons that DOE did not address network mode in the December 2010 NOPR, DOE is not adopting a definition or testing methodology for network mode in the dishwasher, dehumidifier, or conventional cooking products test procedures in today's final rule. DOE reiterates, however, that it may consider amending these test procedures in a separate rulemaking in the future should network-equipped products and data on their functionality become available.

4. Disconnected Mode

DOE also noted in the December 2010 NOPR that section 3.9 of IEC Standard 62301 (FDIS) provides a definition for ''disconnected mode,'' which is ''the state where all connections to mains power sources of the energy using product are removed or interrupted.'' IEC Standard 62301 (FDIS) also adds a note that common terms such as ''unplugged'' or ''cut off from mains'' also describe this mode and that this mode is not part of off mode, standby mode, or network mode. DOE stated in the December 2010 NOPR that there would be no energy use in a disconnected mode and agreed that it would not be part of off mode, standby mode, or network mode. Therefore, DOE did not propose a definition or testing method for disconnected mode in the test procedures for residential dishwashers, dehumidifiers, or conventional cooking products. 75 FR 75290, 75299–300 (Dec. 2, 2010).

AHAM agreed that there would be no energy use in disconnected mode, and supported DOE's decision not to amend the test procedures accordingly. (AHAM, No. 14 at p. 4) In consideration of this support and for the reasons discussed above, DOE does not amend the dishwasher, dehumidifier, and conventional cooking products test procedures to define or add testing provisions for disconnected mode in today's final rule.

E. Specifications for the Test Methods and Measurements for Standby Mode and Off Mode Testing

As discussed in section III.C of this notice, DOE proposed in the December 2010 NOPR to specify testing equipment and conditions for measuring standby mode and off mode energy use in the dishwasher, dehumidifier, and conventional cooking products test procedures, based on provisions in IEC Standard 62301 (First Edition). 75 FR 75290, 75300–04 (Dec. 2, 2010). In September 2011 SNOPR, it proposed to incorporate by reference in the dishwasher, dehumidifier, and conventional cooking products test procedures the following provisions from IEC Standard 62301 (Second Edition) for testing equipment and conditions: (1) The room ambient air temperature requirements in section 4, paragraph 4.2; (2) the electrical supply voltage requirements in section 4, paragraph 4.3.2; (3) the power equipment specifications in section 4, paragraph 4.4; (4) the instructions for allowing the product to enter a lower power state prior to the test measurement in section 5, paragraph 5.1, note 1; and (5) portions of the installation and setup procedures in section 5, paragraph 5.2. 76 FR 58436, 58349–54 (Sep. 20, 2011).

1. Ambient Conditions, Including for Active Mode

In the December 2010 NOPR, DOE proposed that test room ambient temperatures for standby mode and off mode testing be specified for all dishwashers, dehumidifiers, and conventional cooking products according to section 4, paragraph 4.2 of IEC Standard 62301 (First Edition). 75 FR 75290, 75301–02 (Dec. 2, 2010). The First Edition specified a temperature range of 73.4 ± 9 °F. Section 4, paragraph 4.2 of IEC Standard 62301 (Second Edition) contains an identical requirement for the test room ambient temperature, which DOE proposed to reference for standby mode and off mode testing in the September 2011 SNOPR. In the December 2010 NOPR, DOE also compared the IEC Standard 62301 (First Edition) ambient temperature ranges to those specified in the current DOE dishwasher, dehumidifier, and conventional cooking products test procedures for active mode testing as follows. Because the same IEC ambient temperatures were specified in the Second Edition, DOE drew the same tentative conclusions in the September 2011 SNOPR.

DOE noted in the December 2010 NOPR that the current DOE test procedure for dishwashers includes a test room ambient air temperature requirement of 75 ± 5 °F, which helps ensure consistent and repeatable test results for active mode measurements in which heat losses could affect energy consumption. Because energy use in standby mode or off mode is less affected by ambient temperature than active mode energy use, DOE proposed to allow manufacturers of dishwashers to use the less stringent ambient temperature range in IEC Standard 62301 (First Edition) for standby mode and off mode power consumption measurement. DOE further stated that manufacturers could choose to use the ambient temperature range in the current DOE test procedure if tests of active mode efficiency performance and standby mode and off mode power consumption are conducted simultaneously in the same room on multiple dishwashers. 75 FR 75290, 75301 (Dec. 2, 2010).

For dehumidifiers, the current DOE test procedure specifies a test room ambient temperature of 80 ± 2 °F. As with dishwashers, DOE's proposal in the December 2010 NOPR would allow manufacturers of dehumidifiers to conduct active mode efficiency performance testing and standby mode and off mode power consumption testing simultaneously in the same room on multiple dehumidifiers, as long as the temperature requirements for both tests are met. Alternatively, the proposed temperature specifications taken from IEC Standard 62301 (First Edition) would allow a manufacturer that opts to conduct standby mode and off mode testing separately from performance testing to use the ambient

temperature requirement of 73.4 ± 9 °F. 75 FR 75290, 75301 (Dec. 2, 2010).

The current DOE test procedure for conventional cooking products includes a test room ambient air temperature specification of 77 ± 9 °F, which varies slightly from the range specified by IEC Standard 62301 of 73.4 ± 9 °F. DOE stated in the December 2010 NOPR that the higher temperatures allowed for active mode energy testing could be representative of ambient temperatures during a cooking process, but that maintaining lower allowable temperatures for standby mode and off mode power consumption measurements would be more representative of ambient conditions during those operating modes. The proposed test procedure would allow manufacturers of conventional cooking products to measure active mode performance and standby and off mode power simultaneously in the same room on multiple units, provided that the room ambient temperature falls within the range allowed by both ambient temperature requirements (*i.e.,* any temperature between 68 and 82.4 °F). Alternatively, the proposal would allow a manufacturer to conduct standby mode and off mode testing separately from performance testing within an ambient temperature range of 73.4 ± 9 °F. 75 FR 75290, 75301–02 (Dec. 2, 2010).

AHAM stated that DOE should use the ambient temperature requirements in its current dishwasher, dehumidifier, and conventional cooking products test procedures for standby mode and off mode energy use measurements, which AHAM stated would produce accurate, repeatable, and reproducible results. AHAM and Whirlpool noted that the DOE temperature requirements are more stringent for dishwashers and dehumidifiers, and that DOE's ambient temperature requirements in the cooking products test procedure substantially overlaps with the IEC temperature range. For the same reasons as AHAM outlined, BSH commented that the more stringent DOE ambient temperature requirements in the dishwasher test procedure should apply for standby mode and off mode testing. (AHAM, No. 14 at pp. 7–8; AHAM, No. 27 at p. 12; AHAM, NOPR Public Meeting Transcript, No. 10 at p. 63; BSH, No. 28 at pp. 9–10; Whirlpool, No. 26 at p. 1) AHAM, BSH, and Whirlpool suggested a single temperature range would reduce inadvertent testing error. Whirlpool recommended more stringent ambient room temperatures for the dishwasher and conventional cooking products test procedures for all testing—75 ± 2 °F for dishwashers and 75 ± 5 °F for conventional cooking products—and supported conducting all dehumidifier testing under the current DOE active mode test conditions of 80 ± 2 °F. According to Whirlpool, a 1 °F difference in ambient temperature can cause a 1.5 kWh change in the measurement of dishwasher annual energy use. AHAM stated that not every laboratory could achieve a tolerance tighter than ± 5 °F for dishwasher testing. (AHAM, No. 14 at pp. 7–8; AHAM, No. 27 at p. 12; AHAM, 2012 Public Meeting Transcript, No. 38 at pp. 152–153; BSH, No. 28 at pp. 9–10; Whirlpool, No. 12 at pp. 4–5; Whirlpool, No. 21 at p. 3; Whirlpool, No. 26 at pp. 1, 5) AHAM, BSH, and Whirlpool also stated that the dishwasher test procedure should clarify that the tolerances specified indicate the allowable limits of variation in temperature, but do not permit the deliberate variation with those limits. (AHAM, No. 27 at p. 12; AHAM, 2012 Public Meeting Transcript, No. 38 at p. 151; BSH, No. 28 at p. 10; Whirlpool, No. 26 at p. 1; Whirlpool, 2012 Public Meeting Transcript, No. 38 at pp. 153–154) Intertek noted that it understood that the intent of the dishwasher test procedure is to target 75 °F, and they aim to maintain this ambient temperature. According to Intertek, it is also important to maintain this temperature prior to conducting the test when the soils are drying on the test load. (Intertek, 2012 Public Meeting Transcript, No. 38 at pp. 154–155)

In the August 2012 SNOPR, DOE maintained its proposals that the standby mode and off mode testing for dishwashers, dehumidifiers, and conventional cooking products be allowed to be conducted under either the ambient temperature range specified in IEC Standard 62301 (Second Edition) or the ambient temperature range specified in the DOE test procedure where the DOE active mode temperature range overlaps the IEC temperature range. DOE re-examined this issue in light of the comments received. DOE confirmed its proposed approach to not require that standby mode and off mode testing be conducted under the same ambient temperature as active mode testing because no data were available to suggest that the standby mode and off mode power of residential dishwashers varies significantly within the allowable ambient temperature range of IEC Standard 62301 (Second Edition), and because this approach would increase the burden for those manufacturers or laboratories that choose to conduct standby mode and off mode testing separately from active mode testing. 77 FR 49064, 49066 (Aug. 15, 2012)

In the August 2012 SNOPR, DOE also responded to comments on the intent of the ambient temperature range in the dishwasher test procedure by noting that the tolerances specified in the DOE test procedures provide a range of temperatures under which the test results are considered valid, regardless of the reasons for why a particular temperature within the range was selected or achieved. Therefore, DOE did not alter its proposal to state that the dishwasher test should be conducted at the nominal center of the ambient temperature range. DOE stated that it recognized the impact of ambient temperature on the active mode measurement, however, and as an alternative to the ±5 °F tolerance in the current test procedure for active mode testing, DOE proposed to tighten the tolerance on the test room ambient temperature in the dishwasher test procedure to ±2 °F for active mode testing. *Id.*

DOE did not receive comments in response to the August 2012 SNOPR on the proposal that the standby mode and off mode testing for dishwashers, dehumidifiers, and conventional cooking products may be conducted within the range of ambient temperatures where the specified temperature ranges of IEC Standard 62301 (Second Edition) and the DOE test procedure overlap if the testing laboratory chooses to conduct standby mode and off mode testing in the same facility as for active mode testing. DOE acknowledges the previous comments which identify the potential for inadvertent testing error if the standby mode and off mode testing is conducted under different ambient temperatures than active mode testing, but determined that the potential for such error is outweighed by the flexibility provided to manufacturers and testing laboratories to conduct standby mode and off mode testing separately from active mode testing. In addition, commenters did not provide information that would suggest that the more stringent ambient temperature requirements currently specified in the DOE dishwasher, dehumidifier, and conventional cooking product test procedures would reduce variability in the standby mode and off mode energy use measurement. For these reasons, today's final rule incorporates by reference in the new dishwasher and dehumidifier test procedures and amended conventional cooking products test procedure the ambient temperature requirements specified in section 4 of IEC Standard 62301 (Second

Edition) for measuring standby mode and off mode power consumption.

In response to the August 2012 SNOPR, AHAM, BSH, Samsung, and Whirlpool continued to suggest that the dishwasher active mode test should be conducted at the nominal center of the ambient temperature range, but acknowledged that a tighter tolerance would also help minimize test-to-test variation. Whirlpool supported the proposal to tighten the tolerance to ±2 °F, and stated that any additional burden associated with this requirement is small. Whirlpool commented that it will be able to meet the proposed tighter ambient temperature tolerance. None of the commenters provided information on whether all laboratories are capable of achieving a ±2 °F temperature range, but AHAM, BSH, and Samsung believe that some laboratories would need to make significant investments to meet this requirement. BSH added that at certain times of the year its laboratories would not be able to meet the 75 ±2 °F temperature range, requiring costly modifications to achieve consistent performance. BSH noted that it also conducts dishwasher testing according to the IEC dishwasher test procedure that requires an ambient temperature range of 64.4 to 71.6 °F. The current DOE active mode temperature specification provides an overlap between the lower end of the DOE temperature range and the upper end of the IEC range, allowing BSH to conduct both tests in the same laboratory at the same time. DOE's proposal for 75 ±2 °F would not allow this overlap, and could potentially require BSH to have separate laboratories for DOE and IEC testing. (AHAM, No. 35 at p. 7; BSH, No. 36 at p. 3; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1; Whirlpool, No. 34 at p. 2)

DOE carefully considered these comments and whether the potential improvement in the test procedure results by requiring a tighter ambient temperature tolerance for dishwasher active mode testing would warrant the significant costs that could potentially be incurred by at least some test laboratories and manufacturers. Although it does not have information on the number of affected laboratories, DOE observes that at least one manufacturer would need to upgrade its facilities, and would incur additional cost by not being able to conduct all its active mode testing, *i.e.,* testing both for demonstrating compliance with DOE energy conservation standards and for evaluating consumer utility associated with cleaning performance, in a single laboratory. Although test repeatability and reproducibility would be improved by specifying a more stringent ambient temperature tolerance, DOE determined that the significant potential costs do not warrant the benefits of such a specification. As a result, DOE is not changing the required range in ambient temperatures for active mode testing in the dishwasher test procedure. In addition, for the reasons stated in the August 2012 SNOPR, DOE is not amending the dishwasher test procedure to require that the active mode test be conducted at the nominal center of the ambient temperature range.

AHAM and GE stated that the test room humidity should be specified for dehumidifier standby mode and off mode testing to prevent the unit from inadvertently cycling on. (AHAM, No. 14 at p. 7; GE, NOPR Public Meeting Transcript, No. 10 at p. 64) Neither commenter provided information on an appropriate ambient humidity level for this testing, and no such requirement is contained within IEC Standard 62301 (Second Edition). Therefore, DOE is not adopting an ambient humidity requirement in today's final rule for standby mode and off mode testing in the new dehumidifier test procedure. DOE does, however, clarify in section 4.2 of appendix X1 that standby mode and off mode testing should be conducted while ensuring that the dehumidifier does not enter active mode during the test.

2. Installation and Power Supply Requirements

AHAM and Whirlpool supported the requirement to conduct standby mode and off mode testing at the factory or default setting, or where there are no indications of those settings, in the as-shipped condition, in accordance with section 5.2 of IEC Standard 62301 (Second Edition). According to these commenters, this requirement would provide clarity, ensure repeatability, and reduce testing burden. (AHAM, No. 14 at pp. 3–4, 6; Whirlpool, No. 12 at pp. 2, 4; Whirlpool, NOPR Public Meeting Transcript, No. 10 at p. 58) AHAM also stated that it supports the power supply requirements proposed to be referenced from IEC Standard 62301 (Second Edition). (AHAM, No. 14 at pp. 7–8) DOE adopts in today's new dishwasher and dehumidifier test procedures and amended conventional cooking products test procedure references to the electrical supply voltage requirements in section 4, paragraph 4.3.2 and portions of the installation and setup procedures in section 5, paragraph 5.2 of IEC Standard 62301 (Second Edition).

3. Standby Mode and Off Mode Testing Methodology

In the December 2010 NOPR, DOE also proposed for all covered products to require measurement of standby mode and off mode power using section 5, paragraph 5.3 of IEC Standard 62301 (First Edition), clarified by requiring the product to stabilize for at least 30 minutes and using an energy use measurement period of not less than 10 minutes. Further, for any dishwasher or dehumidifier in which the power varies over a cycle, as described in section 5, paragraph 5.3.2 of IEC Standard 62301 (First Edition), the December 2010 NOPR proposed to require the use of the average power approach in section 5, paragraph 5.3.2(a), with the same 30-minute minimum stabilization and 10-minute minimum measurement periods, as long as the measurement period comprises one or more complete cycles. 75 FR 75290, 75300–01 (Dec. 2, 2010) DOE additionally proposed specific methodology for conventional cooking products in which power varies as a function of the time displayed. In that case, testers would be allowed to choose measuring standby power by means of either the 10-minute test or the 12-hour test, as described in section III.C of today's notice. According to the proposal, manufacturers could elect to conduct either a 10-minute test or a 12-hour test, or both, and results of the 10-minute test that are within ±2 percent of the results for the 12-hour test would be deemed to be representative of average energy use. *Id.* at 75302–04, 75328.

In the September 2011 SNOPR, DOE updated its proposal to reference testing methodology from IEC Standard 62301 (Second Edition). DOE tentatively concluded that the application of the provisions of the Second Edition to all power measurements in standby mode and off mode for dishwashers and dehumidifiers would be appropriate, and proposed incorporation by reference of the relevant paragraphs of section 5.3 of IEC Standard 62301 (Second Edition) in the test procedures for these products. Further, DOE noted in the September 2011 SNOPR that although the Second Edition allows the choice of multiple test methods for both stable and unstable non-cyclic power consumption, the IEC preferred sampling method provides for a test duration that is approximately the same or shorter than the allowable IEC alternative methods and does not require classification of the nature of the power consumption (*e.g.,* stable or unstable, non-cyclic) in advance of the test. By monitoring the variation in power consumption during the test, the

test operator could determine whether it is stable or unstable, and, thus, the required duration of the sampling periods. For cyclic power consumption, the Second Edition requires the use of the sampling method. Thus, DOE proposed in the September 2011 SNOPR to specify the use of the sampling method in section 5.3.2 of IEC Standard 62301 (Second Edition) for all measures of standby mode and off mode power consumption for residential dishwashers and dehumidifiers. 76 FR 58346, 58351–53 (Sep. 20, 2011).

DOE did not receive comments in response to the proposed standby mode and off mode power consumption measurement methods for dishwashers and dehumidifiers, and for the reasons discussed, adopts such amendments in the new dishwasher and dehumidifier test procedures in today's final rule.

For conventional cooking products, DOE tentatively concluded in the September 2011 SNOPR that section 5.3 of IEC Standard 62301 (Second Edition) includes provisions that are appropriate for measuring off mode and standby modes, except in the case of a unit's clock whose power consumption varies by the time displayed, and that the sampling method in section 5.3.2 of IEC Standard 62301 (Second Edition) would also provide for measurements with minimal test burden. Thus, DOE proposed in the September 2011 SNOPR for conventional cooking products to require the use of the sampling method in section 5.3.2 of IEC Standard 62301 (Second Edition), except as follows. In the narrow case of cooking products with power consumption that varies as a function of the time displayed, DOE determined that the application of the test methodology from IEC Standard 62301 (Second Edition) would cause manufacturers to incur significant burden that would not be warranted by any potential improved accuracy of the test measurement. For this reason, DOE continued to propose in the September 2011 SNOPR the 10-minute and 12-hour test methods for these products in the conventional cooking products test procedure, based upon the average power method from IEC Standard 62301 (First Edition). The September 2011 SNOPR also proposed to amend the reference in 10 CFR 430.3 to add a reference to IEC Standard 62301 (Second Edition). DOE's proposal for conventional cooking products, based on relevant sections of IEC Standard 62301 (Second Edition) would neither be affected by, nor impact, the testing procedures for microwave ovens other than section renumbering as appropriate. 76 FR 58346, 58351–53. (Sep. 20, 2011).

AHAM and Whirlpool supported the 10-minute testing methodology for conventional cooking products with power consumption that varies as a function of the time displayed, but stated that the time that a product takes to return to the lowest power consumption state after setting the clock may vary and that this stabilization period may be shorter or longer than 10 minutes. They commented that DOE should require the clock to be set to a time of 3:33 minus the number of minutes of the stabilization period. According to AHAM, each manufacturer will know the length of the stabilization period for its products. AHAM also suggested that DOE could require manufacturers to submit in their certification report to DOE the length of the stabilization period, which should not be made public since it is confidential business information. (AHAM, No. 14 at p. 8; AHAM, No. 20 at pp. 2–3; AHAM, NOPR Public Meeting Transcript, No. 10 at pp. 73, 77; Whirlpool, No. 12 at p. 5; Whirlpool, No. 21 at p. 2) Whirlpool stated that the 12-hour test would place significant burden on manufacturers, and that the 10-minute test has been demonstrated to yield representative results. (Whirlpool, No. 21 at p. 2)

ASAP commented that the proposed approach for allowing either a 10-minute or 12-hour test was a reasonable balance between manufacturer test burden and enforcement. (ASAP, NOPR Public Meeting Transcript, No. 10 at pp. 76–77) AHAM and Whirlpool questioned whether a model that met an energy conservation standard when tested by the manufacturer using the 10-minute method but that did not meet the standard when tested by DOE using the 12-hour method would be deemed compliant if the results between the two tests were within the 2-percent variation. Whirlpool believes that the option of two test methods is unnecessary. (AHAM, No. 14 at p. 9; AHAM, No. 20 at p. 3; AHAM, NOPR Public Meeting Transcript, No. 10 at pp. 73–75; Whirlpool, No. 12 at p. 5; Whirlpool, No. 21 at p. 2)

Upon review of comments from interested parties, DOE concludes that a 12-hour test requirement would represent a significant burden to manufacturers, and that the alternative 10-minute method would minimize additional test burden. DOE agrees that the time required by certain products may be different than the 10-minute stabilization period provided in the 10-minute test method. DOE does not believe, however, that allowing the manufacturers to individually determine the stabilization period would optimize the accuracy and repeatability of the test procedure, particularly when the method is used at testing laboratories other than that of the manufacturer. Based on its testing, DOE determined that a requirement to set the display time to 3:23 and allowing a 10-minute stabilization period prior to a 10-minute measurement period would best balance the need for reproducibility of the test procedure with the burden placed on manufacturers. Therefore, DOE adopts in today's final rule the proposed standby mode and off mode testing methodology for conventional cooking products, but eliminating the 12-hour testing option for conventional cooking products with power consumption that varies as a function of the time displayed.

DOE notes that the conventional cooking products test procedure is designed to provide an energy efficiency measurement consistent with representative average consumer use of these products, even if the test conditions and/or procedures may not themselves all be representative of average consumer use (*e.g.,* testing with a display of only 3:33 to 3:42). DOE's amendments reflect the statutory requirement, and the Department's longstanding view, that the overall objective of the test procedure is to measure the product's energy consumption during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) Further, the test procedure requires specific conditions during testing that are designed to ensure repeatability while avoiding excessive testing burdens. Although certain test conditions specified in the test procedure may deviate from representative use, such deviations are carefully designed and circumscribed in order to attain an overall calculated measurement of the energy consumption during representative use. Thus, it is—and has always been—DOE's view that products should not be designed such that the energy consumption drops during test condition settings in ways that would bias the overall measurement, thereby making it unrepresentative of average consumer use. If a manufacturer incorporates a power-saving mode as part of the appliance's routine operation, DOE's test procedure would produce a representative measure of average consumer use if the unit powered down during the 10-minute test period for the same percentage of time that such powering down would be expected to occur during a typical 12-hour period, and thus, such operation would be permissible. It has been the

Department's long-held interpretation that the purpose of the test procedure is to measure representative use. Ultimately, if DOE identifies a broad pattern of behavior which has the effect of circumventing its test procedure provisions, the Department may consider reopening the conventional cooking products test procedure for further rulemaking.

F. Calculation of Energy Use Associated With Operational Modes

1. Standby Mode and Off Mode

In the December 2010 NOPR, DOE proposed a methodology for measuring energy consumption in modes other than active washing mode for dishwashers and active cooking mode for conventional cooking products; *i.e.,* inactive (standby) mode and off mode, as well as delay start mode and cycle finished mode. These modes are collectively referred to as low-power modes. DOE also raised the possibility of using a similar methodology for measuring low-power modes for dehumidifiers, including inactive (standby) mode, off mode, off-cycle mode, and bucket full/removed mode. DOE proposed in the December 2010 NOPR to allocate specific annual hours to each of the active, standby, and off modes. Using this approach, the annual energy use associated with the low-power modes would be calculated by: (1) Calculating the product of wattage and allocated hours for all possible low-power modes; (2) summing the results; and (3) dividing the sum by 1,000 to convert from Wh to kWh. For each product, DOE estimated the hours allocated to each mode, and for those products with both electronic controls and a mechanical on/off switch, DOE proposed to evenly split the hours between inactive mode and off mode. For the per-cycle energy use metrics for dishwashers and conventional cooking products, this value would be divided by the proposed annual active use cycles per year. For dehumidifiers, which measure energy use over a 24-hour period, the annual energy use in the low-power mode would be divided by the active mode hours per year and multiplied by 24 hours. 75 FR 75290, 75306, 75310–15 (Dec. 2, 2010).

As an alternate approach for dishwashers and conventional cooking products, DOE also proposed measuring power consumption for only off and inactive modes for the purpose of calculating the total energy consumed in all low-power modes. Using this approach, energy use in delay start and cycle finished mode would be accounted for by allocating all the hours not associated with active washing or cooking mode to the inactive (standby) and off modes and then measuring standby or off mode power. For dehumidifiers, DOE considered the possibility of a similar alternative approach in which energy use in which all hours other than active dehumidification mode would be allocated to inactive mode, off-cycle mode, and off mode. DOE observed that dehumidifiers are generally capable of either off mode or inactive mode, depending on the type of controls, when the unit is plugged in but not turned on. Each type of dehumidifier would operate in off-cycle mode when the unit is powered on and the relative humidity level in the room is below the dehumidifier humidity set point. 75 FR 75290, 75306, 76308, 75310–13 (Dec. 2, 2010). DOE retained these proposals in the September 2011 SNOPR and received comments in support of the alternate approach. As a result, DOE proposed the alternate approach for dishwashers and conventional cooking products in the May 2012 SNOPR. 77 FR 31444, 31451 (May 25, 2012).

AHAM, BSH, the California Utilities, PG&E, and Whirlpool opposed the allocation of annual hours to different modes proposed for the dishwasher, dehumidifier, and conventional cooking products test procedures, commenting that DOE did not base the proposals on sufficient U.S. consumer use data. AHAM, BSH, and Whirlpool further commented that if DOE moves forward with its proposal, the alternative approach is preferable. (AHAM, No. 14 at pp. 9–14; AHAM, No. 27 at p. 13; AHAM, NOPR Public Meeting Transcript, No. 10 at pp. 85, 97–98, 109; BSH, No. 28 at p. 11; California Utilities, No. 16 at p. 3; PG&E, No. 17 at p. 3; Whirlpool, No. 12 at p. 6; Whirlpool, No. 26 at pp. 1, 3) The California Utilities and PG&E commented that delay start mode should be measured as part of active mode, but supported including delay start energy use in standby mode energy use as a temporary measure. ASAP, the California Utilities, and PG&E questioned DOE's estimates of the annual hours spent in cycle finished mode, while GE stated that DOE's estimates for dehumidifier bucket full/removed mode are too high. (ASAP, NOPR Public Meeting Transcript, No. 10 at pp. 109–110; California Utilities, No. 16 at pp. 2, 4; PG&E, No. 17 at pp. 2,4; Whirlpool, NOPR Public Meeting Transcript, No. 10 at pp. 94–95)

ASAP, the California Utilities, the NOPR/SNOPR2 Joint Comment, and PG&E stated that DOE should specify the placement of the mechanical on/off switch so that consumers would turn the product off, thereby justifying the proposed split between inactive mode and off mode hours. AHAM (ASAP, NOPR Public Meeting Transcript, No. 10 at pp. 87, 109; California Utilities, No. 16 at p. 4; NOPR/SNOPR2 Joint Comment, No. 13 at p. 6; PG&E, No. 17 at p. 4) AHAM commented that DOE should require that mechanical on/off switch be accessible to the consumer, but should not specify product design. (AHAM, No. 14 at p. 12)

In today's final rule, DOE maintains its determination from the May 2012 SNOPR for both dishwashers and conventional cooking products, and, as contemplated in the December 2010 NOPR, makes a similar determination for dehumidifiers, that the power consumption in each of the low-power modes is similar, and that in such a case, measuring power consumption of each mode separately would introduce significant test burden without a corresponding improvement in a representative measure of annual energy use. In consideration of support from interested parties for the alternate calculation method and the lack of additional consumer use data that would improve the original proposal, DOE establishes in the new dishwasher and amended conventional cooking products test procedures provisions to account for standby mode and off mode energy use by measuring inactive mode and off mode power consumption only, and allocating that power consumption to all hours spent in the low-power modes combined.

The same alternative calculation of combined low-power mode energy use is adopted in today's final rule in the new dehumidifier test procedure. The provisions require that dehumidifiers with off mode capability (*i.e.,* those units with electronic controls that may be shut off with a mechanical switch or with mechanical controls) shall be measured in off mode and off-cycle mode. For dehumidifiers not capable of operation in off mode (*i.e.,* units with electronic controls that may not be shut off with a mechanical switch), inactive mode and off-cycle mode shall be measured. The annual hours for all low-power modes combined shall be split evenly between off-cycle mode and either inactive mode and off mode, depending on the unit's capability. Although DOE did not previously propose this specific alternative methodology for dehumidifiers, it suggested that such an approach could be adopted in the final rule. DOE is adopting this approach today after noting the preponderance of supporting comments for the alternative approach, and weighing carefully the benefits of

reduced testing burden of this approach against the minor improvements in accuracy of the standby mode and off mode energy use obtained by measuring each low-power mode separately.

2. Fan-Only Mode

In the May 2012 SNOPR, DOE proposed to define fan-only mode in the test procedures for dishwashers and conventional cooking products as an active mode in which a fan circulates air for a finite period of time after the end of the dishwasher cycle or conventional cooking product heating function, as indicated to the consumer. DOE also proposed provisions to measure energy use in fan-only mode, in which the power consumption and duration of fan-only mode would be measured at the end of each active mode cycle required by the test procedure, and the resulting energy consumption would be included in the energy efficiency metrics for that product. 77 FR 31444, 31451 (May 25, 2012).

In response to the May 2012 SNOPR, the NOPR/SNOPR2 Joint Comment stated that it supports incorporating measurement of fan-only mode energy use in the dishwasher and conventional cooking products test procedures, as this would provide an incentive to manufacturers to reduce fan-only mode energy consumption. (NOPR/SNOPR2 Joint Comment, No. 29 at p. 1) AHAM, BSH, and Whirlpool stated they would not oppose the measurement of fan-only mode energy use for dishwashers or conventional cooking products, as long as fan-only mode is not a user-selectable option. Whirlpool commented that classifying fan-only mode as part of active mode would be consistent with a determination that active mode persists until the end of the operating cycle. However, AHAM, BSH, and Whirlpool stated that measuring energy consumption in this mode according to the proposed method would represent a significant burden due to the increased length of each test. AHAM, BSH, and Whirlpool recommended that DOE allow as an option a one-time measurement or sampling approach to measure fan-only mode energy use over a brief time period combined with a calculation to properly account for its contribution to annual energy use in the test procedures for dishwashers and conventional cooking products. (AHAM, No. 27 at pp. 2–3; BSH, No. 28 at p. 2; Whirlpool, No. 26 at pp. 1–2)

Whirlpool further commented that DOE's estimate that a dishwasher fan could run for 4 hours after each cycle, consuming 17 kWh per year or 4.7 percent of the current maximum energy consumption, was incorrect. Whirlpool stated that fan operation is a function of the residual heat remaining in the unit after completion of the wash cycle and the degree of drying selected, and thus, the fan will not operate for this length of time on every cycle. Whirlpool similarly commented that DOE's estimate that a conventional cooking product fan could run for 3.5 hours after each cycle, consuming as much as 38 kWh per year, was incorrect because fan operation is a function of the residual heat remaining in the unit after completion of the cooking cycle and of the ambient temperature. (Whirlpool, No. 26 at p. 2)

As part of the calculation in the May 2012 SNOPR, DOE provided a range of the annual impacts of fan-only energy consumption in residential dishwashers and conventional cooking products. While DOE agrees that most dishwashers and conventional cooking products will not operate in fan-only mode for 4 hours or 3.5 hours, respectively, DOE is aware of products capable of these durations, and therefore concludes that the values in the May 2012 SNOPR are appropriate estimates of the maximum amount of energy consumed in this mode. However, the proposal for dishwasher and conventional cooking product test methods for measuring energy use in fan-only mode in the May 2012 SNOPR would be based on the actual length of fan-only mode for the product under test.

For the August 2012 SNOPR, DOE continued to propose the methodology first proposed in the May 2012 SNOPR, and also provided an alternative methodology to reduce test burden in which, if fan-only mode is not a user-selectable option, the power consumption would be measured for a brief time period, such as 10 minutes, and then extrapolated over the length of the entire fan-only mode cycle. DOE sought representative data on the length of the fan-only mode cycle for dishwashers and conventional cooking products. 77 FR 49064, 49067 (Aug. 15, 2012).

AHAM, BSH, Samsung, and Whirlpool support the alternative approach under which the energy use of fan-only mode would be measured only if is not a user-selectable option, although they noted this approach could produce non-representative results if the energy use during fan-only mode is not constant. These commenters cited an example in which the fan could stop and start over the course of the fan-only mode, or it could operate at a different wattage at times other than during the sampling period. Therefore, AHAM, BSH, Samsung, and Whirlpool suggest that DOE include language to require that the measured time period of 10 minutes be representative of average energy usage. If the measurement period is not representative, the full fan-only mode should be measured. (AHAM, No. 35 at pp. 9–10; BSH, No. 36 at p. 3; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1) ASAP, NCLC, and NRDC, jointly (hereafter the ''SNOPR3 Joint Comment'') support measuring fan-only mode energy use for the duration of fan-only mode, as originally proposed in the May 2012 SNOPR. These commenters stated they are not aware of available data on the representative cycle times of fan-only mode for dishwashers or conventional cooking products, and that given the wide variations in fan-only cycle times observed in the products, any assumed cycle time would result in significantly over-estimating or under-estimating the actual energy consumption in fan-only mode for a majority of products. (SNOPR3 Joint Comment, No. 37 at pp. 1–2)

Measuring fan-only mode energy use over the full duration of fan-only mode may provide slightly more accuracy in the results, but such an approach can represent significant testing burden in the event that the duration of fan-only mode extends to several hours. Additionally, DOE agrees with the SNOPR3 Joint Comment that any single value for a representative duration of fan-only mode for a dishwasher or conventional cooking product that DOE may prescribe in its test procedures would likely not result in representative energy use for a number of such products. To use the alternate method and extrapolate the results over the duration of fan-only mode, manufacturers must know and use the length of the fan-only mode operation. Use of the alternative approach would substantially reduce testing burden while resulting in representative energy use for this mode. Therefore, in today's final rule, DOE adopts provisions in the new dishwasher test procedure and amends the current conventional cooking products test procedure to include the methodology proposed in the May 2012 SNOPR for measuring energy use over the full duration of fan-only mode, but also allow the choice of the alternative method, using a testing duration of 10 minutes, where the duration of fan-only mode is known and the resulting energy use extrapolated over the entire fan-only mode will be representative. For conventional cooking products, DOE's proposed amendments for measuring fan-only mode energy use are corrected in today's final rule so that the energy use

is determined in kilowatt-hours rather than hours.

AHAM and Whirlpool also commented that DOE should clarify what ''as indicated to the consumer'' means in the fan-only mode definition. According to AHAM, this could refer to the end of the heating function for a cooking product or dishwasher cycle, or when the consumer is notified of the end of the heating function or dishwasher cycle and the fan is running, or something else. (AHAM, No. 27 at p. 2; Whirlpool, No. 26 at p. 1) In today's final rule, DOE provides further clarification in the definition of fan-only mode that indication to the consumer of the end of the cycle is by means of a display, indicator light, or audible signal.

3. Dishwasher Water Softener Regeneration

In the May 2012 SNOPR, DOE proposed a method for measuring the energy consumed during regeneration cycles for water softeners built into certain residential dishwashers. The proposed test procedure would measure the machine electrical energy consumption and the water consumption of a water softener regeneration cycle. DOE considered information submitted by manufacturers in petitions for waiver from the DOE test procedure to determine an appropriate method for incorporating water softener regeneration energy and water consumption into the overall metrics. 77 FR 31444, 31449–52 (May 25, 2012).

The NOPR/SNOPR2 Joint Comment supported the proposed water softener regeneration test procedure, and noted that the test procedure would eliminate the need for additional test procedure waivers. (NOPR/SNOPR2 Joint Comment, No. 29 at p. 1) AHAM, BSH, and Whirlpool opposed the proposed test method because it would be burdensome and result in only a small amount of additional measured energy and water consumption. Whirlpool commented that it submitted detailed data on the frequency, energy use, and water use of water softeners in its petition for wavier, and in granting the waiver, DOE agreed to add constant values of 4 kWh and 23 gallons per year to the results calculated under the test procedure. According to Whirlpool, these represent a very modest amount of annual energy and water consumption. (AHAM, No. 27 at pp. 3–4; BSH, No. 28 at p. 2; BSH, No. 36 at p. 2; Whirlpool, No. 26 at pp. 1–3; Whirlpool, No. 34 at p. 2)

AHAM, BSH, and Whirlpool noted that the proposed test method is not consistent with the approach taken by the European standards EN 50242/EN 60436 and the IEC Standard 60436, which disregard energy and water consumption during water softener regeneration, and that the lack of harmonization increases test burden. These commenters also stated that if the water softener does not operate as part of the ''normal'' energy cycle and is user selectable, it should be treated like other options in the test procedure and should not be measured. (AHAM, No. 27 at p. 4; BSH, No. 28 at pp. 2–3; BSH, No. 36 at p. 2; Whirlpool, No. 26 at pp. 1–3; Whirlpool, No. 34 at p. 2)

AHAM, BSH, and Whirlpool further stated that DOE overestimated the energy use associated with water softener regeneration cycles because it did not account for households with hard water that use home water softening systems. According to BSH, dishwashers with built-in water softening systems are the most costly units, and homes that can afford these high-end dishwashers and have water hardness above 180 parts per million (ppm) (the maximum water hardness for which modern phosphate-free detergents are effective) are more likely to have home water softening systems, although BSH did not provide supporting data. BSH stated that it produces about 50,000 units per year with built-in water softening systems, totaling a small amount of energy consumption for water softener regeneration according to the current waiver calculation methods. (AHAM, No. 27 at p. 4; BSH, No. 28 at p. 2; BSH, No. 36 at p. 2; Whirlpool, No. 26 at p. 1) The NOPR/SNOPR2 Joint Comment stated that in the absence of data regarding the percentage of households with hard water that have their entire water supply softened, DOE's assumption that all dishwashers with built-in water softeners perform the periodic regeneration is reasonable. (NOPR/SNOPR2 Joint Comment, No. 29 at pp. 1–2)

Whirlpool also commented that specifying an exact test water hardness of 217 mg/L (12.7 grains) would not be practical, and a tolerance would be required, such as 9 to 14 grains, allowing laboratories to use existing water supplies and reduce the additional test burden of special mixing of water for this test. (Whirlpool, No. 26 at p. 3)

AHAM, BSH, and Whirlpool commented that if DOE includes water softener regeneration in the test procedure, DOE should adopt a method of adding constant values for the water and energy use, similar to the method DOE agreed to in the test procedure waivers, which would be provided by the manufacturer and would account for regeneration frequency, water use, and energy use. (AHAM, No. 27 at p. 4; BSH, No. 28 at p. 3; BSH, No. 36 at p. 2; Whirlpool, No. 26 at pp. 1, 3; Whirlpool, No. 34 at p. 2)

In the waivers granted to manufacturers for water softening dishwashers, DOE has already determined that the energy and water use for water softener regeneration, although small in comparison to the overall energy and water use of the dishwasher, must be included to accurately represent true energy and water consumption characteristics. DOE recognizes that the proposed methodology to measure water softener regeneration would result in a significant increase in testing burden, by requiring up to 10 additional testing cycles to determine the energy and water use associated with that process. The waivers granted to manufacturers of different water softening dishwashers demonstrate that the values for the additional water and energy consumption necessary for water softener regeneration, as well as the frequency of the regeneration process, will vary depending on the specific model of dishwasher. For that reason, DOE cannot adopt fixed values for these parameters in the dishwasher test procedure. As an alternative approach that will minimize significantly the testing burden for including water softener regeneration in the dishwasher test procedure, DOE adopts in appendix C1 measures of energy and water consumption for water softener regeneration using manufacturer-reported values for the energy and water use for each regeneration cycle and the number of annual regeneration cycles. In today's final rule, DOE also amends 10 CFR 429.19 to require manufacturers to certify and submit to DOE the fixed values, along with data and calculations by which they are derived, for each basic dishwasher model equipped with a built-in water softener system.

DOE does not have data available at this time to determine the percentage of households with hard water that have their entire water supply softened, and for that reason does not provide an adjustment factor to the energy and water use calculations adopted in today's final rule. Because DOE is not adopting methodology for conducting water softener regeneration testing, but instead is incorporating energy and water use measures by means of fixed values, DOE is not adding any specification in the new dishwasher test procedure for the supply water hardness.

G. Measures of Energy Consumption

For the December 2010 NOPR, DOE analyzed whether it is technically feasible, as required by EPCA, to combine the existing measures of energy consumption for dishwashers, dehumidifiers, and conventional cooking products with standby mode and off mode energy use to form a single metric. DOE's tentative conclusions at that time are discussed as follows.

1. Dishwashers

Because the dishwasher test procedure already combines measures of active mode energy consumption and a simplified measure of standby mode energy use to derive EAEU, the current energy use metric for standards, it is technically feasible to incorporate standby mode and off mode energy consumption into the overall energy efficiency descriptor. Furthermore, DOE noted in the December 2010 NOPR that its analysis of overall energy use for dishwashers shows that the standby mode and off mode energy use is of a magnitude that it would materially affect that standard-setting process without overwhelming the effects of differing levels of active mode energy use . Therefore, a combined measure of energy efficiency for dishwashers is a meaningful measure. DOE proposed to amend the calculation of EAEU to incorporate the revised measures of standby mode and off mode energy consumption, and the revised EAEU metric would satisfy the EPCA requirement to integrate standby mode and off mode energy consumption into the overall energy consumption metric. 75 FR 75290, 75314 (Dec. 2, 2010).

EPCA requires that DOE must determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) The current DOE dishwasher test procedure defines ''standby mode'' as the lowest power consumption mode which cannot be switched off or influenced by the user. DOE proposed in the December 2010 NOPR to measure an additional standby mode (*i.e.,* cycle finished mode). However, the proposed amendments clarified that the provisions related to the new measures of energy consumption in standby mode and off mode would not be required to be used by manufacturers until the compliance date of any amended dishwasher standards addressing standby mode and off mode energy use. Therefore, the proposed amendments to the dishwasher test procedure regarding standby mode and off mode would not alter the measured efficiency of any covered product under the existing test procedure. 75 FR 75290, 75314 (Dec. 2, 2010).

Because the current dishwasher test procedure already incorporates standby energy use in the EAOC, it is technically feasible to incorporate both standby mode and off mode energy use into the EAOC. Therefore, DOE proposed in the December 2010 NOPR to amend the EAOC calculation to incorporate the revised measures of standby mode and off mode energy consumption. *Id.*

The dishwasher test procedure currently provides instructions for rounding EAOC to the nearest dollar per year. 10 CFR 430.23(c)(1). However, no instructions are provided for rounding the final values of EAEU or water consumption per cycle (the metrics for the current dishwasher energy conservation standards), nor the contributory measurements and interim calculations. This lack of specificity for rounding may lead to uncertainty in the reported metrics or to discrepancies among test laboratories for the same product, resulting in difficulty for regulated entities to ascertain, certify, and report compliance with the existing standards. Therefore, DOE proposed in the December 2010 NOPR to add instructions to 10 CFR 430.23(c) requiring that water consumption be rounded to one decimal place, and EAEU be rounded to the nearest whole kWh/year. DOE also proposed at that time to provide rounding instructions for EF, but as discussed in section III.J, is removing provisions for determining EF because it is obsolete. 75 FR 75290, 75314 (Dec. 2, 2010).

AHAM commented that is did not oppose modifying the existing EAEU metric for dishwashers as proposed, and supported the rounding instructions proposed. (AHAM, No. 14 at p. 12) Whirlpool stated that, although it is technically feasible to create an integrated metric for dishwashers, delay start mode and cycle finished mode represent *de-minimus* contributors to EAEU and EAOC. According to Whirlpool, the annual cost of energy consumed in inactive/off mode would range from $0 to $0.65. Whirlpool stated that measurement of these modes adds cost and complication to the test procedure with no corresponding value, and should not be included in the test procedure. (Whirlpool, No. 12 at p. 6) Because integrated dishwasher energy use metrics are technically feasible, DOE revises in today's final rule the EAEU and EAOC metrics in the new dishwasher test procedure to incorporate measures of standby mode and off mode energy use, as required by 42 U.S.C. 6295(gg). DOE also adopts in 10 CFR 430.23(c) the rounding instructions for EAEU and water consumption that were proposed in the December 2010 NOPR.

2. Dehumidifiers

The DOE test procedure for dehumidifiers currently only incorporates energy consumption in the form of EF (see 10 CFR part 430, subpart B, appendix X for details). EF, defined as liters of water removed from the air per kWh, is the metric for the current energy conservation standards for dehumidifiers. (10 CFR 430.32(v)) The current DOE test procedure for dehumidifiers does not account for standby mode and off mode energy use.

In the December 2010 NOPR, DOE noted that its analysis of overall energy use for dehumidifiers indicates the standby mode and off mode energy use is of a magnitude that it would materially affect that standard-setting process without overwhelming the effects of differing levels of active mode energy use. Therefore, DOE stated that a combined measure of energy efficiency for dehumidifiers is a meaningful measure. 75 FR 75290, 75314–15 (Dec. 2, 2010).

DOE proposed in the December 2010 NOPR to establish an integrated energy factor (IEF) measure to account for the product's energy use in standby mode and off mode, as well as the energy use of the product's main functions. DOE noted that the calculation of EF represents the liters of water removed from the air per kWh of energy consumed over a given period of time, such as the number of active mode hours per year. If the ratio of the annual standby mode and off mode hours to the annual active mode hours is used to apportion standby mode and off mode power consumption over the active mode test period of one day, it is possible to calculate an IEF that incorporates both the efficiency of water removal from the air and the standby mode and off mode energy consumption. DOE proposed to calculate IEF using the following calculation: (The liters of water removed over the active mode test cycle)/((the active mode energy consumption over the active mode test cycle) + ((the standby mode and off mode annual energy consumption [14] × 24 hours)/(the active mode hours per year))). 75 FR 75290, 75315 (Dec. 2, 2010).

[14] The standby mode and off mode annual energy consumption is equivalent to the average standby mode and off mode power multiplied by the number of standby mode and off mode hours per year.

Section 3 of the current dehumidifier test procedure provides instructions for rounding EF to two decimal places. DOE proposed in the December 2010 NOPR to round the IEF value to two decimal places as well. *Id.*

AHAM stated that is did not oppose the proposed integrated metric for dehumidifiers, and supports the rounding instructions proposed. (AHAM, No. 14 at p. 12) Whirlpool stated that, although it is technically feasible to create an integrated metric for dehumidifiers, delay start mode and bucket full/removed mode represent *de-minimus* contributors to annual energy consumption and operating cost. According to Whirlpool, the annual cost of energy consumed in off-cycle and inactive modes would range from $0 to $0.36. Whirlpool stated that measurement of these modes adds cost and complication to the test procedure with no corresponding value, and should not be included in the test procedure. (Whirlpool, No. 12 at p. 6) Because an integrated dehumidifier energy use metric is technically feasible, DOE adopts in today's final rule the new IEF metric in the new dehumidifier test procedure to incorporate measures of standby mode and off mode energy use, as required by 42 U.S.C. 6295(gg). DOE also adopts the rounding instructions for IEF that were proposed in the December 2010 NOPR.

3. Conventional Cooking Products

The DOE test procedures for conventional cooking tops, ovens, and ranges currently incorporate various measures of energy consumption. These include test energy consumption, annual cooking energy consumption, annual energy consumption of any continuously-burning pilot lights, annual self-cleaning energy consumption, annual clock energy consumption, total annual energy consumption, and cooking efficiency. (*See* 10 CFR part 430, subpart B, appendix I.) The test procedure also provides a calculation for EF [15] and EAOC. Although there are no current energy conservation standards based on performance for conventional cooking products (see 10 CFR 430.32(j)), historically, DOE's rulemaking analyses when considering standards have used EF as the energy conservation metric for conventional cooking products.

In the December 2010 NOPR, DOE noted that the conventional cooking products test procedure currently combines measures of energy consumption and narrow forms of standby energy use, including continuously-operating clock and gas standing pilot light energy consumption, to derive an overall ''energy efficiency measure.'' Therefore, a combined measure of energy efficiency for conventional cooking products has already been demonstrated to be a workable and meaningful measure. For this reason, DOE tentatively concluded that it would be technically feasible to incorporate standby mode and off mode energy consumption into the overall energy efficiency descriptor (*i.e.,* EF). In the December 2010 NOPR, DOE proposed to establish, for conventional electric ovens, the ''integrated annual energy consumption,'' defined as the sum of the annual standby mode and off mode energy consumption, annual primary cooking energy consumption, and annual primary self-cleaning energy consumption, expressed in kWh. For conventional gas ovens that use electrical energy, the ''integrated annual electrical energy consumption'' would be defined as the sum of the annual standby mode and off mode energy consumption, annual secondary cooking energy consumption,[16] and annual secondary self-cleaning energy consumption, expressed in kWh. For conventional electric ovens, IEF would be defined as the (annual useful cooking energy output)/(integrated annual energy consumption). For conventional gas ovens, IEF would be defined as the (annual useful cooking energy output)/(annual gas energy consumption + integrated annual electrical energy consumption). DOE also proposed similar integrated annual energy consumption and IEF metrics for multiple conventional ovens (*i.e.,* cooking appliances that include more than one conventional oven). 75 FR 75290, 75315 (Dec. 2, 2010).

Also in the December 2010 NOPR, DOE proposed to establish measures integrating the product's energy use in standby mode and off mode with energy use during the main functions of the products. For conventional electric cooktops, the ''integrated annual energy consumption'' would be defined as the (annual standby mode and off mode energy consumption) + (annual useful cooking energy output/conventional cooktop cooking efficiency), expressed in kWh. For conventional gas cooktops, the ''integrated annual electrical energy consumption'' would be defined as the sum of the annual standby mode and off mode energy consumption, annual energy consumption for cooking, and annual energy consumption of the gas standing pilot light, expressed in kWh. For conventional electric cooktops, IEF would be defined as the annual useful cooking energy output divided by the electric cooktop integrated annual energy consumption. For conventional gas cooktops, IEF would be defined as the annual useful cooking energy output divided by the gas cooktop integrated annual energy consumption. *Id.*

DOE proposed in the December 2010 NOPR to establish the following measures of energy consumption for conventional kitchen ranges (*i.e.,* a cooktop and oven combined). ''Integrated annual energy consumption'' would be the sum of the annual cooking energy consumption of each of its components plus the conventional range annual standby mode and off mode energy consumption.[17] The IEF of a kitchen range would be the sum of the annual useful cooking energy output of each component divided by the sum of the integrated annual energy consumption of each component. 75 FR 75290, 75315–16 (Dec. 2, 2010).

DOE is also proposed in the December 2010 NOPR to amend the estimated annual energy cost calculations in 10 CFR 430.23(i) to include the cost of energy consumed in standby mode and off mode for conventional cooking products. 75 FR 75290, 75316 (Dec. 2, 2010). The cooking products test procedure currently provides instructions for rounding EAOC to the nearest dollar per year, and the cooking efficiency and energy factor to three significant digits. 10 CFR 430.23(i)(1), (2), (4). DOE proposed in the December 2010 NOPR to amend the test procedure to provide similar instructions requiring that EAOC based on total integrated annual electrical energy consumption be rounded to the nearest dollar per year and IEF to three significant digits. 75 FR 75290, 75316 (Dec. 2, 2010).

AHAM commented that is did not oppose the proposed integrated metrics for conventional cooking products, and supports the rounding instructions

[15] ''Energy factor'' is defined as the ratio of the annual useful energy output to the total annual energy input.

[16] ''Secondary cooking energy consumption'' includes any electrical energy consumption of a conventional gas cooking product during active mode operation.

[17] DOE proposes to measure the standby mode and off mode energy consumption for a conventional range as a single product and to add the standby mode and off mode energy consumption separately in the calculation of the integrated annual energy consumption. It proposes this so that the standby mode and off mode power consumption is not measured separately for each component (*i.e.,* cooktop and oven) and then summed with the cooking annual energy consumption, which would effectively double count the contribution of standby mode and off mode energy consumption.

proposed. (AHAM, No. 14 at p. 12) Whirlpool stated that, although it is technically feasible to create an integrated metric for conventional cooking products, delay start mode, cycle finished mode, and Sabbath mode represent *de-minimus* contributors to annual energy consumption and operating cost. Whirlpool stated that measurement of these modes adds cost and complication to the test procedure with no corresponding value, and should not be included in the test procedure. (Whirlpool, No. 12 at p. 6) ASAP stated that an integrated metric for conventional cooking products could preclude the possibility of a future standard for standby energy use for conventional cooking products, as is being considered for microwave ovens. (ASAP, NOPR Public Meeting Transcript, No. 10 at p. 120.

Because integrated energy use metrics for conventional cooking products are technically feasible, DOE adopts in today's final rule new IEF and integrated annual energy consumption metrics in the cooking products test procedure as described to incorporate measures of standby mode and off mode energy use, as required by 42 U.S.C. 6295(gg). The cooking products test procedure amendments also include separate measures of standby mode and off mode energy use that feed into the calculation of IEF. Should DOE in the future consider new energy efficiency standards for conventional cooking products, DOE will take appropriate action consistent with 42 U.S.C. 6295(gg). DOE also amends in 10 CFR 430.23(i) the estimated annual energy cost calculations to include the cost of energy consumed in standby mode and off mode for conventional cooking products, as well as to provide rounding instructions for EAOC and IEF as proposed in the December 2010 NOPR.

H. Dishwasher Test Procedure Clarifications

1. Energy Test Cycle Selection and Normal Cycle Definition

DOE proposed in the May 2012 SNOPR that soil-sensing dishwashers be tested on the normal cycle under section 2.6.3 of appendix C if soil-sensing is available as an option in the normal cycle. If soil-sensing is not available for the normal cycle, DOE proposed that the dishwasher be tested by selecting the cycle type that uses the soil-sensing system, and contains all the elements of a normal cycle including the power-dry feature (if such a feature is provided). 77 FR 31444, 31452–53 (May 25, 2010). DOE continued to propose this clarification in the August 2012 SNOPR and further proposed that, for units with multiple temperature options, the unit shall be tested at the manufacturer-recommended setting, or absent a manufacturer recommendation, at the highest temperature setting. 77 FR 49064, 49065–66 (Aug. 15, 2012).

AHAM, BSH, and Whirlpool opposed the proposals in the May 2012 SNOPR and the August 2012 SNOPR, stating that it contradicts the definition of normal cycle, may not represent typical consumer usage, and creates confusion for the tester and consumer. These commenters stated that the ''normal cycle'' is the appropriate energy test cycle, and manufacturers must assume the consumer will use the manufacturer-recommended cycle even if that cycle is non-soil-sensing on a dishwasher capable of soil-sensing. The commenters further stated that manufacturers may do this in order to provide soil-sensing only on a specialty cycle(s), such as the cycle intended for washing pots and pans, and then recommend the non-soil-sensing normal cycle to completely wash a full load of normally soiled dishes. Additionally, AHAM, BSH, and Whirlpool noted that it is difficult to determine which cycles use the soil sensor. (AHAM, No. 27 at pp. 4–6; BSH, No 28. at pp. 3–4; Whirlpool, No. 26 at p. 1; Whirlpool, 2012 Public Meeting Transcript, No. 38 at pp. 88–89) AHAM commented that DOE issued guidance in 2010 stating that a soil-sensing cycle is to be used, even if the normal cycle is fixed. AHAM stated that to some, this guidance changed the interpretation of the test procedure. (AHAM, 2012 Public Meeting Transcript, No. 38 at pp. 85–86)

Additionally, AHAM, BSH, Samsung, and Whirlpool pointed out that a manufacturer may make multiple recommendations for cycles that would completely wash a full load of normally soiled dishes, which could invite manufacturer recommendation of alternative cycles or option combinations that could be interpreted by consumers to be alternatives to the ''normal cycle''. These commenters stated it is therefore logical that the energy test cycle and ''normal cycle'' should be the cycle most commonly used by consumers on an everyday basis. Accordingly, AHAM, BSH, and Whirlpool suggested that the definition of ''normal cycle'' be revised to clarify that intent, and to encourage manufacturers to recommend cycles to the consumer that are consistent with the energy and water use measured by the test procedure. In response to the May 2012 SNOPR, they proposed the following definition for normal cycle: ''normal cycle means the cycle type recommended by the manufacturer for daily, regular, or typical use to completely wash a full load of normally soiled dishes, including the power-dry feature. If multiple cycles are recommended by the manufacturer for daily, regular, or typical use to completely wash a full load of normally soiled dishes, the most energy intensive of those recommended cycles shall be considered the normal cycle for the purposes of this test procedure.'' AHAM and Whirlpool opposed the specification of temperature options in the normal cycle definition, but commented that if DOE adds temperature options to that definition, DOE should require selection of the highest temperature settings in the absence of manufacturer recommendations. BSH also supported a requirement to select the highest temperature settings in the absence of manufacturer recommendations. AHAM and Whirlpool stated that, in the absence of data indicating which temperature settings are most representative of actual consumer use, consumers could select the highest temperature settings. (AHAM, No. 27 at pp. 5–6; AHAM, No. 35 at p. 6; BSH, No. 28 at pp. 3–4; BSH, No. 36 at p. 2; Samsung, No. 33 at p. 1; Whirlpool, No. 26 at pp. 1, 4; Whirlpool, No. 32 at p. 1)

In response to DOE's updated proposal for the definition of ''normal cycle'' in the August 2012 SNOPR, AHAM, BSH, Samsung, and Whirlpool submitted a revised definition which would state that the ''[n]ormal cycle means the cycle type recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes, including the power-dry feature. If no cycle or more than one cycle is recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes, the most energy intensive of these cycles shall be considered the normal cycle for purposes of this test procedure.'' (AHAM, No. 35 at p. 6; BSH, No. 36 at pp. 2–3; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1)

Whirlpool commented that DOE should include a ''statement of intent'' in the dishwasher test procedure to clarify the test procedure for new technology developments, and to prevent manufacturers from creating a specifically designed test cycle that fails to perform the functions desired by the consumer, similar to a recent refrigerator rulemaking. (Whirlpool, No. 26 at pp. 3–4; Whirlpool, No. 32 at pp. 1–2) Samsung also requested that DOE add a statement of intent to help

manufacturers, certification bodies, and consumers understand that the intent of the energy test cycle selection is to reflect the representativeness of the test procedure to consumer use conditions. (Samsung, No. 33 at p. 1) According to BSH, however, any additional statements of intent and/or additional wording seeking to further clarify the definition may, in some cases, result in confusion as to what cycle should be selected for testing. (BSH, No. 36 at p. 2)

Under EPCA, any test procedure for consumer products that DOE prescribes or amends shall be reasonably designed to produce test results which measure energy consumption or energy efficiency of these products during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(3)) DOE is aware of products available on the market that have multiple cycles recommended by the manufacturer for washing a full load of normally soiled dishes, and that for soil-sensing dishwasher these cycles may be soil-sensing or non-soil sensing. Upon consideration of the arguments put forth by commenters that consumers are most likely to select cycles that are recommended by the manufacturer when washing a full load of normally soiled dishes, DOE determines that it would be contrary to the EPCA requirements if DOE were to require the preferential selection of a soil-sensing cycle for a soil-sensing dishwasher, regardless of the manufacturer's instructions to the consumer. Therefore, DOE agrees with the stakeholder recommendation for the definition of normal cycle, including the requirement to test on the most energy-intensive of multiple recommended cycles or, in the absence of a manufacturer recommendation, the most energy-intensive of all cycles. Because the most energy-intensive cycle would include the highest energy consumption temperature options for washing and drying, DOE includes such a clarification in the definition of the normal cycle in appendix C1, which would be required to be used on the compliance date of any final amended standards for dishwashers (*i.e.,* May 30, 2013 unless the direct final rule issued on May 30, 2012 is withdrawn). On that compliance date, the definition of normal cycle that DOE adopts in today's final rule supersedes the 2010 guidance. For the reasons discussed above, DOE withdraws the guidance effective May 30, 2013 (unless the direct final rule issued on May 30, 2012 is withdrawn, in which case the guidance will remain in effect). DOE also clarifies in appendix C1 that ''non-soil-sensing dishwasher'' refers to a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of the normal cycle based on the soil load of the dishes, and that a ''soil-sensing-dishwasher'' does have the ability to adjust automatically any energy consuming aspect of the normal cycle based on the soil load of the dishes. In addition, DOE clarifies that soil-sensing dishwashers shall be tested on the normal cycle. Furthermore, DOE has not included a statement of intent in the amendments to the dishwasher test procedure adopted in today's final rule. EPCA's requirement that test procedures measure energy efficiency, energy use or water use during a representative average use cycle obviates the need for specific clarification of that purpose in the residential dishwasher test procedure in the absence of any indication that manufacturers are designing products that test under conditions different than those used by the consumer.

AHAM, BSH, and Whirlpool recommend that manufacturers be required to submit with their certification reports: (1) Whether the unit is soil-sensing; (2) the cycle selected for the energy test; and (3) the options selected for the energy test. AHAM also recommended manufacturers certify in the report whether the test cycle is soil-sensing. AHAM, BSH, and Whirlpool suggested that manufacturers include a clear recommendation for the cycle setting and options in their use and care guides, or on the product controls. (AHAM, No. 27 at p. 6; AHAM, 2012 Public Meeting Transcript, No. 38 at p. 87; BSH, No. 28 at pp. 4–5; BSH, 2012 Public Meeting Transcript, No. 38 at pp. 91–92; Whirlpool, No. 26 at p. 1) Intertek commented that currently, the only way for laboratories to know if a unit has a soil sensor is to reference the use and care manual. (Intertek, 2012 Public Meeting Transcript, No. 38 at p. 91) BSH and Whirlpool indicated that their user manuals likely indicate whether a unit has a soil sensor, while GE noted their manuals do not necessarily indicate which cycles are soil-sensing, and which are fixed. (BSH, 2012 Public Meeting Transcript, No. 38 at p. 92; Whirlpool, 2012 Public Meeting Transcript, No. 38 at p. 92; GE, 2012 Public Meeting Transcript, No. 38 at p. 98)

DOE notes that the certification requirements for dishwashers included in 10 CFR part 429.19 require manufacturers to report the following information for each certified basic model: the capacity in number of place settings as specified in ANSI/AHAM DW–1, presence of a soil sensor (if yes, the number of cycles required to reach calibration), and the water inlet temperature used for testing in °F. In today's final rule, DOE determined, for reproducibility of the test procedure, to additionally require that manufacturers submit the cycle used for energy testing, whether that cycle is soil-sensing, and the options selected for that cycle during energy testing.

2. Preconditioning

In the May 2012 SNOPR, DOE proposed that, for soil-sensing dishwashers, the cycle setting for the active mode cycle (in which the soil sensor is active) be selected for the preconditioning cycle. 77 FR 31444, 31452 (May 25, 2012). In the August 2012 SNOPR, DOE additionally proposed requiring two preconditioning cycles to ensure the soil sensor is properly calibrated, and to clean any debris out of the dishwasher prior to testing. 77 FR 49064, 49066 (Aug. 15, 2012).

AHAM, BSH, Samsung, and Whirlpool agreed with using the test cycle for preconditioning, but also commented that the definition of preconditioning is vague and not adequate for the way some products operate today. They commented that the proposed language may be confusing, and recommended that the cycle used for preconditioning be the same as the cycles used for the test. (AHAM, No. 27 at p. 9; AHAM, No. 35 at p. 7; AHAM, 2012 Public Meeting Transcript, No. 38 at pp. 107–108; BSH, No. 36 at p. 3; BSH, No. 28 at p. 7; Samsung, No. 33 at p. 1; Whirlpool, No. 26 at p. 1; Whirlpool, No. 32 at p. 1) AHAM, BSH, Samsung, and Whirlpool also support the requirement for two preconditioning cycles. (AHAM, No. 35 at p. 7; BSH, No. 36 at p. 3; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1) Whirlpool and BSH commented that some laboratories perform more than one preconditioning cycle to ensure that the machine is cleaned out and water usage is quantified, although Whirlpool's products are designed so that the sensor calibrates in one cycle. Whirlpool acknowledged, however, that if its dishwasher does not calibrate in the first cycle, then it uses the next cycle as well, and will keep trying on subsequent cycles if there is still an error. BSH commented that the action taken if the sensor fails to calibrate on the first cycle varies from manufacturer to manufacturer. Whirlpool and BSH stated that they have equipment in their own laboratories that can determine whether the sensor has calibrated, but

they further noted that there is not a clear way for a third-party laboratory to determine whether the sensor had calibrated, because the energy and water use that would indicate a calibration process are model-specific and the sensor responses are complex. According to BSH, sensor responses may include changes in motor speed and water temperatures, as well as water consumption. Whirlpool and BSH added that their sensors are designed to calibrate with clean water, rather than with a soiled load. (BSH, 2012 Public Meeting Transcript, No. 38 at pp. 111–113, 115–116, 118; Whirlpool, 2012 Public Meeting Transcript, No. 38 at pp. 109–115, 117, 119–120) Viking Range Corporation (Viking) commented that user manuals typically contain energy use information for cycles that would provide an indication to a laboratory as to whether a calibration occurred. (Viking, 2012 Public Meeting Transcript, No. 38 at pp. 120–121) BSH stated that it provides a minimum and maximum water consumption, but water use above the maximum is not necessarily indicative of a problem with calibration. (BSH, 2012 Public Meeting Transcript, No. 38 at p. 122) UL stated that it performs one preconditioning cycle because that is the recommendation in ANSI/AHAM DW–1. (UL, 2012 Public Meeting Transcript, No. 38 at p. 123)

DOE has determined that specifying the energy test cycle would provide clarity and the most accurate possible water usage measurement for calculation of detergent dosing. Thus, in appendix C1 established by today's final rule, DOE includes the requirement that the preconditioning cycle be conducted using the same cycle setting as the energy test cycle, as proposed in the May 2012 SNOPR and August 2012 SNOPR. DOE has added further clarification by revising the definition for ''preconditioning cycle'' to state that it is a normal cycle run with no test load to ensure that the water lines and sump area of the pump are primed. DOE also determines that there would be a slight additional test burden of conducting two preconditioning cycles, but that this increase is warranted by the improvement in test measurements by ensuring sensor calibration and cleaning out the machine and is not unduly burdensome to conduct, as discussed in section III.K. In addition, specifying two preconditioning cycles would eliminate the need for laboratories to interpret testing data to determine whether sensor calibration occurred successfully after the first preconditioning, thus improving reproducibility of the test procedure. For these reasons, DOE is requiring the use of two preconditioning cycles in the dishwasher test procedure established at appendix C1.

3. Detergent

In the May 2012 SNOPR, DOE proposed determining detergent dosing using the pre-wash and main wash fill volumes during the preconditioning cycle, and outlined the calculations for the proper dosing. Additionally, the proposal updated the type of detergent to the currently-available ''Cascade with the Grease Fighting Power of Dawn'' powder detergent. 77 FR 31444, 31453 (May 25, 2012). In the August 2012 SNOPR, DOE continued to propose detergent dosing as outlined in the May 2012 SNOPR, with the clarification that the pre-wash and main wash fill volumes be recorded during the second proposed preconditioning cycle. 77 FR 49064, 49066 (Aug. 15, 2012).

AHAM commented that the proposed detergent dosage calculation leaves room for interpretation. (AHAM, 2012 Public Meeting Transcript, No. 38 at p. 93) AHAM, BSH, and Whirlpool commented that the concentration approach for detergent dosing may no longer be representative of actual consumer use because consumers are more likely to use a monodose detergent. AHAM, BSH, and Whirlpool recommended that DOE should base the decision about whether to specify a certain amount of powder detergent or a unitized dose such as a tablet on consumer usage data, and cited an AC Nielson Homescan Panel study which found a trend towards monodose detergents from 2000 to 2011. According to these commenters, the study showed that dishwasher detergent usage was 14.5 percent monodose, 39 percent gel, and 46.5 percent powder in 2000, which shifted to 53.5 percent monodose, 28.5 percent gel, and 18 percent powder in 2011. AHAM, BSH, and Whirlpool stated that a fixed detergent dose in the dishwasher test procedure would be more representative of consumer usage, less burdensome, and more accurate than the powder detergent dosage currently required, which can vary from test to test due to its complexity. AHAM and Whirlpool further commented that DOE may also consider consumer use of monodose tablets including rinse aid. (AHAM, No. 27 at pp. 10–11; BSH, No. 28 at pp. 7–8; Whirlpool, 2012 Public Meeting Transcript, No. 38 at pp. 94, 96–97; Whirlpool, No. 26 at p. 1)

AHAM, BSH, and Whirlpool commented that DOE should consider whether the detergent should be a laboratory formulation or a formulation available on the market. (AHAM, No. 27 at p. 10; BSH, No. 28 at pp. 7–8; Whirlpool, No. 26 at p. 1) BSH proposed that DOE consider an IEC test detergent to eliminate variation due to manufacturing tolerances and formulation changes. (BSH, No. 28 at p. 8) In the interim, however, without a consumer use study, AHAM, BSH, and Whirlpool support DOE's proposal to update the detergent requirement to the ''Cascade with the Grease Fighting Power of Dawn'' formulation powder detergent. AHAM and BSH commented, though, that DOE would need to consider how a phosphate-free detergent would affect energy and water use results. (AHAM, No. 27 at p. 10; AHAM, 2012 Public Meeting Transcript, No. 38 at pp. 93–94; BSH, No. 28 at p. 8; Whirlpool, No. 26 at p. 1)

BSH noted that detergent dosing based on the preconditioning cycle with a clean load may not reflect the amount of water that would be used during a test cycle with a soiled load, and that the food load and soil sensors will affect each other. BSH also commented that the detergent can influence the sensor decision. (BSH, 2012 Public Meeting Transcript, No. 38 at pp. 94–96, 99)

DOE has determined to adopt the concentration specification for ''Cascade with the Grease Fighting Power of Dawn'' rather than the other detergent dosing methods. A monodose detergent would result in the same amount of detergent being dispensed for every dishwasher, regardless of water consumption. This may skew test results for dishwashers with either high or low water consumption due to the changes in detergent concentration that could impact how easily soils are removed from the test load. A concentration-based detergent dosing ensures that the detergent concentration is similar from unit-to-unit.

Additionally, DOE does not have any information indicating that this phosphate-free detergent would have any impact on energy and water use results. DOE notes that the detergent specified in ANSI/AHAM DW–1–1992 has been unavailable for a number of years. DOE understands that manufacturers and third-party test laboratories have used ''Cascade with the Grease Fighting Power of Dawn'' in its absence, with no apparent impact in the resulting energy and water consumption results.

DOE acknowledges that the water consumption in the second preconditioning cycle with no soil load may be different from the water consumed during the test cycle. However, running a soiled load with no detergent to determine water consumption may also yield water

consumptions different from the test cycle due to the lack of detergent and less-effective removal of soils from the test load. The method of basing detergent dosing on the preconditioning water consumptions helps to limit test burden for manufacturers and third-party test laboratories. Additionally, the requirement to run the preconditioning cycle on the same setting as the test cycles would likely lead to similar water consumptions for both preconditioning and testing.

Therefore, DOE continues to include the concentration-based detergent calculation using the pre-wash and main wash water consumptions as measured during the second preconditioning cycle, and to update the detergent specification to ''Cascade with the Grease Fighting Power of Dawn'' for appendix C1 in today's final rule. DOE also amends appendix C to specify the detergent as ''Cascade with the Grease Fighting Power of Dawn'' because the currently specified detergent is no longer available, thereby making such specification obsolete.

4. Power Supply Requirements

In the May 2012 SNOPR, DOE proposed that power be continuously supplied to the unit during testing, including after the preconditioning cycle and between all test cycles. 77 FR 31444, 31452 (May 25, 2012). The August 2012 SNOPR updated the proposed continuous power supply requirement to also cover the second preconditioning test cycle proposed to ensure sensor calibration. 77 FR 49064, 49066 (Aug. 15, 2012).

AHAM, BSH, and Whirlpool commented that the requirement to maintain the power supply throughout testing would add test burden for manufacturers who know that their soil sensors do not lose calibration with an interruption in the power supply. The commenters suggested DOE add a note to the test procedure that some soil sensors may lose calibration, so that third-party test laboratories would be aware of this behavior, without including the requirement to maintain the power supply. This would allow manufacturers to avoid unnecessary test burden. (AHAM, No. 27 at p. 7; BSH, No. 28 at p. 5; Whirlpool, No. 26 at p. 1)

DOE understands that maintaining the power supply represents an increase in test burden for manufacturers of units whose soil sensors do not lose calibration. However, given the difficulty in determining whether a soil sensor is calibrated, DOE includes the continuous power supply requirement in appendix C1 to ensure consistent testing by either a manufacturer or a third-party laboratory.

5. Updated Industry Standard

In response to the May 2012 SNOPR, AHAM, BSH, and Whirlpool commented that DOE should incorporate by reference the most recent versions of external test procedures, including ANSI/AHAM DW–1–2009 (or the latest version of DW–1 at the time DOE updates its incorporation by reference). These commenters stated that DOE would need to determine whether this change would result in changes to measured energy (resulting from a change in dishware, for example). AHAM and Whirlpool also noted that there are differences in the food soils specified, although Whirlpool characterized them as ''fairly subtle.'' (AHAM, No. 27 at pp. 12–13; AHAM, 2012 Public Meeting Transcript, No. 38 at pp. 155–156; BSH, No. 28 at p. 10; BSH, 2012 Public Meeting Transcript, No. 38 at p. 156; Whirlpool, No. 26 at pp. 1, 5; Whirlpool, 2012 Public Meeting Transcript, No. 38 at p. 156)

In response to these comments, for the August 2012 SNOPR, DOE proposed to update the industry standard test reference in appendix C from ANSI/AHAM DW–1–1992 to DW–1–2010. 77 FR 49064, 49066 (Aug. 15, 2012).

AHAM, BSH, Samsung, and Whirlpool support the proposal to update the industry standard reference to ANSI/AHAM DW–1–2010, but noted they do not currently have data on the effect on energy use of changing to the updated version of the standard. These commenters stated that DOE must determine whether there would be changes to the measured energy use. (AHAM, No. 35 at pp. 7–8; BSH, No. 36 at p. 3, Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1)

The DOE dishwasher test procedure references certain sections of ANSI/AHAM DW–1 related to soil preparation and application. Differences in other provisions such as the dishware specifications would not impact the measurement of energy and water use under the DOE test. When DOE compared the relevant sections of 1992 and 2010 versions of the standard, it identified the following differences:

- The brand and product description for the coffee and preserves;
- The preparation method for the eggs and cream corn;
- The amount of reconstituted milk used in the potato mixture;
- The grinding specifications for the ground beef; and
- The order of soil application.

DOE has not been presented with any data or information that would show that these differences would impact the results from the DOE dishwasher test procedure for specific dishwasher models. DOE also notes the uniform support from commenters to reference the most recent version of industry standards in its test procedures and observes that some test laboratories are already conducting dishwasher testing according to ANSI/AHAM DW–1–2010. Further, these amendments will not be required until the compliance date of new standards, which will be May 30, 2013, unless the direct final rule is withdrawn. If manufacturers determine that the new DOE test procedure does not measure energy and water use that is representative for their products, they may submit to DOE a petition for waiver from the DOE test procedure to determine an appropriate method. For the reasons discussed above, DOE has decided to update the reference in its dishwasher test procedure at appendix C1 to ANSI/AHAM DW–1–2010 in today's final rule.

6. Water Pressure

As noted in the August 2012 SNOPR, DOE received comments in response to the May 2012 SNOPR regarding transient water pressure drop when the water supply valve first opens. AHAM, BSH, and Whirlpool commented that laboratories interpret differently how and where the water pressure is measured and controlled. These commenters recommended that, for repeatability and reproducibility, DOE should specify that the water pressure drops to the required 35 pounds per square inch gauge (psig) ± 2.5 psig in no more than 2 seconds after the valve opens. According to AHAM, its members and independent laboratories indicated that this is the minimum length of time that they are capable of achieving. (AHAM, No. 27 at p. 12; AHAM, 2012 Public Meeting Transcript, No. 38 at p. 137; BSH, No. 28 at p. 9; BSH, 2012 Public Meeting Transcript, No. 38 at p. 158; Whirlpool, No. 26 at p. 1) Samsung noted that the time for the transient pressure drop should be minimized so that it does not affect a water fill, since the fill time can be approximately 1 minute. (Samsung, 2012 Public Meeting Transcript, No. 38 at pp. 139–140) According to Whirlpool, the height at which the pressure measurement is made affects the measurement, although not significantly. (Whirlpool, 2012 Public Meeting Transcript, No. 38 at p. 137)

In the August 2012 SNOPR, DOE acknowledged that transient pressure variations should be minimized for reasons of test stability and reproducibility, and, based on

commenters' indication of laboratory capabilities, proposed that the specified pressure be achieved within 2 seconds. 77 FR 49064, 49066 (Aug. 15, 2012). AHAM, BSH, Samsung, and Whirlpool supported this proposal, reiterating that the duration of the pressure drop should be limited to ensure that water is flowing into the dishwasher at the proper pressure and that AHAM's members indicated that 2 seconds is the minimum length of time their laboratories can achieve. (AHAM, No. 35 at p. 8; BSH, No. 36 at p. 3, Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1)

In consideration of these comments and for the reasons already noted, DOE adopts in today's final rule the requirement in the new dishwasher test procedure that the water pressure shall be achieved within 2 seconds of opening the water supply valve. DOE is not requiring the pressure to be measured at a particular location because DOE did not receive sufficient information regarding a representative position or the impact of pressure measurement position on the energy and water use results.

7. Water Hardness

DOE received comments in response to the May 2012 SNOPR and the August 2012 SNOPR that DOE should add a water hardness specification to the dishwasher test procedure. AHAM, BSH, Samsung and Whirlpool commented that DOE should reference the water hardness specification in ANSI/AHAM DW–1–2010 of 0 to 5 grains, or 0 to 85 ppm, to reduce test variation. (AHAM, No. 27 at p. 11; AHAM, No. 35 at p. 10; BSH, No. 28 at p. 9; Samsung, No. 33 at p. 1; Whirlpool, No. 26 at pp. 1, 5) AHAM and Whirlpool further clarified that the American Water Works Association found this to be the normal range occurring in municipal water supplies, and Whirlpool stated that the water hardness specification was intended to reduce lab-to-lab test variation. (AHAM, No. 27 at p. 11; Whirlpool, No. 26 at p. 1; Whirlpool, 2012 Public Meeting Transcript, No. 38 at pp. 148–150) Whirlpool later changed its recommendation for a water hardness requirement to a range of 0 to 2 grains, or 0 to 34 ppm, based on total hardness and not just calcium carbonate, to account for magnesium as well. According to Whirlpool, laboratories can control water hardness to this range with water softening systems. (Whirlpool, No. 34 at p. 2) UL commented that varying between soft and hard water could potentially impact test results. (UL, 2012 Public Meeting Transcript, No. 38 at p. 151) AHAM noted that in the process of developing an ENERGY STAR test method for dishwasher cleaning performance, DOE proposed to adopt the water hardness requirement in ANSI/AHAM DW–1–1992. (AHAM, 2012 Public Meeting Transcript, No. 38 at pp. 146–147)

DOE proposed a water hardness requirement as part of the ENERGY STAR test method for evaluating dishwasher cleaning performance because it may have an impact on cleaning performance. However, DOE is not aware of data indicating how variations in water hardness may impact energy and water consumption under the DOE test procedure, and, therefore, is not adopting a water hardness requirement in the test procedure at this time. DOE may consider this topic in a future rulemaking if such data become available.

8. Drain Height

AHAM noted at the 2012 Public Meeting that the height of the dishwasher drain is not currently specified in the DOE test procedure, and that such a specification should be added to reduce testing variability. AHAM, BSH, and Whirlpool subsequently proposed in their comments on the May 2012 SNOPR that the drain height should be specified per the manufacturer installation instructions. In the absence of such instructions, these commenters recommended a drain height of 20 inches. (AHAM, No. 27 at p. 11; AHAM, 2012 Public Meeting Transcript, No. 38 at p. 141; BSH, No. 28 at pp. 8–9; Whirlpool, No. 26 at p. 1)

In the August 2012 SNOPR, DOE agreed that the use of manufacturer's instructions for drain height, or a standard height in the absence of such information, would improve reproducibility of the test and proposed corresponding amendments to the dishwasher test procedure, including a standard drain height of 20 inches. 77 FR 49064, 49066 (Aug. 15, 2012).

AHAM, BSH, Samsung, and Whirlpool supported the proposed approach to require installation of the dishwasher with a drain height as specified in the manufacturer's instructions, and that in the absence of such instructions, the drain height should be a standard level of 20 inches. (AHAM, No. 35 at p. 8; BSH, No. 36 at p. 3; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1) For reasons of test reproducibility and in the absence of comments objecting to this approach, DOE includes the drain height requirements in the new dishwasher test procedure in today's final rule according to the proposal in the August 2012 SNOPR.

9. Test Load Specifications and Soiling Requirements, Including Obsolete Dishware and Food Items

In the May 2012 SNOPR, DOE observed that the requirement for soil-sensing dishwashers in the current DOE test procedure to soil a certain number of place settings, while leaving the remaining place settings, serving pieces, and all flatware in the test load unsoiled could be ambiguous because the test procedure does not define which items a ''place setting'' comprises. Therefore, DOE proposed to amend section 2.7 of appendix C to specify the individual items in a place setting and to identify the serving pieces, as well as to clarify in section 2.6.3 of appendix C that the flatware that is part of a soiled place setting is to remain unsoiled. 77 FR 31444, 31453 (May 25, 2012). DOE maintained this proposal for the August 2012 SNOPR. AHAM, BSH, and Whirlpool commented that the test procedure was already clear in requiring that the flatware is not to be soiled, but did not object to the proposed clarification. (AHAM, No. 27 at pp. 7–8; BSH, No. 28 at p. 6; Whirlpool, No. 26 at p. 1) DOE has therefore included these amendments to section 2.7 and 2.63 of the new dishwasher test procedure at appendix C1 in today's final rule.

In the May 2012 SNOPR, DOE also identified a number of test items, including the cup and saucer, salad fork, serving fork, and serving spoon, which are no longer available, thereby making such specifications obsolete. DOE noted that AHAM had submitted information providing alternative specifications for all flatware and serving pieces, which DOE proposed as amendments to the test load specifications in section 2.7 of appendix C. DOE also sought comment on alternative specifications for other obsolete test items, such as the cup and saucer.

AHAM, BSH, and Whirlpool noted the importance to manufacturers and third-party laboratories of identifying replacement test load items swiftly to run the test and certify compliance properly. AHAM and BSH supported DOE's proposal for replacements to obsolete flatware and serving pieces. AHAM and BSH noted, however, that although the cup and saucer are obsolete, alternatives may be available from the same source but with a new item number. These commenters also suggested that the bread and butter plate and fruit bowl may become obsolete. (AHAM, No. 27 at pp. 7–8; BSH, No. 28

at pp. 5–6; Whirlpool, No. 26 at pp. 1, 5)

In addition to comments on the obsolete test load items, DOE received comments on obsolete food items for the soil requirements. AHAM, BSH, and Whirlpool stated that the margarine specified in the current dishwasher test procedure was no longer available, and proposed a replacement brand and product formulation even though it is not possible to determine if the replacement margarine would impact measured energy use. (AHAM, No. 27 at p. 8; AHAM, 2012 Public Meeting Transcript, No. 38 at pp. 101–102; BSH, No. 28 at p. 6; BSH, 2012 Public Meeting Transcript, No. 38 at pp. 102–103; Whirlpool, No. 26 at p. 1; Whirlpool, 2012 Public Meeting Transcript, No. 38 at pp. 103, 129)

For the August 2012 SNOPR, DOE considered these comments, and based on these and additional research, proposed the items shown below in Table 1 as replacements for obsolete or nearly obsolete items. 77 FR 49064, 49065 (Aug. 15, 2012).

TABLE 1—PROPOSED SPECIFICATIONS FOR REPLACING OBSOLETE OR NEARLY OBSOLETE ITEMS

Item	Obsolete or Potentially Obsolete Item	Proposed Item
Cup	8 oz. Ceramic Cup; Corning Comcor®/Corelle® 6014162; alternatively, Arzberg 3824732100.	0.20 liter Coffee Cup; Arzberg 2000–00001–4732–1; alternatively, Arzberg 3824732100.
Saucer	6 inch Saucer; Corning Comcor®/Corelle® 6010972; alternatively, Arzberg 3824731100.	14 cm Saucer; Arzberg 2000–00001–4731–1; alternatively, Arzberg 3824731100.
Bread and butter plate	6.75 inch Bread and Butter; Corning Comcor®/Corelle® 6003887; alternatively, Arzberg 8500217100.	6.75 inch Bread and Butter; Corning Comcor®/Corelle® 6003887; alternatively, 17 cm Bread and Butter; Arzberg 2000–00001–0217–1.
Fruit bowl	10 oz. Dessert Bowl; Corning Comcor®/Corelle® 6003899; alternatively, Arzberg 3820513100.	10 oz. Dessert Bowl; Corning Comcor®/Corelle® 6003899; alternatively, Arzberg 38205131001 or Arzberg 2000–00001–0615–1;
Knife	Oneida® Accent 2619KPVF	Table Knife, WMF "Gastro 0800" 12.0803.6047.
Dinner Fork	Oneida® Accent 2619FRSF	Dessert Fork, WMF "Signum 1900" 12.1905.6040.
Salad Fork	Oneida® Accent 2619FSLF	Cake Fork, WMF "Signum 1900" 12.1964.6040.
Teaspoon	Oneida® Accent 2619STSF	Coffee/Tea Spoon", WMF "Signum 1900" 12.1910.6040.
Margarine	Fleischmann's corn oil (6 g of fat per 14 g serving) not whipped.	Fleischmann's Original stick margarine.
Coffee	Folgers, Decaffeinated Drip Grind	Folgers Classic Decaf.

AHAM, BSH, Samsung, and Whirlpool support the proposed replacement items for the flatware, serving pieces, and food items, including the margarine and coffee. (AHAM, No. 35 at pp. 2–3; BSH, No. 36 at p. 2; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1) Therefore, DOE adopts these replacement flatware, serving pieces, and food items in the amendments to appendix C procedure in today's final rule. DOE also includes these replacement items in the new dishwasher test procedure at appendix C1.

For the dishware replacements, AHAM, BSH, Samsung, and Whirlpool noted that, although the primary cups and saucers specified in the test procedure are obsolete, the alternate Arzberg items specified are still available, albeit with new product numbers. The alternate cup, Arzberg product number 3824732100, currently specified in the dishwasher test procedure is now designated as product number 1382 00001 4732. The alternate saucer, Arzberg product number 3824731100, currently specified in the dishwasher test procedure is now designated as product number 1382 00001 4731. Because the shapes of DOE's proposed replacement cup and saucer are different than for the existing alternate Arzberg cup saucer and it is not known how these differences could affect the test results, these commenters recommend not adopting DOE's proposal for the cup and saucer. Instead, they suggest that DOE designate the current alternate Arzberg cup saucer, identified by their new product numbers, as the primary items and not specify alternates. AHAM, BSH, Samsung, and Whirlpool further commented that DOE's proposed replacement cup and saucer could potentially be acceptable alternates, but manufacturers would first need to assess the impacts of such variables as the weight of the items and the ability of various rack designs to accommodate them. These commenters stated that it would be ideal for at least one option for the cup and saucer to be sourced from within the United States in order to minimize burden. (AHAM, No. 35 at pp. 3–4; BSH, No. 36 at p. 2; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1)

DOE has ascertained that the alternate cup and saucer currently specified in the DOE test procedure are available for purchase at this time under the different item numbers identified by commenters. Therefore, for consistency in the dishwasher test results, DOE amends the dishwasher test procedure in today's final rule to specify the current alternate Arzberg cup and saucer by their new product numbers as the alternate test load items. DOE reconsidered its proposal to eliminate the specifications for the obsolete Corning Comcor/Corelle cup and saucer, and instead retains these as the primary test load items so that manufacturers and testing laboratories may continue to use items they may already possess. DOE also includes these replacement item specifications in the new dishwasher test procedure at appendix C1. If DOE receives additional information regarding dishwasher energy and water consumption using the Arzberg replacement cup and saucer proposed in the August 2012 SNOPR, or other alternatives suggested by interested parties, DOE may consider updating the test procedure at that time so that additional options for the cup and saucer are available to manufacturers and testing laboratories.

For the bread and butter plate, AHAM, BSH, Samsung, and Whirlpool agreed that the existing Corning Comcor/Corelle test item be retained. In addition, these commenters agreed with the proposed Arzberg replacement item, product number 2000 00001 0217 1, as an alternate item, but noted that it may actually be the redesignated product number for the existing Arzberg alternate bread and butter plate, product number 8500217100. These commenters recommend that DOE list both product

numbers as alternates in the dishwasher test procedure so that testing can continue until it is verified whether the products are the same. (AHAM, No. 35 at p. 5; BSH, No. 36 at p. 2; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1)

DOE agrees with that the approach will minimize impact on manufacturers and testing laboratories, and adopts in today's final rule specifications for the two Arzberg bread and butter plate product numbers as allowable alternate test load items in appendix C and appendix C1.

For the fruit bowl, AHAM, BSH, Samsung, and Whirlpool agreed with DOE's proposal to retain the existing primary Corning Comcor/Corelle specification but objected to DOE's proposed Arzberg additional alternate specification. The commenters stated that the additional replacement fruit bowl is significantly larger than the existing fruit bowl, so there could be an impact on measured energy use due to the weight difference and ability for the bowl to fit into racks. However, the commenters did not provide a suggestion for a recommended replacement for the alternate fruit bowl. (AHAM, No. 35 at p. 5; BSH, No. 36 at p. 2; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1)

DOE acknowledges that the impact of a fruit bowl that is larger than the item currently specified in the dishwasher test procedure is not known. Therefore, for consistency in the dishwasher test results, DOE does not adopt the proposed Arzberg replacement fruit bowl as an additional alternate test load item in today's final rule. DOE also reconsidered its proposal to eliminate the specifications for the obsolete Arzberg fruit bowl currently specified as the alternate item, and instead retains this product as an alternate test load item in both appendix C and appendix C1 so that manufacturers and testing laboratories may continue to use items they may already possess. If DOE receives additional information regarding dishwasher energy and water consumption while using the Arzberg replacement fruit bowl proposed in the August 2012 SNOPR, or another alternative suggested by interested parties, DOE may consider updating the test procedure at that time so that additional options for the fruit bowl are available to manufacturers and testing laboratories.

In response to the May 2012 SNOPR, DOE also received comments that DOE should clarify in the dishwasher test procedure the length of time that soils may sit or be stored before they are applied to the dishware. AHAM, BSH, and Whirlpool stated that potatoes will get stiffer the longer they sit, and proposed that prepared potatoes should be used within 30 minutes of preparation. AHAM and Whirlpool also noted that oatmeal settles and thus proposed that it should be prepared and applied as specified in both ANSI/AHAM DW–1–1992 and ANSI/AHAM DW–1–2010; *i.e.,* the oatmeal should stand for 1 minute after preparation and then be used immediately. Whirlpool noted that the length of time that the prepared oatmeal sits could cause variability in the test procedure. AHAM, BSH, and Whirlpool additionally recommended that the reconstituted milk should be allowed to be stored for use over the course of a day, and that the prepared one-pound packages of beef be allowed to be stored in a freezer for up to 6 months to minimize variability in the test procedure. (AHAM, No. 27 at pp. 8–9; BSH, No. 28 at p. 6; Whirlpool, No. 26 at p. 1; Whirlpool, 2012 Public Meeting Transcript, No. 38 at p. 128)

In the August 2012 SNOPR, DOE proposed to amend the dishwasher test procedure to require the potatoes to be used within 30 minutes of preparation and the reconstituted milk be allowed to be stored for use over the course of 1 day, as recommended by commenters. DOE's proposal also included provisions for reconstituting the milk. DOE additionally proposed to adopt the commenters' recommendation that the 1-pound packages of ground beef shall be stored frozen for no more than 6 months. DOE determined that the instructions contained within the referenced sections of both versions of ANSI/AHAM DW–1 pertaining to soil preparation and application, which are or were proposed to be referenced in appendix C, are sufficiently clear in requiring the prepared oatmeal to sit no longer than 1 minute before using. Therefore, DOE did not propose any clarifications in the August 2012 SNOPR for the oatmeal preparation. 77 FR 49064, 49067 (Aug. 15, 2012).

AHAM, BSH, Samsung, and Whirlpool support DOE's proposed clarifications to the soil preparation and storage requirements for potatoes, reconstituted milk, and ground beef, even though these commenters added that manufacturer's instructions for reconstituting the milk could change. The commenters also reiterated their recommendation that the dishwasher test procedure specifically require that the oatmeal be prepared and used consistent with ANSI/AHAM DW–1–1992 and 2009. (AHAM, No. 35 at p. 9; BSH, No. 36 at p. 3; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1) Viking commented that it was aware of outside laboratories that do not put water into the milk formulation directly and measure dry milk into the oatmeal mixture. (Viking, 2012 Public Meeting Transcript, No. 38 at p. 133)

For the reasons stated above, and consideration of comments expressing support, DOE is revising the soil preparation and storage provisions for potatoes, reconstituted milk, and ground beef for the new dishwasher test procedure in today's final rule as proposed in the August 2012 SNOPR. DOE also clarifies in appendix C1 that the nonfat dry milk shall be reconstituted with water before mixing with the oatmeal and potatoes. DOE notes that the referenced section 5.5 of ANSI/AHAM DW–1–2010 pertaining to soil preparation explicitly requires that the oatmeal mixture be allowed to stand for 1 minute after mixing, then used immediately. Thus the instructions the commenters seek regarding the use of the oatmeal mixture are incorporated by reference in today's new dishwasher test procedure without requiring additional clarification.

AHAM commented that there have been some questions about the use of a brush versus a spatula for soiling the dishes because ANSI/AHAM DW–1–1992 references utensils, but does not provide specific details beyond the order of the soil application. (AHAM, 2012 Public Meeting Transcript, No. 38 at p. 127) In today's final rule, DOE updates the industry test method in appendix C1 from the previous ANSI/AHAM DW–1–1992 to ANSI/AHAM DW–1–2010. DOE notes that the newer version of this standard includes clarification as to which soils should be spread with a spatula or brush.

BSH and Whirlpool commented that DOE should harmonize these changes with the Canadian test method because Canada may have different interpretations than DOE. (BSH, 2012 Public Meeting Transcript, No. 38 at p. 107; Whirlpool, 2012 Public Meeting Transcript, No. 38 at p. 107)

DOE is aware of the Canadian test procedure, which is similar to the DOE test procedure in appendix C. To DOE's knowledge, the proposed substitutions and soiling times represent an industry consensus on these issues, and therefore are appropriate additions to the DOE test procedure regardless of the Canadian interpretation. Additionally, the substitute materials available in the United States may differ from those available in Canada. As a result, DOE has included the proposed substitutions and soiling times in today's amendments.

10. Rack Position and Loading

DOE received comments in response to the May 2012 SNOPR which indicated that the rack position and loading pattern for the test load should be specified in the dishwasher test procedure. AHAM, BSH, and Whirlpool stated that the position of the upper rack can affect water pressure during a test, which BSH and Whirlpool felt could influence the rate at which food soils fall off the test load and the turbidity sensor decisions. AHAM, BSH, and Whirlpool recommended that for the energy test, the upper rack should be in the position recommended by the manufacturer, or, in the absence of such a recommendation, in the as-shipped position to reduce potential test variation. (AHAM, No. 27 at p. 11; AHAM, 2012 Public Meeting Transcript; No. 38 at pp. 141–142; BSH, No. 28 at p. 9; BSH, 2012 Public Meeting Transcript; No. 38 at pp. 143–144; Whirlpool, No. 26 at p. 1; Whirlpool, 2012 Public Meeting Transcript, No. 38 at p. 145) Intertek stated that it tests dishwashers with the rack in the as-shipped position, while UL commented that it tests according to the manufacturer instructions. (Intertek, 2012 Public Meeting Transcript, No. 38 at p. 146; UL, 2012 Public Meeting Transcript, No. 38 at p. 151) According to BSH, rack position varies from product-to-product. Different platforms may have the same as-shipped position for the racks, yet have different manufacturer recommendations in the user manuals. (BSH, 2012 Public Meeting Transcript, No. 38 at p. 144) Furthermore, AHAM stated that the as-shipped position of the rack for a particular model may not always be the same. (AHAM, 2012 Public Meeting Transcript, No. 38 at p. 143)

AHAM, BSH, and Whirlpool commented that it is difficult to standardize loading patterns due to varying rack designs. These commenters stated DOE should require a loading pattern according to the manufacturer's recommendation. The commenters further stated that the unsoiled dishes should be loaded first to settle the loading arrangement, and then the appropriate number of unsoiled dishes should be replaced with soiled ones in an alternating pattern, avoiding placing all soiled dishes in one grouped area or in the corners of the racks. AHAM, BSH, and Whirlpool pointed out that this method is similar to what DOE proposed in its first draft performance test procedure for ENERGY STAR. (AHAM, No. 27 at p. 9; BSH, No. 28 at p. 7; Whirlpool, No. 26 at p. 1)

In the August 2012 SNOPR, DOE proposed amendments to the dishwasher test procedure that would require adjusting the rack position according to the manufacturer recommendations and loading the soiled dishes according to section 5.8 of ANSI/AHAM DW–1–2010, which specifies loading the dishware in accordance with manufacturer's recommendation, following the loading pattern provided in the manufacturer's use and care guide, without nesting the dishware or flatware. DOE concluded that these proposed amendments would improve test repeatability and reproducibility. 77 FR 49064, 49066–67 (Aug. 15, 2012).

AHAM, BSH, Samsung, and Whirlpool supported the requirement that the rack be positioned according to manufacturer recommendations for washing a full load of normally soiled dishes. But they further recommended that DOE specify that, in the absence of a manufacturer recommendation regarding rack position for the normal cycle, the rack shall be positioned in the as-shipped position. (AHAM, No. 35 at p. 8; BSH, No. 36 at p. 3; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1) DOE notes that, although AHAM had also indicated in response to the May 2012 SNOPR that the as-shipped position may vary for a particular model, it is likely that in such instances, manufacturers would provide instructions as to the appropriate rack placement during operation. Furthermore, it is likely that a dishwasher that does not provide instructions regarding rack position would be shipped with the rack in a position suitable for washing a full load of normally soiled dishes. Therefore, to provide clarity to testing laboratories regarding rack position for both situations, DOE adopts in today's final rule for appendix C1 the instructions to install the dishwasher with the rack positioned according to manufacturer instructions for washing a full load of normally soiled dishes, and that in the absence of such instructions, the rack shall be maintained in the as-shipped position.

AHAM, BSH, Samsung, and Whirlpool reiterated that dish loading is a potential source for variation, and that it is difficult to achieve standardization of loading patterns because rack designs vary. The commenters also noted that DOE did not propose specifications for how the soiled items are to be distributed when loaded (*i.e.,* all positioned together or alternating with the unsoiled items.) Thus, AHAM, BSH, Samsung, and Whirlpool recommend a loading pattern according to the manufacturer's recommended loading pattern, with addition specification that the unsoiled dishes be loaded first to settle the loading arrangement, and then the appropriate number of unsoiled dishes be replaced with soiled ones with soiled and unsoiled dishes alternating. The commenters would further recommend that testers should avoid placing all soiled dishes in one grouped area or in the corners of the racks. AHAM, BSH, Samsung, and Whirlpool again noted these instructions would be similar to those proposed in the first draft ENERGY STAR test method for dishwasher performance, and they encouraged DOE to harmonize the loading requirements in appendix C and the future ENERGY STAR test method. (AHAM, No. 35 at p. 10; BSH, No. 36 at p. 3; Samsung, No. 33 at p. 1; Whirlpool, No. 31 at p. 1)

DOE is not aware of, nor did commenters provide, data indicating whether the loading arrangement of dishes may impact the measured energy and water consumption of a particular dishwasher, but notes that the loading requirements proposed in the August 2012 SNOPR, which reference section 5.8 of ANSI/AHAM DW–1–2010 and accordingly its requirement to follow the manufacturer's instructions, do not generally preclude testing using an alternating loading pattern of soiled and clean dishware. However, some manufacturer's instructions could conflict with specific requirements for the location of the soiled items. For example, the manufacturer may recommend that the most heavily soiled items be placed in a certain location on the rack, which would conflict with the instructions to alternate soiled and clean items. For these reasons, DOE is not adding in today's final rule any additional loading instructions in the dishwasher test procedure beyond those specified in section 5.8 of ANSI/AHAM DW–1–2010.

11. Rinse Aid Container

The dishwasher test procedure precludes the use of rinse aid during testing, including preconditioning. However, AHAM, BSH, and Whirlpool commented in response to the May 2012 SNOPR that some third-party laboratories fill the rinse aid container before the starting the energy test cycle, presumably to prevent an indicator light from turning on during the test. These commenters believe that DOE should clarify that the rinse aid container should not be filled with water. According to BSH, the added water creates a thermal mass that must be heated when the dishwasher is operated, which would result in higher

energy use. AHAM, BSH, and Whirlpool stated that if the indicator light does turn on, its energy use should be measured. (AHAM, No. 27 at p. 11; AHAM, 2012 Public Meeting Transcript, No. 38 at pp. 135–136; BSH, No. 28 at p. 8; BSH, 2012 Public Meeting Transcript, No. 38 at p. 136; Whirlpool, No. 26 at p. 1)

DOE agreed with commenters, and for reasons of consistency in testing, proposed in the August 2012 SNOPR amendments to the dishwasher test procedure that would clarify that the rinse aid container should not be filled with water for energy testing. 77 FR 49064, 49067 (Aug. 15, 2012). AHAM, BSH, Samsung, and Whirlpool agreed with this proposal. (AHAM, No. 35 at p. 8; BSH, No. 36 at p. 3; Samsung, No. 33 at p. 1; Whirlpool, No. 32 at p. 1) DOE adopts in today's final rule this provision for the new dishwasher test procedure to ensure reproducibility of results.

12. Technical Corrections

In the May 2012 SNOPR, DOE noted that in sections 5.4.1 and 5.4.2 of the current dishwasher test procedure, water energy consumption is calculated as specified for both non-soil-sensing and soil-sensing dishwashers using electrically heated water ''[f]or the normal and truncated normal test cycle.'' Because the normal and truncated normal test cycles do not apply to soil-sensing dishwashers, DOE proposed to remove this qualification in newly designated sections 5.5.1.1 and 5.5.2.1. Similarly, in sections 5.5.1 and 5.5.2 of the current dishwasher test procedure, water energy consumption is calculated as specified for both non-soil-sensing and soil-sensing dishwashers using gas-heated or oil-heated water ''[f]or each test cycle.'' Because for soil-sensing dishwashers the calculation is applied to a single weighted-average water consumption measured over the sensor heavy response, sensor medium response, and sensor light response cycles, this qualification may cause confusion. Therefore, DOE proposed to remove this qualification in newly designated sections 5.6.1.1 and 5.6.2.1. DOE also proposed to correct references to the water consumption values used in the calculation of water energy consumption in these sections of the dishwasher test procedure, so that separate references are provided for non-soil-sensing and soil-sensing dishwashers. 77 FR 31444, 31454 (May 25, 2012).

In addition, DOE stated in the May 2012 SNOPR that, due to a transcription error in publication, the September 2011 SNOPR erroneously specified in the regulatory text for the proposed dishwasher test procedure amendments the calculation of estimated annual operating cost for dishwashers having a truncated normal cycle which operate at 50 °F inlet water temperature. Specifically, the calculation proposed in 10 CFR 430.23(c)(1)(i)(B) contained extraneous variables ''B'' and ''V.'' DOE proposed, therefore, in the May 2012 SNOPR to remove these extraneous variables to correct the calculation. 77 FR 31444, 31455 (May 25, 2012). DOE maintained these proposals in the August 2012 SNOPR.

AHAM, BSH, and Whirlpool commented that they did not oppose these two technical corrections to the dishwasher test procedure. (AHAM, No. 27 at p. 13; BSH, No. 28 at p. 10; Whirlpool, No. 26 at p. 1) For the reasons explained above, DOE adopts in today's final rule the corrections to water energy consumption provisions in both the new and currently applicable dishwasher test procedures. DOE also adopts the corrected calculation described above in its amendments to 10 CFR 430.23(c).

Whirlpool commented that DOE should revise its proposal in the May 2012 SNOPR for section 4.1.2 in the dishwasher test procedure to specify that V_{WSavg} is defined as the average of $V_{WS,1}$ and $V_{WS,2}$. (Whirlpool, No. 26 at p. 1) These variables represent the water consumption measured during test cycles performed to determine the water use associated with water softener regeneration. In the initial portion of the test, two test cycles are run, and the water consumption measured for each ($V_{WS,1}$ and $V_{WS,2}$) are compared. If the difference in water consumption between the two cycles is greater than 10 percent, the cycle in which the larger water use occurred is deemed to contain a water softener regeneration event. The water consumption associated with a cycle containing a water softener regeneration event (V_{WSmax}) is, under these conditions, the larger of $V_{WS,1}$ and $V_{WS,2}$. The smaller of $V_{WS,1}$ and $V_{WS,2}$ would be deemed to represent a typical non-water softener regeneration cycle, denoted by V_{WSavg}. DOE proposed this terminology because, if a water softener regeneration event doesn't occur in the first two test cycles, additional cycles are run, with the water consumption for each new cycle being compared to the average of water consumptions for the previous cycles. Averaging the water consumptions for the non-water softener regeneration cycles would decrease variation in the test procedure results. Because V_{WSavg} represents a typical non-water softener regeneration cycle, not a numerical average of $V_{WS,1}$ and $V_{WS,2}$, DOE did not alter its proposal for the August 2012 SNOPR as Whirlpool suggested, nor is it adopting such a revision to the provisions in the new dishwasher test procedure established in today's final rule because the water consumption for water softener regeneration shall be a value reported by the manufacturer.

In the May 2012 SNOPR, DOE inadvertently proposed in section 4.4.2 of the dishwasher test procedure language that refers to section 1.11 of the test procedure. DOE corrected that proposal in the August 2012 SNOPR to properly refer to section 1.13. DOE includes section 4.2.2 of appendix C1 in today's final rule according to the August 2012 SNOPR.

I. Incorporation by Reference of an Updated AHAM Dehumidifier Test Procedure

In the May 2012 SNOPR, DOE proposed updating the dehumidifier test procedure to clarify which version of the AHAM test method ''Dehumidifiers'' (DH–1) should be used for testing. DOE evaluated both DH–1–1992 and DH–1–2008, and concluded that both versions would produce comparable results for the DOE dehumidifier test procedure. However, DOE proposed referencing the newer version, DH–1–2008, for both the capacity and EF measurements because it provides additional clarity and specificity that may improve test accuracy, repeatability, and reproducibility. DOE also proposed removing the reference to the ENERGY STAR qualification criteria for determining EF, given that the EF methodology is included in DH–1–2008. 77 FR 31444, 31453–54 (May 25, 2012). DOE maintained this proposal for the August 2012 SNOPR.

AHAM, BSH, and Whirlpool support DOE's proposal to incorporate by reference ANSI/AHAM DH–1–2008 for the measurement of capacity and EF, and the calculation of IEF, in its dehumidifier test procedure. The commenters stated that clarity and consistency for regulated parties is critical so that all regulated and other parties (*e.g.,* third-party laboratories, DOE, EPA) are testing per the same test procedure; therefore, they believe it is important that DOE clarify which version of DH–1 it intends to reference in its test procedure. AHAM, BSH, and Whirlpool commented that, to their knowledge, there is no difference in the measured energy between versions of DH–1, but each version contains important technical improvements and clarifications, making the most current version of the standard the best one to reference. (AHAM, No. 27 at p. 13; BSH,

No. 28 at p. 10; Whirlpool, No. 26 at p. 1)

In consideration of this support and for the reasons previously stated, DOE incorporates by reference ANSI/AHAM DH–1–2008 in appendix X1 as the test method for determining capacity and EF. DOE also does not include in appendix X1 the previous reference to the ENERGY STAR qualification criteria for determining EF.

J. Removal of Obsolete Measures of Gas Pilot Light Energy Consumption in the Conventional Cooking Products Test Procedure and of Energy Factor Calculations for Dishwashers

The energy conservation standards for cooking products require that gas cooking products manufactured on or after April 9, 2012, shall not be equipped with a constant-burning pilot light. 10 CFR 430.32(j). In the May 2012 SNOPR, DOE proposed removing the provisions for measuring the energy consumption of constant-burning pilot lights from the conventional cooking products test procedures. 77 FR 31444, 31455 (May 25, 2012).

AHAM, BSH, and Whirlpool support removing the constant-burning pilot light provisions from the conventional cooking products test procedures. (AHAM, No. 27 at p. 13; BSH, No. 28 at p. 11; Whirlpool, No. 26 at pp. 1, 5) Given this support and the obsolescence of constant-burning pilot lights, today's amendments remove the standing pilot light provisions from the test procedures for conventional cooking products. Specifically, today's final rule removes the following existing sections in 10 CFR part 430, subpart B, appendix I:

- Section 2.9.2.2 (''Flow meter'');
- Section 3.1.1.2 (''Continuously burning pilot lights of a conventional gas oven'');
- Section 3.1.2.1 (''Continuously burning pilot lights of a conventional gas cooking top'');
- Section 3.2.1.3 (''Gas consumption of continuously burning pilot lights'' [for conventional gas ovens]);
- Section 3.2.2.1 (''Gas consumption of continuously burning pilot lights'' [for conventional gas cooking tops]);
- Section 3.3.7 (recording the gas flow rate or gas consumption and elapsed time for a continuously burning pilot light of a conventional gas oven);
- Section 3.3.10 (recording the gas flow rate or gas consumption and elapsed time for a continuously burning pilot light of a conventional gas cooking top);
- Section 4.1.2.2 (''Annual energy consumption of any continuously burning pilot lights'' [for conventional gas ovens]); and
- Section 4.2.2.2.2 (''Annual energy consumption of any continuously burning gas pilots'' [for conventional gas cooking tops]).

Today's final rule also modifies (and renumbers where appropriate) the following existing sections in appendix I to eliminate the measures of energy use relating to gas pilot lights:

- Section 1.7 (''Normal nonoperating temperature'');
- Section 1.14 (''Symbol usage'');
- Section 2.9.2.1 (''Positive displacement meters'');
- Section 3.1.1 (''Conventional oven'');
- Section 3.1.1.1 (''Self-cleaning operation of a conventional oven'');
- Section 3.1.2 (''Conventional cooking top'');
- Section 4.1.2.5.2 (''Conventional gas oven energy consumption'');
- Section 4.1.2.6.2 (''Conventional gas oven energy consumption'' [for multiple conventional gas ovens'']);
- Section 4.2.1.2 (''Gas surface unit cooking efficiency''); and
- Section 4.2.2.2.3 (''Total annual energy consumption of a conventional gas cooking top'').

In the May 2012 SNOPR, DOE also proposed to eliminate the calculation of energy factor for dishwashers in 10 CFR 430.23 because this metric is no longer used in DOE's energy conservation standards for dishwashers or to make representations of energy efficiency. 77 FR 31444, 31455 (May 25, 2012). DOE did not receive any comments on this proposal, and amends 10 CFR 430.23 in today's final rule to eliminate the energy factor calculation.

K. Compliance With Other EPCA Requirements

1. Test Burden

EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In the December 2010 NOPR, DOE noted that the proposed amendments to the residential dishwasher, dehumidifier, and conventional cooking products test procedures would incorporate a test standard that is accepted internationally for measuring power consumption in standby mode and off mode (IEC Standard 62301). DOE analyzed the available versions of IEC Standard 62301 at that time—IEC Standard 62301 (First Edition), IEC Standard 62301 (CDV), and IEC Standard 62301 (FDIS)—and determined that the proposed amendments to the residential dishwashers, dehumidifiers, and conventional cooking products test procedures would produce standby mode and off mode average power consumption measurements representative of an average use cycle. DOE also determined that the test methods and equipment that the amendments would require for measuring standby mode and off mode power in these products would not be substantially different from the test methods and equipment required in the current DOE tests. Thus, DOE tentatively concluded that the proposed test procedure amendments would not require manufacturers to make significant investments in test facilities and new equipment. In sum, DOE tentatively concluded in the December 2010 NOPR that the amended test procedures would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct. 75 FR 75290, 75316 (Dec. 2, 2010).

The September 2011 SNOPR proposed amendments to the DOE test procedures based on an updated version of IEC Standard 62301, IEC Standard 62301 (Second Edition), which has been the subject of significant review and input from interested parties and, thus, continues to be an internationally accepted test standard for measuring standby mode and off mode power consumption. As discussed in the September 2011 SNOPR, the provisions of IEC Standard 62301 (Second Edition) that DOE proposed to incorporate by reference provide a means to measure power consumption with greater accuracy and repeatability than the provisions from IEC Standard 62301 (First Edition) that were originally proposed in the December 2010 NOPR. For this reason, DOE tentatively concluded that the amendments proposed in the September 2011 SNOPR would also provide measurements representative of average consumer use of the product under test. DOE further determined that these new provisions in the applicable sections of IEC Standard 62301 (Second Edition) would improve test results without undue testing burden. DOE acknowledged in the September 2011 SNOPR that certain methods from IEC Standard 62301 (Second Edition) may increase test duration, but where such an increase was deemed excessive (*i.e.,* for products

with clocks that can vary in power consumption as a function of time displayed), DOE retained the method previously proposed to mitigate test burden. The potential for increased test burden in other power consumption measurements is offset by more reasonable requirements for testing equipment, while maintaining measurement accuracy deemed acceptable and practical by voting members for IEC Standard 62301 (Second Edition). Thus, DOE tentatively concluded that the amended test procedures proposed in the September 2011 SNOPR would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct. 76 FR 58346, 58354 (Sep. 20, 2011).

In the May 2012 SNOPR, DOE proposed to measure energy use in fan-only mode for dishwashers and conventional cooking products as a continuation of the active mode cycle, which would require more stringent specifications for the watt-hour meters than currently specified in the dishwasher and conventional cooking products test procedures. By not requiring a separate cycle to be run, the proposed approach would minimize test burden associated with the measurement of fan-only mode. The May 2012 SNOPR also proposed amendments to incorporate the energy and water use associated with dishwasher water softener regeneration. Manufacturers would need to run up to an additional ten cycles to ensure that a regeneration process is captured. DOE based this proposal on the information supplied by manufacturers that, on average, water-softening dishwashers regenerate approximately once every six cycles. To minimize test burden, particularly for soil-sensing dishwashers, DOE proposed in the May 2012 SNOPR that these cycles would be run with no test load, since DOE believes that a substantial part of the burden for the existing test procedure is incurred by the preparation and application of soils to the dishware. 77 FR 31444, 31447–51 (May 25, 2012).

The May 2012 SNOPR's proposal to reference AHAM DH–1–2008 in the dehumidifier test procedure would, according to DOE's estimates, require more accurate measurement equipment that would cost approximately $500. DOE also noted in the May 2012 SNOPR that the proposed test room requirements could require the use of a larger test chamber than is specified under the current test procedure, and could also require different air handling equipment. DOE noted that many test laboratories may already be using AHAM DH–1–2008 and, thus, may already meet these requirements. In addition, for those laboratories that are recording data manually, the more frequent data recording events in DOE's proposal could result in three times the data recording events than are currently required. Because only four parameters are recorded for each event, however, DOE estimated in the May 2012 SNOPR that the total increase in operator time would be less than 1 hour. 77 FR 31444, 31453–54 (May 25, 2012).

In the August 2012 SNOPR, DOE noted that the replacement items proposed were intended to be inexpensive, representative of commonly-found items, and in some cases already used by manufacturers in testing dishwashers. In addition, DOE proposed a definition of normal cycle for dishwashers supported by manufacturers because it will lead to consistent, representative results. The updated industry test method for dishwashers was also supported by manufactures because it will lead to, among other things, reduced test variation, as would the proposals for consistent preparation time for the soils used in the test procedure, the positioning of the dishwasher rack during testing, the method of loading, the tighter tolerances on ambient temperature, the added specifications for water pressure measurement and drain height, and the clarifications for the rinse aid container. Finally, DOE proposed an alternative method of measuring the energy use in fan-only mode for dishwashers and cooking products that could significantly decrease overall testing time. 77 FR 49064, 49065–67 (Aug. 15, 2012).

AHAM, BSH, and Whirlpool estimated the test burden associated with the proposed water softener regeneration test method for the dishwasher test procedure to be 20 to 30 additional test hours. (AHAM, No. 27 at p. 4; BSH, No. 28 at p. 2; Whirlpool, No. 26 at p. 1) DOE considered manufacturer test burden when it evaluated comments on its proposed methodology for measuring energy and water use due to water softener regeneration, and acknowledges that the proposal would add burden by requiring up to an additional 10 dishwasher washing and drying cycles, compared to either one or three washing and drying cycles and one preconditioning cycle currently required in the test procedure. As discussed in section III.F.3, DOE is not adopting the proposed testing methodology in today's final rule due to this burden, Instead, DOE includes in the new dishwasher test procedure measures of energy and water consumption for water softener regeneration using manufacturer-reported values for the energy and water use for each regeneration cycle and the number of annual regeneration cycles.

DOE additionally discusses in section IV.B of this notice comments received regarding the investments that manufacturers may incur due to today's final rule and DOE's determination that they do not represent significant burden. Therefore, for the reasons discussed above, DOE concludes that the new and amended test procedures for dishwashers, dehumidifiers, and conventional cooking products will produce test results that measure the active mode, standby mode, and off mode power consumption during representative use, and that the test procedures will not be unduly burdensome to conduct.

2. Certification Requirements

As codified at 42 U.S.C. 6299, *et seq.,* EPCA authorizes DOE to enforce compliance with the energy and water conservation standards established for covered consumer products. On March 7, 2011, the Department published a final rule in the **Federal Register**, which revised, consolidated, and streamlined its existing certification, compliance, and enforcement regulations for covered consumer products, including dishwashers, dehumidifiers, and conventional cooking products. 76 FR 12422.[18] The certification regulations are codified at 10 CFR 429.19 (dishwashers), 10 CFR 429.23 (conventional cooking tops, conventional ovens, microwave ovens), and 10 CFR 429.36 (dehumidifiers).

The certification requirements for each of the products covered in today's final rule consist of a sampling plan for selection of units for testing and requirements for certification reports. AHAM commented that no revisions would be required for current standards for dehumidifiers and conventional cooking products, so that no changes are necessary for the reporting requirements for these products. AHAM also supported DOE's proposed changes to the sampling plan for dehumidifiers and conventional cooking products. (AHAM, No. 20 at p. 3) Because the amendments and new provisions adopted for dehumidifiers and conventional cooking products test procedures will not revise the current energy conservation standards, DOE is not proposing any amendments to the certification

[18] Certification requirements for industrial equipment are also included in these regulations.

reporting requirements for these products. However, because DOE in today's final rule introduces a new metric (IEF) for both conventional cooking products and dehumidifiers, DOE additionally amends provisions in the sampling plan at 10 CFR 429.23 and 10 CFR 429.36 that include IEF along with the existing measure of EF.

AHAM stated that the measured energy use for dishwashers will be affected by the amendments to the dishwasher test procedure. For example, cycle finished mode energy use is not currently measured, but will required to be included under the amended test procedure. AHAM commented that DOE should amend the reporting requirements to account for the change. (AHAM, No. 20 at p. 3) No such amendments are adopted for residential dishwashers in today's final rule because DOE is not adding any new energy efficiency metric for these products. DOE is, though, amending in today's final rule the reporting requirements in 10 CFR 429.19 for dishwashers to specify that manufacturers submit with their certification reports: (1) The cycle selected for the energy test; (2) whether the cycle selected for the energy test is soil-sensing; (3) the options selected for the energy test; and (4) whether the dishwasher has a built-in water softening system, and if yes, the energy and water use required for each regeneration of the water softening system, the number of regeneration cycles per year, and data and calculations used to derive these values.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (Aug. 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *www.gc.doe.gov/gc/office-general-counsel*

DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE has concluded that the rule would not have a significant impact on a substantial number of small entities. The factual basis for this certification is as follows:

The Small Business Administration (SBA) considers a business entity to be small business, if, together with its affiliates, it employs less than a threshold number of workers specified in 13 CFR part 121. These size standards and codes are established by the North American Industry Classification System (NAICS). The threshold number for NAICS classification code 335228, ''Other Major Household Appliance Manufacturing,'' which applies to residential dishwasher manufacturers, is 500 employees. The threshold number for NAICS classification code 335221, ''Household Cooking Appliance Manufacturing,'' which applies to manufacturers of residential conventional cooking products, is 750 employees. The threshold number for NAICS classification code 335211, ''Electric Housewares and Household Fan Manufacturing,'' which applies to dehumidifier manufacturers, is 750 employees.

Most of the manufacturers supplying residential dishwashers, dehumidifiers, and/or conventional cooking products are large multinational corporations. DOE surveyed the AHAM member directory to identify manufacturers of residential dishwashers, dehumidifiers and conventional cooking products. DOE then consulted publicly-available data, purchased company reports from vendors such as Dun and Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a ''small business manufacturing facility'' and have their manufacturing facilities located within the United States. Based on this analysis, DOE identified no small businesses that manufacture dishwashers, five small businesses that manufacture dehumidifiers, and two small businesses that manufacture conventional cooking products.

Today's final rule amends DOE's test procedures for dishwashers, dehumidifiers, and cooking products. Because DOE is unaware of any small businesses that manufacture dishwashers, there are no impacts on such manufacturers due to the amendments to DOE's dishwasher test procedure.

Today's rule amends DOE's test procedures for dehumidifiers and conventional cooking products by incorporating testing provisions to address standby mode and off mode energy use in these products, as well as cooking products fan-only mode energy consumption. The test procedure amendments involve measuring power input when the product is in standby mode or off mode, as well as fan-only mode for a conventional cooking product. These tests can be conducted in the same facilities used for the current energy testing of these products, so there are no additional facilities costs required by this final rule. In addition, while the watt-hour meter required for these tests might require greater accuracy than the watt-hour meter used for current energy testing, the investment required for a possible instrumentation upgrade would likely be relatively modest. It is possible that the manufacturers, or their testing facilities, already have equipment that meets the more stringent meter requirements, but an Internet search of equipment that specifically meets the requirements reveals a cost of approximately $2,000.

Whirlpool stated that the equipment necessary to meet the requirements of IEC Standard 62301 (Second Edition) for measuring airflow and harmonics either does not exist or does not exist in sufficient accuracy or quantity. Whirlpool estimated that the cost to its company of such equipment would be up to $48,000, and that the cost for test equipment upgrades for the harmonics measurement alone would be $10,000. (Whirlpool, No.21 at p. 3; Whirlpool, No. 26 at p. 6) Although Whirlpool's estimates are higher than DOE's, DOE recognizes that a large manufacturer may require multiple meters to equip its testing facilities, and that a small business would likely require investments in the range of DOE's estimates.

Today's final rule also updates the industry test method for dehumidifiers in new appendix X1. As discussed in III.K.1, this update could impose on manufacturers a cost for new measurement equipment of approximately $500, as well as

potentially increasing operator time by less than 1 hour over the course of a 24-hour test.

The costs described above are small compared to the overall financial investment needed to undertake the business enterprise of testing consumer products which involves facilities, qualified staff, and specialized equipment. Based on its review of industry data,[19] DOE estimates that the small dehumidifier and cooking product businesses have annual revenues of $10 million to $60 million.

DOE recognizes that the updated reference to the industry dehumidifier test method could potentially require manufacturers to install a larger test chamber and different air handling equipment. However, some manufacturers may already be using ANSI/AHAM DH–1–2008 in certifying their products. DOE notes that one of the small businesses has products listed in AHAM's current dehumidifier certification database, indicating that those tests were conducted according to DH–1–2008. In addition, AHAM selected an independent test laboratory to conduct dehumidifier testing and verification using DH–1–2008. It is likely that testing that this laboratory performs for manufacturers to determine compliance with energy conservation standards would be conducted in the same facility. Therefore, DOE concludes that small businesses would not be likely to require investments in facility upgrades due to the new dehumidifier test procedure that references DH–1–2008.

Furthermore, DOE adopts in today's final rule amendments that limit the duration of the fan-only mode testing for conventional ovens and conventional ranges to minimize test burden. Under today's final rule, the energy use in fan-only mode is measured for 10 minutes, and then extrapolated over the duration of the fan-mode. DOE estimates that the total time currently required for conventional oven testing (or for testing the conventional oven portion of a range) to be approximately 4 hours for products not equipped with the capability for forced convection or self-cleaning, with an additional 3 hours required for testing forced convection and an additional 4 hours required for testing self-clean operation. DOE's research did not identify any conventional ovens or conventional ranges manufactured by either of the two small cooking products manufacturers that are equipped with either forced convection or self-clean capability. DOE estimates that fan-only mode testing in the absence of such features could increase testing time by approximately 3 percent. However, DOE's research also suggests that none of the conventional ovens and conventional ranges manufactured by the two small cooking products businesses are capable of operation in fan-only mode, and therefore it is unlikely that these manufacturers would be impacted by the fan-only mode testing provisions.

For these reasons, DOE concludes and certifies that today's final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE has transmitted the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of residential dishwashers, dehumidifiers, and conventional cooking products must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for residential dishwashers, dehumidifiers, and conventional cooking products including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including residential dishwashers, dehumidifiers, and conventional cooking products. (76 FR 12422 (Mar. 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends its test procedure for residential dishwashers, dehumidifiers, and conventional cooking products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42

[19] Annual revenue estimates based on financial reports obtained from Hoover's Inc., available online at *www.hoovers.com.*

U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.gc.doe.gov.* DOE examined today's final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (Mar.18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The amendments to the test procedures in today's final rule incorporate testing methods contained in certain sections of the following commercial standards:

1. ANSI/AHAM Standard DH–1–2008, *Dehumidifiers,* 2008, ANSI approved May 9, 2008.

2. ANSI/AHAM Standard DW–1–2010, *Household Electric Dishwashers,* ANSI approved September 10, 2010.

3. IEC Standard 62301, *Household electrical appliances—Measurement of standby power,* Edition 2.0, 2011–01.

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (*i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Buildings and facilities, Business and industry, Energy conservation, Grant programs—energy, Housing, Incorporation by reference, Reporting and recordkeeping requirements, Technical assistance.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Issued in Washington, DC, on September 14, 2012.

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Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 430 of title 10 of the Code of Federal Regulations, as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.4 is amended by adding paragraph (b)(2) to read as follows:

§ 429.4 Materials incorporated by reference.

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(b) * * *

(2) ANSI/AHAM DW–1–2010, *Household Electric Dishwashers,* (ANSI approved September 18, 2010), IBR approved for § 429.19.

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■ 3. Section 429.19 is amended by revising paragraph (b)(3) to read as follows:

§ 429.19 Dishwashers.

* * * * *

(b) * * *

(3) Pursuant to § 429.12(b)(13), a certification report shall include the following additional product-specific information when using appendix C or appendix C1: the capacity in number of place settings as specified in ANSI/AHAM DW–1–1992 when using appendix C (incorporated by reference, see § 429.4) and ANSI/AHAM DW–1–2010 when using appendix C1 (incorporated by reference, see § 429.4), presence of a soil sensor (if yes, the number of cycles required to reach calibration), and the water inlet temperature used for testing in degrees Fahrenheit (°F). When using appendix C1, additionally: the cycle selected for energy testing and whether that cycle is soil-sensing, the options selected for the energy test, and presence of a built-in water softening system (if yes, the energy use in kilowatt-hours and the water use in gallons required for each regeneration of the water softening system, the number of regeneration cycles per year, and data and calculations used to derive these values).

■ 4. Section 429.23 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 429.23 Conventional cooking tops, conventional ovens, microwave ovens.

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, integrated energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

* * * * *

■ 5. Section 429.36 is amended by revising paragraph (a)(2)(ii) introductory text to read as follows:

§ 429.36 Dehumidifiers.

(a) * * *

(2) * * *

(ii) Any represented value of the energy factor, integrated energy factor, or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

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PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 6. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 7. Section 430.3 is amended by:

■ a. Redesignating paragraphs (h)(1) and (h)(2) through (h)(5) as paragraphs (h)(2) and (h)(4) through (h)(7) respectively;

■ b. Adding new paragraphs (h)(1) and (h)(3); and

■ c. Revising paragraph (m)(2).

The additions and revisions read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(h) * * *

(1) ANSI/AHAM DH–1–2008 (''ANSI/AHAM DH–1''), *Dehumidifiers,* ANSI approved May 9, 2008, IBR approved for appendix X1 to subpart B.

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(3) ANSI/AHAM DW–1–2010, *Household Electric Dishwashers,* (ANSI approved September 18, 2010), IBR approved for appendix C1 to subpart B.

* * * * *

(m) * * *

(2) IEC Standard 62301 (''IEC 62301''), *Household electrical appliances–Measurement of standby power* (Edition 2.0, 2011–01), IBR approved for appendix C1, appendix I, appendix J2, and appendix X1 to subpart B.

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■ 8. Section 430.23 is amended by revising paragraphs (c), (i), and (z) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(c) *Dishwashers.* (1) The Estimated Annual Operating Cost (EAOC) for

dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A) When using appendix C (see the note at the beginning of appendix C), for dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart, EAOC = $(D_e \times S) + (D_e \times N \times (M - (E_D/2)))$.

(B) When using appendix C1 (see the note at the beginning of appendix C1), for dishwashers having a truncated normal cycle as defined in section 1.22 of appendix C1 to this subpart, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2)))$.

(C) When using appendix C (see the note at the beginning of appendix C), for dishwashers not having a truncated normal cycle, EAOC = $(D_e \times S) + (D_e \times N \times M)$.

(D) When using appendix C1 (see the note at the beginning of appendix C1), for dishwashers not having a truncated normal cycle, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F))$.

Where,

D_e = the representative average unit cost of electrical energy, in dollars per kilowatt-hour, as provided by the Secretary,

S = the estimated annual standby energy consumption in kilowatt-hours per year and determined according to section 5.6 of appendix C to this subpart,

E_{TLP} = the annual combined low-power mode energy consumption in kilowatt-hours per year and determined according to section 5.7 of appendix C1 to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine energy consumption per cycle for the normal cycle, as defined in section 1.6 of appendix C to this subpart, in kilowatt-hours and determined according to section 5.1 of appendix C to this subpart when using appendix C (see the note at the beginning of appendix C); the normal cycle is defined in section 1.12 of appendix C1 to this subpart, and the machine energy consumption per cycle in kilowatt-hours must be determined according to section 5.1.1 of appendix C1 to this subpart for non-soil-sensing dishwashers and section 5.1.2 of appendix C1 to this subpart for soil-sensing dishwashers when using appendix C1 (see the note at the beginning of appendix C1),

M_{WS} = the machine energy consumption per cycle for water softener regeneration, in kilowatt-hours and determined according to section 5.1.3 of appendix C1 to this subpart,

E_F = the fan-only mode energy consumption per cycle, in kilowatt-hours and determined according to section 5.2 of appendix C1 to this subpart, and

E_D = the drying energy consumption, in kilowatt-hours and defined as energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle; E_D is determined according to section 5.2 of appendix C to this subpart when using appendix C (see the note at the beginning of appendix C), and determined according to section 5.3 of appendix C1 to this subpart when using appendix C1 (see the note at the beginning of appendix C1),

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraphs (c)(1)(i)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(i)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) When using appendix C (see the note at the beginning of appendix C), for dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart, EAOC = $(D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$.

(B) When using appendix C1 (see the note at the beginning of appendix C1), for dishwashers having a truncated normal cycle as defined in section 1.22 of appendix C1 to this subpart, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2))) + (D_e \times N \times (W + W_{WS}))$.

(C) When using appendix C (see the note at the beginning of appendix C), for dishwashers not having a truncated normal cycle, EAOC = $(D_e \times S) + (D_e \times N \times M) + (D_e \times N \times W)$.

(D) When using appendix C1 (see the note at the beginning of appendix C1), for dishwashers not having a truncated normal cycle, EAOC = $(D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F)) + (D_e \times N \times (W + W_{WS}))$.

Where,

D_e, S, E_{TLP}, N, M, M_{WS}, E_F, and E_D, are defined in paragraph (c)(1)(i) of this section,

W = the water energy consumption per cycle for the normal cycle as defined in section 1.6 of appendix C to this subpart, in kilowatt-hours and determined according to section 5.4 of appendix C to this subpart when using appendix C (see the note at the beginning of appendix C); when using appendix C1 (see the note at the beginning of appendix C1), the normal cycle is as defined in section 1.12 of appendix C1 to this subpart, and the water energy consumption per cycle in kilowatt-hours is determined according to section 5.5.1.1 of appendix C1 to this subpart for dishwashers that operate with a nominal 140 °F inlet water temperature and section 5.5.2.1 of appendix C1 to this subpart for dishwashers that operate with a nominal inlet water temperature of 120 °F, and

W_{WS} = the water softener regeneration water energy consumption per cycle in kilowatt-hours and determined according to section 5.5.1.2 of appendix C1 to this subpart for dishwashers that operate with a nominal 140 °F inlet water temperature and section 5.5.2.2 of appendix C1 to this subpart for dishwashers that operate with a nominal inlet water temperature of 120 °F.

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraphs (c)(1)(ii)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(ii)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(iii) When gas-heated or oil-heated water is used,

(A) When using appendix C (see the note at the beginning of appendix C), for dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart, $EAOC_g = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$.

(B) When using appendix C1 (see the note at the beginning of appendix C1), for dishwashers having a truncated normal cycle as defined in section 1.22 of appendix C1 to this subpart, $EAOC_g = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F - (E_D/2))) + (D_g \times N \times (W_g + W_{WSg}))$.

(C) When using appendix C (see the note at the beginning of appendix C), for dishwashers not having a truncated normal cycle, $EAOC_g = (D_e \times S) + (D_e \times N \times M) + (D_g \times N \times W_g)$.

(D) When using appendix C1 (see the note at the beginning of appendix C1), for dishwashers not having a truncated normal cycle, $EAOC_g = (D_e \times E_{TLP}) + (D_e \times N \times (M + M_{WS} + E_F)) + (D_g \times N \times (W_g + W_{WSg}))$.

Where,

D_e, S, E_{TLP}, N, M, M_{WS}, E_F, and E_D are defined in paragraph (c)(1)(i) of this section,

D_g = the representative average unit cost of gas or oil, as appropriate, in dollars per Btu, as provided by the Secretary,

W_g = the water energy consumption per cycle for the normal cycle as defined in section

1.6 of appendix C to this subpart, in Btus and determined according to section 5.5 of appendix C to this subpart when using appendix C (see the note at the beginning of appendix C); when using appendix C1 (see the note at the beginning of appendix C1), the normal cycle is as defined in section 1.12 of appendix C1 to this subpart, and the water energy consumption per cycle in Btus is determined according to section 5.6.1.1 of appendix C1 to this subpart for dishwashers that operate with a nominal 140 °F inlet water temperature and section 5.6.2.1 of appendix C1 to this subpart for dishwashers that operate with a nominal inlet water temperature of 120 °F and

W_{WSg} = the water softener regeneration energy consumption per cycle in Btu per cycle and determined according to section 5.6.1.2 of appendix C1 to this subpart for dishwashers that operate with a nominal 140 °F inlet water temperature and section 5.6.2.2 of appendix C1 to this subpart for dishwashers that operate with a nominal inlet water temperature of 120 °F.

(E) Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(A) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(A) of this section. Manufacturers calculating EAOC pursuant to paragraphs (c)(1)(iii)(B) of this section should calculate EAEU pursuant to paragraph (c)(2)(i)(B) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(C) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(A) of this section. Manufacturers calculating EAOC pursuant to paragraph (c)(1)(iii)(D) of this section should calculate EAEU pursuant to paragraph (c)(2)(ii)(B) of this section.

(2) The estimated annual energy use, EAEU, expressed in kilowatt-hours per year must be rounded to the nearest kilowatt-hour per year and is defined as follows:

(i) When using appendix C (see the note at the beginning of appendix C), for dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart and when using appendix C1 (see the note at the beginning of appendix C), as defined in section 1.22 of appendix C1 to this subpart,

(A) $EAEU = (M - (E_D/2) + W) \times N + S$ may be used for units manufactured:

(*1*) Before April 29, 2013 to make representations of energy efficiency; and

(*2*) Before the compliance date of any amended standards to demonstrate compliance.

(B) $EAEU = (M + M_{WS} + E_F - (E_D/2) + W + W_{WS}) \times N + (E_{TLP})$ must be used for units manufactured:

(*1*) On or after April 29, 2013 to make representations of energy efficiency; and

(*2*) On or after the compliance date of any amended standards to demonstrate compliance.

Where,

M, M_{WS}, S, E_D, N, E_F, and E_{TLP} are defined in paragraph (c)(1)(i) of this section, and W and W_{WS}, are defined in paragraph (c)(1)(ii) of this section.

(C) Manufacturers calculating EAEU pursuant to paragraph (c)(2)(i)(A) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(A), (c)(1)(ii)(A), or (c)(1)(iii)(A) of this section, as appropriate. Manufacturers calculating EAEU pursuant to paragraph (c)(2)(i)(B) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(B), (c)(1)(ii)(B), or (c)(1)(iii)(B) of this section, as appropriate.

(ii) For dishwashers not having a truncated normal cycle:

(A) $EAEU = (M + W) \times N + S$ may be used for units manufactured:

(*1*) Before April 29, 2013 to make representations of energy efficiency; and

(*2*) Before the compliance date of any amended standards to demonstrate compliance.

(B) $EAEU = (M + M_{WS} + E_F + W + W_{WS}) \times N + E_{TLP}$ must be used for units manufactured:

(*1*) On or after April 29, 2013 to make representations of energy efficiency; and

(*2*) On or after the compliance date of any amended standards to demonstrate compliance.

Where,

M, M_{WS}, S, N, E_F, and E_{TLP} are defined in paragraph (c)(1)(i) of this section, and W and W_{WS} are defined in paragraph (c)(1)(ii) of this section.

(C) Manufacturers calculating EAEU pursuant to paragraph (c)(2)(ii)(A) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(C), (c)(1)(ii)(C), or (c)(1)(iii)(C) of this section, as appropriate. Manufacturers calculating EAEU pursuant to paragraph (c)(2)(ii)(B) of this section should calculate EAOC pursuant to paragraph (c)(1)(i)(D), (c)(1)(ii)(D), or (c)(1)(iii)(D) of this section, as appropriate.

(3) When using appendix C (see the note at the beginning of appendix C), the water consumption, V, expressed in gallons per cycle and defined in section 5.3 of appendix C to this subpart, and when using appendix C1 (see the note at the beginning of appendix C1), water consumption, V, and the sum of the water consumption, V, and the water consumption during water softener regeneration, V_{WS}, expressed in gallons per cycle and defined in section 5.4 of appendix C1 to this subpart, must be rounded to one decimal place.

(i) Water consumption, V, may be measured for units manufactured:

(A) Before April 29, 2013 to make representations of energy efficiency; and

(B) Before the compliance date of any amended standards to demonstrate compliance.

(ii) Manufacturers calculating water consumption pursuant to paragraph (c)(3)(i) of this section should calculate EAOC as described in paragraph (c)(1)(i)(A), (c)(1)(i)(C), (c)(1)(ii)(A), (c)(1)(ii)(C), (c)(1)(iii)(A), or (c)(1)(iii)(C) of this section, as appropriate. Manufacturers calculating water consumption pursuant to paragraph (c)(3)(i) of this section should calculate EAEU as described in paragraph (c)(2)(i)(A) or (c)(2)(ii)(A) of this section, as appropriate.

(iii) The sum of the water consumption, V, and the water consumption during water softener regeneration, V_{WS}, must be measured for units manufactured:

(A) On or after April 29, 2013 to make representations of energy efficiency; and

(B) On or after the compliance date of any amended standards to demonstrate compliance.

(C) Manufacturers calculating water consumption pursuant to paragraph (c)(3)(iii) of this section should calculate EAOC as described in paragraph (c)(1)(i)(B), (c)(1)(i)(D), (c)(1)(ii)(B), (c)(1)(ii)(D), (c)(1)(iii)(B), or (c)(1)(iii)(D) of this section, as appropriate. Manufacturers calculating water consumption pursuant to paragraph (c)(3)(iii) of this section should calculate EAEU as described in paragraph (c)(2)(i)(B) or (c)(2)(ii)(B) of this section, as appropriate.

(4) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix C and appendix C1 to this subpart.

* * * * *

(i) *Kitchen ranges and ovens.* (1) The estimated annual operating cost for conventional ranges, conventional cooking tops, and conventional ovens shall be the sum of the following products:

(i) The total integrated annual electrical energy consumption for any electrical energy usage, in kilowatt-hours (kWhs) per year, times the representative average unit cost for electricity, in dollars per kWh, as provided pursuant to section 323(b)(2) of the Act; plus

(ii) The total annual gas energy consumption for any natural gas usage, in British thermal units (Btus) per year, times the representative average unit

cost for natural gas, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act; plus

(iii) The total annual gas energy consumption for any propane usage, in Btus per year, times the representative average unit cost for propane, in dollars per Btu, as provided pursuant to section 323(b)(2) of the Act. The total annual energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be as determined according to sections 4.3, 4.2.2, and 4.1.2, respectively, of appendix I to this subpart. For conventional gas cooking tops, total integrated annual electrical energy consumption shall be equal to E_{CTSO}, defined in section 4.2.2.2.4 of appendix I to this subpart. The estimated annual operating cost shall be rounded off to the nearest dollar per year.

(2) The cooking efficiency for conventional cooking tops and conventional ovens shall be the ratio of the cooking energy output for the test to the cooking energy input for the test, as determined according to sections 4.2.1 and 4.1.3, respectively, of appendix I to this subpart. The final cooking efficiency values shall be rounded off to three significant digits.

(3) [Reserved]

(4) The energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total annual energy input, as determined according to sections 4.3, 4.2.3.1, and 4.1.4.1, respectively, of appendix I to this subpart. The final energy factor values shall be rounded off to three significant digits.

(5) The integrated energy factor for conventional ranges, conventional cooking tops, and conventional ovens shall be the ratio of the annual useful cooking energy output to the total integrated annual energy input, as determined according to sections 4.3, 4.2.3.2, and 4.1.4.2, respectively, of appendix I to this subpart. The final integrated energy factor values shall be rounded off to three significant digits.

(6) There shall be two estimated annual operating costs, two cooking efficiencies, and two energy factors for convertible cooking appliances—

(i) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with natural gas; and

(ii) An estimated annual operating cost, a cooking efficiency, and an energy factor which represent values for those three measures of energy consumption for the operation of the appliance with LP-gas.

(7) There shall be two integrated energy factors for convertible cooking appliances—

(i) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with natural gas; and

(ii) An integrated energy factor which represents the value for this measure of energy consumption for the operation of the appliance with LP-gas.

(8) The estimated annual operating cost for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(1) of this section using the total annual gas energy consumption for natural gas times the representative average unit cost for natural gas.

(9) The estimated annual operating cost for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(1) of this section using the representative average unit cost for propane times the total annual energy consumption of the test gas, either propane or natural gas.

(10) The cooking efficiency for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(2) of this section when the appliance is tested with natural gas.

(11) The cooking efficiency for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(2) of this section, when the appliance is tested with either natural gas or propane.

(12) The energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(6)(i) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with natural gas.

(13) The integrated energy factor for convertible cooking appliances which represents natural gas usage, as described in paragraph (i)(7)(i) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas.

(14) The energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(6)(ii) of this section, shall be determined according to paragraph (i)(4) of this section when the appliance is tested with either natural gas or propane.

(15) The integrated energy factor for convertible cooking appliances which represents LP-gas usage, as described in paragraph (i)(7)(ii) of this section, shall be determined according to paragraph (i)(5) of this section when the appliance is tested with natural gas or propane.

(16) Other useful measures of energy consumption for conventional ranges, conventional cooking tops, and conventional ovens shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix I to this subpart.

* * * * *

(z) *Dehumidifiers.* (1) When using appendix X (see the note at the beginning of appendix X), the energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh), shall be measured in accordance with section 4.1 of appendix X of this subpart.

(2) When using appendix X1 (see the note at the beginning of appendix X1), the integrated energy factor for dehumidifiers, expressed in L/kWh, shall be determined according to paragraph 5.2 of appendix X1 to this subpart.

* * * * *

■ 9. Appendix C to subpart B of part 430 is amended by:

■ a. Revising the introductory text;

■ b. Revising sections 1.2, 1.9, 1.10, 1.11, and 1.13;

■ c. Revising section 2.6.2, 2.6.3.1, 2.6.3.2, 2.6.3.3, 2.7, and 2.8; and

■ d. Revising sections 5.4.1, 5.4.2; 5.5.1, and 5.5.2.

The additions and revisions read as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

Note: Prior to the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption (May 30, 2013 unless the direct final rule published on May 30, 2012 is withdrawn), manufacturers may use either Appendix C or Appendix C1 to certify compliance with existing DOE energy conservation standards and to make any representations related to energy and/or water consumption of dishwashers, with the following exception. If the compliance date is after April 29, 2013, manufacturers that make representations related to standby mode and off mode energy consumption must use Appendix C1 for any representations made after April 29, 2013 of the energy and/or water consumption of these products, consistent with the requirements of 42 U.S.C. 6293(c)(2).

After the compliance date for any amended energy conservation standards that

incorporate standby mode and off mode energy consumption (May 30, 2013 unless the direct final rule published on May 30, 2012 is withdrawn), all dishwashers shall be tested using the provisions of Appendix C1 to certify compliance with amended energy conservation standards and to make any representations related to energy and/or water consumption, with the following exception. If the compliance date is before April 29, 2013, manufacturers may use Appendix C for any representations until April 29, 2013 of energy and/or water consumption of these products, consistent with the requirements of 42 U.S.C. 6293(c)(2).

* * * * *

1.2 *Compact dishwasher* means a dishwasher that has a capacity of less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–1992 (incorporated by reference; see § 430.3), using the test load specified in section 2.7.1 of this appendix.

* * * * *

1.9 *Sensor heavy response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, four place settings of which are soiled according to ANSI/AHAM DW–1–1992 (incorporated by reference; see § 430.3) and as additionally specified in section 2.7.2 of this appendix. For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.10 *Sensor light response* means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to ANSI/AHAM DW–1–1992 (incorporated by reference; see § 430.3) and as additionally specified in section 2.7.2 of this appendix.

1.11 *Sensor medium response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, two place settings of which are soiled according to ANSI/AHAM DW–1–1992 (incorporated by reference; see § 430.3) and as additionally specified in section 2.7.2 of this appendix. For compact dishwashers, this definition is the same, except that one soiled place setting is used.

* * * * *

1.13 *Standard dishwasher* means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–1992 (incorporated by reference; see § 430.3), using the test load specified in section 2.7.1 of this appendix.

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2. *Testing Conditions*

* * * * *

2.6.2 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F.* These units must be tested on the normal cycle with a clean load of eight place settings plus six serving pieces, as specified in section 2.7.1 of this appendix. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity.

* * * * *

2.6.3.1 For tests of the sensor heavy response, as defined in section 1.9 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7.1 of this appendix. Four of the eight place settings must be soiled according to ANSI/AHAM DW–1–1992 (incorporated by reference, see § 430.3) and as additionally specified in section 2.7.2 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7.1 of this appendix. Two of the four place settings must be soiled according to ANSI/AHAM DW–1–1992 and as additionally specified in section 2.7.2 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.2 For tests of the sensor medium response, as defined in section 1.11 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7.1 of this appendix. Two of the eight place settings must be soiled according to ANSI/AHAM DW–1–1992 (incorporated by reference, see § 430.3) and as additionally specified in section 2.7.2 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7.1 of this appendix. One of the four place settings must be soiled according to ANSI/AHAM DW–1–1992 and as additionally specified in section 2.7.2 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.3 For tests of the sensor light response, as defined in section 1.10 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7.1 of this appendix. One of the eight place settings must be soiled with half of the soil load specified for a single place setting according to ANSI/AHAM DW–1–1992 (incorporated by reference, see § 430.3) and as additionally specified in section 2.7.2 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7.1 of this appendix. One of the four place settings must be soiled with half of the soil load specified for a single place setting according to ANSI/AHAM DW–1–1992 and as additionally specified in section 2.7.2 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled.

2.7 *Test load.*

2.7.1 *Test load items.*

Dishware/glassware/flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Dinner Plate	Corning Comcor®/Corelle®.	10 inch Dinner Plate	6003893		
Bread and Butter Plate	Corning Comcor®/Corelle®.	6.75 inch Bread & Butter.	6003887	Arzberg	8500217100 or 2000–00001–0217–1
Fruit Bowl	Corning Comcor®/Corelle®.	10 oz. Dessert Bowl	6003899	Arzberg	3820513100
Cup	Corning Comcor®/Corelle®.	8 oz. Ceramic Cup	6014162	Arzberg	1382–00001–4732
Saucer	Corning Comcor®/Corelle®.	6 inch Saucer	6010972	Arzberg	1382–00001–4731
Serving Bowl	Corning Comcor®/Corelle®.	1 qt. Serving Bowl	6003911		
Platter	Corning Comcor®/Corelle®.	9.5 inch Oval Platter	6011655		
Glass—Iced Tea	Libbey		551 HT		
Flatware—Knife	Oneida®—Accent		2619KPVF	WMF—Gastro 0800	12.0803.6047
Flatware—Dinner Fork	Oneida®—Accent		2619FRSF	WMF—Signum 1900	12.1905.6040
Flatware—Salad Fork	Oneida®—Accent		2619FSLF	WMF—Signum 1900	12.1964.6040
Flatware—Teaspoon	Oneida®—Accent		2619STSF	WMF—Signum 1900	12.1910.6040
Flatware—Serving Fork	Oneida®—Flight		2865FCM	WMF—Signum 1900	12.1902.6040

Dishware/glassware/ flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Flatware—Serving Spoon.	Oneida®—Accent	.....	2619STBF	WMF—Signum 1900 ..	12.1904.6040

2.7.2 *Soils.* The soils shall be as specified in ANSI/AHAM DW–1–1992 (incorporated by reference, *see* § 430.3), except for the following substitutions.

2.7.2.1 *Margarine.* The margarine shall be Fleischmann's Original stick margarine.

2.7.2.2 *Coffee.* The coffee shall be Folgers Classic Decaf.

2.8 *Detergent.* Use half the quantity of detergent specified according to ANSI/AHAM DW–1–1992 (incorporated by reference, *see* § 430.3), using Cascade with the Grease Fighting Power of Dawn powder as the detergent formulation.

* * * * *

5. Calculation of Derived Results From Test Measurements

* * * * *

5.4 * * *

5.4.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.* Calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

where,

V = water consumption in gallons per cycle, as determined in section 5.3.1 of this appendix for non-soil-sensing dishwashers and section 5.3.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 90 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.4.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.* Calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

where,

V = water consumption in gallons per cycle, as determined in section 5.3.1 of this appendix for non-soil-sensing dishwashers and section 5.3.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 70 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024,

5.5 * * *

5.5.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.* Calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

where,

V = water consumption in gallons per cycle, as determined in section 5.3.1 of this appendix for non-soil-sensing dishwashers and section 5.3.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75,

5.5.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.* Calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

where,

V = water consumption in gallons per cycle, as determined in section 5.3.1 of this appendix for non-soil-sensing dishwashers and section 5.3.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

* * * * *

■ 10. Add Appendix C1 to subpart B of part 430 to read as follows:

Appendix C1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

Note: Prior to the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption (May 30, 2013 unless the direct final rule published on May 30, 2012 is withdrawn), manufacturers may use either Appendix C or Appendix C1 to certify compliance with existing DOE energy conservation standards and to make any representations related to energy and/or water consumption of dishwashers, with the following exception. If the compliance date is after April 29, 2013, manufacturers that make representations related to standby mode and off mode energy consumption must use Appendix C1 for any representations made after April 29, 2013 of the energy and/or water consumption of these products, consistent with the requirements of 42 U.S.C. 6293(c)(2).

After the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption (May 30, 2013 unless the direct final rule published on May 30, 2012 is withdrawn), all dishwashers shall be tested using the provisions of Appendix C1 to certify compliance with amended energy conservation standards and to make any representations related to energy and/or water consumption, with the following exception. If the compliance date is before April 29, 2013, manufacturers may use Appendix C for any representations until April 29, 2013 of energy and/or water consumption of these products, consistent with the requirements of 42 U.S.C. 6293(c)(2).

1. Definitions

1.1 *Active mode* means a mode in which the dishwasher is connected to a mains power source, has been activated, and is performing one of the main functions of washing, rinsing, or drying (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical, and/or electrical means, or is involved in functions necessary for these main functions, such as admitting water into the dishwasher, pumping water out of the dishwasher, circulating air, or regenerating an internal water softener.

1.2 *AHAM* means the Association of Home Appliance Manufacturers.

1.3 *Combined low-power mode* means the aggregate of available modes other than active mode.

1.4 *Compact dishwasher* means a dishwasher that has a capacity of less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–2010 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this appendix.

1.5 *Cycle* means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.6 *Cycle finished mode* means a standby mode which provides continuous status display following operation in active mode.

1.7 *Cycle type* means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.8 *Fan-only mode* means an active mode that is not user-selectable, and in which a fan circulates air for a finite period of time after the end of the cycle, where the end of the cycle is indicated to the consumer by means of a display, indicator light, or audible signal.

1.9 *IEC 62301* means the standard published by the International Electrotechnical Commission, titled ''Household electrical appliances-Measurement of standby power,'' Publication 62301 (Edition 2.0, 2011–01) (incorporated by reference; see § 430.3).

1.10 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.11 *Non-soil-sensing dishwasher* means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of the normal cycle based on the soil load of the dishes.

1.12 *Normal cycle* means the cycle type, including washing and drying temperature

options, recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes including the power-dry feature. If no cycle or more than one cycle is recommended in the manufacturer's instructions for daily, regular, or typical use to completely wash a full load of normally soiled dishes, the most energy intensive of these cycles shall be considered the normal cycle. In the absence of a manufacturer recommendation on washing and drying temperature options, the highest energy consumption options must be selected.

1.13 *Off mode* means a mode in which the dishwasher is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.14 *Power-dry feature* means the introduction of electrically-generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.15 *Preconditioning cycle* means a normal cycle run with no test load to ensure that the water lines and sump area of the pump are primed.

1.16 *Sensor heavy response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, four place settings of which are soiled according to ANSI/AHAM DW–1–2010 (incorporated by reference; see § 430.3) and as additionally specified in section 2.7 of this appendix. For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.17 *Sensor light response* means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to ANSI/AHAM DW–1–2010 (incorporated by reference; see § 430.3) and as additionally specified in section 2.7 of this appendix.

1.18 *Sensor medium response* means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, two place settings of which are soiled according to ANSI/AHAM DW–1–2010 (incorporated by reference; see § 430.3) and as additionally specified in section 2.7 of this appendix. For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.

1.19 *Soil-sensing dishwasher* means a dishwasher that has the ability to adjust any energy-consuming aspect of the normal cycle based on the soil load of the dishes.

1.20 *Standard dishwasher* means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1–2010 (incorporated by reference; see § 430.3), using the test load specified in section 2.7 of this appendix.

1.21 *Standby mode* means a mode in which the dishwasher is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.22 *Truncated normal cycle* means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.23 *Truncated sensor heavy response* means the sensor heavy response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.24 *Truncated sensor light response* means the sensor light response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.25 *Truncated sensor medium response* means the sensor medium response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.26 *Water-heating dishwasher* means a dishwasher which, as recommended by the manufacturer, is designed for heating cold inlet water (nominal 50 °F) or designed for heating water with a nominal inlet temperature of 120 °F. Any dishwasher designated as water-heating (50 °F or 120 °F inlet water) must provide internal water heating to above 120 °F in a least one wash phase of the normal cycle.

1.27 *Water-softening dishwasher* means a dishwasher which incorporates a water softening system that periodically consumes additional water and energy during the cycle to regenerate.

2. Testing Conditions

2.1 *Installation requirements.* Install the dishwasher according to the manufacturer's instructions, including drain height. If the manufacture does not provide instructions for a specific drain height, the drain height shall be 20 inches. The racks shall be positioned according to the manufacturer recommendation for washing a full load of normally soiled dishes, or in the absence of a recommendation, the racks shall be maintained in the as-shipped position. The rinse aid container shall remain empty. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.2 *Electrical energy supply.*

2.2.1 *Dishwashers that operate with an electrical supply of 115 volts.* Maintain the electrical supply to the dishwasher at 115 volts ±2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer. Maintain a continuous electrical supply to the unit throughout testing, including the preconditioning cycles, specified in section 2.9 of this appendix, and in between all test cycles.

2.2.2 *Dishwashers that operate with an electrical supply of 240 volts.* Maintain the electrical supply to the dishwasher at 240 volts ±2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer. Maintain a continuous electrical supply to the unit throughout testing, including the preconditioning cycles, specified in section 2.9 of this appendix, and in between all test cycles.

2.2.3 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.3 *Water temperature.* Measure the temperature of the water supplied to the dishwasher using a temperature measuring device as specified in section 3.1 of this appendix.

2.3.1 *Dishwashers to be tested at a nominal 140 °F inlet water temperature.* Maintain the water supply temperature at 140° ± 2 °F.

2.3.2 *Dishwashers to be tested at a nominal 120 °F inlet water temperature.* Maintain the water supply temperature at 120° ± 2 °F.

2.3.3 *Dishwashers to be tested at a nominal 50 °F inlet water temperature.* Maintain the water supply temperature at 50° ± 2 °F.

2.4 *Water pressure.* Using a water pressure gauge as specified in section 3.4 of this appendix, maintain the pressure of the water supply at 35 ± 2.5 pounds per square inch gauge (psig) when the water is flowing. The pressure shall be achieved within 2 seconds of opening the water supply valve.

2.5 *Ambient temperature.*

2.5.1 *Active mode ambient and machine temperature.* Using a temperature measuring device as specified in section 3.1 of this appendix, maintain the room ambient air temperature at 75° ± 5 °F and ensure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

2.5.2 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

2.6 *Test cycle and load.*

2.6.1 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 140 °F.* All non-soil-sensing dishwashers to be tested according to section 4.1 of this appendix at a nominal inlet temperature of 140 °F must be tested on the normal cycle

and truncated normal cycle without a test load if the dishwasher does not heat water in the normal cycle.

2.6.2 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F.* All non-soil-sensing dishwashers to be tested according to section 4.1 of this appendix at a nominal inlet temperature of 50 °F or 120 °F must be tested on the normal cycle with a clean load of eight place settings plus six serving pieces, as specified in section 2.7 of this appendix. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity.

2.6.3 *Soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F, 120 °F, or 140 °F.* All soil-sensing dishwashers shall be tested according to section 4.1 of this appendix on the normal cycle. The dishwasher shall be tested first for the sensor heavy response, then tested for the sensor medium response, and finally for the sensor light response with the following combinations of soiled and clean test loads.

2.6.3.1 For tests of the sensor heavy response, as defined in section 1.16 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this appendix. Four of the eight place settings, except for the flatware, must be soiled according to sections 5.3 through 5.7 of ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3) and as additionally specified in sections 2.7.4 and 2.7.5 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1–2010.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this appendix. Two of the four place settings, except for the flatware, must be soiled according to sections 5.3 through 5.7 of ANSI/AHAM DW–1–2010 and as additionally specified in sections 2.7.4 and 2.7.5 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1–2010.

2.6.3.2 For tests of the sensor medium response, as defined in section 1.18 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this appendix. Two of the eight place settings, except for the flatware, must be soiled according to sections 5.3 through 5.7 of ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3) and as additionally specified in sections 2.7.4 and 2.7.5 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1–2010.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this appendix. One of the four place settings, except for the flatware, must be soiled according to sections 5.3 through 5.7 of ANSI/AHAM DW–1–2010 and as additionally specified in sections 2.7.4 and 2.7.5 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1–2010.

2.6.3.3 For tests of the sensor light response, as defined in section 1.17 of this appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this appendix. One of the eight place settings, except for the flatware, must be soiled with half of the soil load specified for a single place setting according to sections 5.3 through 5.7 of ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3) and as additionally specified in sections 2.7.4 and 2.7.5 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1–2010.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this appendix. One of the four place settings, except for the flatware, must be soiled with half of the soil load specified for a single place setting according to sections 5.3 through 5.7 of ANSI/AHAM DW–1–2010 and as additionally specified in sections 2.7.4 and 2.7.5 of this appendix, while the remaining place settings, serving pieces, and all flatware are not soiled. The test load is to be loaded in the dishwasher according to section 5.8 of ANSI/AHAM DW–1–2010.

2.7 *Test load.*

2.7.1 *Test load items.*

Dishware/glassware/ flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Dinner Plate	Corning Comcor®/ Corelle®.	10 inch Dinner Plate	6003893		
Bread and Butter Plate	Corning Comcor®/ Corelle®.	6.75 inch Bread & Butter.	6003887	Arzberg	8500217100 or 2000–00001–0217–1
Fruit Bowl	Corning Comcor®/ Corelle®.	10 oz. Dessert Bowl	6003899	Arzberg	3820513100
Cup	Corning Comcor®/ Corelle®.	8 oz. Ceramic Cup	6014162	Arzberg	1382–00001–4732
Saucer	Corning Comcor®/ Corelle®.	6 inch Saucer	6010972	Arzberg	1382–00001–4731
Serving Bowl	Corning Comcor®/ Corelle®.	1 qt. Serving Bowl	6003911		
Platter	Corning Comcor®/ Corelle®.	9.5 inch Oval Platter	6011655		
Glass—Iced Tea	Libbey		551 HT		
Flatware—Knife	Oneida®—Accent		2619KPVF	WMF—Gastro 0800	12.0803.6047
Flatware—Dinner Fork	Oneida®—Accent		2619FRSF	WMF—Signum 1900	12.1905.6040
Flatware—Salad Fork	Oneida®—Accent		2619FSLF	WMF—Signum 1900	12.1964.6040
Flatware—Teaspoon	Oneida®—Accent		2619STSF	WMF—Signum 1900	12.1910.6040
Flatware—Serving Fork	Oneida®—Flight		2865FCM	WMF—Signum 1900	12.1902.6040
Flatware—Serving Spoon.	Oneida®—Accent		2619STBF	WMF—Signum 1900	12.1904.6040

2.7.2 *Place setting.* A place setting shall consist of one cup, one saucer, one dinner plate, one bread and butter plate, one fruit bowl, one iced tea glass, one dinner fork, one salad fork, one knife, and two teaspoons.

2.7.3 *Serving pieces.* Serving pieces shall consist of two serving bowls, one platter, one serving fork, and two serving spoons.

2.7.4 *Soils.* The soils shall be as specified in section 5.4 of ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3), except for the following substitutions.

2.7.4.1 *Margarine.* The margarine shall be Fleischmann's Original stick margarine.

2.7.4.2 *Coffee.* The coffee shall be Folgers Classic Decaf.

2.7.5 *Soil Preparation.* Soils shall be prepared according to section 5.5 of ANSI/AHAM DW–1–2010 (incorporated by

reference, see § 430.3), with the following additional specifications.

2.7.5.1 *Milk.* The nonfat dry milk shall be reconstituted before mixing with the oatmeal and potatoes. It shall be reconstituted with water by mixing ⅔ cup of nonfat dry milk with 2 cups of water until well mixed. The reconstituted milk may be stored for use over the course of 1 day.

2.7.5.2 *Instant mashed potatoes.* The potato mixture shall be applied within 30 minutes of preparation.

2.7.5.3 *Ground beef.* The 1-pound packages of ground beef shall be stored frozen for no more than 6 months.

2.8 *Testing requirements.* Provisions in this appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water-heating dishwashers as defined in section 1.26 of this appendix.

2.9 *Preconditioning requirements.* Precondition the dishwasher twice by establishing the testing conditions set forth in sections 2.1 through 2.5 of this appendix. For each preconditioning, set the dishwasher to the preconditioning cycle as defined in section 1.15 of this appendix, without using a test load, and initiate the cycle. During the second preconditioning, measure the prewash fill water volume, V_{pw}, if any, and the main wash fill water volume, V_{mw}.

2.10 *Detergent.* Use half the quantity of detergent specified according to section 4.1 of ANSI/AHAM DW–1–2010 (incorporated by reference, see § 430.3), using Cascade with the Grease Fighting Power of Dawn powder as the detergent formulation. Determine the amount of detergent (in grams) to be added to the prewash compartment (if provided) or elsewhere in the dishwasher (if recommended by the manufacturer) and the main wash compartment according to sections 2.10.1 and 2.10.2 of this appendix.

2.10.1 *Prewash Detergent Dosing.* If the cycle setting for the test cycle includes prewash, determine the quantity of dry prewash detergent, D_{pw}, in grams (g) that results in 0.25 percent concentration by mass in the prewash fill water as:

$$D_{pw} = V_{pw} \times \rho \times k \times 0.25/100$$

where,

V_{pw} = the prewash fill volume of water in gallons,

ρ = water density = 8.343 pounds (lb)/gallon for dishwashers to be tested at a nominal inlet water temperature of 50 °F (10 °C), 8.250 lb/gallon for dishwashers to be tested at a nominal inlet water temperature of 120 °F (49 °C), and 8.205 lb/gallon for dishwashers to be tested at a nominal inlet water temperature of 140 °F (60 °C), and

k = conversion factor from lb to g = 453.6 g/lb.

2.10.2 *Main Wash Detergent Dosing.* Determine the quantity of dry main wash detergent, D_{mw}, in grams (g) that results in 0.25 percent concentration by mass in the main wash fill water as:

$$D_{mw} = V_{mw} \times \rho \times k \times 0.25/100$$

where,

V_{mw} = the main wash fill volume of water in gallons, and

ρ, and k are defined in section 2.10.1 of this appendix.

3. Instrumentation

Test instruments must be calibrated annually.

3.1 *Temperature measuring device.* The device must have an error no greater than ± 1 °F over the range being measured.

3.2 *Timer.* Time measurements for each monitoring period shall be accurate to within 2 seconds.

3.3 *Water meter.* The water meter must have a resolution of no larger than 0.1 gallons and a maximum error no greater than ± 1.5 percent of the measured flow rate for all water temperatures encountered in the test cycle.

3.4 *Water pressure gauge.* The water pressure gauge must have a resolution of one pound per square inch (psi) and must have an error no greater than 5 percent of any measured value over the range of 35 ± 2.5 psig.

3.5 *Watt-hour meter.* The watt-hour meter must have a resolution of .1 watt-hour or less and a maximum error of no more than 1 percent of the measured value for any demand greater than 5 watts.

3.6 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference, see § 430.3).

4. Test Cycle and Measurements

4.1 *Active mode cycle.* Perform a test cycle by establishing the testing conditions set forth in section 2 of this appendix, setting the dishwasher to the cycle type to be tested according to section 2.6.1, 2.6.2, or 2.6.3 of this appendix, initiating the cycle, and allowing the cycle to proceed to completion.

4.1.1 *Machine electrical energy consumption.* Measure the machine electrical energy consumption, M, expressed as the number of kilowatt-hours of electricity consumed by the machine during the entire test cycle, using a water supply temperature as set forth in section 2.3 of this appendix and using a watt-hour meter as specified in section 3.5 of this appendix.

4.1.2 *Fan electrical energy consumption.* If the dishwasher is capable of operation in fan-only mode, measure the fan electrical energy consumption, M_F, expressed as the number of kilowatt-hours of electricity consumed by the machine for the duration of fan-only mode, using a watt-hour meter as specified in section 3.5 of this appendix. Alternatively, if the duration of fan-only mode is known, the watt-hours consumed may be measured for a period of 10 minutes in fan-only mode, using a watt-hour meter as specified in section 3.5 of this appendix. Multiply this value by the time in minutes that the dishwasher remains in fan-only mode, L_F, and divide by 10,000 to obtain M_F. The alternative approach may be used only if the resulting M_F is representative of energy use during the entire fan-only mode.

4.1.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter specified in section 3.3 of this appendix.

4.2 *Standby mode and off mode power.* Connect the dishwasher to a standby mode and off mode watt meter as specified in section 3.6 of this appendix. Establish the testing conditions set forth in sections 2.1, 2.2, and 2.5.2 of this appendix. For dishwashers that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, note 1 of IEC 62301 (incorporated by reference; see § 430.3), allow sufficient time for the dishwasher to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.2.1 and 4.2.2 of this appendix.

4.2.1 If the dishwasher has an inactive mode, as defined in section 1.10 of this appendix, measure and record the average inactive mode power of the dishwasher, P_{IA}, in watts.

4.2.2 If the dishwasher has an off mode, as defined in section 1.13 of this appendix, measure and record the average off mode power, P_{OM}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Machine energy consumption.*

5.1.1 *Machine energy consumption for non-soil-sensing electric dishwashers.* Take the value recorded in section 4.1.1 of this appendix as the per-cycle machine electrical energy consumption. Express the value, M, in kilowatt-hours per cycle.

5.1.2 *Machine energy consumption for soil-sensing electric dishwashers.* The machine energy consumption for the sensor normal cycle, M, is defined as:

$$M = (M_{hr} \times F_{hr}) + (M_{mr} \times F_{mr}) + (M_{lr} \times F_{lr})$$

where,

M_{hr} = the value recorded in section 4.1.1 of this appendix for the test of the sensor heavy response, expressed in kilowatt-hours per cycle,

M_{mr} = the value recorded in section 4.1.1 of this appendix for the test of the sensor medium response, expressed in kilowatt-hours per cycle,

M_{lr} = the value recorded in section 4.1.1 of this appendix for the test of the sensor light response, expressed in kilowatt-hours per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33, and

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.1.3 *Machine energy consumption during water softener regeneration for water-softening dishwashers.* The machine energy consumption for water softener regeneration, M_{WS}, is defined as:

$$M_{WS} = M_{WScycle} \times N_{WS}/N$$

where,

$M_{WScycle}$ = the reported value of the additional machine electrical energy consumption required for water softener regeneration during a cycle including

water softener regeneration, expressed in kilowatt-hours,

N_{WS} = the reported representative average number of water softener regeneration cycles per year, and

N = the representative average dishwasher use of 215 cycles per year.

5.2 *Fan-only mode energy consumption.*

5.2.1 *Electrical energy consumption for fan-only mode for non-soil-sensing electric dishwashers.* Take the value recorded in section 4.1.2 of this appendix as the per-cycle electrical energy consumption for fan-only mode. Express the value, E_F, in kilowatt-hours per cycle. If the dishwasher is not capable of operation in fan-only mode, E_F = 0.

5.2.2 *Electrical energy consumption for fan-only mode for soil-sensing electric dishwashers.* The fan-only mode electrical energy consumption, E_F, for the sensor normal cycle is defined as:

$$E_F = (E_{Fhr} + E_{Fmr} + E_{Flr})/3$$

where,

E_{Fhr} = the value recorded in section 4.1.2 of this appendix for the test of the sensor heavy response, expressed in kilowatt-hours per cycle,

E_{Fmr} = the value recorded in section 4.1.2 of this appendix for the test of the sensor medium response, expressed in kilowatt-hours per cycle,

E_{Flr} = the value recorded in section 4.1.2 of this appendix for the test of the sensor light response, expressed in kilowatt-hours per cycle,

If the dishwasher is not capable of operation in fan-only mode, E_F = 0.

5.3 *Drying energy.*

5.3.1 *Drying energy consumption for non-soil-sensing electric dishwashers.* Calculate the amount of energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle. Express the value, E_D, in kilowatt-hours per cycle.

5.3.2 *Drying energy consumption for soil-sensing electric dishwashers.* The drying energy consumption, E_D, for the sensor normal cycle is defined as:

$$E_D = (E_{Dhr} + E_{Dmr} + E_{Dlr})/3$$

where,

E_{Dhr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor heavy response, expressed in kilowatt-hours per cycle,

E_{Dmr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor medium response, expressed in kilowatt-hours per cycle,

E_{Dlr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor light response, expressed in kilowatt-hours per cycle,

5.4 *Water consumption.*

5.4.1 *Water consumption for non-soil-sensing electric dishwashers using electrically heated, gas-heated, or oil-heated water.* Take the value recorded in section 4.1.3 of this appendix as the per-cycle water consumption. Express the value, V, in gallons per cycle.

5.4.2 *Water consumption for soil-sensing electric dishwashers using electrically heated, gas-heated, or oil-heated water.* The water consumption for the sensor normal cycle, V, is defined as:

$$V = (V_{hr} \times F_{hr}) + (V_{mr} \times F_{mr}) + (V_{lr} \times F_{lr})$$

where,

V_{hr} = the value recorded in section 4.1.3 of this appendix for the test of the sensor heavy response, expressed in gallons per cycle,

V_{mr} = the value recorded in section 4.1.3 of this appendix for the test of the sensor medium response, expressed in gallons per cycle,

V_{lr} = the value recorded in section 4.1.3 of this appendix for the test of the sensor light response, expressed in gallons per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33, and

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.4.3 *Water consumption during water softener regeneration for water-softening dishwashers using electrically heated, gas-heated, or oil-heated water.* The water consumption for water softener regeneration, V_{WS}, is defined as:

$$V_{WS} = V_{WScycle} \times N_{WS}/N$$

where,

$V_{WScycle}$ = the reported value of the additional water consumption required for water softener regeneration during a cycle including water softener regeneration, expressed in gallons per cycle,

N_{WS} = the reported representative average number of water softener regeneration cycles per year, and

N = the representative average dishwasher use of 215 cycles per year.

5.5 *Water energy consumption for non-soil-sensing or soil-sensing dishwashers using electrically heated water.*

5.5.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.*

5.5.1.1 Calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K$$

where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this appendix for non-soil-sensing dishwashers and section 5.4.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 90 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5.1.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WS}, expressed in kilowatt-hours per cycle and defined as:

$$W_{WS} = V_{WS} \times T \times K$$

where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this appendix,

T = nominal water heater temperature rise = 90 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.*

5.5.2.1 Calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$$W = V \times T \times K$$

where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this appendix for non-soil-sensing dishwashers and section 5.4.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 70 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024,

5.5.2.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WS}, expressed in kilowatt-hours per cycle and defined as:

$$W_{WS} = V_{WS} \times T \times K$$

where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this appendix,

T = nominal water heater temperature rise = 70 °F, and

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.6 *Water energy consumption per cycle using gas-heated or oil-heated water.*

5.6.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.*

5.6.1.1 Calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$$W_g = V \times T \times C/e$$

where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this appendix for non-soil-sensing dishwashers and section 5.4.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75,

5.6.1.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WSg}, expressed in kilowatt-hours per cycle and defined as:

$$W_{WSg} = V_{WS} \times T \times C/e$$

where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this appendix,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.6.2 *Dishwashers that operate with a nominal 120 °F inlet water temperature, only.*

5.6.2.1 Calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

where,

V = water consumption in gallons per cycle, as determined in section 5.4.1 of this appendix for non-soil-sensing dishwashers and section 5.4.2 of this appendix for soil-sensing dishwashers,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.6.2.2 For water-softening dishwashers, calculate the water softener regeneration water energy consumption, W_{WSg}, expressed in kilowatt-hours per cycle and defined as:

$W_{WSg} = V_{WS} \times T \times C/e$

where,

V_{WS} = water consumption during water softener regeneration in gallons per cycle which includes regeneration, as determined in section 5.4.3 of this appendix,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2, and

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.7 *Annual combined low-power mode energy consumption.* Calculate the annual combined low-power mode energy consumption for dishwashers, E_{TLP}, expressed in kilowatt-hours per year, according to the following:

$E_{TLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$

where:

P_{IA} = dishwasher inactive mode power, in watts, as measured in section 4.2.1 of this appendix for dishwashers capable of operating in inactive mode; otherwise, $P_{IA} = 0$,

P_{OM} = dishwasher off mode power, in watts, as measured in section 4.2.2 of this appendix for dishwashers capable of operating in off mode; otherwise, $P_{OM} = 0$,

S_{IA} = annual hours in inactive mode as defined as S_{LP} if no off mode is possible, $[S_{LP}/2]$ if both inactive mode and off mode are possible, and 0 if no inactive mode is possible,

S_{OM} = annual hours in off mode as defined as S_{LP} if no inactive mode is possible, $[S_{LP}/2]$ if both inactive mode and off mode are possible, and 0 if no off mode is possible,

S_{LP} = combined low-power annual hours for all available modes other than active mode as defined as $[H - (N \times (L + L_F))]$ for dishwashers capable of operating in fan-only mode; otherwise, $S_{LP} = 8{,}465$,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option,

L_F = the duration of the fan-only mode for the normal cycle for non-soil-sensing dishwashers; the average duration of the fan-only mode for sensor light response, sensor medium response, and sensor heavy response for soil-sensing dishwashers, and

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

■ 11. Appendix I to subpart B of part 430 is amended by:

■ a. Revising the Note after the appendix heading;

■ b. Revising section 1. Definitions;

■ c. In section 2. Test Conditions, by:

■ 1. Revising sections 2.1, 2.1.1, 2.1.2, 2.1.3, 2.2.1.2, 2.5.2, 2.6, 2.9.1.1, 2.9.1.3, and 2.9.2.1;

■ 2. Removing section 2.9.2.2;

■ d. In section 3. Test Methods and Measurements, by:

■ 1. Revising sections 3.1.1, 3.1.1.1, 3.1.1.2, 3.1.2, and 3.1.2.1;

■ 2. Adding sections 3.1.1.2.1, 3.1.1.2.2, 3.1.2.1.1, and 3.1.2.1.2;

■ 3. Redesignating sections 3.1.3 and 3.1.3.1 as 3.1.4 and 3.1.4.1 and revising newly redesignated section 3.1.4.1;

■ 4. Adding sections 3.1.3, 3.1.3.1, 3.1.3.2, and 3.1.3.3;

■ 5. Revising sections 3.2.1, 3.2.1.1, 3.2.1.2, 3.2.1.3, and 3.2.1.4;

■ 6. Revising section 3.2.2 and 3.2.2.1 and adding section 3.2.2.2;

■ 7. Redesignating section 3.2.3 as 3.2.4 and revising newly redesignated section 3.2.4;

■ 8. Adding new section 3.2.3;

■ 9. Revising sections 3.3.7 through 3.3.11; and

■ 10. Removing sections 3.3.12 and 3.3.13;

■ e. In section 4. Calculation of Derived Results From Test Measurements, by:

■ 1. Revising sections 4.1.1 and 4.1.1.1;

■ 2. Removing section 4.1.2.2;

■ 3. Redesignating sections 4.1.2.3, 4.1.2.3.1, 4.1.2.3.2, 4.1.2.4, 4.2.1.5, 4.1.2.5.1, 4.1.2.5.2, 4.1.2.6, 4.1.2.6.1, and 4.1.2.6.2 as 4.1.2.2, 4.1.2.2.1, 4.1.2.2.2, 4.1.2.3, 4.1.2.4, 4.1.2.4.1, 4.1.2.4.3, 4.1.2.5, 4.1.2.5.1, and 4.1.2.5.3;

■ 4. Revising newly redesignated sections 4.1.2.2.1, 4.1.2.2.2, 4.1.2.3, 4.1.2.4.1, 4.1.2.4.3, 4.1.2.5.1, and 4.1.2.5.3;

■ 5. Adding sections 4.1.2.4.2 and 4.1.2.5.2;

■ 6. Revising section 4.1.4;

■ 7. Adding sections 4.1.4.1 and 4.1.4.2;

■ 8. Revising sections 4.2.1.1 and 4.2.1.2;

■ 9. Revising section 4.2.2.1;

■ 10. Adding sections 4.2.2.1.1 and 4.2.2.1.2;

■ 11. Revising section 4.2.2.2.2;

■ 12. Removing section 4.2.2.2.3;

■ 13. Revising section 4.2.3;

■ 14. Adding sections 4.2.3.1 and 4.2.3.2; and

■ 15. Revising section 4.3.

The additions and revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

Note: The procedures and calculations in this Appendix I need not be performed to determine compliance with energy conservation standards for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens at this time. However, any representation made after April 29, 2013 related to standby mode and off mode energy consumption of conventional ranges, conventional cooking tops, and conventional ovens, and any representation made after September 6, 2011 related to standby mode and off mode energy consumption of microwave ovens, must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). Upon the compliance date of any energy conservation standard that incorporates standby mode and off mode energy consumption, compliance with the applicable provisions of this test procedure will also be required. Future revisions may add relevant provisions for measuring active mode in microwave ovens.

1. Definitions

1.1 *Active mode* means a mode in which the product is connected to a mains power source, has been activated, and is performing the main functions of producing heat by means of a gas flame, electric resistance heating, or microwave energy, or circulating air internally or externally to the cooking product. Delay start mode is a one-off, user-initiated, short-duration function that is associated with an active mode.

1.2 *Built-in* means the product is supported by surrounding cabinetry, walls, or other similar structures.

1.3 *Combined low-power mode* means the aggregate of available modes other than active mode, but including the delay start mode portion of active mode.

1.4 *Cycle finished mode* means a standby mode in which a conventional cooking top,

conventional oven, or conventional range provides continuous status display following operation in active mode.

1.5 *Drop-in* means the product is supported by horizontal surface cabinetry.

1.6 *Fan-only mode* means an active mode that is not user-selectable and in which a fan circulates air internally or externally to the cooking product for a finite period of time after the end of the heating function, where the end of the heating function is indicated to the consumer by means of a display, indicator light, or audible signal.

1.7 *Forced convection* means a mode of conventional oven operation in which a fan is used to circulate the heated air within the oven compartment during cooking.

1.8 *Freestanding* means the product is not supported by surrounding cabinetry, walls, or other similar structures.

1.9 *IEC 62301 (First Edition)* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (First Edition 2005–06) (incorporated by reference; see § 430.3).

1.10 *IEC 62301 (Second Edition)* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01) (incorporated by reference; see § 430.3).

1.11 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

1.12 *Normal non-operating temperature* means the temperature of all areas of an appliance to be tested are within 5 °F (2.8 °C) of the temperature that the identical areas of the same basic model of the appliance would attain if it remained in the test room for 24 hours while not operating with all oven doors closed.

1.13 *Off mode* means a mode in which the product is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of an off mode.

1.14 *Primary energy consumption* means either the electrical energy consumption of a conventional electric oven or the gas energy consumption of a conventional gas oven.

1.15 *Secondary energy consumption* means any electrical energy consumption of a conventional gas oven.

1.16 *Standard cubic foot (L) of gas* means that quantity of gas that occupies 1 cubic foot (L) when saturated with water vapor at a temperature of 60 °F (15.6 °C) and a pressure of 30 inches of mercury (101.6 kPa) (density of mercury equals 13.595 grams per cubic centimeter).

1.17 *Standby mode* means any modes where the product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer; (b) continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

1.18 *Thermocouple* means a device consisting of two dissimilar metals which are joined together and, with their associated wires, are used to measure temperature by means of electromotive force.

1.19 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

A—Number of Hours in a Year
C—Specific Heat
E—Energy Consumed
Eff—Cooking Efficiency
H—Heating Value of Gas
K—Conversion for Watt-hours to Kilowatt-hours
K_e—3.412 Btu/Wh, Conversion for Watt-hours to Btu's
M—Mass
n—Number of Units
O—Annual Useful Cooking Energy Output
P—Power
Q—Gas Flow Rate
R—Energy Factor, Ratio of Useful Cooking Energy Output to Total Energy Input
S—Number of Self-Cleaning Operations per Year
T—Temperature
t—Time
V—Volume of Gas Consumed
W—Weight of Test Block

2. Test Conditions

2.1 *Installation.* A free standing kitchen range shall be installed with the back directly against, or as near as possible to, a vertical wall which extends at least 1 foot above and on either side of the appliance. There shall be no side walls. A drop-in, built-in, or wall-mounted appliance shall be installed in an enclosure in accordance with the manufacturer's instructions. These appliances are to be completely assembled with all handles, knobs, guards, and the like mounted in place. Any electric resistance heaters, gas burners, baking racks, and baffles shall be in place in accordance with the manufacturer's instructions; however, broiler pans are to be removed from the oven's baking compartment.

2.1.1 *Conventional electric ranges, ovens, and cooking tops.* These products shall be connected to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1 of this appendix. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.1.2 *Conventional gas ranges, ovens, and cooking tops.* These products shall be connected to a gas supply line with a gas meter installed between the supply line and the appliance being tested, according to manufacturer's specifications. The gas meter shall be as described in section 2.9.2 of this appendix. Conventional gas ranges, ovens, and cooking tops with electrical ignition devices or other electrical components shall be connected to an electrical supply circuit of nameplate voltage with a watt-hour meter installed in the circuit. The watt-hour meter shall be as described in section 2.9.1.1 of this appendix. For standby mode and off mode testing, these products shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix. The microwave oven shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3). A watt meter shall be installed in the circuit and shall be as described in section 2.9.1.3 of this appendix.

* * * * *

2.2.1.2 *Supply voltage waveform.* For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.4 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3).

* * * * *

2.5.2 *Standby mode and off mode ambient temperature.* For conventional range, conventional cooking top, and conventional oven standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3).

2.6 *Normal non-operating temperature.* All areas of the appliance to be tested shall attain the normal non-operating temperature, as defined in section 1.12 of this appendix, before any testing begins. The equipment for measuring the applicable normal non-operating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4 of this appendix, as applicable.

* * * * *

2.9.1.1 *Watt-hour meter.* The watt-hour meter for measuring the electrical energy consumption of conventional ovens and cooking tops shall have a resolution of 1 watt-hour (3.6 kJ) or less and a maximum

error no greater than 1.5 percent of the measured value for any demand greater than 5 watts. The watt-hour meter for measuring the energy consumption of microwave ovens shall have a resolution of 0.1 watt-hour (0.36 kJ) or less and a maximum error no greater than 1.5 percent of the measured value.

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2.9.1.3 *Standby mode and off mode watt meter.* The watt meter used to measure conventional range, conventional cooking top, and conventional oven standby mode and off mode power consumption shall have a resolution as specified in Section 4, Paragraph 4.4 of IEC 62301 (Second Edition) (incorporated by reference, see § 430.3). The watt meter used to measure microwave oven standby mode and off mode power consumption shall have a resolution as specified in Section 4, Paragraph 4.5 of IEC 62301 (First Edition) (incorporated by reference, see § 430.3), and shall also be able to record a ''true'' average power as specified in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition).

2.9.2 *Gas Measurements.*

2.9.2.1 *Positive displacement meters.* The gas meter to be used for measuring the gas consumed by the gas burners of the oven or cooking top shall have a resolution of 0.01 cubic foot (0.28 L) or less and a maximum error no greater than 1 percent of the measured valued for any demand greater than 2.2 cubic feet per hour (62.3 L/h).

3. Test Methods and Measurements

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3.1.1 *Conventional oven.* Perform a test by establishing the testing conditions set forth in section 2, *Test Conditions,* of this appendix and turn off the gas flow to the conventional cooking top, if so equipped. Before beginning the test, the conventional oven shall be at its normal non-operating temperature as defined in section 1.12 and described in section 2.6 of this appendix. Set the conventional oven test block W_1 approximately in the center of the usable baking space. If there is a selector switch for selecting the mode of operation of the oven, set it for normal baking. If an oven permits baking by either forced convection by using a fan, or without forced convection, the oven is to be tested in each of those two modes. The oven shall remain on for one complete thermostat ''cut-off/cut-on'' of the electrical resistance heaters or gas burners after the test block temperature has increased 234 °F (130 °C) above its initial temperature.

3.1.1.1 *Self-cleaning operation of a conventional oven.* Establish the test conditions set forth in section 2, *Test Conditions,* of this appendix. Turn off the gas flow to the conventional cooking top. The temperature of the conventional oven shall be its normal non-operating temperature as defined in section 1.12 and described in section 2.6 of this appendix. Then set the conventional oven's self-cleaning process in accordance with the manufacturer's instructions. If the self-cleaning process is adjustable, use the average time recommended by the manufacturer for a moderately soiled oven.

3.1.1.2 *Conventional oven standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this appendix. For conventional ovens that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in 3.1.1.2.1 and 3.1.1.2.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33.

3.1.1.2.1 If the conventional oven has an inactive mode, as defined in section 1.11 of this appendix, measure and record the average inactive mode power of the conventional oven, P_{IA}, in watts.

3.1.1.2.2 If the conventional oven has an off mode, as defined in section 1.13 of this appendix, measure and record the average off mode power of the conventional oven, P_{OM}, in watts.

3.1.2 *Conventional cooking top.* Establish the test conditions set forth in section 2, *Test Conditions,* of this appendix. Turn off the gas flow to the conventional oven(s), if so equipped. The temperature of the conventional cooking top shall be its normal nonoperating temperature as defined in section 1.12 and described in section 2.6 of this appendix. Set the test block in the center of the surface unit under test. The small test block, W_2, shall be used on electric surface units of 7 inches (178 mm) or less in diameter. The large test block, W_3, shall be used on electric surface units over 7 inches (178 mm) in diameter and on all gas surface units. Turn on the surface unit under test and set its energy input rate to the maximum setting. When the test block reaches 144 °F (80 °C) above its initial test block temperature, immediately reduce the energy input rate to 25±5 percent of the maximum energy input rate. After 15±0.1 minutes at the reduced energy setting, turn off the surface unit under test.

3.1.2.1 *Conventional cooking top standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this appendix. For conventional cooktops that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional cooking top to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.2.1.1 and 3.1.2.1.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/-2 sec after an additional stabilization period until the clock time reaches 3:33.

3.1.2.1.1 If the conventional cooking top has an inactive mode, as defined in section 1.11 of this appendix, measure and record the average inactive mode power of the conventional cooking top, P_{IA}, in watts.

3.1.2.1.2 If the conventional cooking top has an off mode, as defined in section 1.13 of this appendix, measure and record the average off mode power of the conventional cooking top, P_{OM}, in watts.

3.1.3 *Conventional range standby mode and off mode power.* Establish the standby mode and off mode testing conditions set forth in section 2, *Test Conditions,* of this appendix. For conventional ranges that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the conventional range to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition) for testing in each possible mode as described in sections 3.1.3.1 and 3.1.3.2 of this appendix. For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 at the end of the stabilization period specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition), and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33.

3.1.3.1 If the conventional range has an inactive mode, as defined in section 1.11 of this appendix, measure and record the average inactive mode power of the conventional range, P_{IA}, in watts.

3.1.3.2 If the conventional range has an off mode, as defined in section 1.13 of this appendix, measure and record the average off mode power of the conventional range, P_{OM}, in watts.

3.1.4 *Microwave oven.*

3.1.4.1 *Microwave oven test standby mode and off mode power.* Establish the testing conditions set forth in section 2, *Test Conditions,* of this appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition). For units in which

power varies as a function of displayed time in standby mode, set the clock time to 3:23 and use the average power approach described in Section 5, Paragraph 5.3.2(a), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33. If a microwave oven is capable of operation in either standby mode or off mode, as defined in sections 1.17 or 1.13 of this appendix, respectively, or both, test the microwave oven in each mode in which it can operate.

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3.2.1 *Conventional oven test energy consumption.* If the oven thermostat controls the oven temperature without cycling on and off, measure the energy consumed, E_O, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the oven thermostat operates by cycling on and off, make the following series of measurements: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last ''ON'' period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next ''ON'' period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that ''ON'' period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following ''ON'' period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven, measure in watt-hours (kJ) any electrical energy, E_{IO}, consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O.

3.2.1.1 *Conventional oven average test energy consumption.* If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat does not cycle on and off, measure the energy consumed with the forced convection mode, $(E_O)_1$, and without the forced convection mode, $(E_O)_2$, when the temperature of the block reaches T_O (T_O is 234 °F (130 °C) above the initial block temperature, T_I). If the conventional oven permits baking by either forced convection or without forced convection and the oven thermostat operates by cycling on and off, make the following series of measurements with and without the forced convection mode: Measure the block temperature, T_A, and the energy consumed, E_A, or volume of gas consumed, V_A, at the end of the last ''ON'' period of the conventional oven before the block reaches T_O. Measure the block temperature, T_B, and the energy consumed, E_B, or volume of gas consumed, V_B, at the beginning of the next ''ON'' period. Measure the block temperature, T_C, and the energy consumed, E_C, or volume of gas consumed, V_C, at the end of that ''ON'' period. Measure the block temperature, T_D, and the energy consumed, E_D, or volume of gas consumed, V_D, at the beginning of the following ''ON'' period. Energy measurements for E_O, E_A, E_B, E_C, and E_D should be expressed in watt-hours (kJ) for conventional electric ovens, and volume measurements for V_A, V_B, V_C, and V_D should be expressed in standard cubic feet (L) of gas for conventional gas ovens. For a gas oven that can be operated with or without forced convection, measure in watt-hours (kJ) any electrical energy consumed by an ignition device or other electrical components required for the operation of a conventional gas oven while heating the test block to T_O using the forced convection mode, $(E_{IO})_1$, and without using the forced convection mode, $(E_{IO})_2$.

3.2.1.2 *Conventional oven fan-only mode energy consumption.* If the conventional oven is capable of operation in fan-only mode, measure the fan-only mode energy consumption, E_{OF}, expressed in kilowatt-hours (kJ) of electricity consumed by the conventional oven for the duration of fan-only mode, using a watt-hour meter as specified in section 2.9.1.1 of this appendix. Alternatively, if the duration of fan-only mode is known, the watt-hours consumed may be measured for a period of 10 minutes in fan-only mode, using a watt-hour meter as specified in section 2.9.1.1 of this appendix. Multiply this value by the time in minutes that the conventional oven remains in fan-only mode, t_{OF}, and divide by 10,000 to obtain E_{OF}. The alternative approach may be used only if the resulting E_{OF} is representative of energy use during the entire fan-only mode.

3.2.1.3 *Energy consumption of self-cleaning operation.* Measure the energy consumption, E_S, in watt-hours (kJ) of electricity or the volume of gas consumption, V_S, in standard cubic feet (L) during the self-cleaning test set forth in section 3.1.1.1 of this appendix. For a gas oven, also measure in watt-hours (kJ) any electrical energy, E_{IS}, consumed by ignition devices or other electrical components required during the self-cleaning test.

3.2.1.4 *Standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.1.2 of this appendix. If the conventional oven is capable of operating in inactive mode, as defined in section 1.11 of this appendix, measure the average inactive mode power of the conventional oven, P_{IA}, in watts as specified in section 3.1.1.2.1 of this appendix. If the conventional oven is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the conventional oven, P_{OM}, in watts as specified in section 3.1.1.2.2 of this appendix.

3.2.2 *Conventional surface unit test energy consumption.*

3.2.2.1 *Conventional surface unit average test energy consumption.* For the surface unit under test, measure the energy consumption, E_{CT}, in watt-hours (kJ) of electricity or the volume of gas consumption, V_{CT}, in standard cubic feet (L) of gas and the test block temperature, T_{CT}, at the end of the 15 minute (reduced input setting) test interval for the test specified in section 3.1.2 of this appendix and the total time, t_{CT}, in hours, that the unit is under test. Measure any electrical energy, E_{IC}, consumed by an ignition device of a gas heating element or other electrical components required for the operation of the conventional gas cooking top in watt-hours (kJ).

3.2.2.2 *Conventional surface unit standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.2.1 of this appendix. If the conventional surface unit is capable of operating in inactive mode, as defined in section 1.11 of this appendix, measure the average inactive mode power of the conventional surface unit, P_{IA}, in watts as specified in section 3.1.2.1.1 of this appendix. If the conventional surface unit is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the conventional surface unit, P_{OM}, in watts as specified in section 3.1.2.1.2 of this appendix.

3.2.3 *Conventional range standby mode and off mode energy consumption.* Make measurements as specified in section 3.1.3 of this appendix. If the conventional range is capable of operating in inactive mode, as defined in section 1.11 of this appendix, measure the average inactive mode power of the conventional range, P_{IA}, in watts as specified in section 3.1.3.1 of this appendix. If the conventional range is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the conventional range, P_{OM}, in watts as specified in section 3.1.3.2 of this appendix.

3.2.4 *Microwave oven test standby mode and off mode power.* Make measurements as specified in Section 5, Paragraph 5.3 of IEC 62301 (First Edition) (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, as defined in section 1.17 of this appendix, measure the average standby mode power of the microwave oven, P_{SB}, in watts as specified in section 3.1.4.1 of this appendix. If the microwave oven is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the microwave oven, P_{OM}, as specified in section 3.1.4.1 of this appendix.

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3.3.7 For conventional ovens, record the conventional oven standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable. For conventional cooktops, record the conventional cooking top standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable. For conventional ranges, record the conventional range standby mode and off mode test measurements P_{IA} and P_{OM}, if applicable.

3.3.8 For the surface unit under test, record the electric energy consumption, E_{CT}, or the gas volume consumption, V_{CT}, the final test block temperature, T_{CT}, and the total test time, t_{CT}. For a gas cooking top which uses electrical energy for ignition of the burners, also record E_{IC}.

3.3.9 Record the heating value, Hn, as determined in section 2.2.2.2 of this appendix for the natural gas supply.

3.3.10 Record the heating value, Hp, as determined in section 2.2.2.3 of this appendix for the propane supply.

3.3.11 Record the average standby mode power, P_{SB}, for the microwave oven standby

mode, as determined in section 3.2.4 of this appendix for a microwave oven capable of operating in standby mode. Record the average off mode power, P_{OM}, for the microwave oven off mode power test, as determined in section 3.2.4 of this appendix for a microwave oven capable of operating in off mode.

4. Calculation of Derived Results From Test Measurements

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4.1.1 *Test energy consumption.* For a conventional oven with a thermostat which operates by cycling on and off, calculate the test energy consumption, E_O, expressed in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens, and defined as:

$$E_O = E_{AB} + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times \left(E_{CD} - E_{AB}\right)\right]$$

for electric ovens, and,

$$E_O = \left(V_{AB} \times H\right) + \left[\left(\frac{T_O - T_{AB}}{T_{CD} - T_{AB}}\right) \times \left(V_{CD} - V_{AB}\right) \times H\right]$$

for gas ovens,

Where:

H = either H_n or H_p, the heating value of the gas used in the test as specified in section 2.2.2.2 and section 2.2.2.3 of this appendix, expressed in Btus per standard cubic foot (kJ/L).

T_O = 234 °F (130 °C) plus the initial test block temperature.

and,

$$E_{AB} = \frac{\left(E_A + E_B\right)}{2}, \quad E_{CD} = \frac{\left(E_C + E_D\right)}{2},$$

$$V_{AB} = \frac{\left(V_A + V_B\right)}{2}, \quad V_{CD} = \frac{\left(V_C + V_D\right)}{2},$$

$$T_{AB} = \frac{\left(T_A + T_B\right)}{2}, \quad T_{CD} = \frac{\left(T_C + T_D\right)}{2},$$

Where:

T_A = block temperature in °F (°C) at the end of the last ''ON'' period of the conventional oven before the test block reaches T_O.

T_B = block temperature in °F (°C) at the beginning of the ''ON'' period following the measurement of T_A.

T_C = block temperature in °F (°C) at the end of the ''ON'' period which starts with T_B.

T_D = block temperature in °F (°C) at the beginning of the ''ON'' period which follows the measurement of T_C.

E_A = electric energy consumed in Wh (kJ) at the end of the last ''ON'' period before the test block reaches T_O.

E_B = electric energy consumed in Wh (kJ) at the beginning of the ''ON'' period following the measurement of T_A.

E_C = electric energy consumed in Wh (kJ) at the end of the ''ON'' period which starts with T_B.

E_D = electric energy consumed in Wh (kJ) at the beginning of the ''ON'' period which follows the measurement of T_C.

V_A = volume of gas consumed in standard cubic feet (L) at the end of the last ''ON'' period before the test block reaches T_O.

V_B = volume of gas consumed in standard cubic feet (L) at the beginning of the ''ON'' period following the measurement of T_A.

V_C = volume of gas consumed in standard cubic feet (L) at the end of the ''ON'' period which starts with T_B.

V_D = volume of gas consumed in standard cubic feet (L) at the beginning of the ''ON'' period which follows the measurement of T_C.

4.1.1.1 *Average test energy consumption.* If the conventional oven can be operated with or without forced convection, determine the average test energy consumption, E_O and E_{IO}, in watt-hours (kJ) for electric ovens and Btus (kJ) for gas ovens using the following equations:

$$E_O = \frac{\left(E_O\right)_1 + \left(E_O\right)_2}{2}$$

$$E_{IO} = \frac{\left(E_{IO}\right)_1 + \left(E_{IO}\right)_2}{2}$$

Where:

$(E_O)_1$ = test energy consumption using the forced convection mode in watt-hours (kJ) for electric ovens and in Btus (kJ) for gas ovens as measured in section 3.2.1.1 of this appendix.

$(E_O)_2$ = test energy consumption without using the forced convection mode in watt-hours (kJ) for electric ovens and in

Btus (kJ) for gas ovens as measured in section 3.2.1.1 of this appendix.

$(E_{IO})_1$ = electrical energy consumption in watt-hours (kJ) of a gas oven in forced convection mode as measured in section 3.2.1.1 of this appendix.

$(E_{IO})_2$ = electrical energy consumption in watt-hours (kJ) of a gas oven without using the forced convection mode as measured in section 3.2.1.1 of this appendix.

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4.1.2.2.1 *Annual primary energy consumption.* Calculate the annual primary energy consumption for conventional oven self-cleaning operations, E_{SC}, expressed in kilowatt-hours (kJ) per year for electric ovens and in Btus (kJ) for gas ovens, and defined as: $E_{SC} = E_S \times S_e \times K$, for electric ovens,

Where:

E_S = energy consumption in watt-hours, as measured in section 3.2.1.3 of this appendix.

S_e = 4, average number of times a self-cleaning operation of a conventional electric oven is used per year.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

or

$E_{SC} = V_S \times H \times S_g$, for gas ovens,

Where:

V_S = gas consumption in standard cubic feet (L), as measured in section 3.2.1.3 of this appendix.

H = H_n or H_p, the heating value of the gas used in the test as specified in sections 2.2.2.2 and 2.2.2.3 of this appendix in Btus per standard cubic foot (kJ/L).

S_g = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

4.1.2.2.2 *Annual secondary energy consumption for self-cleaning operation of gas ovens.* Calculate the annual secondary energy consumption for self-cleaning operations of a gas oven, E_{SS}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{SS} = E_{IS} \times S_g \times K$,

Where:

E_{IS} = electrical energy consumed during the self-cleaning operation of a conventional gas oven, as measured in section 3.2.1.3 of this appendix.

S_g = 4, average number of times a self-cleaning operation of a conventional gas oven is used per year.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.1.2.3 *Annual combined low-power mode energy consumption of a single conventional oven.* Calculate the annual standby mode and off mode energy consumption for conventional ovens, E_{OTLP}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{OTLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional oven inactive mode power, in watts, as measured in section 3.2.1.4 of this appendix.

P_{OM} = conventional oven off mode power, in watts, as measured in section 3.2.1.4 of this appendix.

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional oven has fan-only mode, S_{TOT} equals (8,540.1 − (t_{OF}/60)) hours, where t_{OF} is the conventional oven fan-only mode duration, in minutes, as measured in section 3.2.1.2 of this appendix, and 60 is the conversion factor for minutes to hours; otherwise, S_{TOT} is equal to 8,540.1 hours.

If the conventional oven has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

If the conventional oven has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT} and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional oven has an off mode but no inactive mode, S_{IA} is equal to 0 and S_{OM} is equal to S_{TOT};

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

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4.1.2.4.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption of a conventional electric oven, E_{AO}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AO} = E_{CO} + E_{SC}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this appendix.

4.1.2.4.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual electrical energy consumption of a conventional electric oven, IE_{AO}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AO} = E_{CO} + E_{SC} + E_{OTLP}, + (E_{OF} \times N_{OE})$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

N_{OE} = representative number of annual conventional electric oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability and 204 cycles for a conventional electric oven with self-clean capability.

4.1.2.4.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption of a conventional gas oven, E_{AOG}, expressed in Btus (kJ) per year and defined as:

$E_{AOG} = E_{CO} + E_{SC}$,

Where:

E_{CO} = annual primary cooking energy consumption as determined in section 4.1.2.1.1 of this appendix.

E_{SC} = annual primary self-cleaning energy consumption as determined in section 4.1.2.2.1 of this appendix.

If the conventional gas oven uses electrical energy, calculate the total annual electrical energy consumption, E_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$E_{AOE} = E_{SO} + E_{SS}$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this appendix.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.2.2 of this appendix.

If the conventional gas oven uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{AOE}, expressed in kilowatt-hours (kJ) per year and defined as:

$IE_{AOE} = E_{SO} + E_{SS} + E_{OTLP} + (E_{OF} \times N_{OG})$,

Where:

E_{SO} = annual secondary cooking energy consumption as determined in section 4.1.2.1.2 of this appendix.

E_{SS} = annual secondary self-cleaning energy consumption as determined in section 4.1.2.2.2 of this appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

N_{OG} = representative number of annual conventional gas oven cooking cycles per year, which is equal to 183 cycles for a conventional gas oven without self-clean capability and 197 cycles for a conventional gas oven with self-clean capability.

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4.1.2.5.1 *Conventional electric oven energy consumption.* Calculate the total annual energy consumption, E_{TO}, in kilowatt-hours (kJ) per year and defined as:

$E_{TO} = E_{ACO} + E_{ASC}$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

4.1.2.5.2 *Conventional electric oven integrated energy consumption.* Calculate the total integrated annual energy consumption, IE_{TO}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TO} = E_{ACO} + E_{ASC} + E_{OTLP} + (E_{OF} \times N_{OE})$,

Where:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

is the average annual primary energy consumption for cooking, and where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

average annual self-cleaning energy consumption,

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

E_{OTLP} = annual combined low-power mode energy consumption for the cooking appliance as determined in section 4.1.2.3 of this appendix.

E_{OF} = fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

N_{OE} = representative number of annual conventional electric oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability and 204 cycles for a conventional electric oven with self-clean capability.

4.1.2.5.3 *Conventional gas oven energy consumption.* Calculate the total annual gas energy consumption, E_{TOG}, in Btus (kJ) per year and defined as:

$E_{TOG} = E_{ACO} + E_{ASC}$,

Where:

E_{ACO} = average annual primary energy consumption for cooking in Btus (kJ) per year and is calculated as:

$$E_{ACO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{CO}\right)_i ,$$

Where:

n = number of conventional ovens in the basic model.

E_{CO} = annual primary energy consumption for cooking as determined in section 4.1.2.1.1 of this appendix.

and,

E_{ASC} = average annual self-cleaning energy consumption in Btus (kJ) per year and is calculated as:

$$E_{ASC} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SC}\right)_i ,$$

Where:

n = number of self-cleaning conventional ovens in the basic model.

E_{SC} = annual primary self-cleaning energy consumption as determined according to section 4.1.2.2.1 of this appendix.

If the oven also uses electrical energy, calculate the total annual electrical energy consumption, E_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$E_{TOE} = E_{ASO} + E_{AAS}$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO} = annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.2.2 of this appendix.

If the oven also uses electrical energy, also calculate the total integrated annual electrical energy consumption, IE_{TOE}, in kilowatt-hours (kJ) per year and defined as:

$IE_{TOE} = E_{ASO} + E_{AAS} + E_{OTLP} + (E_{OF} \times N_{OG})$,

Where:

$$E_{ASO} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SO}\right)_i ,$$

is the average annual secondary energy consumption for cooking,

Where:

n = number of conventional ovens in the basic model.

E_{SO}= annual secondary energy consumption for cooking of gas ovens as determined in section 4.1.2.1.2 of this appendix.

$$E_{AAS} = \frac{1}{n}\sum_{i=1}^{n}\left(E_{SS}\right)_i ,$$

is the average annual secondary self-cleaning energy consumption,

Where:

n = number of self-cleaning ovens in the basic model.

E_{SS} = annual secondary self-cleaning energy consumption of gas ovens as determined in section 4.1.2.2.2 of this appendix.

E_{OTLP} = annual combined low-power mode energy consumption as determined in section 4.1.2.3 of this appendix.

E_{OF}= fan-only mode energy consumption as measured in section 3.2.1.2 of this appendix.

N_{OG} = representative number of annual conventional gas oven cooking cycles per year, which is equal to 183 cycles for a conventional gas oven without self-clean capability and 197 cycles for a conventional gas oven with self-clean capability.

* * * * *

4.1.4 *Conventional oven energy factor and integrated energy factor.*

4.1.4.1 *Conventional oven energy factor.* Calculate the energy factor, or the ratio of useful cooking energy output to the total energy input, R_O, using the following equations:

$$R_O = \frac{O_O}{E_{AO}},$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

E_{AO} = total annual energy consumption for electric ovens as determined in section 4.1.2.4.1 of this appendix.

For gas ovens:

$$R_O = \frac{O_O}{E_{AOG} + \left(E_{AOE} \times K_e\right)},$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

E_{AOE} = total annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btu's.

4.1.4.2 *Conventional oven integrated energy factor.* Calculate the integrated energy factor, or the ratio of useful cooking energy output to the total integrated energy input, IR_O, using the following equations:

$$IR_O = \frac{O_O}{IE_{AO}},$$

For electric ovens,

Where:

O_O = 29.3 kWh (105,480 kJ) per year, annual useful cooking energy output.

IE_{AO} = total integrated annual energy consumption for electric ovens as determined in section 4.1.2.4.2 of this appendix.

For gas ovens:

$$IR_O = \frac{O_O}{E_{AOG} + \left(IE_{AOE} \times K_e\right)},$$

Where:

O_O = 88.8 kBtu (93,684 kJ) per year, annual useful cooking energy output.

E_{AOG} = total annual gas energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

IE_{AOE} = total integrated annual electrical energy consumption for conventional gas ovens as determined in section 4.1.2.4.3 of this appendix.

K_e = 3,412 Btu/kWh (3,600 kJ/kWh), conversion factor for kilowatt-hours to Btus.

* * * * *

4.2.1.1 *Electric surface unit cooking efficiency.* Calculate the cooking efficiency, $Eff_{SU,}$ of the electric surface unit under test, defined as:

$$Eff_{SU} = W \times C_P \times \left(\frac{T_{SU}}{K_e \times E_{CT}}\right),$$

Where:

W = measured weight of test block, W_2 or W_3, expressed in pounds (kg).

C_p = 0.23 Btu/lb-°F (0.96 kJ/kg ÷ °C), specific heat of test block.

T_{SU} = temperature rise of the test block: final test block temperature, T_{CT}, as determined in section 3.2.2 of this appendix, minus the initial test block temperature, T_I, expressed in °F (°C) as determined in section 2.7.5 of this appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

E_{CT} = measured energy consumption, as determined according to section 3.2.2.1 of this appendix, expressed in watt-hours (kJ).

4.2.1.2 *Gas surface unit cooking efficiency.* Calculate the cooking efficiency, $Eff_{SU,}$ of the gas surface unit under test, defined as:

$$Eff_{SU} = \left(\frac{W_3 \times C_P \times T_{SU}}{E}\right),$$

Where:

W_3 = measured weight of test block as measured in section 3.3.2 of this appendix, expressed in pounds (kg).

C_p and T_{SU} are the same as defined in section 4.2.1.1 of this appendix.

and,

$E = V_{CT} + (E_{IC} \times K_e)$,

Where:

V_{CT} = total gas consumption in standard cubic feet (L) for the gas surface unit test as measured in section 3.2.2.1 of this appendix.

E_{IC} = electrical energy consumed in watt-hours (kJ) by an ignition device of a gas surface unit as measured in section 3.2.2.1 of this appendix.

K_e = 3.412 Btu/Wh (3.6 kJ/Wh), conversion factor of watt-hours to Btus.

* * * * *

4.2.2.1 *Conventional electric cooking top.*

4.2.2.1.1 *Annual energy consumption of a conventional electric cooking top.* Calculate the annual electrical energy consumption of an electric cooking top, $E_{CA,}$ in kilowatt-hours (kJ) per year, defined as:

$$E_{CA} = \frac{O_{CT}}{Eff_{CT}},$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this appendix.

4.2.2.1.2 *Integrated annual energy consumption of a conventional electric cooking top.* Calculate the total integrated annual electrical energy consumption of an electric cooking top, $IE_{CA,}$ in kilowatt-hours (kJ) per year, defined as:

$$IE_{CA} = \frac{O_{CT}}{Eff_{CT}} + E_{CTLP},$$

Where:

O_{CT} = 173.1 kWh (623,160 kJ) per year, annual useful cooking energy output.

Eff_{CT} = conventional cooking top cooking efficiency as defined in section 4.2.1.3 of this appendix.

E_{CTLP} = conventional cooking top combined low-power mode energy consumption = $[(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional cooking top inactive mode power, in watts, as measured in section 3.1.2.1.1 of this appendix.

P_{OM} = conventional cooking top off mode power, in watts, as measured in section 3.1.2.1.2 of this appendix.

If the conventional cooking top has both inactive mode and off mode annual hours, S_{IA} and S_{OM} both equal 4273.4;

If the conventional cooking top has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional cooking top has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.2.2.2.2 *Total integrated annual energy consumption of a conventional gas cooking top.* Calculate the total integrated annual energy consumption of a conventional gas cooking top, $IE_{CA,}$ in Btus (kJ) per year, defined as:

$IE_{CA} = E_{CC} + E_{CTSO}$,

Where:

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this appendix.

E_{CTSO} = conventional cooking top combined low-power mode energy consumption = $[(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$,

Where:

P_{IA} = conventional cooking top inactive mode power, in watts, as measured in section 3.1.2.1.1 of this appendix.

P_{OM} = conventional cooking top off mode power, in watts, as measured in section 3.1.2.1.2 of this appendix.

If the conventional cooking top has both inactive mode and off mode annual hours, S_{IA} and S_{OM} both equal 4273.4;

If the conventional cooking top has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to 8546.9, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional cooking top has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to 8546.9;

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

4.2.3 *Conventional cooking top energy factor and integrated energy factor.*

4.2.3.1 *Conventional cooking top energy factor.* Calculate the energy factor or ratio of useful cooking energy output for cooking to the total energy input, R_{CT}, as follows:

For an electric cooking top, the energy factor is the same as the cooking efficiency as determined according to section 4.2.1.3 of this appendix.

For gas cooking tops,

$$R_{CT} = \frac{O_{CT}}{E_{CC}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

E_{CC} = energy consumption for cooking as determined in section 4.2.2.2.1 of this appendix.

4.2.3.2 *Conventional cooking top integrated energy factor.* Calculate the integrated energy factor or ratio of useful cooking energy output for cooking to the total integrated energy input, IR_{CT}, as follows:

For electric cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total annual integrated energy consumption of cooking top determined according to section 4.2.2.1.2 of this appendix.

For gas cooking tops,

$$IR_{CT} = \frac{O_{CT}}{IE_{CA}},$$

Where:

O_{CT} = 527.6 kBtu (556,618 kJ) per year, annual useful cooking energy output of cooking top.

IE_{CA} = total integrated annual energy consumption of cooking top determined according to section 4.2.2.2.2 of this appendix.

4.3 *Combined components.* The annual energy consumption of a kitchen range (*e.g.,* a cooking top and oven combined) shall be the sum of the annual energy consumption of each of its components. The integrated annual energy consumption of a kitchen range shall be the sum of the annual energy consumption of each of its components plus the total annual fan-only mode energy consumption for the oven component, E_{TOF}, defined as:

$E_{TOF} = E_{OF} \times N_R$,

Where:

E_{OF} = conventional oven fan-only mode energy consumption, in kilowatt-hours, as measured in section 3.2.1.2 of this appendix.

N_R = representative number of annual conventional oven cooking cycles per year, which is equal to 219 cycles for a conventional electric oven without self-clean capability, 204 cycles for a conventional electric oven with self-clean capability, 183 cycles for a conventional gas oven without self-clean capability, and 197 cycles for a conventional gas oven with self-clean capability.

plus the conventional range integrated annual combined low-power mode energy consumption, E_{RTLP}, defined as:

$E_{RTLP} = [(P_{IA} \times S_{IA}) + (P_{OM} \times S_{OM})] \times K$

Where:

P_{IA} = conventional range inactive mode power, in watts, as measured in section 3.1.3.1 of this appendix.

P_{OM} = conventional range off mode power, in watts, as measured in section 3.1.3.2 of this appendix.

S_{TOT} equals the total number of inactive mode and off mode hours per year;

If the conventional oven component of the conventional range has fan-only mode, S_{TOT} equals $(8{,}329.2 - (t_{OF}/60))$ hours, where t_{OF} is the conventional oven fan-only mode duration, in minutes, as measured in section 3.2.1.2 of this appendix, and 60 is the conversion factor for minutes to hours; otherwise, S_{TOT} is equal to 8,329.2 hours.

If the conventional range has both inactive mode and off mode, S_{IA} and S_{OM} both equal $S_{TOT}/2$;

If the conventional range has an inactive mode but no off mode, the inactive mode annual hours, S_{IA}, is equal to S_{TOT}, and the off mode annual hours, S_{OM}, is equal to 0;

If the conventional range has an off mode but no inactive mode, S_{IA} is equal to 0, and S_{OM} is equal to S_{TOT};

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

The annual energy consumption for other combinations of ovens and cooktops will also be treated as the sum of the annual energy consumption of each of its components. The energy factor of a combined component is the sum of the annual useful cooking energy output of each component divided by the sum of the total annual energy consumption of each component. The integrated energy factor of other combinations of ovens and cooktops is the sum of the annual useful cooking energy output of each component divided by the sum of the total integrated annual energy consumption of each component.

■ 12. Appendix X to subpart B of part 430 is amended by adding a Note after the appendix heading to read as follows:

Appendix X to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers

Note: Prior to the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption, manufacturers may use either Appendix X or Appendix X1 to certify compliance with existing DOE energy conservation standards and to make any representations related to energy consumption of dehumidifiers, with the following exception. If the compliance date is after April 29, 2013, manufacturers that make representations related to standby mode and off mode energy consumption must use Appendix X1 for any representations made after April 29, 2013 of the energy consumption of these products, consistent with the requirements of 42 U.S.C. 6293(c)(2).

After the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption, all dehumidifiers shall be tested using the provisions of Appendix X1 to certify compliance with amended energy conservation standards and to make any representations related to energy consumption, with the following exception. If the compliance date is before April 29, 2013, manufacturers may use Appendix X for any representations until April 29, 2013 of energy consumption of these products, consistent with the requirements of 42 U.S.C. 6293(c)(2).

* * * * *

■ 13. Add Appendix X1 to subpart B of part 430 to read as follows:

Appendix X1 to Subpart B of Part 430–Uniform Test Method for Measuring the Energy Consumption of Dehumidifiers

Note: Prior to the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption, manufacturers may use either Appendix X or Appendix X1 to certify compliance with existing DOE energy conservation standards and to make any representations related to energy consumption of dehumidifiers, with the following exception. If the compliance date is after April 29, 2013, manufacturers that make representations related to standby mode and off mode energy consumption must use Appendix X1 for any representations made after April 29, 2013 of

the energy consumption of these products, consistent with the requirements of 42 U.S.C. 6293(c)(2).

After the compliance date for any amended energy conservation standards that incorporate standby mode and off mode energy consumption, all dehumidifiers shall be tested using the provisions of Appendix X1 to certify compliance with amended energy conservation standards and to make any representations related to energy consumption, with the following exception. If the compliance date is before April 29, 2013, manufacturers may use Appendix X for any representations until April 29, 2013 of energy consumption of these products, consistent with the requirements of 42 U.S.C. 6293(c)(2).

1. Scope

This appendix covers the test requirements used to measure the energy performance of dehumidifiers.

2. Definitions

2.1 ANSI/AHAM DH–1 means the test standard published by the American National Standards Institute and the Association of Home Appliance Manufacturers, titled ''Dehumidifiers,'' ANSI/AHAM DH–1–2008, (incorporated by reference; see § 430.3).

2.2 *Active mode* means a mode in which a dehumidifier is connected to a mains power source, has been activated, and is performing the main functions of removing moisture from air by drawing moist air over a refrigerated coil using a fan, or circulating air through activation of the fan without activation of the refrigeration system.

2.3 *Combined low-power mode* means the aggregate of available modes other than active mode.

2.4 *Energy factor for dehumidifiers* means a measure of energy efficiency of a dehumidifier calculated by dividing the water removed from the air by the energy consumed, measured in liters per kilowatt-hour (L/kWh).

2.5 *IEC 62301* means the test standard published by the International Electrotechnical Commission, titled ''Household electrical appliances—Measurement of standby power,'' Publication 62301 (Edition 2.0 2011–01) (incorporated by reference; see § 430.3).

2.6 *Inactive mode* means a standby mode that facilitates the activation of active mode by remote switch (including remote control), internal sensor, or timer, or that provides continuous status display.

2.7 *Off mode* means a mode in which the dehumidifier is connected to a mains power source and is not providing any active mode or standby mode function, and where the mode may persist for an indefinite time. An indicator that only shows the user that the dehumidifier is in the off position is included within the classification of an off mode.

2.8 *Off-cycle mode* means a standby mode in which the dehumidifier:

(1) Has cycled off its main function by humidistat or humidity sensor;

(2) Does not have its fan or blower operating; and

(3) Will reactivate the main function according to the humidistat or humidity sensor signal.

2.9 *Product capacity for dehumidifiers* means a measure of the ability of the dehumidifier to remove moisture from its surrounding atmosphere, measured in pints collected per 24 hours of continuous operation.

2.10 *Standby mode* means any modes where the dehumidifier is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:

(1) To facilitate the activation of other modes (including activation or deactivation of active mode) by remote switch (including remote control), internal sensor, or timer;

(2) Continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that provides regular scheduled tasks (*e.g.,* switching) and that operates on a continuous basis.

3. Test Apparatus and General Instructions

3.1 *Active mode.* The test apparatus and instructions for testing dehumidifiers shall conform to the requirements specified in Section 3, ''Definitions,'' Section 4, ''Instrumentation,'' and Section 5, ''Test Procedure,'' of ANSI/AHAM DH–1 (incorporated by reference, see § 430.3). Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final minimum energy factor value to two decimal places as follows:

(i) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places; or

(ii) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

3.2 *Standby mode and off mode.*

3.2.1 *Installation requirements.* For the standby mode and off mode testing, the dehumidifier shall be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (incorporated by reference, see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes.

3.2.2 *Electrical energy supply.*

3.2.2.1 *Electrical supply.* For the standby mode and off mode testing, maintain the electrical supply voltage and frequency indicated in Section 7.1.3, ''Standard Test Voltage,'' of ANSI/AHAM DH–1, (incorporated by reference, see § 430.3). The electrical supply frequency shall be maintained ±1 percent.

3.2.2.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform indicated in Section 4, Paragraph 4.3.2 of IEC 62301, (incorporated by reference; see § 430.3).

3.2.3 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode power consumption shall meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (incorporated by reference, see § 430.3).

3.2.4 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (incorporated by reference; see § 430.3).

4. Test Measurement

4.1 *Active mode.* Measure the energy factor for dehumidifiers, expressed in liters per kilowatt hour (L/kWh) and product capacity in pints per day (pints/day), in accordance with the test requirements specified in Section 7, ''Capacity Test and Energy Consumption Test,'' of ANSI/AHAM DH–1 (incorporated by reference, see § 430.3).

4.2 *Standby mode and off mode.* Establish the testing conditions set forth in section 3.2 of this appendix, ensuring that the dehumidifier does not enter active mode during the test. For dehumidifiers that take some time to enter a stable state from a higher power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301, (incorporated by reference; see § 430.3), allow sufficient time for the dehumidifier to reach the lower power state before proceeding with the test measurement. Follow the test procedure specified in Section 5, Paragraph 5.3.2 of IEC 62301 for testing in each possible mode as described in sections 4.2.1 and 4.2.2 of this appendix.

4.2.1 If the dehumidifier has an inactive mode, as defined in section 2.6 of this appendix, but not an off mode, as defined in section 2.7 of this appendix, measure and record the average inactive mode power of the dehumidifier, P_{IA}, in watts. Otherwise, if the dehumidifier has an off mode, as defined in section 2.7 of this appendix, measure and record the average off mode power of the dehumidifier, P_{OM}, in watts.

4.2.2 If the dehumidifier has an off-cycle mode, as defined in section 2.8 of this appendix, measure and record the average off-cycle mode power of the dehumidifier, P_{OC}, in watts.

5. Calculation of Derived Results From Test Measurements

5.1 *Annual combined low-power mode energy consumption.* Calculate the annual combined low-power mode energy consumption for dehumidifiers, E_{TLP}, expressed in kilowatt-hours per year, according to the following:

$$E_{TLP} = [(P_{IO} \times S_{IO}) + (P_{OC} \times S_{OC})] \times K$$

Where:

P_{IO} = P_{IA}, dehumidifier inactive mode power, or P_{OM}, dehumidifier off mode power, in watts, as measured in section 4.2.1 of this appendix.

P_{OC} = dehumidifier off-cycle mode power, in watts, as measured in section 4.2.2 of this appendix.

S_{IO} = 1840,5 dehumidifier inactive mode or off mode annual hours.

S_{OC} = 1840,5 dehumidifier off-cycle mode annual hours.

K = 0.001 kWh/Wh conversion factor for watt-hours to kilowatt-hours.

5.2 *Integrated energy factor.* Calculate the integrated energy factor, IEF, expressed in liters per kilowatt-hour, rounded to two decimal places, according to the following:

$$IEF = L_W/(E_{active} + ((E_{TLP} \times 24)/S_{active}))$$

Where:

L_W = water removed from the air during dehumidifier energy factor test, in liters, as measured in section 4.1 of this appendix.

E_{active} = dehumidifier energy factor test energy consumption, in kilowatt-hours, as measured in section 4.1 of this appendix.

E_{TLP} = standby mode and off mode annual energy consumption, in kilowatt-hours per year, as calculated in section 5.1 of this appendix.

24 = hours per day.

S_{active} = 1,095, dehumidifier active mode annual hours.

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Part III

Federal Deposit Insurance Corporation

12 CFR Part 327

Assessments, Large Bank Pricing; Final Rule

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD92

Assessments, Large Bank Pricing

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations by revising some of the definitions used to determine assessment rates for large and highly complex insured depository institutions.

DATES: *Effective date:* April 1, 2013.

FOR FURTHER INFORMATION CONTACT: Scott Ciardi, Chief, Large Bank Pricing Section, Division of Insurance and Research, (202) 898–7079; Brenda Bruno, Senior Financial Analyst, Division of Insurance and Research, (630) 241–0359 x 8312; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

SUPPLEMENTARY INFORMATION:

I. Background

On February 7, 2011, the FDIC Board adopted a final rule that amended its assessment regulations, by, among other things, establishing a new methodology for determining assessment rates for large and highly complex institutions (the February 2011 rule).[1] [2] The February 2011 rule eliminated risk categories for large banks [3] and created two scorecards, one for highly complex banks and another for all other large banks, that combine CAMELS ratings and certain forward-looking financial ratios. The scorecards calculate a total score for each institution.[4] The total score is then converted to the bank's initial base assessment rate, which, after certain adjustments, results in the institution's total assessment rate.[5] To calculate the amount of the bank's quarterly assessment, the total assessment rate is multiplied by the bank's assessment base and the result is divided by four.

One of the financial ratios used in the scorecards is the ratio of higher-risk assets to Tier 1 capital and reserves.[6] Higher-risk assets are defined in the February 2011 rule as the sum of construction and land development (C&D) loans, leveraged loans, subprime loans, and nontraditional mortgage loans. The FDIC used existing interagency guidance to define leveraged loans, nontraditional mortgage loans, and subprime loans but refined the definitions to ensure consistency in reporting. In arriving at these definitions, the FDIC took into account comments that were received in response to the two notices of proposed rulemaking that led to adoption of the February 2011 rule.[7]

While institutions already reported C&D loan data in their quarterly reports of condition and income (the Call Reports and the Thrift Financial Reports or TFRs), they did not report the data for the other loans, thus requiring new line items in these reports. Therefore, on March 16, 2011, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, and the FDIC (collectively, the agencies) published a Paperwork Reduction Act of 1995 (PRA) notice under normal PRA clearance procedures requesting comment on proposed revisions to the reports that would provide the data needed by the FDIC to implement the February 2011 rule beginning with the June 30, 2011, report date (March PRA notice).[8]

Commenters on the March PRA notice raised concerns about their ability to report subprime and leveraged loan data consistent with the definitions used in the February 2011 rule. They also stated that they would be unable to report the required data by the June 30, 2011 report date. These data concerns had not been raised during the rulemaking process leading up to the February 2011 rule.[9]

As a consequence of this unexpected difficulty, the FDIC applied to the Office of Management and Budget (OMB) for an emergency clearance request to allow large and highly complex institutions to identify and report subprime and leveraged loans and securitizations originated or purchased prior to October 1, 2011, using either their existing internal methodologies or the definitions in existing supervisory guidance. The agencies also submitted corresponding reporting revisions under normal PRA clearance procedures and requested public comment on July 27, 2011 (July PRA notice).[10]

In response to the PRA notices, commenters recommended extending the transition guidance for reporting subprime and leveraged loans until more workable and accurate definitions were developed.

On September 28, 2011, the FDIC informed large and highly complex institutions via email (followed by

[1] 12 CFR 327.9.

[2] A large institution is defined as an insured depository institution: (1) That had assets of $10 billion or more as of December 31, 2006 (unless, by reporting assets of less than $10 billion for four consecutive quarters since then, it has become a small institution); or (2) that had assets of less than $10 billion as of December 31, 2006, but has since had $10 billion or more in total assets for at least four consecutive quarters, whether or not the institution is new. A ''highly complex institution'' is defined as: (1) An insured depository institution (excluding a credit card bank) that has had $50 billion or more in total assets for at least four consecutive quarters and that either is controlled by a U.S. parent holding company that has had $500 billion or more in total assets for four consecutive quarters, or is controlled by one or more intermediate U.S. parent holding companies that are controlled by a U.S. holding company that has had $500 billion or more in assets for four consecutive quarters, and (2) a processing bank or trust company. A processing bank or trust company is an insured depository institution whose last three years' non-lending interest income, fiduciary revenues, and investment banking fees, combined, exceed 50 percent of total revenues (and its last three years fiduciary revenues are non-zero), whose total fiduciary assets total $500 billion or more and whose total assets for at least four consecutive quarters have been $10 billion or more.

[3] The terms ''bank'' and ''institution'' are used interchangeably in the preamble of the final rule, unless the context suggests otherwise. Again, unless the context suggests otherwise, the terms include any insured depository institution that meets the definition of a large institution or highly complex institution as defined in 12 CFR 327.9(f) and (g).

[4] A large or highly complex institution's total score may be adjusted by the large bank adjustment. 12 CFR 327.9(b)(3).

[5] An institution's initial base assessment rate can be adjusted by the unsecured debt adjustment, the depository institution debt adjustment, and, for some institutions, the brokered deposit adjustment. 12 CFR 327.9(d).

[6] Higher-risk assets are used to calculate the concentration score, which is part of both the large bank scorecard and the highly complex institution scorecard. For large banks, the concentration score is defined as the higher of: (a) The higher-risk assets to Tier 1 capital and reserves score or (b) the growth-adjusted portfolio concentration score. For highly complex institutions, it is defined as the higher of: (a) The higher-risk assets to Tier 1 capital and reserves score, (b) the largest counterparty exposure to Tier 1 capital and reserves score, or (c) the top 20 counterparty exposure to Tier 1 capital and reserves score.

[7] 75 FR 23516 (May 3, 2010); 75 FR 72612 (November 24, 2010).

[8] 76 FR 14460 (March 16, 2011).

[9] In response to the November 2010 NPR on the revised large institution assessment system, the FDIC received a number of comments recommending changes to the definitions of subprime and leveraged loans, which the FDIC took into account in its February 2011 rule amending its assessment regulations. For example, several commenters on the November 2010 NPR stated that updating data to evaluate loans for subprime or leveraged status would be burdensome and costly, and for certain types of retail loans, would be impossible because existing loan agreements do not require borrowers to routinely provide updated financial information. In response to these comments, the FDIC's February 2011 rule stated that large institutions should evaluate loans for subprime or leveraged status upon origination, refinance, or renewal. No comments, however, were received on the November 2010 NPR indicating that large institutions would be unable to identify and report subprime or leveraged loans in accordance with the final rule's definitions in their Call Reports and TFRs beginning as of June 30, 2011. The data availability concerns were first raised in comments on the March PRA notice.

[10] 76 FR 44987 (July 27, 2011).

changes to Call Report instructions) that the deadline for the transition guidance would be extended to April 1, 2012, and that the FDIC would review the definitions of subprime and leveraged loans to determine whether changes to the definitions would alleviate commenters' concerns without sacrificing accuracy in determining risk for deposit insurance pricing purposes. The FDIC subsequently extended the deadline for the transition guidance to April 1, 2013.

The FDIC considered all comments related to the higher-risk asset definitions that were submitted in response to the March and July 2011 PRA notices as part of its review. The FDIC also engaged in extensive discussions with bankers and industry trade groups to better understand their concerns and to solicit potential solutions to these concerns. As a result, the FDIC issued a notice of proposed rulemaking on March 20, 2012 (NPR) to resolve the problems raised in comments on the March and July PRA notices.

II. Comments Received

The FDIC sought comments on every aspect of the proposed rule. The FDIC received a total of 14 comment letters.[11] The FDIC also conducted meetings with commenters and others. Summaries of these meetings are posted on the FDIC's Web site.[12]

Comments are discussed in the relevant sections that follow.

III. The Final Rule: Assessment System for Large and Highly Complex Institutions

The FDIC has adopted this final rule to amend the assessment system for large and highly complex institutions by: (1) Revising the definitions of certain higher-risk assets, specifically leveraged loans, which are renamed ''higher-risk C&I loans and securities,'' [13] and subprime consumer loans, which are renamed ''higher-risk consumer loans''; (2) clarifying when an asset must be classified as higher risk; (3) clarifying the way securitizations are identified as higher risk; and (4) further defining terms that are used in the large bank pricing portions of 12 CFR 327.9. The names of the categories of assets included in the higher-risk assets to Tier 1 capital and reserves ratio have been changed to avoid confusion between the definitions used in the deposit insurance assessment regulations and those used within the industry and in other regulatory guidance. The FDIC has not amended the definition of C&D loans and the final rule retains the definitions used in the February 2011 rule. The FDIC also retains the definition of nontraditional mortgage loans; however, the final rule clarifies how securitizations of nontraditional mortgage loans are identified as higher risk. The final rule aggregates all securitizations that contain higher-risk assets into a newly defined category of higher-risk assets, ''higher-risk securitizations.'' While the nomenclature is new, the NPR proposed including all assets that meet this newly defined category as higher-risk assets. The FDIC believes that the final rule will result in more consistent reporting, better reflect risk to the Deposit Insurance Fund (DIF), significantly reduce reporting burden, and satisfy many of the concerns voiced by the industry after adoption of the February 2011 rule.

The final rule will be effective on April 1, 2013, predicated on changes to the Call Report instructions having been made. The effective date is discussed in Section E below.

A. Higher-Risk Assets

The FDIC uses the amount of an institution's higher-risk assets to calculate the institution's higher-risk concentration measure, concentration score and total score. As noted in the February 2011 rule, the higher-risk concentration measure captures the risk associated with concentrated lending in higher-risk areas. This type of lending contributed to the failure of a number of large banks during the recent financial crisis and economic downturn.[14]

Higher-Risk C&I Loans and Securities

Basic definition of a higher-risk C&I loan and security

The definition of a ''higher-risk C&I loan and security'' in the final rule incorporates suggestions from comment letters, including a joint comment letter (the joint letter) from several industry trade groups and discussions with a trade group; the definition differs from the definition proposed in the NPR.

The final rule introduces a new term, a ''higher-risk C&I borrower,'' which includes a borrower that owes the reporting bank (*i.e.,* the bank filing its Call Report) on a C&I loan originally made on or after the effective date of the rule (April 1, 2013), if the following conditions are met: [15]

- The C&I loan must have an original amount (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) of at least $5 million;
- The loan must meet the purpose and materiality tests described below; and
- When the loan is made, the borrower must meet the leverage test, also described below.

To ensure that the definition is equitably applied, all C&I loans that a borrower owes to the reporting bank that meet the purpose test when made and that are made within six months of each other must be aggregated to determine whether they have an original amount of at least $5 million; however, only loans in the original amount of $1 million or more need to be aggregated.[16] Thus, for example, if a bank makes a $4 million C&I loan and 5 months later makes a $2 million C&I loan, both of which meet the purpose test, the loans will have an original amount of $6 million. For a C&I loan that meets the purpose test and that is syndicated or participated among banks, the original amount of the loan (for purposes of determining whether the original amount is at least $5 million and for purposes of applying the materiality test) is the total original amount of the loan, not just the syndicated or participated portion held by an individual bank.

A ''higher-risk C&I borrower'' also includes a borrower that obtains a refinance [17] of an existing C&I loan, where the refinance occurs on or after the effective date of the rule and the refinanced loan is owed to the reporting

[11] The FDIC also received a number of emails from commenters and other interested parties.

[12] *http://www.fdic.gov/regulations/laws/federal/2012/2012-ad92.html.*

[13] ''C&I'' is an abbreviation for ''commercial and industrial.''

[14] 76 FR 10672, 10692–10693 (February 25, 2011).

[15] C&I loans are as defined as commercial and industrial loans in the instructions to Call Report Schedule RC–C Part I—Loans and Leases, as they may be amended from time to time. This definition includes purchased credit impaired loans and overdrafts.

[16] Loans made before the effective date of the rule need not be aggregated.

[17] The definition of refinance is discussed in Appendix C. Two commenters had suggested that the definition proposed in the NPR was too broad and inconsistent with Regulation Z, Section 226.20. While the definition in the final rule differs from the Regulation Z definition, the two definitions serve different purposes. Regulation Z states that a refinancing occurs when an existing obligation is satisfied and replaced with a new obligation, and this new transaction requires new disclosures to the consumer. The purpose of Regulation Z is to determine when new disclosures should be required to be given to consumers. The purpose of the definition in the final rule is to determine when an institution should re-evaluate a loan for higher-risk status. Prior to proposing its definition of refinance in the NPR, the FDIC discussed it at length with the industry and other interested parties.

bank, if the following conditions are met:

- The refinanced loan must be in an amount (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) of at least $5 million;
- The C&I loan being refinanced must have met the purpose and materiality tests when it was originally made;
- The original loan must have been made no more than five years before the refinanced loan (the look-back period); and
- When the loan is refinanced, the borrower must meet the leverage test.

Again, to ensure that the definition is equitably applied, when a C&I loan is refinanced through more than one loan and the loans are made within six months of each other, they must be aggregated to determine whether they have an amount of at least $5 million. Thus, for example, an $8 million C&I refinancing loan that is split into two $4 million loans, where both are made within six months of each other, will still have an amount of $8 million.

A borrower ceases to be a ''higher-risk C&I borrower'' if: (1) The borrower no longer has any C&I loans owed to the reporting bank that, when originally made, met the purpose and materiality tests; (2) any such loans outstanding owed by the borrower to the reporting bank have all been refinanced more than five years after originally being made; or (3) the reporting bank makes a new C&I loan or refinances an existing C&I loan and the borrower no longer meets the leverage test. A borrower cannot cease to be a higher-risk borrower except as provided above.

Under the final rule, ''higher-risk C&I loans or securities'' include all C&I loans owed to the reporting bank by a higher-risk C&I borrower, except loans subject to an exclusion described below, and all securities issued by the higher-risk C&I borrower that are owned by the reporting bank, except securities classified as trading book, without regard to when the loans were made or the securities purchased.[18]

Purpose Test

A loan or refinance meets the purpose test if it is to finance a buyout, acquisition or capital distribution. Under the final rule, an ''acquisition'' is the purchase by the borrower of any equity interest in another company or the purchase of all or a substantial portion of the assets of another company; a ''buyout'' is the purchase or repurchase by the borrower of the borrower's outstanding equity (a buyout includes, but is not limited to, an equity buyout or funding of an Employee Stock Ownership Plan (ESOP)); and a ''capital distribution'' is a dividend payment or other transaction designed to enhance shareholder value, such as repurchase of stock.[19]

The purpose test will help identify risk and reflect the method used internally by most banks to identify higher-risk loans. The test identifies those borrowers with certain higher-risk characteristics, such as a heavy reliance on either enterprise value or improvement in the borrower's profitability.[20]

Materiality Test

A loan or refinance meets the materiality test if the amount of the original loan (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) equals or exceeds 20 percent of the total funded debt of the borrower. Total funded debt of the borrower is to be determined as of the date of the original loan and does not include the loan to which the materiality test is being applied.[21] A loan also meets the materiality test if, before the loan was made, the borrower had no funded debt.

At the time of refinance, whether the original loan met the purpose or materiality tests may not be easily determined by a new lender. In such a case, the new lender must use its best efforts and reasonable due diligence to determine whether the original loan met these tests.

Leverage Test

A borrower meets the leverage test if the ratio of the borrower's total debt to trailing twelve-month EBITDA (commonly known as the operating leverage ratio) is greater than 4, or the ratio of the borrower's senior debt to trailing twelve-month EBITDA (also commonly known as the operating leverage ratio) is greater than 3.[22]

Appendix C provides detailed definitions of many of the terms used in the foregoing definitions.

Comments on the Proposed Definition

In the joint letter, commenters took issue with several parts of the NPR's proposed definitions related to higher-risk C&I loans.[23] The NPR proposed that a C&I loan of any size that was made within the past seven years and that met the purpose and materiality tests, whether made by the reporting bank or another institution, would make all C&I loans to a leveraged borrower higher risk if the borrower had a total of at least $5 million in C&I loans owed to the reporting bank. The commenters suggested that a $5 million threshold should be part of the purpose test, on the grounds that a loan of less than $5 million at origination or refinance would not be sufficiently material to be ''higher risk'' even if it financed an acquisition, buyout or capital distribution, and that requiring a lender to consider loans under $5 million to a borrower would be expensive and time consuming. The commenters further suggested that the look back at the

[18] The amount of a higher-risk C&I loan or security to be reported on the Call Report as of the end of a quarter is the amount of C&I loans, and unfunded C&I loan commitments, owed to the reporting bank by a higher-risk C&I borrower and the amount of securities issued by a higher-risk C&I borrower that are owned by the reporting bank.

[19] The NPR proposed to include as an acquisition ''any of the assets and liabilities of another company.'' The final rule narrows and clarifies this definition.

[20] Enterprise value is a measure of the borrower's value as a going concern.

[21] When multiple loans must be aggregated to determine whether they total at least $5 million, the materiality test is to be applied as of the date of the last loan.

[22] EBITDA is defined as earnings before interest, taxes, depreciation, and amortization.

[23] The NPR proposed the following definition of a ''higher-risk C&I loan and security'':

- Any commercial loan (funded or unfunded, including irrevocable and revocable commitments) owed by a borrower to the evaluating depository institution with an original amount greater than $5 million if the conditions specified in (a) or (b) below are met as of origination, or, if the loan has been refinanced, as of refinance, and the loan does not meet the asset-based lending (ABL) exclusion or the floor plan line of credit exclusion (discussed in Appendix C).

(a)(i) The purpose of any of the borrower's debt (whether owed to the evaluating insured depository institution or another lender) that was incurred within the previous seven years was to finance a buyout, acquisition or capital distribution and such debt was material; and

(ii) The ratio of the borrower's total debt to trailing twelve-month EBITDA (*i.e.,* operating leverage ratio) is greater than 4 or the ratio of the borrower's senior debt to trailing twelve-month EBITDA (*i.e.,* operating leverage ratio) is greater than 3; or

(b) Any of the borrower's debt (whether owed to the evaluating institution or another lender) is designated as a highly leveraged transaction (HLT) by a syndication agent.

- All securities held by the evaluating institution that are issued by a commercial borrower, if the conditions specified in (a) or (b) above are met, except securities classified as trading book; and
- All securitizations held by the evaluating institution that are more than 50 percent collateralized by commercial loans or securities that would meet the higher-risk C&I loans and securities definition if directly held by the evaluating institution, except securities classified as trading book.

Under the proposed definition, multiple loans to one borrower were to be aggregated to determine whether the outstanding amount exceeded $5 million to the extent that the institution's loan data systems could do so without undue cost. If the cost was excessive, the institution could treat multiple loans to one borrower as separate loans.

purpose and materiality of debt should apply only when currently outstanding debt is *refinanced,* on the grounds that the definition of higher-risk is intended to identify risk when it is created. Finally, the commenters recommended that the look-back period should be, at most, five years rather than the seven years proposed in the NPR, on the grounds that most large banks track the past borrowing history of a borrower only three years back through a review of their financial statements and that the purpose of debt becomes murkier as it grows older and as new debt is added.

The final rule adopts these suggestions with some modifications primarily intended either to simplify the rule or to ensure that the intent of the definitions cannot be easily circumvented.

In the joint letter and a subsequent email, commenters suggested that debt incurred to fund ordinary business actions such as dividends to make tax payments should be excluded from the definition of a capital distribution in the purpose test. The final rule does not adopt this suggestion because the materiality test should be sufficient to exclude most loans made in the ordinary course of business.

Several industry trade groups and one bank commented that a material increase in debt should be defined as a 50 percent increase in funded debt within one year rather than the proposed 20 percent increase, arguing that 20 percent would include loans made to firms for routine acquisitions in the normal course of business. According to the commenters, such loans might include financing for a modest stock redemption or basic dividend program. Commenters also suggested that the materiality test should apply only to debt that meets the purpose test, rather than all debt. The final rule adopts the suggestion to consider only purpose loans in the materiality test.

Because the materiality test will measure only the increase in total funded debt that results from loans that meet the purpose test, rather than the total increase in funded debt from any source, the final rule continues to define a material increase as at least 20 percent. Increasing the threshold above 20 percent could exclude borrowers that were highly leveraged before obtaining a loan that meets the purpose test, even if the loan was large. Furthermore, the final rule already adopts a narrower definition of higher-risk C&I loans than existing and proposed regulatory guidelines on leveraged lending, which do not contain any materiality test.[24] The final rule also simplifies the materiality test by requiring that a loan that meets the purpose test must be at least 20 percent of total funded debt as of the date of origination, rather than as of one year earlier.

The FDIC received no comments on the definition of the leverage test proposed in the NPR.

Exclusions From the Definition of Higher-Risk C&I Loan and Security

As proposed in the NPR, the definition of a higher-risk C&I loan and security in the final rule excludes the maximum amount that is recoverable from the U.S. government under guarantee or insurance provisions, as well as loans (including syndicated or participated loans) that are fully secured by cash collateral.[25] [26]

In the joint letter, commenters recommended excluding loans that are collateralized by securities issued by the U.S. government, its agencies, or government-sponsored enterprises (GSEs). The final rule, however, does not exclude loans so collateralized because the collateral is subject to interest rate risk and collateral arrangements are subject to operational risk. Commenters also recommended excluding loans that are fully secured by brokerage account collateral (securities-based loans). The final rule does not exclude these loans because the value of the collateral is subject to several sources of risk, including operational, credit and market risk.

A bank suggested that the definition of higher-risk C&I loans exclude loans acquired at a discount or marked to fair value. Another commenter suggested that the definition exclude modified loans. The final rule does not adopt these suggestions. The higher-risk concentration ratio is a forward looking financial measure aimed at capturing the risk of concentrations in higher-risk assets, irrespective of how the assets are valued on the balance sheet or whether they are modified. These loans have the characteristics of higher-risk loans, despite being recorded at a discount or at fair value at the date of acquisition or having been modified from the original terms. The future performance of these assets remains uncertain; the institution still faces the risk of additional losses on these assets.

In the joint letter, commenters recommended that unplanned overdrafts not be included as higher-risk C&I loans, arguing that they create exposures that are incidental and cured within a few days, if not overnight. The final rule, however, defines C&I loans consistent with the Call Report definition of such loans, which includes unplanned overdrafts. An overdraft alone is unlikely to cause a borrower to be considered higher risk, however; it is only likely to be included as higher-risk to the extent that other loans cause a C&I borrower to be considered higher risk.

Exclusions for Asset-Based Lending and Floor Plan Lending

The definition of higher-risk C&I loans and securities excludes certain well-collateralized asset-based loans and floor plan loans.[27] Excluding these loans should result in better differentiation of risk among banks and will reduce reporting burden. Because these loans carry significant operational risk, the exclusions apply only to loans that are well secured by self-liquidating collateral (*i.e.,* accounts receivable and inventory), and only when the institution can demonstrate that it has a history of strong risk management and internal controls over these loans. The final rule provides that, if a bank's primary federal regulator (PFR) has criticized (*i.e.,* included in Matters Requiring Attention or MRA) the bank's controls or administration of its asset-based or floor plan loan portfolios, the exclusion will not apply.

The final rule details the conditions that institutions must meet to be eligible for the asset-based and floor plan lending exclusions. The differences

[24] OCC's February 2008 Comptroller's Handbook on Leverage Lending (pages 2 and 3) and the (interagency) Proposed Guidelines on Leveraged Lending, 77 FR 19417 (March 30, 2012).

[25] To exclude a loan based on cash collateral, the cash must be in the form of a savings or time deposit held by an insured depository institution. The insured depository institution (or lead institution or agent bank in the case of a participation or syndication) must have a perfected first priority security interest, a security agreement, and a collateral assignment of the deposit account that is irrevocable for the remaining term of the loan or commitment. In addition, the institution must place a hold on the deposit account that alerts the institution's employees to an attempted withdrawal. If the cash collateral is held at another institution or at multiple institutions, a security agreement must be in place and each institution must have in place an account control agreement (as defined in Appendix C). For the exclusion to apply to a revolving line of credit, the cash collateral must be equal to or greater than the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan).

[26] The NPR proposed excluding from the definition of a higher-risk C&I loan and security ''the maximum amount that is recoverable from * * * [GSEs] under guarantee or insurance provisions,'' but the final rule omits this language because no GSE guarantees or insures C&I loans or securities issued by a C&I borrower.

[27] The proposal included asset-based lending guidance. The final rule, however, incorporates this guidance into the asset-based lending exclusion conditions in Appendix C.

between the final rule and the NPR are generally the result of recommendations from commenters. The final rule requires that a new borrowing base certificate be obtained within 30 days before or after each draw or advance on a loan, as opposed to requiring a new borrowing base certificate at each draw or advance, as proposed in the NPR.[28] A bank is required to validate the borrowing base, but is not required to do so at each draw, as was proposed in the NPR.[29] In their joint letter, commenters stated that it is not standard practice for lenders to obtain a new borrowing base certificate at each advance or draw on a loan, and noted that it is not unusual for draws to occur on a daily basis. The commenters further stated that requiring lenders to obtain a new borrowing base certificate at each advance or draw would impose a major administrative burden on banks and their borrowers. In the joint letter, commenters recommended that a new borrowing base certificate be required within 60 days of each draw or advance. The final rule adopts a 30-day requirement on the grounds that 60 days does not provide sufficient assurance that the loan is fully secured.

The final rule permits a bank to exclude an asset-based loan from higher-risk C&I loans owed by a higher-risk C&I borrower, provided that the advance rate on the accounts receivables that serve as collateral for the loan does not exceed 85 percent. This is a change from the NPR, which proposed that advance rates on accounts receivable should *generally* not exceed 75 percent to 85 percent of eligible receivables. One commenter noted that the term ''generally'' gave institutions the option to allow advance rates of greater than 85 percent of eligible accounts receivable when appropriate. Because advance rates in excess of 85 percent expose the lender to the risk of loss from a relatively small default rate on accounts receivable, however, the final rule requires that advance rates never exceed 85 percent for the exclusion to apply.

In response to comments, the final rule also provides that:

- The borrowing base may include other assets, but a loan must be fully secured by the portion of the borrowing base that is composed of accounts receivable and inventory.
- Appraisals will not be required for accounts receivable collateral. In addition, when there is a readily available and determinable market price for inventory from a recognized exchange or third-party industry source, inventory may be valued using these sources in lieu of an appraisal.
- An institution need not have the unconditional ability to take control of a borrower's deposit accounts to be eligible for the asset-based lending exclusion; rather, it is sufficient if the lending institution has the legally enforceable ability to take dominion over the borrower's deposit accounts without further consent by the borrower (or any other party). In all cases, the lending bank must have a perfected first priority security interest in the deposit account, a security agreement must be in place and, if the account is held at an institution other than the lending institution, an account control agreement must also be in place.[30]
- The lending bank must have the ability to withhold funding of a draw or loan advance if the outstanding balance on the loan is not within the collateral formula prescribed by the loan agreement.
- A bank's lending policies or procedures must address the maintenance of an inventory loan agreement with the borrower, consistent with the requirements for an accounts receivable loan agreement.
- Banks are required to obtain financial statements from dealer floor plan borrowers, but the statements need not be audited. Original Equipment Manufacturers (OEM) financial statements, otherwise known as dealer statements, will be sufficient.

Higher-Risk Consumer Loans

''Higher-risk consumer loans'' are defined as all consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default (PD) within two years (the two-year PD) is greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan.[31] [32]

Higher-risk PD Threshold

As noted by commenters, the FDIC may need to adjust the higher-risk PD threshold after reviewing data for the first reporting period, since the 20 percent threshold in the definition was determined based on preliminary score-to-default rate mappings received from a few credit score providers.

The NPR proposed that the FDIC could change the PD threshold without further notice-and-comment rulemaking. Several trade groups commented that the higher-risk PD threshold, after a potential adjustment following the first reporting period, should remain invariant and not be changed without notice-and-comment rulemaking.

The final rule is generally consistent with these comments.[33] Under the final rule, the FDIC retains the flexibility to change the 20 percent threshold without further notice-and-comment rulemaking, but only as the result of reviewing data for up to the first two reporting periods. The FDIC will give banks at least one quarter advance notice of any change through a Financial Institution Letter. Any subsequent changes to the threshold will be made through notice-and-comment rulemaking.

A threshold of 20 percent was found to be generally consistent with score-based definitions of subprime commonly used by the industry, capturing the riskiest 10 to 20 percent of consumer loans on a national basis. If, once the final rule is in effect, the overall proportion of consumer loans reported as higher-risk among large institutions differs materially from this preliminary estimate of 10 to 20 percent of consumer loans, the FDIC may decide to adjust the 20 percent threshold. The final rule, like the proposed rule, gives the FDIC the flexibility to make this change without further notice-and-

[28] A ''borrowing base certificate'' is defined in Appendix C.

[29] The requirements of the validation process are discussed further in Appendix C.

[30] For the purposes of this rule, an account control agreement means a written agreement between the lending bank (the secured party), the borrower, and the institution that holds the deposit account serving as collateral (the depository bank), that the depository bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the borrower (or any other party).

[31] For the purposes of this rule, consumer loans consist of all loans secured by 1–4 family residential properties as well as loans and leases made to individuals for household, family, and other personal expenditures, as defined in the instructions to the Reports of Condition and Income, Schedule RC–C, as the instructions may be amended from time to time.

[32] A loan that meets both the definitions of a nontraditional mortgage loan and a higher-risk consumer loan at the time of origination should be reported as a nontraditional mortgage loan. If the loan later ceases to meet the definition of nontraditional mortgage loan but continues to qualify as a higher-risk consumer loan, however, it must then be reported as a higher-risk consumer loan.

[33] Several commenters also suggested that, if the FDIC were to adjust the PD threshold, the new threshold should only apply to loans originated or refinanced after the effective date of the change, and the determination that a loan is or is not higher risk will be based on the previous threshold. In the commenters' view, this suggestion would allow institutions to adjust their pricing policies prospectively to account for the cost of making a new loan that meets the revised threshold. Because the final rule requires notice-and-comment rulemaking before changing the PD threshold (except for a potential change after the first or second reporting period under the final rule), this issue would be addressed in any such future rulemaking.

comment rulemaking (as a result of reviewing data reported for the first one or two reporting periods) so that a re-calibration of the measure can be accomplished quickly to prevent banks from being unfairly assessed. Before making any such change, the FDIC will analyze the potential effect of changing the PD threshold on the distribution of higher-risk consumer loans among institutions and the resulting effect on assessments collected from the industry.

One bank commented that the higher-risk PD threshold should vary by product type, and that volatility in default rates is more relevant than the average level of default rates. As an example, the bank noted that, although credit card default rates were higher than default rates on some other products during the recent crisis, the default rates on credit cards rose less than the default rates on other products. In particular, the default rates on mortgages rose significantly and unexpectedly, causing losses that threatened institutions and the financial system. The bank also commented that other risk factors, such as historic default rates, yields, and resilience to stress, should be taken into account.

While the factors that the commenter mentioned are relevant, taking them into account in the definition of a higher-risk consumer loan would introduce excessive complexity with uncertain improvements in risk differentiation. Under the final rule, as proposed in the NPR, institutions must estimate the two-year PD for a consumer loan based on how loans with similar risk characteristics performed during the recent crisis. The FDIC chose to use the recent stress period for PD estimation, as opposed to a longer history, to capture the consumer behavior that generated significant unexpected losses. The PDs estimated using the specified time periods are not intended to reflect long-run mean default rates or capture product-by-product differences in more favorable periods.

Methodology for Estimating PDs

Time period. Under the final rule, and as proposed in the NPR, an institution must estimate the two-year PD for a consumer loan based on the observed stress period default rate (defined below) for loans of a similar product type made to consumers with credit risk comparable to the borrower being evaluated, all as detailed in the estimation guidelines in Appendix C. To capture the default behavior of consumers during a period of economic stress, the default rate is to be calculated as the average of the two, 24-month default rates from July 2007 to June 2009, and July 2009 to June 2011.[34]

Several trade groups and two institutions commented that the time periods used for PD estimation should be updated bi-annually. These commenters suggested that the average default rates could be calculated on a rolling basis, using the two most recent consecutive 24-month periods, or on a cumulative basis using all consecutive 24-month periods from July 2007 forward. They noted that it is standard industry practice to recalibrate credit models at least once a year, and that model parameters more than two years old are generally considered unreliable. Furthermore, the commenters stated that specifying a regular interval for updating the time periods would make the process more predictable and give institutions an opportunity to adjust their credit policies and pricing in advance of any changes, thus promoting a more stable flow of credit to consumers.

Identifying higher-risk consumer loans based on PD estimates from a time of economic stress is consistent with the FDIC's objective of assessing large institutions during favorable periods based on how they are likely to perform during periods of stress, as explained in the February 2011 rule. If the time period were to be updated on a rolling or cumulative basis, as suggested, the resulting PD estimates would eventually not reflect the performance of loans during the recent crisis. While the updated default rates might be closer to realized two-year default rates during favorable periods, they would generally not capture the relative differences in default behavior among product types that can be expected to occur under stress conditions (and that actually did occur during the recent financial crisis). In addition, unless changes were made to the higher-risk PD threshold of 20 percent, any regular updating of the time period could introduce an undesirable level of pro-cyclicality into the higher-risk concentration measure, whereby the volume of higher-risk loans would tend to rise as credit conditions deteriorated, and fall as conditions improved. This type of volatility could occur even if the distribution of credit scores in a loan portfolio remained static over time. The final rule avoids this volatility by using a fixed historical period for measuring default rates.

Default rates calculated using the recent crisis period may not reflect future changes in macroeconomic factors, industry standards, or consumer behavior that affect the riskiness of different product types. To ensure that the PD methodology continues to accurately identify higher-risk consumer loans, the FDIC may need to update the time period used for PD estimation at some point. Under the final rule, unlike the proposed rule, a change in the time period would require further notice-and-comment rulemaking.

Default rate and definition of ''active loan.'' The final rule requires institutions to calculate the default rate for each 24-month time period as the number of active loans that experienced at least one default event during the period divided by the total number of active loans as of the observation date (*i.e.,* the beginning of the 24-month period). An ''active'' loan is defined as any loan that was open and not in default as of the observation date, and on which a payment was made within the 12 months prior to the observation date. This definition differs from the one proposed in the NPR, which had defined an active loan as a loan that was open and not in default as of the observation date, and had a positive balance any time within the 12 months prior to the observation date. The FDIC had proposed this balance-based definition to exclude accounts that, while open and available for use, were generally not being used. Including these accounts in the default rate calculation could result in PD estimates that understate the default experience of truly active accounts. The FDIC also based its proposal on indications that historical balance data were available in the credit bureau data used by third-party providers of consumer credit scores.

One credit reporting bureau, however, informed the FDIC that historical data on account balances are often either unavailable or difficult to obtain. The credit reporting bureau also suggested that the proposed approach could miss active revolving loans where the balance is completely paid off each month. As an alternative, the credit reporting bureau suggested that an active account could be defined as any loan reported by the lender in the 12 months prior to the observation date, or any loan that has a positive balance as of the observation date.

The FDIC concluded, based on discussions with the three major credit reporting bureaus, that the date of last payment is information that is generally reported and maintained historically. In addition, defining an active loan using the date of last payment should better capture active revolving accounts that pay off monthly compared to both the proposed definition and a definition

[34] Institutions must use the formula in Appendix C to calculate the average default rate.

that would rely on the balance only as of the observation date. While the commenter's suggestion to include any loan reported by the lender in the 12 months prior to the observation date would also capture these revolving accounts, this definition could capture accounts that are no longer open as of the observation date or are otherwise inactive.

Additional risk factors. The final rule requires that, at a minimum, the PD estimate of a loan must be based on the product type and credit score of the borrower. In response to a comment, the final rule clarifies that institutions may consider risk factors other than product type and credit score (*e.g.,* geography) in estimating the PD of a loan, because these factors may improve PD estimates. All estimation requirements detailed in the final rule, including the minimum sample size, however, must be satisfied regardless of the number of factors used.

Mapping scores to default rates. The final rule requires partitioning the entire credit score range generated by a given scoring system into a minimum of 15 credit score bands. A PD for each credit score band and loan product type (and for any other risk factor being considered) must be estimated as the average of two particular 24-month default rates as described in Appendix C. Each 24-month default rate must be calculated using a random sample of at least 1,200 active loans. Although each score band will likely include multiple credit scores, each credit score will need to have a unique PD associated with it. Therefore, when the number of score bands is less than the number of unique credit scores (as will almost always be the case), banks must use a linear interpolation between adjacent default rates to determine the PD for a particular score. The observed default rate for each band must be assumed to correspond to the midpoint of the range for that band. For example, if one score band ranges from 621 to 625 and has an observed default rate of 4 percent, while the next lowest band ranges from 616 to 620 and has an observed default rate of 6 percent, a 620 score must be assigned a default rate of 5.2 percent, calculated as

$$\left(\frac{.04 - .06}{623 - 618}\right) \cdot (620 - 618) + .06 = .052$$

One provider of consumer credit scores recommended an alternative to the proposed method of assigning PDs to individual score values. This commenter suggested that the FDIC permit banks to use a least-squares regression or other accepted statistical methodology to estimate the score-to-default rate relationship. The commenter noted that the relationship between the logarithm of the odds of not defaulting and the FICO score is very close to linear. The commenter argued that PDs estimated using a regression would be less dependent on the way institutions structure score bins and provide more reliable estimates of future default rates for a given score.

Depending on the nature of the data, least-squares regression and alternative methods of estimating the score-to-default rate relationship may, in fact, have certain advantages over the proposed approach. Given the minimum sample size and score band requirements, however, estimates generated using the proposed approach should be similar to those generated using alternative statistical methods. While the industry generally understands and uses linear interpolation, many banks that try to develop their own PD estimates according to the requirements may lack the expertise to apply more sophisticated fitting methods to their data. To ensure consistency among estimation methods, the final rule retains the linear interpolation approach.

Alternative methodology. Like the proposed rule, the final rule allows institutions to request to use default rates calculated using fewer observations or score bands than the specified minimums, either in advance of, or concurrent with, actual reporting under the requested approach. The request must explain in detail how the requested approach differs from the rule specifications and include, at a minimum, a table with default rates and the number of observations used in each score and product segment. The FDIC will evaluate the proposed methodology and may request additional information from the institution, which the institution must provide. The institution may report using its approach while the FDIC evaluates the request. If, after reviewing the request, the FDIC determines that the institution's approach is unacceptable, the institution may be required to amend its Call Reports and treat any loan whose PD had been estimated using the disapproved methodology as an unscorable domestic consumer loan subject to the de minimis approach described above; the institution, however, will be required to submit amended information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination.

One trade group commented that the FDIC should publish its criteria for evaluating methodologies that deviate from the PD estimation requirements. The trade group stated that providing the criteria would help smaller institutions evaluate their options before devoting time and resources to developing an alternative methodology. Because the final rule allows institutions to request the use of PD estimates that differ from the specifications only in the two specific respects noted previously (using fewer observations or score bands than the specified minimums), institutions should not be expending resources developing an entirely different methodology. While providing more specific guidance on acceptable alternatives to the score band and sample size requirements may make the decision process easier for institutions, the range of potentially acceptable alternatives is broad enough to preclude the final rule from providing predetermined criteria.

In the joint letter, commenters suggested that a simplified method of reporting should be permitted for banks with minimal exposure to higher-risk consumer loans. The commenters stated that the potential benefit to the FDIC would be small relative to the cost these banks would incur to comply with the new definition. The commenters suggested that if a bank's subprime loans—defined based on the 2001 interagency guidance—were less than one percent of Tier 1 capital and reserves, they should be allowed to report the amount as higher-risk if it is less costly for them to do so. One trade group suggested that if a portfolio has a default rate consistently below 10 percent and the bank maintains prudent underwriting criteria and appropriate monitoring for loans placed in that portfolio, the bank should not be required to estimate and report the PDs of loans in the portfolio. This same trade group stated that loans made before the effective date of the rule should be exempt from PD reporting, or the FDIC should provide a transitional period of at least three years.

Under the final rule, as proposed in the NPR, banks must calculate the PDs of *all* outstanding consumer loans following the effective date of the rule. Because the 2001 interagency guidance for subprime lending differs from the definition in the final rule, allowing banks to determine their level of exposure using this alternative standard could result in inconsistent treatment of loans across banks. This same inconsistency could result if alternative criteria were used, such as having a default rate consistently below 10 percent. While banks will need some

time to modify systems and processes to report under the definitions in the final rule, the suggested transition period of three years could result in the assessment system failing to identify higher-risk concentrations for too long. The effective date of April 1, 2013, should give banks sufficient time to comply with the final rule.

Unscorable Consumer Loans

The final rule definition, like the definition proposed in the NPR, requires institutions to estimate the two-year PD of a loan based, in part, on the credit risk of the borrower as reflected in a credit score.[35] When a consumer loan has a co-signer or co-borrower, the PD may be determined using the most favorable individual credit score. For unscorable consumer loans—where the available information is insufficient to determine a credit score—the final rule specifies the following treatment: if the total outstanding balance of unscorable consumer loans of a particular product type exceeds 5 percent of the total outstanding balance for that product type, including both foreign and domestic loans, the excess amount shall be treated as higher-risk (the de minimis approach). Otherwise, the total outstanding balance of unscorable consumer loans of a particular product type will not be considered higher-risk. The consumer product types used to determine whether the 5 percent test is satisfied shall correspond to the product types listed in the table used for reporting PD estimates. If, after the origination or refinance of the loan, an unscorable consumer loan becomes scoreable, the final rule requires institutions to reclassify the loan using the PD estimated according to the rule specifications. Based upon that PD, the loan will be determined to be either higher risk or not, and that determination will remain in effect until a refinancing occurs, at which time the loan must be re-evaluated. An unscorable loan must be reviewed at least annually to determine if a credit score has become available.

Several trade groups commented that the proposed rule did not consider how large banks are to treat consumer credits with no credit histories or scores. These groups noted that this issue is relevant for all types of consumer loans, but especially for student and credit card loans. One trade group argued that an institution should not be automatically required to classify unscorable loans as higher-risk, because doing so would cause some products, such as student loans, to become more expensive or less available. In the joint letter, commenters suggested that, to account for unscorable loans, large banks with sufficient data on the performance of such loans should be allowed to develop internal PD estimates using the same time period and sample size requirements in the rule. For large banks that do not have sufficient data to create such a mapping, the commenters stated that unscorable loans could initially be treated as higher-risk and subsequently re-evaluated according to the rule specifications once a credit score becomes available for the borrower. The commenters also noted that, although initially classifying unscorable loans as higher-risk is excessively conservative, it would be considered generally acceptable to large banks so long as a subsequent re-evaluation of these loans is permitted. For unscorable student loans, however, the commenters recommended that a PD distribution based on the bank's long-term default experience be permitted as opposed to initially classifying the loans as higher-risk.

Unscorable loans were not addressed in the proposed rule. In evaluating treatment options for purposes of the final rule, the FDIC sought information from a few credit score providers on the performance of unscorable loans by product type as well as data from large banks on the volume of unscorable loans outstanding. Data on the historical performance of unscorable loans were generally unavailable. Further, where data were available, the performance of unscorable loans relative to their scored counterparts was found to vary significantly by product type, and product definitions were not consistent with the Call Report definitions expected to be used for reporting purposes. More importantly, because credit scoring systems may differ in their ability to score certain consumers, basing the treatment of all unscorable loans on performance data from only a few score providers would be inappropriate. For these reasons, the final rule adopts the conservative approach suggested in the joint letter—initially treating such loans as higher-risk (subject to the de minimis approach) and requiring banks to re-evaluate the loans according to the PD specifications once a credit score becomes available for the borrower.

The final rule does not permit institutions to develop PD estimates for unscorable loans based on internal data, nor does the final rule apply a separate standard for student loans as recommended in the joint letter. To permit banks with sufficient internal data to apply PD estimates to unscorable loans while requiring other banks to initially classify the loans as higher-risk (subject to the de minimis approach) could create an unfair advantage for those banks with sufficient internal data. As the commenters acknowledged, many student loans are either government guaranteed or co-signed by parents or other individuals with a credit history and can be scored; therefore, the volume of unscorable student loans that would be initially treated as higher-risk is likely to be small. Nevertheless, to avoid capturing immaterial exposures to unscorable student loans as well as other types of unscorable loans in the higher-risk measure, the final rule classifies only the outstanding balance of unscorable loans in a portfolio that exceeds 5 percent of the total outstanding balance for the portfolio as higher-risk (the de minimis approach). If the outstanding balance of unscorable loans does not exceed 5 percent of the total, the amount will be ignored for the purpose of calculating higher-risk consumer loans.

Foreign consumer loans

The NPR did not discuss the treatment of foreign consumer loans, as pointed out in the joint letter. Under the final rule, a bank must estimate the PD of a foreign consumer loan according to the general specifications described above (and in Appendix C) unless doing so would be unduly complex or unduly burdensome (*e.g.,* if a bank had to develop separate PD mappings for many different countries). A bank may request to use the alternative methodology described above (*i.e.,* to use default rates calculated using fewer observations or score bands than the specified minimums), either in advance of or concurrent with reporting under that methodology, but must comply with the requirements detailed above for using an alternative methodology.

When estimating a PD according to the general specifications described above and in Appendix C would be unduly complex or unduly burdensome, a bank that is required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may: (1) Use the Basel II approach discussed below, subject to the terms discussed below; (2) submit a written request to the FDIC to use an alternate methodology, but may not use the methodology until approved by the

[35] As detailed in Appendix C, the credit risk of the borrower must be determined using a third-party or internal scoring system that qualifies as empirically derived, demonstrably and statistically sound (EDDSS), as defined in 12 CFR 202.2(p), as amended from time to time, and that has been approved by the bank's model risk oversight and governance process and internal audit mechanism.

FDIC;[36] or (3) treat the loan as an unscorable consumer loan subject to the de minimis approach described above.

When estimating a PD according to the general specifications described above and in Appendix C would be unduly complex or unduly burdensome, a bank that is not required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may: (1) Treat the loan as an unscorable consumer loan subject to the de minimis approach described above; or (2) submit a written request to the FDIC to use an alternate methodology, but may not use the methodology until approved by the FDIC.[37]

Basel II approach. A bank that is required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may estimate the two-year PD of a foreign consumer loan based on the one-year PD used for Basel II capital purposes.[38] The bank must submit a written request to the FDIC in advance of, or concurrent with, reporting under that methodology. The request must explain in detail how one-year PDs calculated under the Basel II framework are translated to two-year PDs that meet the final rule specifications. While the range of acceptable approaches is potentially broad, any proposed methodology must meet the following requirements:

- The bank must use data on a sample of loans for which both the one-year Basel II PDs and two-year final rule PDs can be calculated. The sample may contain both foreign and domestic loans.
- The bank must use the sample data to demonstrate that a meaningful relationship exists between the two types of PD estimates, and the significance and nature of the relationship must be determined using accepted statistical principles and methodologies. For example, to the extent that a linear relationship exists in the sample data, the bank may use an ordinary least-squares regression to determine the best linear translation of Basel II PDs to final rule PDs. The estimated equation should fit the data reasonably well based on standard statistics such as the coefficient of determination.
- The method must account for any significant variation in the relationship between the two types of PD estimates that exists across consumer products based on the empirical analysis of the data. For example, if the bank is using a linear regression to determine the relationship between PD estimates, it should test whether the parameter estimates are significantly different by product type.

The bank may report using this approach while the FDIC evaluates the methodology. If, after reviewing the methodology, the FDIC determines that the methodology is unacceptable, the institution will be required to amend its Call Reports. The institution will be required to submit amended information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination.

Under the NPR, banks would not have been permitted to estimate the two-year PD of a foreign consumer loan using the Basel II PD. The joint letter commenters stated that the FDIC should consider issues specific to the scoring of loans from foreign markets. These commenters indicated that, due to the diversity of national credit markets, pervasive lack of standardized industry risk scores in other countries, and difficulty in applying U.S.-specific rules to many other markets, banks should be permitted to use other information in assessing the PD for a foreign loan. The commenters stated that such information could include the Basel II PD ''or other measures that the banks consider to be reasonable indications of a cyclical view adjusted for the differences in the definition of default and timing of account risk assessment.'' The commenters added that institutions should be allowed to exercise judgment in making their determination given that not all of the information required under the proposed definition may be reasonably available.

The final rule builds upon the suggestion of allowing banks subject to the Basel II framework to develop PD mappings for foreign consumer loans based on the Basel II PDs used for capital purposes. The final rule permits only banks subject to the Basel II framework to be able to use an alternative approach based on the Basel II PD automatically (provided that estimating a PD according to the general specifications described above and in Appendix C would be unduly complex or unduly burdensome), because the Basel II PD is well defined, subject to supervisory review and approval for banks subject to the Basel II approach, and likely to be correlated with PD estimates developed according to the final rule requirements. In addition, those institutions that operate in many foreign markets, and for which the general methodology for determining PDs would likely be burdensome, are subject to Basel II requirements.

Missing Data

Under the final rule, banks must determine the PD of a consumer loan as of the date the loan was originated, or, if the loan has been refinanced, as of the date it was refinanced. For loans originated or refinanced by a bank before April 1, 2013, and all loans acquired by a bank regardless of the date of acquisition, if information as of the date the loan was originated or refinanced is not available, then the institution must use the oldest available information to determine the PD. If no information is available, then the institution must obtain recent, refreshed data from the borrower or other appropriate third party to determine the PD. Refreshed data is defined as the most recent data available, and must be as of a date that is no earlier than three months before the acquisition of the loan. In addition, for loans acquired on or after April 1, 2013, the acquiring bank shall have six months from the date of acquisition to determine the PD.

The joint letter commenters suggested that, if data as of origination or refinance are unavailable for an acquired loan, a bank should be able to use the oldest data on file or refreshed data to determine if the loan was higher risk. The commenters further stated that a bank should not be required to go to extraordinary lengths to obtain a credit score or PD from the originating lender; the bank should be able to use the best available data at the time of acquisition. The commenters recommended that a bank be given, at most, one year from the date a loan is acquired to determine the PD of the loan, instead of the proposed timeframe of three months. The commenters also recommended this approach—using refreshed data or the oldest data available when data as of origination or refinance are unavailable—for evaluating loans originated or purchased prior to the effective date of the rule. The commenters argued that there has been

[36] The FDIC may request additional information from the bank regarding the proposed methodology and the bank must provide the information. The FDIC may grant a bank tentative approval to use a methodology while the FDIC considers it in more detail. If the FDIC ultimately disapproves the methodology, the bank will be required to amend Call Reports affected by the disapproved methodology treating any loan whose PD had been estimated using the disapproved methodology as an unscorable consumer loan subject to the de minimis approach described above; however, the institution will be required to amend no more than the two most recently dated and filed Call Reports preceding the FDIC's determination.

[37] The provisions in the previous footnote also apply in this case.

[38] Use of this method does not imply that a bank's PFR has approved use of the PDs for the Basel II capital framework. If a bank's PFR requires it to revise its Basel II PD methodology, the bank must use revised Basel II PDs to calculate (or recalculate if necessary) corresponding PDs under this Basel II approach.

no reason in the past for large banks to maintain the data needed to determine the PDs for loans already on the books.

Under the final rule, a bank is not required to go to extraordinary lengths to obtain a credit score or PD for an existing or acquired loan; however, the bank must use the available data closest to the date of origination or refinance to minimize inconsistencies in PD estimates. While banks may need additional time to gather and evaluate the information for an acquired consumer loan, the joint letter commenters offered no reason that a full year would be needed. If data from the original lender are unavailable, banks should be able to obtain a refreshed credit score for most borrowers at reasonable cost. Further, allowing acquired loans that are truly higher risk to be treated as non-higher risk for up to one year could result in a bank's risk being under-assessed for too long. Therefore, the final rule gives banks six months to complete this determination.

Exclusions

Consistent with the definition of a higher-risk C&I loan and security, the final rule definition of a higher-risk consumer loan excludes the maximum amount that is recoverable from the U.S. government under guarantee or insurance provisions, as well as loans that are fully secured by cash collateral.[39] [40]

In the joint letter, commenters recommended excluding loans that are collateralized by securities issued by the U.S. government, its agencies, or GSEs. The final rule, however, does not exclude loans so collateralized because the collateral is subject to interest rate risk and collateral arrangements are subject to operational risk.

Commenters also recommended excluding loans that are fully and continuously secured by brokerage account collateral (securities-based loans). As in the case of higher-risk C&I loans, several commenters suggested that other factors, such as loan-to-value (LTV) ratios, credit history, and borrower resources, should factor into the definition of a higher-risk consumer loan.

The final rule definition, like the definition proposed in the NPR, does account for a borrower's credit history, because the two-year PD is based, in part, on the credit score of the borrower. The final rule does not, however, adopt the other suggested exclusions. To ensure consistency, excluding loans from the higher-risk totals based upon these criteria would require the development of numerous thresholds, such as appropriate LTVs for various asset types, frequent updating of appraisals of collateral, and frequent updating of borrower's financial statements. In addition, the final rule does not exclude loans secured by brokerage account collateral because the value of the collateral is subject to several sources of risk, including operational, credit, and market risk.

Definition of ''Refinance''

One large bank sought clarification on whether re-aging a loan as a loss mitigation activity would qualify as a refinancing of the loan. The FDIC believes conservative re-aging programs are a loss mitigation activity, not a refinance, provided the institution follows, at a minimum, the re-aging guidelines recommended in the interagency approved Uniform Retail Credit Classification and Account Management Policy.[41] Thus, among other things, for a loan to be considered for re-aging, the following must be true: (1) The borrower must have demonstrated a renewed willingness and ability to repay the loan; (2) the loan must have existed for at least nine months; and (3) the borrower must have made at least three consecutive minimum monthly payments or the equivalent cumulative amount.[42] In addition, for re-aging to be considered as a loss mitigation activity, and not as a refinance, the institution's program must have clearly defined policy guidelines and parameters for re-aging, as well as internal methods of ensuring the reasonableness of those guidelines and for monitoring their effectiveness. Institutions must also monitor both the number and dollar amount of re-aged accounts, collect and analyze data to assess the performance of re-aged accounts, and determine the effect of re-aging practices on past due ratios.

In the joint letter, commenters requested that an increase in a credit card line of credit of up to 10 percent should not be considered a refinance, as proposed for all other consumer loans. In addition, the joint letter commenters requested that when a bank has internally approved a higher credit line than it has made available to the customer, providing access to this additional credit should not be considered a refinance, as the bank has not underwritten new risk. The final rule makes these changes; further, to be consistent with other types of consumer loans, a non-temporary credit card line increase of 10 percent or greater, that is not the result of a loss mitigation strategy, is a refinance under the final rule.[43]

The joint letter commenters also requested that an increase or decrease in the interest rate of a credit card loan should not be considered a refinance on the grounds that rate changes for credit card loans are commonplace (*e.g.,* formulaic adjustments tied to underlying indices, expirations of introductory rates and special rates for balance transfers, and changes mandated by law such as the Credit CARD Act). The final rule clarifies that a change to the interest rate on a credit card loan that is consistent with the terms of the loan agreement is not a refinance.

Paperwork Reduction Act (PRA) Notice for the Call Reports

The FDIC intends to collect the outstanding balance of consumer loans, by two-year PD and product type, from large and highly complex institutions. The types of information collected and the format of the information collected on the Call Report will be subject to a PRA notice, which will be published in the **Federal Register** with request for comment. The FDIC anticipates that appropriate changes to the Call Reports will be made and that institutions will report consumer loans consistent with the definition in the final rule. Several commenters stated that any PD data reported by the banks should be kept confidential and not disclosed or used in public statements. Moreover, these commenters stated that the final rule specifications for calculating the PD, designed to provide a consistent measure across large banks, will likely not reflect banks' internal PD estimates. The FDIC agrees with these comments

[39] To exclude a loan based on cash collateral, the cash must be in the form of a savings or time deposit held by a bank. The lending bank (or lead or agent bank in the case of a participation or syndication) must, in all cases, (including instances in which cash collateral is held at another bank or banks) have a perfected first priority security interest under applicable state law, a security agreement in place, and all necessary documents executed and measures taken as required to result in such perfection and priority. In addition, the lending bank must place a hold on the deposit account that alerts the bank's employees to an attempted withdrawal. For the exclusion to apply to a revolving line of credit, the cash collateral must be equal to, or greater than, the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan).

[40] The NPR proposed excluding from the definition of a higher-risk consumer loan ''the maximum amounts recoverable from * * * [GSEs] under guarantee or insurance provisions,'' but the final rule omits this language because no GSE guarantees or insures individual consumer loans.

[41] 65 FR 36903 (June 13, 2000).

[42] The definition of refinance is discussed in Appendix C.

[43] Under the final rule, a refinance excludes all temporary credit card line increases.

and affirms that any PD data reported for purposes of this rule will remain confidential.

The following table is an example of how the FDIC may collect the consumer loan information. As suggested in the example table below, institutions would report the outstanding amount of all consumer loans, including those with a PD below the high-risk threshold, stratified by the 10 product types and 12 two-year PD bands. In addition, for each product type, institutions would report the amount of unscorable loans, as defined in the final rule, and indicate whether the PDs were derived using scores and default rate mappings provided by a third-party vendor or an internal approach.[44] Although not included in this table, banks would report in their Call Reports the value of all securitizations (except those classified as trading book) of consumer loans that are more than 50 percent collateralized by consumer loans that would be identified as higher-risk assets.

Outstanding Balance of Consumer Loans by Two-Year Probability of Default

Product	Two-year Probability of Default												Unscoreable
	≤ 1%	1.01-4%	4.01-7%	7.01-10%	10.01-14%	14.01-16%	16.01-18%	18.01-20%	20.01-22%	22.01-26%	26.01-30%	>30%	
Nontraditional residential mortgages													
Closed end loans secured by first liens on 1-4 family residential properties													
Closed end loans secured by junior liens on 1-4 family residential properties													
Revolving, open-end first liens and credit lines secured by 1-4 family residential properties													
Revolving, open-end junior liens and credit lines secured by 1-4 family residential properties													
Credit cards													
Automobile loans													
Student loans													
Other consumer loans (including single payment and installment) and revolving credit plans other than credit cards													
Consumer leases													
Total													

Note: All reported amounts should exclude the maximum amount recoverable from the U.S. government under guarantee or insurance provisions. Reported amounts should also exclude loans that are fully secured by cash collateral. Nontraditional residential mortgages and unscorable loans are defined according to 12 C.F.R. Part 327 Appendix C, while other product types are defined according to the instructions for Call Report Schedule RC-C. Closed-end loans on 1-4 family residential properties should exclude loans reported previously as nontraditional residential mortgages.

Nontraditional Mortgage Loans

The final rule retains the definition of a nontraditional mortgage loan that was contained in the February 2011 rule; however, the final rule clarifies how securitizations of nontraditional mortgage loans will be identified under the definition. Securitizations are discussed in the section that follows.

Several commenters on the NPR urged the FDIC to reconsider the definition of nontraditional mortgage loans. As the FDIC stated in the NPR, it will monitor future rulemakings regarding Qualified Residential Mortgages, and the capital treatment of nontraditional mortgage loans, to determine whether any changes to the definition should be considered.

Higher-Risk Securitizations

As proposed in the NPR, the final rule requires securitizations, except securitizations classified as trading book, to be reported as higher-risk where, in aggregate, more than 50 percent of the assets backing the securitization meet the criteria for higher-risk C&I loans or securities, higher-risk consumer loans, or nontraditional mortgage loans.[45] Concentrations in higher-risk assets, whether they are in the form of a whole loan or a securitization, increase the risk of loss to the DIF during times of prolonged periods of economic stress.

The final rule treatment of securitizations differs from the proposed rule in a nonsubstantive way. In the final rule, higher-risk securitizations constitute a new classification of higher-risk assets rather than being included in higher-risk C&I loans or securities, higher-risk consumer loans, or nontraditional mortgage loans.[46]

In determining whether or not to report a securitization as higher risk, a bank is required to use information reasonably available to a sophisticated investor in reasonably determining whether the securitization meets the 50 percent threshold.[47] Information reasonably available to a sophisticated investor includes, but is not limited to, offering memoranda, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving

[44] An internal approach includes the use of an institution's own default experience with a particular product and credit score, whether that score was provided by a third party or was internally derived.

[45] Unscorable consumer loans that exceed 5 percent of the loans in a securitization are deemed higher-risk.

[46] The definition of a higher-risk securitization in the final rule excludes the maximum amount that is recoverable from the U.S. government under guarantee or insurance provisions. The NPR proposed also excluding from the definition of a higher-risk C&I loan securitization ''the maximum amount that is recoverable from * * * [GSEs] under guarantee or insurance provisions,'' but the final rule omits this language because no GSE guarantees or insures securitizations containing C&I loans. The NPR also contained similar language with regard to the proposed definition of a higher-risk consumer loan securitization, and the final rule again omits this language. No GSE currently guarantees or insures securitizations where more than 50 percent of the assets backing the securitization consist of higher-risk consumer loans or nontraditional mortgages, and the definition of a higher-risk securitization in the final rule does not apply to a securitization issued before April 1, 2013.

[47] A securitization is as defined in 12 CFR part 325, Appendix A, Section II(B)(16), as it may be amended from time to time.

trust or similar securitization meets the threshold, an institution may use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report, or similar documents.

The joint letter commenters pointed out that continuously obtaining updated information on actively managed open-ended securitizations (those securitizations where the underlying assets of the securitization may change) would not only be burdensome, but unnecessary, because governing indentures require securitization managers to maintain minimum credit quality. The final rule takes this point into account and provides that a bank must determine whether a securitization is higher-risk based upon information as of the date of issuance (*i.e.,* the date the securitization is sold on a market to the public for the first time). The bank must make this determination within the time limit that would apply under Appendix C to this final rule if the bank were directly acquiring loans or securities of the type underlying the securitization. In making the determination, a bank must use one of the following methods:

- For a securitization collateralized by a static pool of loans, whose underlying collateral changes due to the sale or amortization of these loans, the 50 percent threshold is to be determined based upon the amount of higher-risk assets, as defined in Appendix C to this final rule, owned by the securitization on the date of issuance of the securitization.
- For a securitization collateralized by a dynamic pool of loans, whose underlying collateral may change by the purchase of additional assets, including purchases made during a ramp-up period, the 50 percent threshold is to be determined based upon the highest amount of higher-risk assets, as defined in Appendix C to this final rule, allowable under the portfolio guidelines of the securitization.

The final rule uses the term ''issuance'' rather than ''origination,'' as proposed in the NPR, because the term ''issuance'' is commonly used and understood in the securitization industry and is less open to misinterpretation. To relieve burden on the industry, the final rule does not adopt the proposal in the NPR that a securitization be evaluated at purchase, because the most readily available information will generally be that included in offering material compiled as of the date of issuance.

In cases in which a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and where a bank has access to the necessary information, it may opt for an alternative method of evaluating the securitization to determine whether it is higher risk. The bank may evaluate individual loans in the securitization on a loan-by-loan basis and only report as higher risk those loans that meet the definition of a higher-risk asset; any loan within the securitization that does not meet the definition of a higher-risk asset need not be reported as such. Once an institution evaluates a securitization for higher-risk asset designation using this alternative evaluation method, it must continue to evaluate all securitizations that it has consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and for which it has the required information using the alternative evaluation method. For securitizations for which the institution does not have access to information on a loan-by-loan basis, the institution must determine whether the securitization meets the 50 percent threshold in the manner previously described for other securitizations.

In the joint letter, commenters noted that some loan originators, securitizers, and servicers, including non-bank loan originators, securitizers, and servicers, may not currently collect the data needed to evaluate loans as higher-risk under the final rule. In particular, according to the trade groups, some may not collect data needed for the purpose and materiality tests of the higher-risk C&I loan definition. Some institutions that rely on loan securitization issuers or servicers to determine the credit quality of securitizations may need additional time to develop systems to collect the information necessary to make their own higher-risk asset determinations under the final rule. For these reasons, among others, the effective date of the final rule has been extended from October 1, 2012, as proposed in the NPR, to April 1, 2013. Banks will not need to review securitizations issued before April 1, 2013, to determine whether they are higher risk under the final rule. The new higher-risk definitions in the final rule will apply only to securitizations issued on or after that date, regardless of the date of origin of the underlying loans.

In the joint letter, commenters asserted that the proposed means of identifying securitizations as higher-risk is unworkable and would make banks reluctant to invest in securitizations, which would impede the flow of credit to consumers and businesses and would further impair a market that is struggling to recover. In this same letter, commenters noted that securitizers have developed standards for the type and quantity of information that they provide investors, but this information may not be adequate for banks to make a higher-risk asset determination. Further, the commenters noted that securitizations could be issued by non-bank finance companies that are not subject to deposit insurance pricing rules or definitions and may not have the required data to provide to their investors. The commenters also added that institutions that invest in these securitizations cannot simply request the information needed to make a higher-risk asset determination or compel the servicer or originator to make that determination.

The final rule, like the proposed rule, gives banks flexibility in making higher-risk asset determinations for securitizations. The final rule allows an institution to use information reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold and suggests several sources for this information. In most cases, this information should be sufficient to make the determination, because banks must conduct thorough due diligence prior to purchase. Moreover, large and highly complex institutions are sophisticated investors and can typically obtain the information needed to determine whether a securitization meets the 50 percent threshold when they purchase interests in these securitizations. The final rule, like the proposed rule, however, also acknowledges that sufficient information necessary for an institution to make a definitive determination may not, in every case, be reasonably available to the institution as a sophisticated investor, and allows an institution to exercise its judgment in making the determination. A bank need not rely upon all of the aforementioned pieces of information if fewer documents provide sufficient data to make the determination.

Commenters, through the joint letter, and a bank recommended that the FDIC allow banks to consider the structure of the securitization and any credit enhancements to it. They argued that, by not doing so, the FDIC is giving banks an incentive to acquire lesser quality, subordinated interests in securitizations, because variations in quality and subordination or the lack of it will not affect deposit insurance assessment rates.

In the joint letter, commenters noted that, while the use of external credit ratings to determine the credit quality of securitization exposures is problematic due to Section 939A of the Dodd-Frank

Act, banks could use the proposed revised regulatory capital risk-weighting methodologies currently in development by the bank regulatory agencies (the Standardized Approach for Risk-Weighted Assets [48]) to determine if a securitization is higher risk. For example, the commenters suggested that securitizations with risk weights of 200 percent to 250 percent or greater could be considered below investment grade and therefore treated as higher-risk assets for deposit insurance pricing purposes.

Like the proposed rule, the final rule does not allow exclusions for higher-risk securitizations based upon structure or credit enhancements. As noted in the proposed rule, the performance of a securitization is highly correlated with the performance of the underlying assets, even when the securitization contains terms or conditions intended to reduce risk. During the crisis, a number of highly rated senior securitization positions were subject to significant downgrades and suffered substantial losses. Even where losses have not yet been realized (as is the case in many collateralized loans), the market value of these securitizations declined precipitously during the crisis, reflecting the decline in the market value of the underlying assets and the increased risk of loss. While commenters on the NPR noted that ''based upon agency ratings, the extensive downgrades and the market value reductions of collateralized loan obligations and other securitizations in the recent financial turmoil have, for the most part, been overcome,'' in fact, many financial institutions suffered substantial losses due to these securitizations. This decline in value contributed to the liquidity crisis of 2008, which forced the U.S. government to provide unprecedented support to financial institutions and liquidity markets. Furthermore, the Standardized Approach for Risk-Weighted Assets is still in development and has not yet been finalized. The proposed implementation date is more than two years away (January 15, 2015, although it may be implemented earlier); banks must have a method in place to identify higher-risk securitizations for deposit insurance pricing purposes by April 1, 2013. The FDIC will monitor implementation of the Standardized Approach to determine whether all or parts of the approach should be incorporated into the risk-based pricing system for large banks and highly complex institutions.

[48] 77 FR 52888 (Aug. 30, 2012).

B. Large Bank Adjustment Process

The FDIC has the ability to adjust a large or highly complex institution's total score (which is used to determine its deposit insurance assessment rate) by a maximum of 15 points (the large bank adjustment).[49] Because the revised definitions should result in better risk identification and consistent application across the industry, the FDIC anticipates that there will be limited circumstances where the FDIC will consider a large bank adjustment as a result of perceived mitigants to an institution's higher-risk concentration measure. The revised definitions, which include specific exceptions for well-collateralized loans, should result in generally equal treatment of similar loans at different institutions.

C. Audit

Several of the changes to the definitions could require periodic auditing to ensure consistent reporting across the industry. For example, the consumer loan PD calculation, whether through credit score mapping or through an internal approach, if not properly monitored, could potentially be done inconsistently. Also, institutions need to carefully evaluate their controls for asset-based and floor plan lending to determine whether they can exclude these loans from their higher-risk C&I loans and securities totals. The FDIC expects institutions to have appropriate systems in place for the proper identification and reporting of higher-risk assets. Enhanced review procedures for higher-risk asset reporting should be part of these systems. Institutions' higher-risk asset identification and reporting programs include applicable policies, procedures, reviews, and validation (through internal or external audits). The results of any internal reviews or external audits of higher-risk asset reporting must be made available to the FDIC upon request. The FDIC may review specific details of an institution's reporting, including loans that are excluded from higher-risk assets. Any weakness identified in the reporting of higher-risk assets may be considered in the application of adjustments to an institution's total score as outlined in the Assessment Rate Adjustment Guidelines for Large and Highly Complex Institutions.[50]

D. Updating the Scorecard

The February 2011 final rule grants the FDIC the flexibility to update the minimum and maximum cutoff values used in each scorecard annually without further rulemaking as long as the method of selecting cut-off values remains unchanged.[51] The FDIC may add new data for subsequent years to its analysis and may, from time to time, exclude some earlier years from its analysis. Updating the minimum and maximum cutoff values and weights will allow the FDIC to use the most recent data, thereby improving the accuracy of the scorecard method.[52]

Unless the FDIC re-calibrates cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio, however, the changes to the definitions of higher-risk assets may result in significant increases or decreases in the amount of total deposit insurance assessments collected from large and highly complex institutions. Each scorecard measure, including the higher-risk assets to Tier 1 capital and reserves ratio, is converted to a score between 0 and 100 based upon minimum and maximum cutoff values for the measure (where the minimum and maximum cutoff values get converted to a score of 0 or 100). Most of the minimum and maximum cutoff values represent the 10th and 90th percentile values for each measure, which are derived using data on large banks over a ten-year period beginning with the first quarter of 2000 through the fourth quarter of 2009. Because the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio were calibrated using higher-risk assets data reported in accordance with an institution's existing methodology for identifying leveraged or subprime loans and securities, changing the definitions of these higher-risk assets may result in significant differences in the volume of higher-risk assets reported by institutions, and differences in the amount of deposit insurance assessments collected by the FDIC.

The FDIC does not intend for the changes in the definitions in this final rule to result in the FDIC collecting higher or lower deposit insurance assessment revenue from large and highly complex institutions as a whole (although it may result in individual institutions paying higher or lower deposit insurance assessments). Consequently, the FDIC anticipates that it may need to use its flexibility to

[49] 12 CFR 327.9(b)(3).

[50] 76 FR 57992 (Sept. 19, 2011).

[51] 76 FR 10672, 10700 (Feb. 25, 2011) (H. Updating the Scorecard).

[52] If, as a result of its review and analysis, the FDIC concludes that different measures should be used to determine risk-based assessments, that the method of selecting additional or alternative cutoff values should be revised, that the weights assigned to the scorecard measures should be recalibrated, or that a new method should be used to differentiate risk among large institutions or highly complex institutions, changes would be made through a future rulemaking.

update cutoff values to update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio.[53] Changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores, and the resulting effect on total assessments and risk differentiation between institutions, will be taken into account in determining changes to the cutoffs. In addition, because the FDIC has not collected any data under the revised definitions, changes to cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio could be made more frequently than annually. This review ensures proper risk differentiation between institutions.[54]

E. Implementation and Effective Date

The final rule makes the amended definitions effective April 1, 2013, in place of the October 1, 2012 date proposed in the NPR.

Several industry trade groups and institutions expressed concerns about their ability to report under the proposed definitions by October 1, 2012, stating that they did not have the systems in place to calculate the PD for consumer loans and were not assured that third-party providers would be able to develop PD mapping tables for institutions to use by the proposed effective date. One industry trade group noted that institutions would need time to develop internal PD mapping models, or, if the institution decided to use a third-party provider's PD mapping table, would need time to perform due diligence and negotiate contracts with third-party providers. Commenters recommended extending the effective date of the final rule from October 1, 2012, as proposed, by a range of dates, from one quarter to one year; one industry trade group recommended that either loans made before the effective date of the proposal should be exempt from PD reporting altogether or that institutions be given three years to report these loans as higher-risk.

To allow institutions time to revise their reporting systems to be consistent with the revised definitions, the FDIC is postponing the effective date of the final rule to April 1, 2013. This new date should give institutions ample time to accurately report under the new definitions.

Because the FDIC is not amending the definitions of C&D loans and nontraditional mortgage loans (other than to clarify how securitizations that meet the definition of a nontraditional mortgage loan are to be identified), institutions should continue to define and report these higher-risk assets as they have been doing under the February 2011 rule.

Transition Guidance Until Effective Date

Prior to April 1, 2013, large and highly complex institutions will continue to use the transition guidance for leveraged loans and subprime loans as outlined in the General Instructions (Instructions) for Schedule RC–O of the Consolidated Reports of Condition and Income, Memorandum items 6 through 15. The Instructions have been updated to reflect April 1, 2013 (formerly October 1, 2012) as the effective date of this final rule.

This transition guidance provides that an institution may use either the definition in the February 2011 rule or continue to use its existing internal methodology for identifying loans and securities as leveraged or subprime for Schedule RC–O assessment reporting purposes. Some institutions do not have an existing methodology in place to identify loans and securities as leveraged or subprime (because they are not required to report these exposures to their PFR for examination or other supervisory purposes or do not measure and monitor loans and securities with these characteristics for internal risk management purposes). These institutions may continue to apply existing guidance provided by their PFR, by the agencies' 2001 Expanded Guidance for Subprime Lending Programs (for consumer loans), or by the February 2008 Comptroller's Handbook on Leveraged Lending (for C&I loans and securities).

Rules in Effect on the Effective Date and Thereafter

Effective April 1, 2013, the amended definitions described above apply to:

(1) C&I loans owed to a reporting bank by a higher-risk C&I borrower (as that term is defined in the final rule) and all securities issued by a higher-risk C&I borrower (as that term is defined in the final rule), except securitizations of C&I loans, that are owned by the reporting bank;

(2) Consumer loans (as defined in the final rule), except securitizations of consumer loans, whenever originated or purchased;

(3) Securitizations of C&I and consumer loans (as defined in the final rule) issued on or after April 1, 2013, including those securitizations issued on or after April 1, 2013, that are partially or fully collateralized by loans originated before April 1, 2013.

For C&I loans that are either originated or refinanced by a reporting bank before April 1, 2013, or purchased by a reporting bank before April 1, 2013, in cases in which the loans are owed to the reporting bank by a borrower that does not meet the definition of a higher-risk C&I borrower as that term is defined in the final rule (which requires, among other things, that the borrower have obtained a C&I loan or refinanced an existing C&I loan on or after April 1, 2013), and for securities purchased before April 1, 2013, that are issued by an entity that does not meet the definition of a higher-risk C&I borrower, as that term is defined in the final rule, banks must continue to use the transition guidance in the September 2012 Call Report instructions to determine whether to report the loan or security as a higher-risk asset for purposes of the higher-risk assets to Tier 1 capital and reserves ratio. An institution may opt to apply the final rule definition of higher-risk C&I loans and securities to all of its C&I loans and securities, but, if it does so, it must also apply the final rule definition of a higher-risk C&I borrower without regard to when a loan is originally made or refinanced (*i.e.,* whether made or refinanced before or after April 1, 2013).

Under the final rule, banks will not need to reexamine their entire existing C&I loan and security portfolios immediately to determine whether the loans and securities meet the new definition of higher-risk C&I loans and securities (although they may opt to do so as provided in the last sentence of the preceding paragraph). Rather, they will be able to wait until a borrower seeks a new C&I loan (or refinances an existing one) on or after April 1, 2013, and meets the higher-risk C&I borrower definition before applying the new higher-risk C&I loan and security definition to all of that borrower's C&I loans and securities.

For consumer loans (other than securitizations of consumer loans) originated or purchased prior to April 1, 2013, an institution must determine whether the loan met the definition of a higher-risk consumer loan no later than June 30, 2013.

For all securitizations issued before April 1, 2013, banks must either (1) continue to use the transition guidance in the September 2012 Call Report instructions or (2) apply the definitions in the final rule to all of its securitizations. If a bank applies the definition of higher-risk C&I loans and securities in the final rule to its securitizations, it must also apply the definition of a higher-risk C&I borrower in the final rule to all C&I borrowers without regard to when the loans to

[53] 76 FR 10672, 10700 (February 25, 2011).

[54] The FDIC will provide large and highly complex institutions with at least one quarter advance notice in their quarterly deposit insurance invoice of changes in the cutoff values to ensure that the industry can determine the effect that any changes may have on assessments.

those borrowers were originally made or refinanced (*i.e.,* whether made or refinanced before or after April 1, 2013).

The provisions of the final rule apply to all securitizations issued on or after April 1, 2013 (including those securitizations that are collateralized by loans originated before April 1, 2013).

III. Regulatory Analysis and Procedure

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment.[55] For RFA purposes a small institution is defined as one with $175 million or less in assets.

As of June 30, 2012, of the 7,246 insured commercial banks and savings institutions, there were 3,821 small insured depository institutions, as that term is defined for purposes of the RFA. The final rule, however, applies only to institutions with $10 billion or greater in total assets. Consequently, small institutions for purposes of the RFA will experience no significant economic impact from this final rule.

B. Small Business Regulatory Enforcement Fairness Act

The OMB has determined that the final rule is not a ''major rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) Public Law 110–28 (1996). As required by law, the FDIC will file the appropriate reports with Congress and the Government Accountability Office so that the final rule may be reviewed.

C. Paperwork Reduction Act

1. Request for Comment on Information Collection

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) the FDIC 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 collections of information contained in this final rule are being submitted to OMB for review.

Interested parties may submit written comments to the FDIC concerning the Paperwork Reduction Act (PRA) implications of this final rule.[56] Comments should be submitted within 60 days from the publication date of this final rule in the **Federal Register**. Commenters should refer to ''PRA Comments—Large Bank Definitions Modifications'' in the subject line. Comments may be submitted by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow instructions for submitting comments on the Agency Web site.
- *Email: Comments@FDIC.gov.* Include ''PRA Comments—Large and Highly Complex Institutions Definitions, 3064–AD92'' in the subject line of the message.
- *Mail:* Gary A. Kuiper, Counsel, F–1086, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

Comment is solicited on:

(1) Whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the collections of information, including the validity of the methodology and assumptions used;

(3) The quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collections 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; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

2. Amendment to Information Collection OMB Number: 3064–0179

(a) *Alternative Probability of Default Methodologies.* This final rule, amending 12 CFR Part 327, to revise definitions used to determine assessment rates for large and highly complex insured depository institutions includes a provision allowing large and highly complex institutions to make a written request to the FDIC to use alternative methodologies when estimating two-year probabilities of default (PD). Under the final rule, institutions may request to use default rates calculated using fewer observations or score bands than the specified minimums, either in advance of or concurrent with reporting under that methodology. An institution's request must explain how the requested approach differs from the rule specifications and include, at a minimum, a table with default rates and the number of observations used in each score and product segment. The FDIC will evaluate the proposed methodology and may request additional information from the institution, which the institution must provide. The institution may report using its approach while the FDIC evaluates the request. After reviewing the request, the FDIC may determine that the institution's approach is unacceptable; if so, the institution will be required to amend its Call Reports and report according to the generally applicable specifications for PD estimation in the final rule; the institution will be required to submit amended information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination.

(b) *Alternative Probability of Default Methodologies for Foreign Consumer Loans.* The final rule also includes a provision allowing institutions to determine whether certain foreign consumer loans are higher-risk loans. One provision permits a bank that is required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework to estimate the two-year PD of a foreign consumer loan based on the one-year PD used for capital purposes when it is unable to reasonably estimate the two-year PD according to the final rule specifications. To do this, the bank must submit a written request to the FDIC in advance of, or concurrent with, reporting under that methodology. The request must explain in detail how one-year PDs calculated under the Basel framework are translated to two-year PDs that meet the final rule specifications. While the range of acceptable approaches is potentially broad, any proposed methodology must meet certain requirements spelled out in the final rule. The bank may report

[55] See 5 U.S.C. 603, 604 and 605.

[56] The Notice of Proposed Rulemaking did not include a Paperwork Reduction Act notice for the *Alternative Probability of Default Methodologies or the Alternative Probability of Default Methodologies for Foreign Loans;* the former was inadvertently omitted; the latter was not proposed in the NPR but was added at the request of commenters on the NPR.

using its proposed Basel II approach while the FDIC evaluates the methodology. If, after reviewing the request, the FDIC determines that the methodology is unacceptable, the institution will be required to amend its Call Reports. The institution will be required to submit amended information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination. Another provision of the final rule permits an institution to use its own approach to determine whether certain foreign loans are higher-risk loans, provided the FDIC first approves that approach. The bank must submit its proposed approach to the FDIC and the FDIC will notify the bank whether the approach is acceptable. The FDIC may request additional information from the bank regarding the proposed methodology and the bank must provide the information. The FDIC may grant a bank tentative approval to use a methodology while the FDIC considers it in more detail; if the FDIC ultimately disapproves the methodology, the bank will be required to amend all Call Reports affected by the disapproved methodology.

In conjunction with publication of this final rule amending 12 CFR Part 327 to revise definitions used to determine assessment rates for large and highly complex insured depository institutions, the FDIC has submitted to OMB a request for clearance of the paperwork burden associated with these processes for requesting a change in methodologies. That request is pending.

(1) Title: ''Large and Highly Complex Institutions Definitions—Alternative Probability of Default Methodologies.''

Respondents: Large and Highly Complex insured depository institutions

Number of Responses: 0–20 per year

Frequency of Response: Occasional

Average number of hours to prepare a response: 10–40

Total Annual Burden: 0–800 hours

(2) Title: ''Large and Highly Complex Institutions Definitions—Alternative Probability of Default for Foreign Loans.''

Respondents: Large and Highly Complex insured depository institutions

Number of Responses: 0–20 per year

Frequency of Response: Occasional

Average number of hours to prepare a response: 10–40

Total Annual Burden: 0–800 hours

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Bank deposit insurance, Banks, Savings Associations.

For the reasons set forth above, the FDIC amends 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1813, 1815, 1817–19, 1821.

■ 2. Revise Section VI of Appendix A to subpart A of part 327 to read as follows:

Appendix A to Subpart A of Part 327—Method to Derive Pricing Multipliers and Uniform Amount

* * * * *

VI. Description of Scorecard Measures

Scorecard measures [1]	Description
Tier 1 Leverage Ratio	Tier 1 capital for Prompt Corrective Action (PCA) divided by adjusted average assets based on the definition for prompt corrective action.
Concentration Measure for Large Insured depository institutions (excluding Highly Complex Institutions).	The concentration score for large institutions is the higher of the following two scores:
(1) Higher-Risk Assets/Tier 1 Capital and Reserves	Sum of construction and land development (C&D) loans (funded and unfunded), higher-risk C&I loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the ratio.
(2) Growth-Adjusted Portfolio Concentrations	The measure is calculated in the following steps: (1) Concentration levels (as a ratio to Tier 1 capital and reserves) are calculated for each broad portfolio category: • C&D, • Other commercial real estate loans, • First lien residential mortgages (including non-agency residential mortgage-backed securities), • Closed-end junior liens and home equity lines of credit (HELOCs), • Commercial and industrial loans, • Credit card loans, and • Cther consumer loans. (2) Risk weights are assigned to each loan category based on historical loss rates. (3) Concentration levels are multiplied by risk weights and squared to produce a risk-adjusted concentration ratio for each portfolio. (4) Three-year merger-adjusted portfolio growth rates are then scaled to a growth factor of 1 to 1.2 where a 3-year cumulative growth rate of 20 percent or less equals a factor of 1 and a growth rate of 80 percent or greater equals a factor of 1.2. If three years of data are not available, a growth factor of 1 will be assigned. (5) The risk-adjusted concentration ratio for each portfolio is multiplied by the growth factor and resulting values are summed. See Appendix C for the detailed description of the measure.
Concentration Measure for Highly Complex Institutions	Concentration score for highly complex institutions is the highest of the following three scores:

Scorecard measures [1]	Description
(1) Higher-Risk Assets/Tier 1 Capital and Reserves	Sum of C&D loans (funded and unfunded), higher-risk C&I loans (funded and unfunded), nontraditional mortgages, higher-risk consumer loans, and higher-risk securitizations divided by Tier 1 capital and reserves. See Appendix C for the detailed description of the measure.
(2) Top 20 Counterparty Exposure/Tier 1 Capital and Reserves.	Sum of the total exposure amount to the largest 20 counterparties (in terms of exposure amount) divided by Tier 1 capital and reserves. Counterparty exposure is equal to the sum of Exposure at Default (EAD) associated with derivatives trading and Securities Financing Transactions (SFTs) and the gross lending exposure (including all unfunded commitments) for each counterparty or borrower at the consolidated entity level.[2]
(3) Largest Counterparty Exposure/Tier 1 Capital and Reserves.	The amount of exposure to the largest counterparty (in terms of exposure amount) divided by Tier 1 capital and reserves. Counterparty exposure is equal to the sum of EAD associated with derivatives trading and SFTs and the gross lending exposure (including all unfunded commitments) for each counterparty or borrower at the consolidated entity level.
Core Earnings/Average Quarter-End Total Assets	Core earnings are defined as net income less extraordinary items and tax-adjusted realized gains and losses on available-for-sale (AFS) and held-to-maturity (HTM) securities, adjusted for mergers. The ratio takes a four-quarter sum of merger-adjusted core earnings and divides it by an average of five quarter-end total assets (most recent and four prior quarters). If four quarters of data on core earnings are not available, data for quarters that are available will be added and annualized. If five quarters of data on total assets are not available, data for quarters that are available will be averaged.
Credit Quality Measure	The credit quality score is the higher of the following two scores:
(1) Criticized and Classified Items/Tier 1 Capital and Reserves.	Sum of criticized and classified items divided by the sum of Tier 1 capital and reserves. Criticized and classified items include items an institution or its primary federal regulator have graded ''Special Mention'' or worse and include retail items under Uniform Retail Classification Guidelines, securities, funded and unfunded loans, other real estate owned (ORE), other assets, and marked-to-market counterparty positions, less credit valuation adjustments.[3] Criticized and classified items exclude loans and securities in trading books, and the amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions.
(2) Underperforming Assets/Tier 1 Capital and Reserves	Sum of loans that are 30 days or more past due and still accruing interest, nonaccrual loans, restructured loans (including restructured 1–4 family loans), and ORE, excluding the maximum amount recoverable from the U.S. government, its agencies, or government-sponsored enterprises, under guarantee or insurance provisions, divided by a sum of Tier 1 capital and reserves.
Core Deposits/Total Liabilities	Total domestic deposits excluding brokered deposits and uninsured non-brokered time deposits divided by total liabilities.
Balance Sheet Liquidity Ratio	Sum of cash and balances due from depository institutions, federal funds sold and securities purchased under agreements to resell, and the market value of available for sale and held to maturity agency securities (excludes agency mortgage-backed securities but includes all other agency securities issued by the U.S. Treasury, U.S. government agencies, and U.S. government-sponsored enterprises) divided by the sum of federal funds purchased and repurchase agreements, other borrowings (including FHLB) with a remaining maturity of one year or less, 5 percent of insured domestic deposits, and 10 percent of uninsured domestic and foreign deposits.[4]
Potential Losses/Total Domestic Deposits (Loss Severity Measure).	Potential losses to the DIF in the event of failure divided by total domestic deposits. Appendix D describes the calculation of the loss severity measure in detail.
Market Risk Measure for Highly Complex Institutions	The market risk score is a weighted average of the following three scores:
(1) Trading Revenue Volatility/Tier 1 Capital	Trailing 4-quarter standard deviation of quarterly trading revenue (merger-adjusted) divided by Tier 1 capital.
(2) Market Risk Capital/Tier 1 Capital	Market risk capital divided by Tier 1 capital.[5]
(3) Level 3 Trading Assets/Tier 1 Capital	Level 3 trading assets divided by Tier 1 capital.
Average Short-term Funding/Average Total Assets	Quarterly average of federal funds purchased and repurchase agreements divided by the quarterly average of total assets as reported on Schedule RC–K of the Call Reports

[1] The FDIC retains the flexibility, as part of the risk-based assessment system, without the necessity of additional notice-and-comment rulemaking, to update the minimum and maximum cutoff values for all measures used in the scorecard. The FDIC may update the minimum and maximum cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio in order to maintain an approximately similar distribution of higher-risk assets to Tier 1 capital and reserves ratio scores as reported prior to April 1, 2013, or to avoid changing the overall amount of assessment revenue collected. 76 FR 10672, 10700 (February 25, 2011). The FDIC will review changes in the distribution of the higher-risk assets to Tier 1 capital and reserves ratio scores and the resulting effect on total assessments and risk differentiation between banks when determining changes to the cutoffs. The FDIC may update the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio more frequently than annually. The FDIC will provide banks with a minimum one quarter advance notice of changes in the cutoff values for the higher-risk assets to Tier 1 capital and reserves ratio with their quarterly deposit insurance invoice.

[2] EAD and SFTs are defined and described in the compilation issued by the Basel Committee on Banking Supervision in its June 2006 document, ''International Convergence of Capital Measurement and Capital Standards.'' The definitions are described in detail in Annex 4 of the document. Any updates to the Basel II capital treatment of counterparty credit risk would be implemented as they are adopted. *http://www.bis.org/publ/bcbs128.pdf*

[3] A marked-to-market counterparty position is equal to the sum of the net marked-to-market derivative exposures for each counterparty. The net marked-to-market derivative exposure equals the sum of all positive marked-to-market exposures net of legally enforceable netting provisions and net of all collateral held under a legally enforceable CSA plus any exposure where excess collateral has been posted to the counterparty. For purposes of the Criticized and Classified Items/Tier 1 Capital and Reserves definition a marked-to-market counterparty position less any credit valuation adjustment can never be less than zero.

[4] Deposit runoff rates for the balance sheet liquidity ratio reflect changes issued by the Basel Committee on Banking Supervision in its December 2010 document, ''Basel III: International Framework for liquidity risk measurement, standards, and monitoring,'' *http://www.bis.org/publ/bcbs188.pdf*.

[5] Market risk capital is defined in Appendix C of Part 325 of the FDIC Rules and Regulations,. *http://www.fdic.gov/regulations/laws/rules/2000–4800.html#fdic2000appendixctopart325*.

■ 3. Revise Appendix C to subpart A of part 327 to read as follows:

Appendix C to Subpart A to Part 327

I. Concentration Measures

The concentration score for large banks is the higher of the higher-risk assets to Tier 1 capital and reserves score or the growth-adjusted portfolio concentrations score.[1] The concentration score for highly complex institutions is the highest of the higher-risk assets to Tier 1 capital and reserves score, the Top 20 counterparty exposure to Tier 1 capital and reserves score, or the largest counterparty to Tier 1 capital and reserves score. The higher-risk assets to Tier 1 capital and reserves ratio and the growth-adjusted portfolio concentration measure are described herein.

A. Higher-Risk Assets/Tier 1 Capital and Reserves

The higher-risk assets to Tier 1 capital and reserves ratio is the sum of the concentrations in each of five risk areas described below and is calculated as:

$$H_i = \sum_{k=1}^{5} \left(\frac{\text{Amount of Exposure}_{i,k}}{\text{Tier 1 Capital} + \text{Reserves}_i} \right)$$

Where:

H_i is bank *i*'s higher-risk concentration measure and *k* is a risk area.[2] The five risk areas (*k*) are: construction and land development (C&D) loans; higher-risk commercial and industrial (C&I) loans and securities; higher-risk consumer loans; nontraditional mortgage loans; and higher-risk securitizations.

1. Construction and Land Development Loans

Construction and land development loans include construction and land development loans outstanding and unfunded commitments to fund construction and land development loans, whether irrevocable or unconditionally cancellable.[3]

2. Higher-Risk Commercial and Industrial (C&I) Loans and Securities

Definitions

Higher-Risk C&I Loans and Securities

Higher-risk C&I loans and securities are:

(a) All commercial and industrial (C&I) loans (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) owed to the reporting bank (*i.e.,* the bank filing its report of condition and income, or Call Report) by a higher-risk C&I borrower, as that term is defined herein, regardless when the loans were made;[4] [5] and

(b) All securities, except securities classified as trading book, issued by a higher-risk C&I borrower, as that term is defined herein, that are owned by the reporting bank, without regard to when the securities were purchased; however, higher-risk C&I loans and securities exclude:

(a) The maximum amount that is recoverable from the U.S. government under guarantee or insurance provisions;

(b) Loans (including syndicated or participated loans) that are fully secured by cash collateral as provided herein;

(c) Loans that are eligible for the asset-based lending exclusion, described herein, provided the bank's primary federal regulator (PFR) has not cited a criticism (included in the Matters Requiring Attention, or MRA) of the bank's controls or administration of its asset-based loan portfolio; and

(d) Loans that are eligible for the floor plan lending exclusion, described herein, provided the bank's PFR has not cited a criticism (included in the MRA) of the bank's controls or administration of its floor plan loan portfolio.

Higher-Risk C&I Borrower

A ''higher-risk C&I borrower'' is a borrower that:

(a) Owes the reporting bank on a C&I loan originally made on or after April 1, 2013, if:

(i) The C&I loan has an original amount (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) of at least $5 million;

(ii) The loan meets the purpose and materiality tests described herein; and

(iii) When the loan is made, the borrower meets the leverage test described herein; or

(b) Obtains a refinance, as that term is defined herein, of an existing C&I loan, where the refinance occurs on or after April 1, 2013, and the refinanced loan is owed to the reporting bank, if:

(i) The refinanced loan is in an amount (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) of at least $5 million;

(ii) The C&I loan being refinanced met the purpose and materiality tests (described herein) when it was originally made;

(iii) The original loan was made no more than 5 years before the refinanced loan; and

(iv) When the loan is refinanced, the borrower meets the leverage test.

When a bank acquires a C&I loan originally made on or after April 1, 2013, by another lender, it must determine whether the borrower is a higher-risk borrower as a result of the loan as soon as reasonably practicable, but not later than one year after acquisition. When a bank acquires loans from another entity on a recurring or programmatic basis, however, the bank must determine whether the borrower is a higher-risk borrower as a result of the loan as soon as is practicable, but not later than three months after the date of acquisition.

A borrower ceases to be a ''higher-risk C&I borrower'' only if:

[1] For the purposes of this Appendix, the term ''bank'' means insured depository institution.

[2] The higher-risk concentration ratio is rounded to two decimal points.

[3] Construction and land development loans are as defined in the instructions to Call Report Schedule RC–C Part I—Loans and Leases, as they may be amended from time to time, and include items reported on line items RC–C 1.a.1 (1–4 family residential construction loans), RC–C 1.a.2. (Other construction loans and all land development and other land loans), and RC–O M.10.a (Total unfunded commitments to fund construction, land development, and other land loans secured by real estate), and exclude RC–O M.10.b (Portion of unfunded commitments to fund construction, land development and other loans that are guaranteed or insured by the U.S. government, including the FDIC), RC–O M.13.a (Portion of funded construction, land development, and other land loans guaranteed or insured by the U.S. government, excluding FDIC loss sharing agreements), RC–M 13a.1.a.1 (1–4 family construction and land development loans covered by loss sharing agreements with the FDIC), and RC–M 13a.1.a.2 (Other construction loans and all land development loans covered by loss sharing agreements with the FDIC).

[4] Commercial and industrial loans are as defined as commercial and industrial loans in the instructions to Call Report Schedule RC–C Part I—Loans and Leases, as they may be amended from time to time. This definition includes purchased credit impaired loans and overdrafts.

[5] Unfunded commitments are defined as unused commitments, as this term is defined in the instructions to Call Report Schedule RC–L, Derivatives and Off-Balance Sheet Items, as they may be amended from time to time.

(a) The borrower no longer has any C&I loans owed to the reporting bank that, when originally made, met the purpose and materiality tests described herein;

(b) The borrower has such loans outstanding owed to the reporting bank, but they have all been refinanced more than 5 years after originally being made; or

(c) The reporting bank makes a new C&I loan or refinances an existing C&I loan and the borrower no longer meets the leverage test described herein.

Original Amount

The original amount of a loan, including the amounts to aggregate for purposes of arriving at the original amount, as described herein, is:

(a) For C&I loans drawn down under lines of credit or loan commitments, the amount of the line of credit or loan commitment on the date of its most recent approval, extension or renewal prior to the date of the most recent Call Report; if, however, the amount currently outstanding on the loan as of the date of the bank's most recent Call Report exceeds this amount, then the original amount of the loan is the amount outstanding as of the date of the bank's most recent Call Report.

(b) For syndicated or participated C&I loans, the total amount of the loan, rather than just the syndicated or participated portion held by the individual reporting bank.

(c) For all other C&I loans (whether term or non-revolver loans), the total amount of the loan as of origination or the amount outstanding as of the date of the bank's most recent Call Report, whichever is larger.

For purposes of defining original amount and a higher-risk C&I borrower:

(a) All C&I loans that a borrower owes to the reporting bank that meet the purpose test when made, and that are made within six months of each other, must be aggregated to determine the original amount of the loan; however, only loans in the original amount of $1 million or more must be aggregated; and further provided, that loans made before the April 1, 2013, need not be aggregated.

(b) When a C&I loan is refinanced through more than one loan, and the loans are made within six months of each other, they must be aggregated to determine the original amount.

Refinance

For purposes of a C&I loan, a refinance includes:

(a) Replacing an original obligation by a new or modified obligation or loan agreement;

(b) Increasing the master commitment of the line of credit (but not adjusting sub-limits under the master commitment);

(c) Disbursing additional money other than amounts already committed to the borrower;

(d) Extending the legal maturity date;

(e) Rescheduling principal or interest payments to create or increase a balloon payment;

(f) Releasing a substantial amount of collateral;

(g) Consolidating multiple existing obligations; or

(h) Increasing or decreasing the interest rate.

A refinance of a C&I loan does not include a modification or series of modifications to a commercial loan other than as described above or modifications to a commercial loan that would otherwise meet this definition of refinance, but that result in the classification of a loan as a troubled debt restructuring (TDR), as this term is defined in the glossary of the Call Report instructions, as they may be amended from time to time.

Purpose Test

A loan or refinance meets the purpose test if it is to finance:

(a) A buyout, defined as the purchase or repurchase by the borrower of the borrower's outstanding equity, including, but not limited to, an equity buyout or funding an Employee Stock Ownership Plan (ESOP);

(b) An acquisition, defined as the purchase by the borrower of any equity interest in another company, or the purchase of all or a substantial portion of the assets of another company; or

(c) A capital distribution, defined as a dividend payment or other transaction designed to enhance shareholder value, including, but not limited to, a repurchase of stock.

At the time of refinance, whether the original loan met the purpose test may not be easily determined by a new lender. In such a case, the new lender must use its best efforts and reasonable due diligence to determine whether the original loan met the test.

Materiality Test

A loan or refinance meets the materiality test if:

(a) The original amount of the loan (including funded amounts and the amount of unfunded commitments, whether irrevocable or unconditionally cancellable) equals or exceeds 20 percent of the total funded debt of the borrower; total funded debt of the borrower is to be determined as of the date of the original loan and does not include the loan to which the materiality test is being applied; or

(b) Before the loan was made, the borrower had no funded debt.

When multiple loans must be aggregated to determine the original amount, the materiality test is applied as of the date of the most recent loan.

At the time of refinance, whether the original loan met the materiality test may not be easily determined by a new lender. In such a case, the new lender must use its best efforts and reasonable due diligence to determine whether the original loan met the test.

Leverage Test

A borrower meets the leverage test if:

(a) The ratio of the borrower's total debt to trailing twelve-month EBITDA (commonly known as the operating leverage ratio) is greater than 4; or

(b) The ratio of the borrower's senior debt to trailing twelve-month EBITDA (also commonly known as the operating leverage ratio) is greater than 3.

EBITDA is defined as earnings before interest, taxes, depreciation, and amortization.

Total debt is defined as all interest-bearing financial obligations and includes, but is not limited to, overdrafts, borrowings, repurchase agreements (repos), trust receipts, bankers acceptances, debentures, bonds, loans (including those secured by mortgages), sinking funds, capital (finance) lease obligations (including those obligations that are convertible, redeemable or retractable), mandatory redeemable preferred and trust preferred securities accounted for as liabilities in accordance with ASC Subtopic 480–10, Distinguishing Liabilities from Equity—Overall (formerly FASB Statement No. 150, ''Accounting for Certain Financial Instruments with Characteristics of both Liabilities and Equity''), and subordinated capital notes. Total debt excludes pension obligations, deferred tax liabilities and preferred equity.

Senior debt includes any portion of total debt that has a priority claim on any of the borrower's assets. A priority claim is a claim that entitles the holder to priority of payment over other debt holders in bankruptcy.

When calculating either of the borrower's operating leverage ratios, the only permitted EBITDA adjustments are those specifically permitted for that borrower in the loan agreement (at the time of underwriting) and only funded amounts of lines of credit must be considered debt.

The debt-to-EBITDA ratio must be calculated using the consolidated financial statements of the borrower. If the loan is made to a subsidiary of a larger organization, the debt-to-EBITDA ratio may be calculated using the financial statements of the subsidiary or, if the parent company has unconditionally and irrevocably guaranteed the borrower's debt, using the consolidated financial statements of the parent company.

In the case of a merger of two companies or the acquisition of one or more companies or parts of companies, pro-forma debt is to be used as well as the trailing twelve-month pro-forma EBITDA for the combined companies. When calculating the trailing pro-forma EBITDA for the combined company, no adjustments are allowed for economies of scale or projected cost savings that may be realized subsequent to the acquisition unless specifically permitted for that borrower under the loan agreement.

Exclusions

Cash Collateral Exclusion

To exclude a loan based on cash collateral, the cash must be in the form of a savings or time deposit held by a bank. The bank (or lead bank or agent bank in the case of a participation or syndication) must have a perfected first priority security interest, a security agreement, and a collateral assignment of the deposit account that is irrevocable for the remaining term of the loan or commitment. In addition, the bank must place a hold on the deposit account that alerts the bank's employees to an attempted withdrawal. If the cash collateral is held at another bank or at multiple banks, a security agreement must be in place and each bank must have an account control agreementin place.[6] For the exclusion to apply to a

[6] An account control agreement, for purposes of this Appendix, means a written agreement between

revolving line of credit, the cash collateral must be equal to or greater than the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan).

Asset-Based and Floor Plan Lending Exclusions

The FDIC retains the authority to verify that banks have sound internal controls and administration practices for asset-based and floor plan loans that are excluded from a bank's reported higher-risk C&I loans and securities totals. If the bank's PFR has cited a criticism of the bank's controls or administration of its asset-based or floor plan loan portfolios in an MRA, the bank is not eligible for the asset-based or floor plan lending exclusions.

Asset-Based Lending Conditions

Asset-based loans (loans secured by accounts receivable and inventory) that meet all the following conditions are excluded from a bank's higher-risk C&I loan totals:

(a) The loan is managed by a loan officer or group of loan officers at the reporting bank who have experience in asset-based lending and collateral monitoring, including, but not limited to, experience in reviewing the following: Collateral reports, borrowing base certificates (which are discussed herein), collateral audit reports, loan-to-collateral values (LTV), and loan limits, using procedures common to the industry.

(b) The bank has taken, or has the legally enforceable ability to take, dominion over the borrower's deposit accounts such that proceeds of collateral are applied to the loan balance as collected. Security agreements must be in place in all cases; in addition, if a borrower's deposit account is held at a bank other than the lending bank, an account control agreement must also be in place.

(c) The bank has a perfected first priority security interest in all assets included in the borrowing base certificate.

(d) If the loan is a credit facility (revolving or term loan), it must be fully secured by self-liquidating assets such as accounts receivable and inventory.[7] Other non-self-liquidating assets may be part of the borrowing base, but the outstanding balance of the loan must be fully secured by the portion of the borrowing base that is composed of self-liquidating assets. Fully secured is defined as a 100 percent or lower LTV ratio after applying the appropriate discounts (determined by the loan agreement) to the collateral. If an over advance (including a seasonal over advance) causes the LTV to exceed 100 percent, the loan may not be excluded from higher-risk C&I loans owed by a higher-risk C&I borrower. Additionally, the bank must have the ability to withhold funding of a draw or advance if the loan amount exceeds the amount allowed by the collateral formula.

(e) A bank's lending policy or procedures must address the maintenance of an accounts receivable loan agreement with the borrower. This loan agreement must establish a maximum percentage advance, which cannot exceed 85 percent, against eligible accounts receivable, include a maximum dollar amount due from any one account debtor, address the financial strength of debtor accounts, and define eligible receivables. The definition of eligible receivables must consider the receivable quality, the turnover and dilution rates of receivables pledged, the aging of accounts receivable, the concentrations of debtor accounts, and the performance of the receivables related to their terms of sale.

Concentration of debtor accounts is the percentage value of receivables associated with one or a few customers relative to the total value of receivables. Turnover of receivables is the velocity at which receivables are collected. The dilution rate is the uncollectible accounts receivable as a percentage of sales.

Ineligibles must be established for any debtor account where there is concern that the debtor may not pay according to terms. Monthly accounts receivable agings must be received in sufficient detail to allow the bank to compute the required ineligibles. At a minimum, the following items must be deemed ineligible accounts receivable:

(i) Accounts receivable balances over 90 days beyond invoice date or 60 days past due, depending upon custom with respect to a particular industry with appropriate adjustments made for dated billings;

(ii) Entire account balances where over 50 percent of the account is over 60 days past due or 90 days past invoice date;

(iii) Accounts arising from sources other than trade (*e.g.,* royalties, rebates);

(iv) Consignment or guaranteed sales;

(v) Notes receivable;

(vi) Progress billings;

(vii) Account balances in excess of limits appropriate to account debtor's credit worthiness or unduly concentrated by industry, location or customer;

(viii) Affiliate and intercompany accounts; and

(ix) Foreign accounts receivable.

(f) Loans against inventory must be made with advance rates no more than 65 percent of eligible inventory (at the lower of cost valued on a first-in, first-out (FIFO) basis or market) based on an analysis of realizable value. When an appraisal is obtained, or there is a readily determinable market price for the inventory, however, up to 85 percent of the net orderly liquidation value (NOLV) or the market price of the inventory may be financed. Inventory must be valued or appraised by an independent third-party appraiser using NOLV, fair value, or forced sale value (versus a ''going concern'' value), whichever is appropriate, to arrive at a net realizable value. Appraisals are to be prepared in accordance with industry standards, unless there is a readily available and determinable market price for the inventory (*e.g.,* in the case of various commodities), from a recognized exchange or third-party industry source, and a readily available market (*e.g.,* for aluminum, crude oil, steel, and other traded commodities); in that case, inventory may be valued using current market value. When relying upon current market value rather than an independent appraisal, the reporting bank's management must update the value of inventory as market prices for the product change. Valuation updates must be as frequent as needed to ensure compliance with margin requirements. In addition, appropriate mark-to-market reserves must be established to protect against excessive inventory price fluctuations. An asset has a readily identifiable and publicly available market price if the asset's price is quoted routinely in a widely disseminated publication that is readily available to the general public.

(g) A bank's lending policy or procedures must address the maintenance of an inventory loan agreement with the borrower. This loan agreement must establish a maximum percentage advance rate against acceptable inventory, address acceptable appraisal and valuation requirements, and define acceptable and ineligible inventory. Ineligibles must be established for inventory that exhibit characteristics that make it difficult to achieve a realizable value or to obtain possession of the inventory. Monthly inventory agings must be received in sufficient detail to allow the bank to compute the required ineligibles. At a minimum, ineligible inventory must include:

(i) Slow moving, obsolete inventory and items turning materially slower than industry average;

(ii) Inventory with value to the client only, which is generally work in process, but may include raw materials used solely in the client's manufacturing process;

(iii) Consigned inventory or other inventory where a perfected security interest cannot be obtained;

(iv) Off-premise inventory subject to a mechanic's or other lien; and

(v) Specialized, high technology or other inventory subject to rapid obsolescence or valuation problems.

(h) The bank must maintain documentation of borrowing base certificate reviews and collateral trend analyses to demonstrate that collateral values are actively, routinely and consistently monitored. A borrowing base certificate is a form prepared by the borrower that reflects the current status of the collateral. A new borrowing base certificate must be obtained within 30 days before or after each draw or advance on a loan. A bank is required to validate the borrowing base through asset-based tracking reports. The borrowing base validation process must include the bank requesting from the borrower a list of accounts receivable by creditor and a list of individual items of inventory and the bank certifying that the outstanding balance of the loan remains within the collateral formula prescribed by the loan agreement. Any discrepancies between the list of accounts receivable and

the lending bank (the secured party), the borrower, and the bank that holds the deposit account serving as collateral (the depository bank), that the depository bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the borrower (or any other party).

[7] An asset is self-liquidating if, in the event the borrower defaults, the asset can be easily liquidated and the proceeds of the sale of the assets would be used to pay down the loan. These assets can include machinery, heavy equipment or rental equipment if the machinery or equipment is inventory for the borrower's primary business and the machinery or equipment is included in the borrowing base.

inventory and the borrowing base certificate must be reconciled with the borrower. Periodic, but no less than annual, field examinations (audits) must also be performed by individuals who are independent of the credit origination or administration process. There must be a process in place to ensure that the bank is correcting audit exceptions.

Floor Plan Lending Conditions

Floor plan loans may include, but are not limited to, loans to finance the purchase of various vehicles or equipment including automobiles, boat or marine equipment, recreational vehicles (RV), motorized watersports vehicles such as jet skis, or motorized lawn and garden equipment such as tractor lawnmowers. Floor plan loans that meet all the following conditions are excluded from a bank's higher-risk C&I loan totals:

(a) The loan is managed by a loan officer or a group of loan officers at the reporting bank who are experienced in floor plan lending and monitoring collateral to ensure the borrower remains in compliance with floor plan limits and repayment requirements. Loan officers must have experience in reviewing certain items, including but not limited to: Collateral reports, floor plan limits, floor plan aging reports, vehicle inventory audits or inspections, and LTV ratios. The bank must obtain and review financial statements of the borrower (*e.g.,* tax returns, company-prepared financial statements, or dealer statements) on at least a quarterly basis to ensure that adequate controls are in place. (A ''dealer statement'' is the standard format financial statement issued by Original Equipment Manufacturers (OEMs) and used by nationally recognized automobile dealer floor plan lenders.)

(b) For automobile floor plans, each loan advance must be made against a specific automobile under a borrowing base certificate held as collateral at no more than 100 percent of (i) dealer invoice plus freight charges (for new vehicles) or (ii) the cost of a used automobile at auction or the wholesale value using the prevailing market guide (*e.g.,* NADA, Black Book, Blue Book). The advance rate of 100 percent of dealer invoice plus freight charges on new automobiles, and the advance rate of the cost of a used automobile at auction or the wholesale value, may only be used where there is a manufacturer repurchase agreement or an aggressive curtailment program in place that is tracked by the bank over time and subject to strong controls. Otherwise, permissible advance rates must be lower than 100 percent.

(c) Advance rates on vehicles other than automobiles must conform to industry standards for advance rates on such inventory, but may never exceed 100 percent of dealer invoice plus freight charges on new vehicles or 100 percent of the cost of a used vehicle at auction or its wholesale value.

(d) Each loan is self-liquidating (*i.e.,* if the borrower defaulted on the loan, the collateral could be easily liquidated and the proceeds of the sale of the collateral would be used to pay down the loan advance).

(e) Vehicle inventories and collateral values are closely monitored, including the completion of regular (at least quarterly) dealership automotive or other vehicle dealer inventory audits or inspections to ensure accurate accounting for all vehicles held as collateral. The lending bank or a third party must prepare inventory audit reports and inspection reports for loans to automotive dealerships, or loans to other vehicle dealers, and the lending bank must review the reports at least quarterly. The reports must list all vehicles held as collateral and verify that the collateral is in the dealer's possession.

(f) Floor plan aging reports must be reviewed by the bank as frequently as required under the loan agreement, but no less frequently than quarterly. Floor plan aging reports must reflect specific information about each automobile or vehicle being financed (*e.g.,* the make, model, and color of the automobile or other vehicle, and origination date of the loan to finance the automobile or vehicle). Curtailment programs should be instituted where necessary and banks must ensure that curtailment payments are made on stale automotive or other vehicle inventory financed under the floor plan loan.

Detailed Reports

Examples of detailed reports that must be provided to the asset-based and floor plan lending bank include:

(a) Borrowing Base Certificates: Borrowing base certificates, along with supporting information, must include:

(i) The accounts receivable balance (rolled forward from the previous certificate);

(ii) Sales (reported as gross billings) with detailed adjustments for returns and allowances to allow for proper tracking of dilution and other reductions in collateral;

(iii) Detailed inventory information (*e.g.,* raw materials, work-in-process, finished goods); and

(iv) Detail of loan activity.

(b) Accounts Receivable and Inventory Detail: A listing of accounts receivable and inventory that is included on the borrowing base certificate. Monthly accounts receivable and inventory agings must be received in sufficient detail to allow the lender to compute the required ineligibles.

(c) Accounts Payable Detail: A listing of each accounts payable owed to the borrower. Monthly accounts payable agings must be received to monitor payable performance and anticipated working capital needs.

(d) Covenant Compliance Certificates: A listing of each loan covenant and the borrower's compliance with each one. Borrowers must submit Covenant Compliance Certificates, generally on a monthly or quarterly basis (depending on the terms of the loan agreement) to monitor compliance with the covenants outlined in the loan agreement. Non-compliance with any covenants must be promptly addressed.

(e) Dealership Automotive Inventory or Other Vehicle Inventory Audits or Inspections: The bank or a third party must prepare inventory audit reports or inspection reports for loans to automotive dealerships and other vehicle dealerships. The bank must review the reports at least quarterly. The reports must list all vehicles held as collateral and verify that the collateral is in the dealer's possession.

(f) Floor Plan Aging Reports: Borrowers must submit floor plan aging reports on a monthly or quarterly basis (depending on the terms of the loan agreement). These reports must reflect specific information about each automobile or other type of vehicle being financed (*e.g.,* the make, model, and color of the automobile or other type of vehicle, and origination date of the loan to finance the automobile or other type of vehicle).

3. Higher-Risk Consumer Loans

Definitions

Higher-risk consumer loans are defined as all consumer loans where, as of origination, or, if the loan has been refinanced, as of refinance, the probability of default (PD) within two years (the two-year PD) is greater than 20 percent, excluding those consumer loans that meet the definition of a nontraditional mortgage loan.[8] [9]

Higher-risk consumer loans exclude:

(a) The maximum amounts recoverable from the U.S. government under guarantee or insurance provisions; and

(b) Loans fully secured by cash collateral. To exclude a loan based on cash collateral, the cash must be in the form of a savings or time deposit held by a bank. The lending bank (or lead or agent bank in the case of a participation or syndication) must, in all cases, (including instances in which cash collateral is held at another bank or banks) have a perfected first priority security interest under applicable state law, a security agreement in place, and all necessary documents executed and measures taken as required to result in such perfection and priority. In addition, the lending bank must place a hold on the deposit account that alerts the bank's employees to an attempted withdrawal. For the exclusion to apply to a revolving line of credit, the cash collateral must be equal to, or greater than, the amount of the total loan commitment (the aggregate funded and unfunded balance of the loan).

Banks must determine the PD of a consumer loan as of the date the loan was originated, or, if the loan has been refinanced, as of the date it was refinanced. The two-year PD must be estimated using an approach that conforms to the requirements detailed herein.

[8] For the purposes of this rule, consumer loans consist of all loans secured by 1–4 family residential properties as well as loans and leases made to individuals for household, family, and other personal expenditures, as defined in the instructions to the Call Report, Schedule RC–C, as the instructions may be amended from time to time. Higher-risk consumer loans include purchased credit-impaired loans that meet the definition of higher-risk consumer loans.

[9] The FDIC has the flexibility, as part of its risk-based assessment system, to change the 20 percent threshold for identifying higher-risk consumer loans without further notice-and-comment rulemaking as a result of reviewing data for up to the first two reporting periods after the effective date of this rule. Before making any such change, the FDIC will analyze the potential effect of changing the PD threshold on the distribution of higher-risk consumer loans among banks and the resulting effect on assessments collected from the industry. The FDIC will provide banks with at least one quarter advance notice of any such change to the PD threshold through a Financial Institution Letter.

Loans Originated or Refinanced Before April 1, 2013, and all Acquired Loans

For loans originated or refinanced by a bank before April 1, 2013, and all acquired loans regardless of the date of acquisition, if information as of the date the loan was originated or refinanced is not available, then the bank must use the oldest available information to determine the PD. If no information is available, then the bank must obtain recent, refreshed data from the borrower or other appropriate third party to determine the PD. Refreshed data is defined as the most recent data available, and must be as of a date that is no earlier than three months before the acquisition of the loan. In addition, for loans acquired on or after April 1, 2013, the acquiring bank shall have six months from the date of acquisition to determine the PD.

When a bank acquires loans from another entity on a recurring or programmatic basis, the acquiring bank may determine whether the loan meets the definition of a higher-risk consumer loan using the origination criteria and analysis performed by the original lender only if the acquiring bank verifies the information provided. Loans acquired from another entity are acquired on a recurring basis if a bank has acquired other loans from that entity at least once within the calendar year of the acquisition of the loans in question or in the previous calendar year. If the acquiring bank cannot or does not verify the information provided by the original lender, the acquiring bank must obtain the necessary information from the borrower or other appropriate third party to make its own determination of whether the purchased assets should be classified as a higher-risk consumer loan.

Loans That Meet Both Higher-Risk Consumer Loans and Nontraditional Mortgage Loans Definitions

A loan that meets both the nontraditional mortgage loan and higher-risk consumer loan definitions at the time of origination, or, if the loan has been refinanced, as of refinance, must be reported only as a nontraditional mortgage loan. If, however, the loan ceases to meet the nontraditional mortgage loan definition but continues to meet the definition of a higher-risk consumer loan, the loan is to be reported as a higher-risk consumer loan.

General Requirements for PD Estimation

Scorable Consumer Loans

Estimates of the two-year PD for a loan must be based on the observed, stress period default rate (defined herein) for loans of a similar product type made to consumers with credit risk comparable to the borrower being evaluated. While a bank may consider additional risk factors beyond the product type and credit score (*e.g.,* geography) in estimating the PD of a loan, it must at a minimum account for these two factors. The credit risk assessment must be determined using third party or internal scores derived using a scoring system that qualifies as *empirically derived, demonstrably and statistically sound* as defined in 12 CFR 202.2(p), as it may be amended from time to time, and has been approved by the bank's model risk oversight and governance process and internal audit mechanism. In the case of a consumer loan with a co-signer or co-borrower, the PD may be determined using the most favorable individual credit score.

In estimating the PD based on such scores, banks must adhere to the following requirements:

(a) The PD must be estimated as the average of the two, 24-month default rates observed from July 2007 to June 2009, and July 2009 to June 2011, where the average is calculated according to the following formula and DR_t is the observed default rate over the 24-month period beginning in July of year t:

$$PD = 1 - \sqrt{(1 - DR_{2007})(1 - DR_{2009})}$$

(b) The default rate for each 24-month period must be calculated as the number of active loans that experienced at least one default event during the period divided by the total number of active loans as of the observation date (*i.e.,* the beginning of the 24-month period). An ''active'' loan is defined as any loan that was open and not in default as of the observation date, and on which a payment was made within the 12 months prior to the observation date.

(c) The default rate for each 24-month period must be calculated using a stratified random sample of loans that is sufficient in size to derive statistically meaningful results for the product type and credit score (and any additional risk factors) being evaluated. The product strata must be as homogenous as possible with respect to the factors that influence default, such that products with distinct risk characteristics are evaluated separately. The loans should be sampled based on the credit score as of the observation date, and each 24-month default rate must be calculated using a random sample of at least 1,200 active loans.

(d) Credit score strata must be determined by partitioning the entire credit score range generated by a given scoring system into a minimum of 15 bands. While the width of the credit score bands may vary, the scores within each band must reflect a comparable level of credit risk. Because performance data for scores at the upper and lower extremes of the population distribution is likely to be limited, however, the top and bottom bands may include a range of scores that suggest some variance in credit quality.

(e) Each credit score will need to have a unique PD associated with it. Therefore, when the number of score bands is less than the number of unique credit scores (as will almost always be the case), banks must use a linear interpolation between adjacent default rates to determine the PD for a particular score. The observed default rate for each band must be assumed to correspond to the midpoint of the range for the band. For example, if one score band ranges from 621 to 625 and has an observed default rate of 4 percent, while the next lowest band ranges from 616 to 620 and has an observed default rate of 6 percent, a 620 score must be assigned a default rate of 5.2 percent, calculated as

$$\left(\frac{.04 - .06}{623 - 618}\right) \cdot (620 - 618) + .06 = .052$$

When evaluating scores that fall below the midpoint of the lowest score band or above the midpoint of the highest score band, the interpolation must be based on an assumed adjacent default rate of 1 or 0, respectively.

(f) The credit scores represented in the historical sample must have been produced by the same entity, using the same or substantially similar methodology as the methodology used to derive the credit scores to which the default rates will be applied. For example, the default rate for a particular vendor score cannot be evaluated based on the score-to-default rate relationship for a different vendor, even if the range of scores under both systems is the same. On the other hand, if the current and historical scores were produced by the same vendor using slightly different versions of the same scoring system and equivalent scores represent a similar likelihood of default, then the historical experience could be applied.

(g) A loan is to be considered in default when it is 90+ days past due, charged-off, or the borrower enters bankruptcy.

Unscorable Consumer Loans

For unscorable consumer loans—where the available information about a borrower is insufficient to determine a credit score—the bank will be unable to assign a PD to the loan according to the requirements described above. If the total outstanding balance of the unscorable consumer loans of a particular product type (including, but not limited to, student loans) exceeds 5 percent of the total outstanding balance for that product type, including both foreign and domestic loans, the excess amount shall be treated as higher risk (the de minimis approach). Otherwise, the total outstanding balance of unscorable consumer loans of a particular product type will not be considered higher risk. The consumer product types used to determine whether the 5 percent test is satisfied shall correspond to the product types listed in the table used for reporting PD estimates.

A bank may not develop PD estimates for unscorable loans based on internal data.

If, after the origination or refinance of the loan, an unscorable consumer loan becomes scorable, a bank must reclassify the loan using a PD estimated according to the general requirements above. Based upon that PD, the loan will be determined to be either higher risk or not, and that determination will remain in effect until a refinancing occurs, at which time the loan must be re-evaluated. An unscorable loan must be reviewed at least annually to determine if a credit score has become available.

Alternative Methodologies

A bank may use internally derived default rates that were calculated using fewer observations or score bands than those specified above under certain conditions. The bank must submit a written request to the FDIC either in advance of, or concurrent with, reporting under the requested approach. The request must explain in detail how the proposed approach differs from the rule specifications and the bank must provide support for the statistical appropriateness of the proposed methodology. The request must include, at a minimum, a table with the default rates and

number of observations used in each score and product segment. The FDIC will evaluate the proposed methodology and may request additional information from the bank, which the bank must provide. The bank may report using its proposed approach while the FDIC evaluates the methodology. If, after reviewing the request, the FDIC determines that the bank's methodology is unacceptable, the bank will be required to amend its Call Reports and report according to the generally applicable specifications for PD estimation. The bank will be required to submit amended information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination.

Foreign Consumer Loans

A bank must estimate the PD of a foreign consumer loan according to the general requirements described above unless doing so would be unduly complex or burdensome (*e.g.,* if a bank had to develop separate PD mappings for many different countries). A bank may request to use default rates calculated using fewer observations or score bands than the specified minimums, either in advance of, or concurrent with, reporting under that methodology, but must comply with the requirements detailed above for using an alternative methodology.

When estimating a PD according to the general requirements described above would be unduly complex or burdensome, a bank that is required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may: (1) Use the Basel II approach discussed herein, subject to the terms discussed herein; (2) submit a written request to the FDIC to use its own methodology, but may not use the methodology until approved by the FDIC; or (3) treat the loan as an unscorable consumer loan subject to the de minimis approach described above.

When estimating a PD according to the general requirements described above would be unduly complex or burdensome, a bank that is not required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may: (1) Treat the loan as an unscorable consumer loan subject to the de minimis approach described above; or (2) submit a written request to the FDIC to use its own methodology, but may not use the methodology until approved by the FDIC.

When a bank submits a written request to the FDIC to use its own methodology, the FDIC may request additional information from the bank regarding the proposed methodology and the bank must provide the information. The FDIC may grant a bank tentative approval to use the methodology while the FDIC considers it in more detail. If the FDIC ultimately disapproves the methodology, the bank may be required to amend its Call Reports; however, the bank will be required to amend no more than the two most recently dated and filed Call Reports preceding the FDIC's determination. In the amended Call Reports, the bank must treat any loan whose PD had been estimated using the disapproved methodology as an unscorable domestic consumer loan subject to the de minimis approach described above.

Basel II Approach

A bank that is required to calculate PDs for foreign consumer loans under the requirements of the Basel II capital framework may estimate the two-year PD of a foreign consumer loan based on the one-year PD used for Basel II capital purposes.[10] The bank must submit a written request to the FDIC in advance of, or concurrent with, reporting under that methodology. The request must explain in detail how one-year PDs calculated under the Basel II framework are translated to two-year PDs that meet the requirements above. While the range of acceptable approaches is potentially broad, any proposed methodology must meet the following requirements:

(a) The bank must use data on a sample of loans for which both the one-year Basel II PDs and two-year final rule PDs can be calculated. The sample may contain both foreign and domestic loans.

(b) The bank must use the sample data to demonstrate that a meaningful relationship exists between the two types of PD estimates, and the significance and nature of the relationship must be determined using accepted statistical principles and methodologies. For example, to the extent that a linear relationship exists in the sample data, the bank may use an ordinary least-squares regression to determine the best linear translation of Basel II PDs to final rule PDs. The estimated equation should fit the data reasonably well based on standard statistics such as the coefficient of determination; and

(c) The method must account for any significant variation in the relationship between the two types of PD estimates that exists across consumer products based on the empirical analysis of the data. For example, if the bank is using a linear regression to determine the relationship between PD estimates, it should test whether the parameter estimates are significantly different by product type.

The bank may report using this approach (if it first notifies the FDIC of its intention to do so), while the FDIC evaluates the methodology. If, after reviewing the methodology, the FDIC determines that the methodology is unacceptable, the bank will be required to amend its Call Reports. The bank will be required to submit amended information for no more than the two most recently dated and filed Call Reports preceding the FDIC's determination.

Refinance

For purposes of higher-risk consumer loans, a refinance includes:

(a) Extending new credit or additional funds on an existing loan;

(b) Replacing an existing loan with a new or modified obligation;

(c) Consolidating multiple existing obligations;

(d) Disbursing additional funds to the borrower. Additional funds include a material disbursement of additional funds or, with respect to a line of credit, a material increase in the amount of the line of credit, but not a disbursement, draw, or the writing of convenience checks within the original limits of the line of credit. A material increase in the amount of a line of credit is defined as a 10 percent or greater increase in the quarter-end line of credit limit; however, a temporary increase in a credit card line of credit is not a material increase;

(e) Increasing or decreasing the interest rate (except as noted herein for credit card loans); or

(f) Rescheduling principal or interest payments to create or increase a balloon payment or extend the legal maturity date of the loan by more than six months.

A refinance for this purpose does not include:

(a) A re-aging, defined as returning a delinquent, open-end account to current status without collecting the total amount of principal, interest, and fees that are contractually due, provided:

(i) The re-aging is part of a program that, at a minimum, adheres to the re-aging guidelines recommended in the interagency approved Uniform Retail Credit Classification and Account Management Policy;[11]

(ii) The program has clearly defined policy guidelines and parameters for re-aging, as well as internal methods of ensuring the reasonableness of those guidelines and monitoring their effectiveness; and

(iii) The bank monitors both the number and dollar amount of re-aged accounts, collects and analyzes data to assess the performance of re-aged accounts, and determines the effect of re-aging practices on past due ratios;

(b) Modifications to a loan that would otherwise meet this definition of refinance, but result in the classification of a loan as a TDR;

(c) Any modification made to a consumer loan pursuant to a government program, such as the Home Affordable Modification Program or the Home Affordable Refinance Program;

(d) Deferrals under the Servicemembers Civil Relief Act;

(e) A contractual deferral of payments or change in interest rate that is consistent with the terms of the original loan agreement (*e.g.,* as allowed in some student loans);

(f) Except as provided above, a modification or series of modifications to a closed-end consumer loan;

(g) An advance of funds, an increase in the line of credit, or a change in the interest rate that is consistent with the terms of the loan agreement for an open-end or revolving line of credit (*e.g.,* credit cards or home equity lines of credit);

(h) For credit card loans:

(i) Replacing an existing card because the original is expiring, for security reasons, or

[10] Using these Basel II PDs for this purpose does not imply that a bank's PFR has approved use of these PDs for the Basel II capital framework. If a bank's PFR requires it to revise its Basel II PD methodology, the bank must use revised Basel II PDs to calculate (or recalculate if necessary) corresponding PDs under this Basel II approach.

[11] Among other things, for a loan to be considered for re-aging, the following must be true: (1) The borrower must have demonstrated a renewed willingness and ability to repay the loan; (2) the loan must have existed for at least nine months; and (3) the borrower must have made at least three consecutive minimum monthly payments or the equivalent cumulative amount.

because of a new technology or a new system;

(ii) Reissuing a credit card that has been temporarily suspended (as opposed to closed);

(iii) Temporarily increasing the line of credit;

(iv) Providing access to additional credit when a bank has internally approved a higher credit line than it has made available to the customer; or

(v) Changing the interest rate of a credit card line when mandated by law (such as in the case of the Credit CARD Act).

4. Nontraditional mortgage loans

Nontraditional mortgage loans include all residential loan products that allow the borrower to defer repayment of principal or interest and include all interest-only products, teaser rate mortgages, and negative amortizing mortgages, with the exception of home equity lines of credit (HELOCs) or reverse mortgages. A teaser-rate mortgage loan is defined as a mortgage with a discounted initial rate where the lender offers a lower rate and lower payments for part of the mortgage term. A mortgage loan is no longer considered a nontraditional mortgage loan once the teaser rate has expired. An interest-only loan is no longer considered a nontraditional mortgage loan once the loan begins to amortize.

Banks must determine whether residential loans meet the definition of a nontraditional mortgage loan as of origination, or, if the loan has been refinanced, as of refinance, as refinance is defined in this Appendix for purposes of higher-risk consumer loans. When a bank acquires a residential loan, it must determine whether the loan meets the definition of a nontraditional mortgage loan using the origination criteria and analysis performed by the original lender. If this information is unavailable, the bank must obtain refreshed data from the borrower or other appropriate third party. Refreshed data for residential loans is defined as the most recent data available. The data, however, must be as of a date that is no earlier than three months before the acquisition of the residential loan. The acquiring bank must also determine whether an acquired loan is higher risk not later than three months after acquisition.

When a bank acquires loans from another entity on a recurring or programmatic basis, however, the acquiring bank may determine whether the loan meets the definition of a nontraditional mortgage loan using the origination criteria and analysis performed by the original lender only if the acquiring bank verifies the information provided. Loans acquired from another entity are acquired on a recurring basis if a bank has acquired other loans from that entity at least once within the calendar year or the previous calendar year of the acquisition of the loans in question.

5. Higher-Risk Securitizations

Higher-risk securitizations are defined as securitizations (except securitizations classified as trading book), where, in aggregate, more than 50 percent of the assets backing the securitization meet either the criteria for higher-risk C&I loans or securities, higher-risk consumer loans, or nontraditional mortgage loans, except those classified as trading book. A securitization is as defined in 12 CFR part 325, Appendix A, Section II(B)(16), as it may be amended from time to time. A higher-risk securitization excludes the maximum amount that is recoverable from the U.S. government under guarantee or insurance provisions.

A bank must determine whether a securitization is higher risk based upon information as of the date of issuance (*i.e.,* the date the securitization is sold on a market to the public for the first time). The bank must make this determination within the time limit that would apply under this Appendix if the bank were directly acquiring loans or securities of the type underlying the securitization. In making the determination, a bank must use one of the following methods:

(a) For a securitization collateralized by a static pool of loans, whose underlying collateral changes due to the sale or amortization of these loans, the 50 percent threshold is to be determined based upon the amount of higher-risk assets, as defined in this Appendix, owned by the securitization on the date of issuance of the securitization.

(b) For a securitization collateralized by a dynamic pool of loans, whose underlying collateral may change by the purchase of additional assets, including purchases made during a ramp-up period, the 50 percent threshold is to be determined based upon the highest amount of higher-risk assets, as defined in this Appendix, allowable under the portfolio guidelines of the securitization.

A bank is not required to evaluate a securitization on a continuous basis when the securitization is collateralized by a dynamic pool of loans; rather, the bank is only required to evaluate the securitization once.

A bank is required to use the information that is reasonably available to a sophisticated investor in reasonably determining whether a securitization meets the 50 percent threshold. Information reasonably available to a sophisticated investor includes, but is not limited to, offering memoranda, indentures, trustee reports, and requests for information from servicers, collateral managers, issuers, trustees, or similar third parties. When determining whether a revolving trust or similar securitization meets the threshold, a bank may use established criteria, model portfolios, or limitations published in the offering memorandum, indenture, trustee report, or similar documents.

Sufficient information necessary for a bank to make a definitive determination may not, in every case, be reasonably available to the bank as a sophisticated investor. In such a case, the bank may exercise its judgment in making the determination. In some cases, the bank need not rely upon all of the aforementioned pieces of information to make a higher-risk determination if fewer documents provide sufficient data to make the determination.

In cases in which a securitization is required to be consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and a bank has access to the necessary information, a bank may opt for an alternative method of evaluating the securitization to determine whether it is higher risk. The bank may evaluate individual loans in the securitization on a loan-by-loan basis and only report as higher risk those loans that meet the definition of a higher-risk asset; any loan within the securitization that does not meet the definition of a higher-risk asset need not be reported as such. When making this evaluation, the bank must follow the provisions of section I.B herein. Once a bank evaluates a securitization for higher-risk asset designation using this alternative evaluation method, it must continue to evaluate all securitizations that it has consolidated on the balance sheet as a result of SFAS 166 and SFAS 167, and for which it has the required information, using the alternative evaluation method. For securitizations for which the bank does not have access to information on a loan-by-loan basis, the bank must determine whether the securitization meets the 50 percent threshold in the manner previously described for other securitizations.

B. Application of Definitions

Section I of this Appendix applies to:

(1) All construction and land development loans, whenever originated or purchased;

(2) C&I loans (as that term is defined in this Appendix) owed to a reporting bank by a higher-risk C&I borrower (as that term is defined in this Appendix) and all securities issued by a higher-risk C&I borrower, except securitizations of C&I loans, that are owned by the reporting bank;

(3) Consumer loans (as defined in this Appendix), except securitizations of consumer loans, whenever originated or purchased;

(4) Securitizations of C&I and consumer loans (as defined in this Appendix) issued on or after April 1, 2013, including those securitizations issued on or after April 1, 2013, that are partially or fully collateralized by loans originated before April 1, 2013.

For C&I loans that are either originated or refinanced by a reporting bank before April 1, 2013, or purchased by a reporting bank before April 1, 2013, where the loans are owed to the reporting bank by a borrower that does not meet the definition of a higher-risk C&I borrower as that term is defined in this Appendix (which requires, among other things, that the borrower have obtained a C&I loan or refinanced an existing C&I loan on or after April 1, 2013) and securities purchased before April 1, 2013, that are issued by an entity that does not meet the definition of a higher-risk C&I borrower, as that term is defined in this Appendix, banks must continue to use the transition guidance in the September 2012 Call Report instructions to determine whether to report the loan or security as a higher-risk asset for purposes of the higher-risk assets to Tier 1 capital and reserves ratio. A bank may opt to apply the definition of higher-risk C&I loans and securities in this Appendix to all of its C&I loans and securities, but, if it does so, it must also apply the definition of a higher-risk C&I borrower in this Appendix without regard to when the loan is originally made or refinanced (*i.e.,* whether made or refinanced before or after April 1, 2013).

For consumer loans (other than securitizations of consumer loans) originated or purchased prior to April 1, 2013, a bank must determine whether the loan met the definition of a higher-risk consumer loan no later than June 30, 2013.

For all securitizations issued before April 1, 2013, banks must either (1) continue to use the transition guidance or (2) apply the definitions in this Appendix to all of its securitizations. If a bank applies the definition of higher-risk C&I loans and securities in this Appendix to its securitizations, it must also apply the definition of a higher-risk C&I borrower in this Appendix to all C&I borrowers without regard to when the loans to those borrowers were originally made or refinanced (*i.e.,* whether made or refinanced before or after April 1, 2013).

II. Growth-Adjusted Portfolio Concentration Measure

The *growth-adjusted concentration measure* is the sum of the values of concentrations in each of the seven portfolios, each of the values being first adjusted for risk weights and growth. The product of the risk weight and the concentration ratio is first squared and then multiplied by the growth factor. The measure is calculated as:

$$\mathrm{N}_i = \sum_{k=1}^{7}\left[w_k * \left(\frac{\text{Amount of exposure}_{\mathrm{i,k}}}{\text{Tier 1 Capital} + \text{Reserves}_i}\right)\right]^2 * g_k$$

Where:

N is bank *i*'s growth-adjusted portfolio concentration measure;[12]

k is a portfolio;

g is a growth factor for bank *i*'s portfolio *k;* and,

w is a risk weight for portfolio *k.*

The seven portfolios (k) are defined based on the Call Report/TFR data and they are:

- Construction and land development loans;
- Other commercial real estate loans;
- First-lien residential mortgages and non-agency residential mortgage-backed securities (excludes CMOs, REMICS, CMO and REMIC residuals, and stripped MBS issued by non-U.S. government issuers for which the collateral consists of MBS issued or guaranteed by U.S. government agencies);
- Closed-end junior liens and home equity lines of credit (HELOCs);
- Commercial and industrial loans;
- Credit card loans; and
- Other consumer loans.[13] [14]

The growth factor, *g,* is based on a three-year merger-adjusted growth rate for a given portfolio; *g* ranges from 1 to 1.2 where a 20 percent growth rate equals a factor of 1 and an 80 percent growth rate equals a factor of 1.2.[15] For growth rates less than 20 percent, *g* is 1; for growth rates greater than 80 percent, *g* is 1.2. For growth rates between 20 percent and 80 percent, the growth factor is calculated as:

$$g_{i,k} = 1 + \left[\frac{1}{3}\left(G_{i,k} - 0.20\right)\right]$$

Where:

$$G_{i,k} = \frac{V_{i,k,t}}{V_{i,k,t-12}} - 1,$$

V is the portfolio amount as reported on the Call Report/TFR and t is the quarter for which the assessment is being determined.

The risk weight for each portfolio reflects relative peak loss rates for banks at the 90th percentile during the 1990–2009 period.[16] These loss rates were converted into equivalent risk weights as shown in Table C.1.

TABLE C.1—90TH PERCENTILE ANNUAL LOSS RATES FOR 1990–2009 PERIOD AND CORRESPONDING RISK WEIGHTS

Portfolio	Loss rates (90th percentile)	Risk weights
First-Lien Mortgages	2.3%	0.5
Second/Junior Lien Mortgages	4.6%	0.9
Commercial and Industrial (C&I) Loans	5.0%	1.0
Construction and Development (C&D) Loans	15.0%	3.0
Commercial Real Estate Loans, excluding C&D	4.3%	0.9
Credit Card Loans	11.8%	2.4
Other Consumer Loans	5.9%	1.2

By order of the Board of Directors.

Dated at Washington, DC, this 9th day of October 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

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[12] The growth-adjusted portfolio concentration measure is rounded to two decimal points.

[13] All loan concentrations should include the fair value of purchased credit impaired loans.

[14] Each loan concentration category should exclude the amount of loans recoverable from the U.S. government under guarantee or insurance provisions.

[15] The growth factor is rounded to two decimal points.

[16] The risk weights are based on loss rates for each portfolio relative to the loss rate for C&I loans, which is given a risk weight of 1. The peak loss rates were derived as follows. The loss rate for each loan category for each bank with over $5 billion in total assets was calculated for each of the last twenty calendar years (1990–2009). The highest value of the 90th percentile of each loan category over the twenty year period was selected as the peak loss rate.

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Part IV

Federal Communications Commission

47 CFR Parts 76

Program Access Rules; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket Nos. 12–68; 07–18; 05–192; 07–29; FCC 12–123]

Program Access Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission declines to extend the prohibition on exclusive contracts involving satellite-delivered, cable-affiliated programming beyond its October 5, 2012 expiration date. Instead of this prohibition, the Commission will address exclusive contracts involving satellite-delivered, cable-affiliated programming on a case-by-case basis in response to program access complaints. The Commission also affirms its expanded discovery procedures for program access complaints.

DATES: Effective November 30, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact David Konczal, *David.Konczal@fcc.gov*, or Kathy Berthot, *Kathy.Berthot@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* and *Order on Reconsideration,* FCC 12–123, adopted and released on October 5, 2012. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, 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.) The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. 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).

Summary of the Report and Order and Order on Reconsideration

I. Introduction

1. In this *Report and Order,* we decline to extend the exclusive contract prohibition section of the program access rules beyond its October 5, 2012 sunset date. This prohibition generally bans exclusive contracts for satellite cable programming or satellite broadcast programming between any cable operator and any cable-affiliated programming vendor in areas served by a cable operator.[1] The prohibition applies only to programming that is delivered via satellite; it does not apply to programming delivered via terrestrial facilities.[2] Congress directed the Commission to adopt this prohibition in 1992 when cable operators served more than 95 percent of all multichannel video subscribers and were affiliated with over half of all national cable networks. In expectation that competition in the video programming and distribution markets would develop, Congress provided that the exclusive contract prohibition would expire on October 5, 2002, unless the Commission found that it ''continue[d] to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' On two previous occasions, first in 2002 and again in 2007, the Commission renewed the prohibition for five years, with the latest extension expiring on October 5, 2012, thus extending the prohibition for ten years beyond the original term established by Congress.

2. We find that a preemptive prohibition on exclusive contracts is no longer ''necessary to preserve and protect competition and diversity in the distribution of video programming'' considering that a case-by-case process will remain in place after the prohibition expires to assess the impact of individual exclusive contracts. In upholding the Commission's last extension of the prohibition in 2007, the United States Court of Appeals for the DC Circuit (''DC Circuit'') noted changes in the marketplace since 1992 and stated its expectation that if the market continued to evolve in this manner, ''the Commission will soon be able to conclude that the prohibition is no longer necessary to preserve and protect competition and diversity in the distribution of video programming.'' As discussed below, because the current market presents a mixed picture (with the cable industry now less dominant at the national level than it was when the exclusive contract prohibition was enacted, but prevailing concerns about cable dominance and concentration in various individual markets), we find that extending a preemptive ban on exclusive contracts sweeps too broadly. Rather, this mixed picture justifies a case-by-case approach in applying our program access rules (consistent with the case-by-case inquiries we undertake in the terrestrial programming and program carriage contexts), with special account taken of the unique characteristics of Regional Sports Network (''RSN'') programming. In addition to allowing us to assess any harm to competition resulting from an exclusive contract, this case-by-case approach will also allow us to consider the potentially procompetitive benefits of exclusive contracts in individual cases, such as promoting investment in new programming, particularly local programming, and permitting MVPDs to differentiate their service offerings. Accordingly, consistent with Congress's intention that the exclusive contract prohibition would not remain in place indefinitely and its finding that exclusive contracts can have procompetitive benefits in some markets, we decline to extend the preemptive prohibition beyond its October 5, 2012 sunset date.

3. We recognize that the potential for anticompetitive conduct resulting from vertical integration between cable operators and programmers remains a concern. For example, in some markets, vertical integration may result in exclusive contracts between cable operators and their affiliated programmers that preclude competitors in the video distribution market from accessing critical programming needed to attract and retain subscribers and thus harm competition. While the amount of satellite-delivered, cable-affiliated programming among the most popular cable networks has declined since 2007, some of that programming may still be critical for MVPDs to compete in the video distribution market. Congress has provided the

[1] An exclusive contract results in one cable operator having access to a particular cable-affiliated programming network or networks in a given geographic area, to the exclusion of every other multichannel video programming distributor (''MVPD'') competing in that geographic area.

[2] The exclusive contact prohibition in section 628(c)(2)(D) pertains only to ''satellite cable programming'' and ''satellite broadcast programming.'' *See* 47 U.S.C. 548(c)(2)(D). Both terms are defined to include only programming transmitted or retransmitted by satellite for reception by cable operators. *See* 47 U.S.C. 548(i)(1) (incorporating the definition of ''satellite cable programming'' as used in 47 U.S.C. 605); *id.* 548(i)(3). In this *Order,* we refer to ''satellite cable programming'' and ''satellite broadcast programming'' collectively as ''satellite-delivered programming.''

Commission with the authority to address exclusive contracts on a case-by-case basis. We thus conclude that, in the context of present market conditions, such an individualized assessment of exclusive contracts in response to complaints is a more appropriate regulatory approach than the blunt tool of a prohibition that preemptively bans all exclusive contracts between satellite-delivered, cable-affiliated programmers and cable operators. This case-by-case consideration of exclusive contracts involving satellite-delivered, cable-affiliated programming will mirror our treatment of terrestrially delivered, cable-affiliated programming, including the establishment of a rebuttable presumption that an exclusive contract involving a cable-affiliated RSN has the purpose or effect prohibited in section 628(b) of the Act. As demonstrated by our recent actions on complaints involving withholding of terrestrially delivered, cable-affiliated programming, the Commission is committed to exercising its authority under section 628 of the Act to require cable-affiliated programmers to license their programming to competitors in appropriate cases.[3]

4. In addition to case-by-case adjudication, we expect that additional factors will mitigate the risk of any potentially adverse impact of the expiration of the exclusive contract prohibition on consumers and competition. First, approximately 30 satellite-delivered, cable-affiliated, national networks (accounting for 30 percent of all such networks) and 14 satellite-delivered, cable-affiliated, RSNs (accounting for over 40 percent of all such RSNs) are subject to program access merger conditions adopted in the *Comcast/NBCU Order* until January 2018. These conditions require Comcast/NBCU to make these networks available to competitors, even after the expiration of the exclusive contract prohibition.[4] Second, the record indicates that existing affiliation agreements between programmers and MVPDs require programming covered by the agreement to be made available for the term of the existing agreement despite the expiration of the exclusive contract prohibition. This effectively defers the period that exclusive contracts will begin to be enforced and thus minimizes any potential disruption to consumers that could result from the expiration of the prohibition. Third, in addition to claims under section 628(b) of the Act, additional causes of action under section 628 will continue to apply after expiration of the exclusive contract prohibition, including claims alleging undue influence under section 628(c)(2)(A) and claims alleging discrimination under section 628(c)(2)(B). In particular, nothing in our decision today will alter our treatment of selective refusals to license, whereby a satellite-delivered, cable-affiliated programmer refuses to license its content to a particular MVPD (such as a new entrant or satellite provider) while simultaneously licensing its content to other MVPDs competing in the same geographic area. Even after the expiration of the exclusive contract prohibition, such conduct will remain a violation of the discrimination provision in section 628(c)(2)(B) of the Act, unless the cable-affiliated programmer can establish a legitimate business reason for the conduct in response to a program access complaint challenging the conduct. Fourth, we will continue to monitor the video marketplace. If the expiration of the exclusive contract prohibition, combined with future changes in the competitive landscape, result in harm to consumers or competition, we have statutory authority pursuant to section 628(b) of the Act to take remedial action by adopting rules to address such concerns.

5. We also take related actions herein to amend our rules pertaining to subdistribution agreements, common carriers, and Open Video Systems (''OVS'') to reflect the expiration of the exclusive contract prohibition. Further, we modify merger conditions pertaining to exclusive contracts adopted in the *Liberty Media Order* to conform to our revised rules. In addition, we revise our procedural rules to (i) provide for a 45-day answer period for all complaints alleging a violation of section 628(b), regardless of whether the complaint involves satellite-delivered or terrestrially delivered programming; and (ii) establish a six-month deadline (calculated from the date of filing of the complaint) for the Media Bureau to act on a complaint alleging a denial of programming.

6. In the *Order on Reconsideration* in MB Docket No. 07–29, we (i) affirm the expanded discovery procedures for program access complaints adopted in the *2007 Extension Order;* (ii) modify the standard protective order for use in program access complaint proceedings to include a provision allowing a party to object to the disclosure of confidential information based on concerns about the individual seeking access; and (iii) clarify that a party may object to any request for documents that are protected from disclosure by the attorney-client privilege, the work-product doctrine, or other recognized protections from disclosure.

II. Report and Order in MB Docket No. 12–68 et al.

A. Background

7. In areas served by a cable operator, section 628(c)(2)(D) generally prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between any cable operator and any cable-affiliated

[3] *See Verizon* v. *MSG/Cablevision (Bureau Order*), Order, 26 FCC Rcd 13145 (MB 2011), *affirmed, Verizon v. MSG/Cablevision (Commission Order),* Memorandum Opinion and Order, 26 FCC Rcd 15849 (2011); *AT&T* v. *MSG/Cablevision (Bureau Order),* Order, 26 FCC Rcd 13206 (MB 2011), *affirmed, AT&T* v. *MSG/Cablevision (Commission Order),* Memorandum Opinion and Order, 26 FCC Rcd 15871 (2011), *appeal pending sub nom. Cablevision Sys. Corp. et al.* v. *FCC,* No. 11–4780 (2nd Cir.). In addition, where vertical integration occurs as a result of a transaction involving the transfer of Commission licenses, we have authority under section 310(d) to impose conditions that address potential competitive harms that might result from such integration. *See, e.g., Comcast/NBCU Order,* Memorandum Opinion and Order, 26 FCC Rcd 4238 (2011).

[4] These conditions provide that, if ''negotiations fail to produce a mutually acceptable set of price, terms, and conditions'' for a carriage agreement with one or more Comcast-controlled networks, an MVPD or bargaining agent may ''submit [the] dispute to commercial arbitration.'' *Comcast/NBCU Order,* 26 FCC Rcd at 4259–62, paragraphs 49–59 and 4358, Condition II. Each party is required to submit a ''final offer * * * in the form of a contract for carriage'' for a period of three years. *Id.* at 4365, Condition VII.A.13. The arbitrator must ''choose the final offer of the party which most closely approximates the fair market value of the programming carriage rights at issue.'' *Id.* at 4366, Condition VII.B.4. Following the decision of the arbitrator, ''the parties shall be bound by the final offer chosen by the arbitrator.'' *Id.* at 4367, Condition VII.B.11; *see also id.* at 4364, Condition VII.A.1 (stating that the arbitration will ''determine the terms and conditions of a new agreement''). By requiring Comcast-controlled networks to enter into arbitration with a requesting MVPD to determine the price, terms, and conditions of a new carriage agreement, these conditions require Comcast-controlled networks to make their programming available to all requesting MVPDs and thus preclude any Comcast-controlled network from enforcing an exclusive contract, including in regions where Comcast does not operate its cable systems. *See id.* at 4261, paragraph 55 (explaining that these conditions apply to the benefit of all MVPDs, ''not just those that compete directly with Comcast''). Our decision to decline to extend the exclusive contract prohibition beyond its sunset date does not impact our analysis in the *Comcast/NBCU Order* concluding that these conditions were necessary to curb Comcast's anticompetitive exclusionary program access strategies that might result from the transaction. In that proceeding, based on an extensive factual record in the context of an adjudication, the Commission found MVPDs would be ''substantially harm[ed]'' without Comcast-NBCU's suite of local, regional, and national programming, and that an ''anticompetitive exclusionary program access strategy would often be profitable for Comcast.'' *Comcast/NBCU Order,* 26 FCC Rcd at 4254, paragraph 37 (footnotes omitted) and 4257–58, paragraph 44.

programming vendor.[5] The exclusive contract prohibition applies to all satellite-delivered, cable-affiliated programming and preemptively bans all exclusive contracts for such programming with cable operators, regardless of whether the withholding of particular programming would impact competition in the marketplace. As mentioned above, the exclusive contract prohibition applies only to programming that is delivered via satellite; it does not apply to programming that is delivered via terrestrial facilities. Under the statute and our implementing rules, an exclusive contract is permissible if a cable operator or cable-affiliated programmer obtains prior approval by demonstrating to the Commission that the contract serves the public interest. Congress thus recognized that some exclusive contracts may serve the public interest by providing offsetting benefits to the video programming market or assisting in the development of competition among MVPDs.

8. Congress also provided that the exclusive contract prohibition would sunset after ten years (on October 5, 2002), unless the Commission found that it ''continue[d] to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' On two previous occasions, first in 2002 and again in 2007, the Commission found that the prohibition remained necessary and thus renewed it for an additional five-year term on each occasion, with the latest extension expiring on October 5, 2012. In issuing the latest extension, the Commission recognized that ''Congress intended for the exclusive contract prohibition to sunset at a point when market conditions warrant'' and specifically ''caution[ed] competitive MVPDs to take any steps they deem appropriate to prepare for the eventual sunset of the prohibition, including further investments in their own programming.'' The DC Circuit upheld the Commission's decision, characterizing the developments in the marketplace as a ''mixed picture'' and deferring to the Commission's analysis. The court expressed an expectation, however, that at the next review ''the Commission will weigh heavily Congress's intention that the exclusive contract prohibition will eventually sunset.''

9. On March 20, 2012, the Commission adopted and released an *NPRM* initiating a third review of the necessity of the exclusive contract prohibition. The *NPRM* presented data on the current state of competition in the video distribution market and the video programming market and invited commenters to submit more recent data or empirical analyses.[6] The *NPRM* sought comment on whether current conditions in the video marketplace support retaining, sunsetting, or relaxing the exclusive contract prohibition. No commenter challenged the accuracy of the data set forth in the *NPRM.*

B. Discussion

10. For the reasons discussed below, we decline to extend the exclusive contract prohibition beyond its October 5, 2012 sunset date. First, we review marketplace developments since 2007 and conclude that, because the current market presents a mixed picture (with the cable industry now less dominant at the national level than it was when the exclusive contract prohibition was enacted, but prevailing concerns about cable dominance and concentration in various individual markets), a preemptive ban on exclusive contracts sweeps too broadly and is no longer ''necessary to preserve and protect competition and diversity in the distribution of video programming'' considering that a case-by-case process will remain in place after the prohibition expires to assess the impact of individual exclusive contracts. Second, we describe the case-by-case process that will remain after sunset of the preemptive ban to address competitive harms that may arise in connection with exclusive contracts, including a 45-day period for answering a section 628(b) complaint and the establishment of a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated RSN has the purpose or effect prohibited in section 628(b). We also explain how addressing exclusive contracts on a case-by-case basis comports with the First Amendment. Third, we describe necessary amendments to our rules pertaining to subdistribution agreements, common carriers, and OVS and to merger conditions pertaining to exclusive arrangements adopted in the *Liberty Media Order* to reflect the expiration of the exclusive contract prohibition.

1. Expiration of the Exclusive Contract Prohibition

a. Standard of Review

11. Congress provided that the exclusive contract prohibition would expire on October 5, 2002, unless the Commission found that it continued to be ''necessary'' to preserve and protect competition and diversity in the distribution of video programming. The Commission has previously determined that the exclusive contract prohibition continues to be ''necessary'' if, in the absence of the prohibition, competition and diversity in the distribution of video programming would not be preserved and protected. The DC Circuit has upheld the Commission's interpretation of the term ''necessary'' and has also ruled that the Commission's analysis of the prohibition is appropriately focused on harm to competition and consumers, not harm to competitors.

12. The Commission has also explained that the sunset provision ''creates a presumption that the rule will sunset'' unless the Commission finds that it continues to be necessary.[7] Moreover, the Commission has explained that, because the exclusive contract prohibition has been in effect since 1992, ''it is difficult to obtain specific factual evidence of the impact on competition in the video distribution market if the prohibition were lifted.'' Accordingly, we rely on ''economic theory and predictive judgment[s] in addition to specific factual evidence in reaching our decision concerning the continued need for the exclusive contract prohibition.''

b. Analysis

13. In evaluating whether the exclusive contract prohibition continues to be necessary, the Commission has previously examined data on the status of competition in the video programming market and the video distribution market. The Commission presented extensive data in the *NPRM* on these issues, which presented a mixed picture, and invited commenters to submit more recent data or empirical analyses. While no commenter disputed the accuracy of the data presented in the *NPRM,* updated information in the record requires some modifications to these data. In the discussion below and in Appendix E, we present the most recent data available on the market shares of cable operators and other MVPDs in the video distribution market,

[5] In unserved areas, Congress adopted a *per se* prohibition on exclusive contracts between cable operators and satellite-delivered, cable-affiliated programmers. 47 U.S.C. 548(c)(2)(C). Unlike the exclusive contract prohibition in served areas, the exclusive contract prohibition in unserved areas is not subject to a sunset provision and is unaffected by this *Order.*

[6] *See id.* at 3424–30, paragraphs 21–29 and 3473–87, Appendices A–C.

[7] Commenters' suggestion that vertically integrated cable operators bear the burden of demonstrating that the prohibition is no longer necessary finds no basis in the statute.

which differ only slightly from the data presented in the *NPRM,* and continue to show a mixed picture. In addition, in the discussion below and in Appendices F and G, we update the data presented in the *NPRM* on cable-affiliated networks to reflect (i) Comcast/NBCU's sale of its interest in A&E Television Networks, LLC (''A&E''); and (ii) information in the record provided by Cablevision, Comcast, and Time Warner Cable (''TWC'') regarding their affiliation with RSNs and whether those RSNs are satellite-delivered or terrestrially delivered. Appendices E through G are available at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-12-123A1.pdf.*

14. Based on similar data and other record evidence, the Commission in past extension decisions has analyzed whether, in the absence of the exclusive contract prohibition, cable-affiliated programmers would have the incentive and the ability to harm competition and diversity in the distribution of video programming by entering into exclusive contracts. We undertake the same analysis here. Below, we consider the ''incentive'' element followed by the ''ability'' element.

(i) Incentive

15. In evaluating whether cable-affiliated programmers retain the incentive to enter into exclusive contracts, the Commission analyzes whether there continues to be an economic rationale for exclusivity. The Commission has explained that, if a vertically integrated cable operator enters into an exclusive arrangement for affiliated programming, it can recoup profits lost at the upstream level (*i.e.,* lost licensing fees and advertising revenues) by increasing the number of subscribers of its downstream MVPD division. The Commission has also explained that, particularly where rival distributors are limited in their market shares, a cable-affiliated programmer will be able to recoup a substantial amount of the revenues foregone by pursuing exclusivity. In the *2007 Extension Order,* the Commission concluded that vertically integrated cable programmers retained the incentive to enter into exclusive contracts for satellite-delivered programming.

16. As discussed below, the record here shows a mixed picture, indicating that vertically integrated cable programmers may still have an incentive to enter into exclusive contracts for satellite-delivered programming in many markets. As the Commission explained previously, the profitability of exclusivity increases as the number of subscribers controlled by the vertically integrated cable operator increases. In past extension decisions, the Commission has analyzed the aggregate market share of cable operators on a national and regional basis to assess the profitability of exclusivity. In the *2007 Extension Order,* the Commission found that the cable industry's share of MVPD subscribers nationwide had decreased since 2002 from 78 percent to approximately 67 percent, but that this market share was still sufficient to make exclusivity a profitable strategy. Here, the record evidence indicates that the cable industry's share of MVPD subscribers nationwide has continued to decrease, from 67 percent in 2007 to 57.4 percent today, which indicates that vertically integrated cable operators as a whole—and considered solely on a national basis—have a reduced incentive to enter into exclusive contracts, compared to 2007.

17. On a regional basis, however, there remain markets where cable operators have a substantial share of subscribers. In the *2007 Extension Order,* the Commission noted that the cable industry's share of MVPD subscribers in certain Designated Market Areas (''DMAs'') remained above or near the 78 percent level that the Commission previously found in 2002 was sufficient to make exclusivity a profitable strategy. Here, the record indicates that the cable industry's share of MVPD subscribers in certain DMAs remains above or near both the 67 percent level and the 78 percent level that the Commission has previously found to be sufficient to make exclusivity a profitable strategy. Although the number of DMAs in which the cable industry's share of MVPD subscribers exceeds these benchmarks has decreased since 2007, there are still a considerable number of DMAs in which concerns about competition remain.

18. Moreover, we note that data submitted in the record by cable operators indicate that clustering has increased since 2007. The Commission has, in past orders, observed that clustering may increase a cable operator's incentive to enter into exclusive contracts for regional programming. In the *2007 Extension Order,* the Commission noted that Comcast passed more than 70 percent of television households in 30 Designated Market Areas (DMAs) and TWC passed more than 70 percent of television households in 23 DMAs. Based on the 2011 data provided by the cable operators, Comcast now passes more than 70 percent of television households in [REDACTED] DMAs and TWC passes more than 70 percent of television households in [REDACTED] DMAs.[8] These calculations employ data from Nielsen on television households in each DMA and homes passed data provided by the cable operators. In the *2007 Extension Order,* the Commission also noted that the collective market share of MVPDs that compete with incumbent cable operators in many DMAs where cable multiple system operators (''MSOs'') have clusters is far less than their collective nationwide market share. The same holds true today.

19. In addition to this data, we note that real-world evidence indicates that in some markets cable-affiliated programmers may have an incentive to enter into exclusive contracts that can harm competition. As noted in the previous extension decisions as well as in the *2010 Program Access Order,* vertically integrated cable operators have withheld from competitors certain terrestrially delivered networks, which are not subject to the exclusive contract prohibition. Most recently, Cablevision and MSG withheld the terrestrially delivered MSG HD and MSG+ HD RSNs from AT&T and Verizon.

20. Because the record before us indicates that there may be certain region-specific circumstances where vertically integrated cable operators may have an incentive to withhold satellite-delivered programming from competitors,[9] we believe that a case-by-case approach authorized under other provisions of the Act—rather than a preemptive ban on exclusive contracts—will adequately address competitively harmful conduct in a more targeted, less burdensome manner. We disagree with commenters to the extent they imply that Congress intended the prohibition to expire only once vertically integrated cable operators no longer have any incentive to enter into exclusive contracts. Such an interpretation

[8] We also received data from Cablevision showing [REDACTED] DMAs in which Cablevision passes more than 70 percent of television households.

[9] We also note that, in past extension decisions, the Commission has noted that increases in horizontal consolidation among vertically integrated cable operators means they will reap a greater portion of the gains from exclusivity, thereby increasing the incentive to enter into exclusive contracts. Our most recent data indicates that the percentage of MVPD subscribers receiving their video programming from one of the four largest vertically integrated cable operators today is 42.7 percent, an increase from the *2002 Extension Order* (34 percent), but a decrease from the *2007 Extension Order* (54–56.75 percent). While the record evidence demonstrates that the data pertaining to horizontal consolidation have remained consistent with 2002 levels, this factor is outweighed by other marketplace considerations favoring elimination of the preemptive ban.

contradicts Congress's recognition that exclusive contracts do not always harm competition and can have procompetitive benefits in some cases.

(ii) Ability

21. In addition to an incentive to enter into exclusive contracts, we also assess the ''ability'' of vertically integrated cable operators to use exclusivity to harm competition and diversity in the distribution of video programming. In this regard, the Commission considers whether satellite-delivered, cable-affiliated programming remains programming for which there are no good substitutes and are necessary for competition. In previous extension orders, the Commission found that there were no good substitutes for a significant amount of satellite-delivered, cable-affiliated programming, and that such programming remained necessary for viable competition in the video distribution market. Accordingly, the Commission concluded that cable-affiliated programmers retained ''the ability to favor their affiliated cable operators over competitive MVPDs such that competition and diversity in the distribution of video programming would not be preserved and protected absent the rule.'' In reaching this conclusion, the Commission explained that ''[w]hat is most significant to our analysis is not the percentage of total available programming that is vertically integrated with cable operators, but rather the popularity of the programming that is vertically integrated and how the inability of competitive MVPDs to access this programming will affect the preservation and protection of competition in the video distribution marketplace.''

22. We recognize that some commenters contend that the data in the *NPRM* indicate little change since 2007 in the amount of satellite-delivered, cable affiliated programming among the most popular cable networks. These claims, however, do not consider four developments that impact significantly our determination as to whether a preemptive prohibition remains necessary under the terms of the statute.

23. First, as explained in the *NPRM,* the Commission in 2011 granted the application of Comcast, General Electric Company (''GE''), and NBCU to assign and transfer control of broadcast, satellite, and other radio licenses from GE to Comcast. Reviewing that vertical integration pursuant to section 310(d), the Commission approved the transaction with conditions, including a program access condition requiring Comcast/NBCU to make networks it controls (the ''Comcast-controlled networks'') [10] available to competitors. As set forth in Appendices F and G, we estimate that 30 satellite-delivered national networks and 14 satellite-delivered RSNs are Comcast-controlled networks. Comcast/NBCU is subject to these conditions until January 2018. In other words, even after the exclusive contract prohibition expires, these Comcast-controlled networks could not be subject to an exclusive contract until January 2018. For that reason, we find it appropriate to exclude the Comcast-controlled networks when assessing the continued need for a preemptive ban.[11]

24. Some commenters contend, however, that the Commission must consider the Comcast-controlled networks as if they would be impacted by a sunset of the exclusivity prohibition. They claim that, if the Commission declines to extend the prohibition based on an analysis of the market that ignores the Comcast-controlled networks, the Commission will have no vehicle to consider whether the prohibition remains necessary after the Comcast merger conditions expire. We reject these claims. The Commission may exercise its broad rulemaking authority under section 628(b) to adopt rules prohibiting certain exclusive contracts involving cable-affiliated programming if it becomes necessary after these merger conditions expire, based on an assessment of the marketplace at that time.

25. Second, after the Commission released the *NPRM,* Comcast sold its interest in A&E to A&E's other owners (Disney and Hearst). As a result of this transaction, the regulatory status of the 17 networks owned by A&E changed from cable-affiliated to non-cable-affiliated. As set forth in the *NPRM,* A&E-owned networks account for four of the Top 20 national cable networks as ranked by average prime-time ratings and three of the Top 20 national cable networks as ranked by subscribership. Thus, the change in the regulatory status of the A&E networks has reduced since 2007 the number of satellite-delivered, cable-affiliated networks among the Top 20 national cable networks ranked by subscribership and by average prime-time ratings.

26. Third, in both the *2002 Extension Order* and the *2007 Extension Order,* the Commission found significant that the subscription premium networks HBO and Cinemax were cable-affiliated. The Commission relied on comments arguing that ''first-run programming produced by HBO and other premium networks [is] essential for a competitive MVPD to offer to potential subscribers in order to compete with the incumbent cable operator.'' In 2009, however, the Commission approved a transaction resulting in the separation of TWC, a cable operator, from Time Warner Inc., an owner of satellite-delivered, national programming networks, including HBO and Cinemax. As a result, HBO and Cinemax are no longer cable-affiliated. This transaction was also significant because it changed the regulatory status of other cable networks cited by the Commission in the *2007 Extension Order* (CNN, TBS, and TNT) from cable-affiliated to non-cable-affiliated. In declining to adopt a condition applying the program access rules to Time Warner Inc. post-transaction, the Commission explained that the underlying premise of the program access rules would no longer apply because Time Warner Inc. (a non-cable-affiliated programmer) and TWC would no longer have the incentive to discriminate in favor of each other.

[10] As discussed in the *NPRM,* the program access merger conditions apply to ''C–NBCU Programmers.'' Whether a network qualifies as a ''C–NBCU programmer'' is a fact-specific determination. As described in the *NPRM,* with the exception of the iN DEMAND networks, we assume that any network in which Comcast or NBCU holds a 50 percent or greater interest is a ''C–NBCU Programmer'' subject to these conditions. We refer to these networks as ''Comcast-controlled networks.'' We refer to other networks in which Comcast or NBCU holds a less than 50 percent interest as ''Comcast-affiliated networks,'' which we assume for purposes of the estimates in this *Order* are not ''C–NBCU Programmers'' subject to the program access merger conditions adopted in the *Comcast/NBCU Order,* but are subject to the program access rules, including the exclusive contract prohibition. No commenter opposed this proposed distinction between Comcast-controlled and Comcast-affiliated networks as set forth in the *NPRM.* In addition, given Comcast's previous statements that it cannot control decisionmaking at iN DEMAND, the *NPRM* proposed to consider iN DEMAND as Comcast-affiliated, but not Comcast-controlled. No commenter opposed this characterization, thus we consider the iN DEMAND networks to be Comcast-affiliated, but not Comcast-controlled, for purposes of the estimates in this *Order.* Nothing in this *Order* should be read to state or imply any position as to whether any particular network qualifies or does not qualify as a ''C–NBCU Programmer.''

[11] Our decision here is consistent with the *2011 Program Carriage Order.* In that order, the Commission found that the ''number of cable-affiliated networks recently increased significantly after the merger of Comcast and NBC Universal, thereby highlighting the continued need for an effective program carriage complaint regime.'' In the *Comcast/NBCU Order,* the Commission specifically relied on the program carriage complaint process to address concerns relating to program carriage resulting from the merger. Accordingly, the increase in vertical integration resulting from the Comcast/NBCU transaction was a significant factor in the *2011 Program Carriage Order.* With respect to program access concerns, however, the *Comcast/NBCU Order* adopted specific conditions to address these concerns, thus allowing us to exclude the Comcast-controlled networks from consideration here.

27. Fourth, in the *2007 Extension Order,* the Commission relied on data indicating that 46 percent of all RSNs were cable-affiliated. These data, however, did not distinguish between terrestrially delivered and satellite-delivered RSNs. As discussed above, the exclusive contract prohibition applies only to programming that is delivered via satellite; it does not apply to programming that is delivered via terrestrial facilities. An exclusive contract involving a terrestrially delivered, cable-affiliated RSN is permitted unless the Commission finds in response to a complaint that it violates section 628(b) of the Act. We, therefore, further refine our prior analysis by distinguishing between cable-affiliated RSNs that are subject to the prohibition (*i.e.,* RSNs delivered via satellite) and those that are not (*i.e.,* RSNs delivered via terrestrial means). To that end, the Media Bureau asked the three cable operators that own the greatest number of RSNs (Cablevision, Comcast, and TWC) whether their RSNs are satellite-delivered or terrestrially delivered. The responses reveal that a little fewer than half (43 percent) of all cable-affiliated RSNs are terrestrially delivered and therefore beyond the scope of the exclusive contract prohibition.[12] The remaining 57 percent of cable-affiliated RSNs are satellite-delivered, but over 43 percent of these RSNs are Comcast-controlled and thus subject to program access merger conditions until January 2018. As set forth in Appendix G, the data demonstrate the following regarding the 108 RSNs (both cable-affiliated and non-cable-affiliated) available today: (i) 52 RSNs (48 percent) are not cable-affiliated; (ii) 24 RSNs (22 percent) are cable-affiliated but terrestrially delivered and therefore subject to a case-by-case process under section 628(b);[13] (iii) 14 RSNs (13 percent) are cable-affiliated and satellite-delivered, but are also Comcast-controlled, and therefore subject to program access merger conditions until January 2018 that require Comcast to make these networks available to competitors;[14] and (iv) only 18 RSNs (17 percent) are cable-affiliated, satellite-delivered, and not Comcast-controlled, and therefore potentially impacted by the expiration of the exclusive contract prohibition.[15]

28. Based on the four developments noted above, the record indicates a decrease since 2007 in the amount of satellite-delivered, cable-affiliated programming among the most popular cable networks. In particular, the number of Top 20 national cable networks as ranked by average prime time ratings that are cable-affiliated has fallen from seven in 2007 to one today[16] and the number of Top 20 national cable networks as ranked by subscribership that are cable-affiliated has fallen from six in 2007 to three today.[17] Moreover, while the Commission in 2007 found that ''popular subscription premium networks, such as HBO and Cinemax'' were cable-affiliated, those networks are no longer cable-affiliated today. In addition, while the Commission in 2007 relied on data indicating that 46 percent of all RSNs were satellite-delivered and cable-affiliated, this figure is only 17 percent today (not including Comcast-controlled networks, which are subject to program access merger conditions).[18]

29. In light of the mixed picture presented by the current MVPD market (including the decline in the amount of satellite-delivered, cable-affiliated programming among the most popular cable networks), we find that a broad, preemptive ban on exclusive contracts is no longer necessary to prevent cable-affiliated programmers from harming competition, considering that a case-by-case process will remain in place after the prohibition expires to assess the impact of individual exclusive contracts. We recognize that some satellite-delivered, cable-affiliated programming, such as certain RSNs, remains necessary for competition and has no good substitutes. However, we do not believe this warrants extension of a preemptive ban on exclusivity when a case-by-case approach can address competitively harmful exclusive contracts on a more targeted basis.

(iii) Conclusion

30. Based on the foregoing, we can no longer conclude that the exclusive contract prohibition remains necessary to preserve and protect competition and diversity in the distribution of video programming considering that a case-by-case process will remain in place after the prohibition expires to assess the impact of individual exclusive contracts. While the record indicates that vertically integrated cable operators may still have the ability and incentive to withhold satellite-delivered, cable-affiliated programming in some markets with the effect of harming competition and diversity, the record also demonstrates a decline since 2007 in the amount of satellite-delivered, cable-affiliated programming among the most popular cable networks. To be sure, absent the prohibition, there may be instances where cable operators enter into exclusive contracts for satellite-delivered, cable-affiliated programming that is necessary for competition and has no good substitutes. But Congress has provided the Commission with the authority to address such contracts on a case-by-case basis after the expiration of the prohibition. Specifically, sections 628(b), 628(c)(1), and 628(d) of the Act grant the Commission broad authority to prohibit ''unfair acts'' of cable operators and their affiliated programmers that have the ''purpose or effect'' of ''hinder[ing] significantly or prevent[ing]'' any MVPD from providing ''satellite cable programming or satellite broadcast programming to subscribers or consumers.'' In addition, the Commission has authority (i) pursuant to section 628(c)(2)(B) of the Act to prohibit discrimination in the prices, terms, and conditions for sale of satellite-delivered, cable-affiliated programming among MVPDs; and (ii) pursuant to section 628(c)(2)(A) of the

[12] The Media Bureau did not request information from Bright House or Cox regarding whether their affiliated RSNs are satellite-delivered or terrestrially delivered. This includes the following four RSNs: Bright House Sports Network, Bright House Sports Network HD, Cox Sports Television, and Cox Sports Television HD. Moreover, Comcast and TWC did not provide information regarding whether the following affiliated RSNs are satellite-delivered or terrestrially delivered: Comcast SportsNet Houston, Comcast SportsNet Houston HD, Midco Sports Network, Midco Sports Network HD, Time Warner Cable SportsNet, Time Warner Cable SportsNet HD, Time Warner Cable Deportes, and Time Warner Cable Deportes HD. For purposes of this analysis, and with the exception of Cox-4 and Cox-4 HD (which the Commission has previously found are terrestrially delivered), we assume that all cable-affiliated RSNs for which we do not have information are satellite-delivered and therefore subject to the exclusive contract prohibition. Thus, our estimate that 43 percent of cable-affiliated RSNs are terrestrially delivered is conservative.

[13] Four of these 24 terrestrially delivered, cable-affiliated RSNs are Comcast-controlled RSNs and therefore also subject to program access merger conditions until January 2018 that require Comcast to make these networks available to competitors.

[14] As discussed above, our decision to decline to extend the exclusive contract prohibition beyond its sunset date does not impact our analysis in the *Comcast/NBCU Order* concluding that the program access merger conditions adopted therein were necessary to curb Comcast's anticompetitive exclusionary program access strategies that might result from the transaction.

[15] Even with respect to these 18 RSNs, TWC has stated it will make its four RSNs featuring the games of the Los Angles Lakers (Time Warner Cable SportsNet, Time Warner Cable SportsNet HD, Time Warner Cable Deportes, and Time Warner Cable Deportes HD) available to competing MVPDs.

[16] This number increases to three if the Comcast-controlled national networks are included. In the early 1990s when the exclusive contract prohibition was adopted, 12 of the Top 15 national cable networks as ranked by average prime time ratings were cable-affiliated.

[17] This number increases to four if the Comcast-controlled national networks are included. In the early 1990s when the exclusive contract prohibition was adopted, 10 of the Top 25 national cable networks as ranked by subscribership were cable-affiliated.

[18] This percentage increases to 30 percent if the Comcast-controlled RSNs are included.

Act to prohibit a cable operator from engaging in undue or improper influence over the decision of its affiliated, satellite-delivered programmer to enter into an exclusive contract. The Commission is committed to using this statutory authority to require cable-affiliated programmers to license programming to competitors in appropriate cases, as demonstrated by our recent actions on complaints involving terrestrially delivered, cable-affiliated RSNs. As demonstrated in those proceedings, a case-by-case approach allows for an individualized assessment of exclusive contracts based on the facts presented in each case.

31. As some commenters note, however, the Commission in previous extension decisions characterized a case-by-case process for addressing exclusive contracts as an inadequate substitute for the ''particularized protection'' afforded by the exclusive contract prohibition. But the Commission reached that conclusion on a much different factual record. Here, based on the decline during the past five years in the amount of satellite-delivered, cable-affiliated programming among the most popular cable networks, we can no longer conclude that a case-by-case process is insufficient to protect MVPDs from the potential anticompetitive impact of exclusive contracts or that a preemptive ban continues to be warranted.[19] Moreover, our recent actions addressing complaints involving terrestrially delivered, cable-affiliated RSNs demonstrates the adequacy of a case-by-case process.

32. Some commenters note that Congress has already established a case-by-case approach for assessing exclusive contracts involving satellite-delivered, cable-affiliated programming. Specifically, pursuant to section 628(c)(4), a cable operator or a satellite-delivered, cable-affiliated programmer may submit a ''Petition for Exclusivity'' to the Commission for approval to enforce or enter into an exclusive contract by demonstrating that the contract serves the public interest. Some commenters claim that the Commission could streamline this procedure rather than requiring MVPDs to pursue complaints. We reject this contention. Given the decline during the past five years in the amount of satellite-delivered, cable-affiliated programming among the most popular cable networks, we find no basis to continue to preemptively ban exclusive contracts and to place the burden on cable operators or their affiliated programmers to demonstrate that an exclusive contract serves the public interest before entering into or enforcing the contract. Indeed, relying on the Petition for Exclusivity process to avoid the expiration of the prohibition would mean that the prohibition would never expire, contrary to Congress's direction.

33. We recognize the possibility that the expiration of the exclusive contract prohibition may result in cable operators acquiring additional programming, including ''must have'' programming, and then entering into exclusive contracts for such programming. We also recognize the possibility that some existing satellite-delivered, cable-affiliated programming may increase in popularity in the future. The record, however, provides no basis on which to predict the likelihood of these developments or their impact on competition. Indeed, such developments seem contrary to current market trends, as discussed above. Given this, extending the prohibition based simply on the chance of a reversal in industry trends would be at odds with Congress' inclusion of a sunset provision. Moreover, even if a marketplace reversal were to occur, the Commission has the tools in place to address these developments, either on a case-by-case basis in response to complaints, which include a rebuttable presumption of ''significant hindrance'' for RSNs, or by adopting rules pursuant to section 628(b) that prohibit certain types of exclusive contracts involving cable-affiliated programming.[20]

c. Additional Factors Weighing in Favor of Expiration of the Exclusive Contract Prohibition

34. We find additional factors also weigh in favor of our decision to decline to extend the prohibition beyond its sunset date. First, as both Congress and the Commission have specifically recognized, exclusive contracts may result in the procompetitive benefit of increasing investment in programming in some cases, thereby promoting competition and diversity in the video programming market. Vertically integrated cable operators and cable-affiliated programmers note that expiration of the prohibition will provide cable operators with an incentive to increase their investment in programming ventures, particularly local and regional programming. They also claim that exclusivity is critical to programmers for the following reasons: (i) A new service with limited interest may be able to gain carriage only if it can provide a distributor with exclusive carriage; (ii) exclusivity may be critical for a niche network that targets a particular audience; (iii) a programmer may wish to enter into an exclusive arrangement to reduce or share the risks with a cable operator; and (iv) exclusivity enhances the incentive of the cable operator to market and publicize the network. Moreover, expiration of the exclusive contract prohibition may also encourage other MVPDs or non-MVPD-affiliated programmers to create programming to counteract any exclusives involving cable operators, thereby leading to more competition and diversity in the video programming market. The Commission recognized this benefit in the *2010 Program Access Order,* explaining that,

[19] The Commission's conclusions in the *Comcast/NBCU Order* do not require a different result. In that proceeding, based on an extensive factual record in the context of an adjudication, the Commission found that the ''record evidence supports a finding that without Comcast-NBCU's suite of RSN, local and regional broadcast and national cable programming, other MVPDs likely would lose significant numbers of subscribers to Comcast, substantially harming those MVPDs that compete with Comcast in video distribution.'' *Comcast/NBCU Order,* 26 FCC Rcd at 4254, paragraph 37 (footnotes omitted). Moreover, the Commission found that ''this anticompetitive exclusionary program access strategy would often be profitable for Comcast.'' *Id.* at 4257–58, paragraph 44. The Commission's findings with respect to that transaction, which involved the nation's largest cable operator both in terms of subscribers and number of cable networks owned, do not compel the same conclusion with respect to all other vertically integrated cable operators. Indeed, the Commission specifically noted that ''[a]ll adjudicatory findings are fact specific and based on the evidence in the record in a specific matter.'' *Id.* at 4258, paragraph 45. Moreover, consistent with the case-by-case approach we describe herein, the Commission explained that ''[a]n assessment of the consequences of foreclosure of the programming at issue in a particular transaction must be made on a case-by-case basis, considering whether the foreclosure to rival MVPDs of access to the specific programming networks offered by the parties to the transaction likely would result in the loss of subscribers to MVPDs having access.'' *Id.* at 4258, paragraph 45 n. 109.

[20] Some commenters also speculate that cable operators will enter into exclusive contracts covering a bundle of cable-affiliated networks, which has a more harmful impact on competitors than an exclusive contract involving a single network. Should this occur, however, the Commission will be able to address these situations post-sunset pursuant to the provisions of section 628 that do not sunset. The Commission's conclusions in the *Comcast/NBCU Order* do not require a different result. In that proceeding, the Commission found that the ''evidence suggests that the overall bundle of NBCU cable networks is critical programming that MVPDs need to offer a competitive service that is attractive to consumers even if no individual network in the bundle were considered 'marquee' programming.'' *Comcast/NBCU Order,* 26 FCC Rcd at Appendix B, 4395–96, paragraph 46. As discussed above, this conclusion was based on an extensive factual record in the context of an adjudication involving the nation's largest cable operator, both in terms of subscribers and number of cable networks owned, and does not compel the same conclusion with respect to all other vertically integrated cable operators.

''[i]f particular programming is replicable, our policies should encourage MVPDs or others to create competing programming, rather than relying on the efforts of others, thereby encouraging investment and innovation in programming and adding to the diversity of programming in the marketplace.''

35. Some MVPDs question the potential for procompetitive benefits resulting from exclusive contracts involving satellite-delivered, cable-affiliated programming, noting that exclusive contracts involving non-cable-affiliated programmers are rare and that the Commission previously noted an increase in programming networks over time despite the exclusive contract prohibition. Nevertheless, Congress specifically recognized the benefits of exclusive contracts in some cases, as demonstrated by its mandate that the Commission allow the exclusive contract prohibition to expire when it is no longer ''necessary'' to preserve and protect competition and diversity in the video distribution market.

36. Second, the Commission has recognized that exclusive contracts may result in the procompetitive benefit of allowing MVPDs to differentiate their service offerings.[21] To be sure, the issue of whether the procompetitive benefits of product differentiation outweigh the anticompetitive harms is a fact-specific determination best handled on a case-by-case basis. But, at least in some markets, it is possible that consumers will benefit from increased competition in the video distribution market when MVPDs differentiate their service offerings and thereby invite competitive countermeasures from their rivals.[22]

37. Third, declining to extend the exclusive contract prohibition beyond its sunset date and relying instead on a case-by-case process is consistent with our First Amendment obligations and promotes the goals of Executive Order 13579 and the Commission's plan adopted consistent with the Executive Order, whereby the Commission analyzes rules that may be outmoded, ineffective, insufficient, or excessively burdensome and determines whether any such regulations should be modified, streamlined, or repealed. In today's marketplace, a nuanced, narrower, case-by-case approach that meets the statutory objectives is more appropriate than the blunt regulatory tool of a prohibition that preemptively bans all exclusive contracts and places the burden on the proponent of exclusivity to demonstrate how the exclusive contract serves the public interest before entering into or enforcing the contract.

38. Fourth, our action here promotes regulatory parity by treating satellite-delivered and terrestrially delivered programming similarly. Specifically, we will now consider all exclusive contracts involving cable-affiliated programming on a case-by-case basis in response to complaints, regardless of whether the programming is satellite-delivered or terrestrially delivered. Nothing in the record here establishes any basis for continuing to apply a preemptive prohibition to exclusive contracts involving satellite-delivered, cable-affiliated programming while assessing exclusive contracts involving terrestrially delivered, cable-affiliated programming on a case-by-case basis. Achieving parity in treatment between these two types of programming will remove any uncertainty and confusion surrounding which regulatory approach (preemptive prohibition or case-by-case) applies. In addition, parity in regulatory treatment will help to ensure that business reasons, rather than regulatory distinctions, drive the decision whether to deliver programming by satellite or terrestrial means.

39. Fifth, we expect that any enforcement of exclusive contracts in the near term will be limited by the terms of existing affiliation agreements. In the *NPRM,* the Commission sought comment on which of two alternative scenarios would occur after the expiration of the exclusive contract prohibition: (i) existing affiliation agreements allow programmers to terminate or modify their existing agreements immediately on the effective date of the sunset and to instead enter into exclusive contracts with cable operators; or (ii) existing affiliation agreements require programmers to continue to provide their programming to MVPDs for the duration of the term of the affiliation agreements despite the expiration of the exclusive contract prohibition. In response, no commenter claimed that expiration of the exclusive contract prohibition would allow cable-affiliated programmers to immediately terminate existing agreements. Rather, one commenter noted that programmers have contractual commitments to continue to provide their programming to MVPDs despite the expiration of the exclusive contract prohibition. Thus, enforcement of exclusive contracts in the near term will be limited, thereby effectively deferring the period that exclusive contracts will begin to be enforced.

d. Impact of the Expiration of the Exclusive Contract Prohibition on Competition and Consumers

40. Some commenters claim that declining to extend the exclusive contract prohibition beyond its sunset date and relying instead on a case-by-case process will harm competition, consumers, and MVPDs. We find these claims unpersuasive. First, they claim that a case-by-case complaint process is burdensome and time-consuming, especially for smaller MVPDs. These claims are based on the length of time needed to resolve complaints involving terrestrially delivered RSNs, such as the recent *Verizon* v. *MSG/Cablevision* and *AT&T* v. *MSG/Cablevision* cases. In those decisions, however, the Media Bureau specifically noted certain atypical circumstances that resulted in a delay in resolution of the complaints. We do not expect that complaints challenging exclusive contracts involving satellite-delivered, cable-affiliated programming will present similarly atypical circumstances. In any event, for the reasons discussed below, we establish a six-month deadline (calculated from the date of filing of the complaint) for the Media Bureau to act on a complaint alleging a denial of programming. Some commenters also claim that a complainant will not have access to the programming subject to the exclusive contract during the pendency of the complaint, thereby harming the complainant's ability to attract and retain subscribers. As the Commission explained in the *2010 Program Access Order,* however, a complainant may seek a standstill of an existing programming contract during the pendency of a complaint. Moreover, to the extent MVPDs are concerned about the costs of pursuing a complaint, they may seek to join with other MVPDs in pursuing a complaint to share those costs. An exclusive contract results in one cable operator having access to a

[21] Some commenters claim that exclusivity will harm consumers because no consumer could access the full range of programming available without having to subscribe to more than one service. This argument, however, is not specific to cable-affiliated programming. Rather, it is an argument against any type of exclusive programming arrangement, including those involving non-cable-affiliated programming that is not covered by the exclusive contract prohibition. Moreover, despite this alleged drawback of exclusivity, Congress has specifically found that exclusive contracts may have countervailing procompetitive benefits in some cases.

[22] The Commission in the *2007 Extension Order* found that the ability of MVPDs to engage in competitive countermeasures did not mitigate the impact of being unable to offer essential programming, as demonstrated by the material adverse impact on competition in the video distribution market resulting from withholding of RSNs in San Diego and Philadelphia. For the reasons discussed herein, given market developments since 2007, we find no basis to assume that the anticompetitive impact of exclusive arrangements always outweighs the procompetitive benefits.

particular cable-affiliated programming network or networks in a given geographic area, to the exclusion of every other MVPD competing in that geographic area. Accordingly, unlike a selective refusal to license where a cable-affiliated programmer withholds programming from one rival MVPD, an exclusive contract impacts every MVPD competing in the geographic area subject to the exclusive contract. For example, if a satellite-delivered, cable-affiliated RSN enters into an exclusive contract with an incumbent cable operator for each franchise area within a DMA, there are at least two DBS operators as well as potentially several telcos and cable overbuilders that will be impacted by the exclusive contract and that can seek to join as complainants in challenging the contract.

41. Second, some commenters claim that expiration of the exclusive contract prohibition will hinder the deployment of broadband. They note that the Commission in the *2010 Program Access Order* explained that a wireline firm's decision to deploy broadband is linked to its ability to offer video and that unfair acts involving terrestrially delivered, cable-affiliated programming that impede the ability of MVPDs to provide video service can also impede the ability of MVPDs to provide broadband services. The Commission, however, did not address this concern by adopting a preemptive ban on exclusive contracts and other allegedly unfair acts involving terrestrially delivered, cable-affiliated programming. Rather, the Commission adopted a case-by-case approach for addressing these allegedly unfair acts, which is precisely the approach we rely on here. As in the *2010 Program Access Order,* we believe that a case-by-case process will protect MVPDs from the potential anticompetitive impact of exclusive contracts, including the impact on broadband deployment.

42. Third, although some commenters claim that expiration of the exclusive contract prohibition will have a particularly adverse impact on new entrants in the video distribution market, including small and rural MVPDs, we note that the expiration of the exclusive contract prohibition does not impact the ability of MVPDs to challenge selective refusals to license. Specifically, to the extent that these concerns are based on fear that cable-affiliated programmers will single out certain MVPDs (such as a satellite provider or a new entrant with a small subscriber base) and withhold programming from them, as discussed below, such programmers will face the prospect of a complaint alleging non-price discrimination in violation of section 628(c)(2)(B).[23]

43. Fourth, DISH claims that expiration of the exclusive contract prohibition will result in increased programming costs for MVPDs by providing cable-affiliated programmers with increased leverage in negotiations based on threats to provide a competing cable operator with exclusivity. As with certain other concerns mentioned above, this concern is not specific to cable-affiliated programming and argues against any type of exclusive programming arrangement. In addition, DISH provides no evidence that non-cable-affiliated programmers have used such threats in programming negotiations. Moreover, as mentioned above, Congress specifically recognized the procompetitive benefits of exclusivity in some cases. DISH offers no basis to conclude that this singular concern about increased programming costs outweighs the potential procompetitive benefits of exclusivity envisioned by Congress.

44. As the preceding analysis makes clear, the benefits of our decision to decline to extend the exclusive contract prohibition beyond its sunset date will outweigh any potential costs. We believe that the case-by-case approach for considering exclusive contracts—which will allow the Commission to consider the unique facts and circumstances of each case—will be sufficient to protect MVPDs, including small, rural, and new entrant MVPDs, in their efforts to compete and will minimize the alleged costs of allowing the exclusive contract prohibition to sunset. We also expect that the following additional factors will further reduce these alleged costs: (i) A significant percentage of satellite-delivered, cable-affiliated programming is subject until January 2018 to program access merger conditions adopted in the *Comcast/NBCU Order,* which require Comcast/NBCU to make these networks available to competitors even after the expiration of the exclusive contract prohibition;[24] (ii) we expect that any enforcement of exclusive contracts in the near term will be limited by the terms of existing affiliation agreements; (iii) even after the expiration of the exclusive contract prohibition, a satellite-delivered, cable-affiliated programmer's refusal to license its content to a particular MVPD (such as a small, rural, or new entrant MVPD), while simultaneously licensing its content to other MVPDs competing in the same geographic area, will continue to be a violation of the discrimination provision in section 628(c)(2)(B), unless the programmer can establish a ''legitimate business reason'' for the conduct in response to a program access complaint challenging the conduct; and (iv) if the expiration of the exclusive contract prohibition results in harm to consumers or competition on a broad scale, we have statutory authority pursuant to section 628(b) of the Act to take remedial action by adopting rules, including a prohibition on certain types of exclusive contracts involving cable-affiliated programming, to address these concerns.

45. We acknowledge that a case-by case approach will result in certain costs by requiring affected parties and the Commission to expend time and resources litigating and resolving complaints. We find, however, that certain factors will help to minimize these costs. Below, we establish a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated RSN has the purpose or effect set forth in section 628(b). This presumption will reduce costs by eliminating the need for litigants and the Commission to undertake repetitive examinations of Commission precedent and empirical evidence on RSNs. In addition, as noted above, the costs of pursuing a complaint can be shared by joining with other MVPDs. With these additional measures to ease the burdens of litigating complaints, we believe that the costs of the case-by-case approach are outweighed by the significant benefits of our decision to decline to extend the exclusive contract prohibition beyond its sunset date.

e. Alternatives to Expiration of the Exclusive Contract Prohibition

46. In the *NPRM,* the Commission sought comment on two ways to relax the exclusive contract prohibition as alternatives to a complete expiration. For the reasons discussed below, we

[23] Some commenters claim that the emergence since 2007 of distributors of video programming over the Internet justifies extension of the exclusive contract prohibition, claiming that vertically integrated cable operators have an enhanced incentive to withhold programming from potential new sources of competition. Even assuming that these distributors qualify as MVPDs entitled to the benefits of the program access rules, however, this type of selective refusal to license would be addressed pursuant to the discrimination provision in section 628(c)(2)(B).

[24] As discussed above, our decision to decline to extend the exclusive contract prohibition beyond its sunset date does not impact our analysis in the *Comcast/NBCU Order* concluding that the program access merger conditions adopted therein were necessary to curb Comcast's anticompetitive exclusionary program access strategies that might result from the transaction.

decline to adopt these approaches. First, the Commission sought comment on establishing a process whereby a cable operator or satellite-delivered, cable-affiliated programmer can file a Petition for Sunset seeking to remove the exclusive contract prohibition on a market-by-market basis based on the extent of competition in the market. Both vertically integrated cable operators and their MVPD competitors oppose this approach. Given the lack of any record support for a market-by-market sunset process, we decline to adopt it.

47. Second, the Commission sought comment on whether to retain an exclusive contract prohibition for satellite-delivered, cable-affiliated RSNs and other satellite-delivered, cable-affiliated ''must have'' programming. In the *2010 Program Access Order,* the Commission rejected suggestions that it adopt a preemptive prohibition on exclusive contracts involving terrestrially delivered, cable-affiliated RSNs. The Commission explained that, previously in the *Adelphia Order,* it analyzed the impact of the withholding of three terrestrially delivered, cable-affiliated RSNs on the market shares of DBS operators. While the Commission found a significant impact on predicted DBS market share in two cases, it found no statistically significant impact in a third case. While the Commission found this evidence sufficient to support a rebuttable presumption of ''significant hindrance,'' it rejected the claim that the ''empirical evidence concerning RSNs is so uniform that it supports a *per se* rule that an unfair act involving a terrestrially delivered, cable-affiliated RSN always significantly hinders or prevents the MVPD from providing satellite cable programming or satellite broadcast programming.''

48. Based on the record here, we find no basis to reach a different conclusion for satellite-delivered, cable-affiliated RSNs. We note that, since the *2010 Program Access Order,* the Commission has found that the withholding of two additional terrestrially delivered, cable-affiliated RSNs (MSG HD and MSG+ HD) ''significantly hindered'' two MVPDs (Verizon and AT&T). Commenters also put forth surveys and other evidence, including evidence previously submitted in program access complaint proceedings, to support their claims regarding the uniform nature of RSNs as critical for competition. But this additional evidence fails to refute the Commission's previous findings that withholding of a cable-affiliated RSN does not always have a significant competitive impact. As the *Adelphia Order* demonstrates, unique factors at play in individual cases can dictate the extent to which withholding of an RSN impacts competition, such as whether the teams carried by the RSN are new and without an established following. Moreover, as discussed above, if we were to adopt a preemptive prohibition for exclusive contracts involving satellite-delivered, cable-affiliated RSNs, the prohibition would impact only 18 out of the 56 cable-affiliated RSNs available today. The remaining cable-affiliated RSNs are either terrestrially delivered (and thus subject to a case-by-case complaint process) or Comcast-controlled (and thus subject to program access merger conditions that require Comcast to make these networks available to competitors).[25] We find no basis in the record to single out these 18 RSNs for a preemptive prohibition on exclusive contracts. To be sure, as discussed below, we find, as the Commission found in the *2010 Program Access Order,* that the weight of the existing precedent and categorical evidence concerning RSNs is sufficient to establish a rebuttable presumption that an exclusive contract involving a cable-affiliated RSN has the purpose or effect prohibited in section 628(b) of the Act. But, consistent with our previous holding, we continue to believe that, ''[r]ather than adopting a general conclusion about the effect of these unfair acts, * * * case-by-case consideration of the impact on competition in the video distribution market is necessary to address whether unfair practices significantly hinder competition in particular cases.''

49. We also decline to retain a preemptive prohibition for any other categories of satellite-delivered, cable-affiliated programming. Several commenters offer examples of networks and programming that they consider to be ''must have'' programming. These commenters, however, fail to provide empirical data supporting their positions, nor do they offer a rational and workable definition of such programming that can be applied objectively. Accordingly, we conclude that there is insufficient evidence in the record to support retention of a preemptive prohibition for any categories of satellite-delivered, cable-affiliated programming.[26]

2. Case-by-Case Complaint Process

50. For the reasons discussed above, rather than continue the current approach of a preemptive prohibition on exclusive contracts between cable operators and satellite-delivered, cable-affiliated programmers, we will consider these exclusive contracts instead on a case-by-case basis in response to complaints alleging a violation of section 628(b). Moreover, additional causes of action under section 628 will continue to apply after expiration of the exclusive contract prohibition, including claims alleging undue influence under section 628(c)(2)(A)[27] and claims alleging discrimination under section 628(c)(2)(B).

a. Section 628(b) Complaints

(i) Procedures for Challenging Exclusive Contracts Involving Satellite-Delivered, Cable-Affiliated Programming Pursuant to Section 628(b)

51. The Commission in the *2010 Program Access Order* adopted a case-by-case complaint process to address unfair acts involving terrestrially delivered, cable-affiliated programming that allegedly violate section 628(b). As detailed below, we are extending these rules and policies to section 628(b) complaints challenging exclusive contracts involving satellite-delivered, cable-affiliated programming.

52. Under the case-by-case process for complaints alleging that an exclusive contract involving satellite-delivered, cable-affiliated programming violates section 628(b), the complainant will have the burden to establish that the exclusive contract at issue is ''unfair'' based on the facts and circumstances presented. The Commission has held previously that determining whether challenged conduct is ''unfair'' requires ''balancing the anticompetitive harms of the challenged conduct against the procompetitive benefits.'' In addition, the complainant will have the burden of proving that the exclusive contract has the ''purpose or effect'' of ''significantly hindering or preventing'' the

[25] As discussed above, our decision to decline to extend the exclusive contract prohibition beyond its sunset date does not impact our analysis in the *Comcast/NBCU Order* concluding that the program access merger conditions adopted therein were necessary to curb Comcast's anticompetitive exclusionary program access strategies that might result from the transaction.

[26] This lack of record evidence supporting retention of a preemptive prohibition should not be read to state or imply that a complainant could not show that withholding of certain programming results in significant hindrance under section 628(b) based on the facts presented in a complaint proceeding.

[27] The *NPRM* sought comment on whether, in the event of the expiration of the exclusive contract prohibition, a cable operator can ''unduly influence'' a satellite-delivered, cable-affiliated programmer to enter into an exclusive contract only if the underlying contract violates section 628(b) or section 628(c)(2)(B). Because the record on this issue is not well developed, we decline to address this issue at this time as a rulemaking matter, but leave open the possibility to consider such claims in the context of an appropriate adjudicatory matter.

complainant from providing satellite cable programming or satellite broadcast programming. As noted in the *2010 Program Access Order,* it is not our intent to remove incentives for MVPDs to improve their program offerings in order to differentiate themselves in the marketplace as long as their efforts to do so do not have the purpose or effect of significantly hindering or preventing an MVPD from providing satellite cable programming or satellite broadcast programming. In this regard, as previously noted in the *2010 Program Access Order,* it is highly unlikely that an unfair act involving local news and local community or educational programming will have the prescribed purpose or effect under section 628(b). As the Commission noted, local news and local community or educational programming is readily replicable by competitive MVPDs and exclusivity has played an important role in the growth and viability of local cable news networks.

53. The Commission has not adopted specific evidentiary requirements with respect to proof that the defendant's alleged activities have the ''purpose or effect'' of ''significantly hindering or preventing'' the complainant from providing satellite cable programming or satellite broadcast programming. Rather, the evidence required to satisfy this burden will vary based on the facts and circumstances of each case and may depend on, among other things, whether the complainant is a new entrant or an established competitor and whether the programming the complainant seeks to access is new or existing programming.[28] Illustrative examples of evidence that a complainant may provide include: (i) An appropriately crafted regression analysis that estimates what the complainant's market share in the MVPD market would be if it had access to the programming and how that compares to its actual market share; or (ii) statistically reliable survey data indicating the likelihood that customers would choose not to subscribe to or not to switch to an MVPD that did not carry the withheld programming.[29] We will assess the reliability of any evidence presented, such as the regression analysis, survey data, or other empirical data, on a case-by-case basis. The discovery process will enable parties to obtain additional evidence to assist in making these showings.

54. We also establish a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated RSN has the ''purpose or effect'' of ''significantly hindering or preventing'' the complainant from providing satellite cable programming or satellite broadcast programming, as set forth in section 628(b). The record in this proceeding supports the conclusion that RSNs are non-replicable and, in many cases, critically important to consumers. We note that in the *2010 Program Access Order* the Commission adopted a similar rebuttable presumption for terrestrially delivered, cable-affiliated RSNs, relying on Commission precedent and record evidence that demonstrated that RSNs are likely to be both non-replicable and highly valued by consumers. The DC Circuit upheld the Commission's decision to establish this rebuttable presumption under both First Amendment and APA review. The same analysis and findings from the *2010 Program Access Order* supporting a rebuttable presumption for terrestrially delivered, cable-affiliated RSNs apply equally to satellite-delivered, cable-affiliated RSNs. Indeed, commenters in this proceeding have not provided any evidence or suggested any basis for having a rebuttable presumption of ''significant hindrance'' for terrestrially delivered, cable-affiliated RSNs, but not for satellite-delivered, cable-affiliated RSNs.[30] Moreover, real-world evidence of withholding of RSNs, as well as the data in our record showing the increase of regional clusters, demonstrate that cable-affiliated programmers may still have an incentive to enter into exclusive contracts for satellite-delivered RSNs in some markets.[31] Accordingly, we believe that the record justifies the establishment of a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated RSN has the purpose or effect set forth in section 628(b).[32]

55. For purposes of this rebuttable presumption, we will define the term ''RSN'' in the same way the Commission defined that term in the *2010 Program Access Order* and in previous merger proceedings that have adopted program access conditions:

> Any non-broadcast video programming service that (1) provides live or same-day distribution within a limited geographic region of sporting events of a sports team that is a member of Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, NASCAR, NCAA Division I Football, NCAA Division I Basketball, Liga de Béisbol Profesional de Puerto Rico, Baloncesto Superior Nacional de Puerto Rico, Liga Mayor de Fútbol Nacional de Puerto Rico, and the Puerto Rico Islanders of the United Soccer League's First Division, and (2) in any year, carries a minimum of either 100 hours of programming that meets the criteria of subheading 1, or 10% of the regular season games of at least one sports team that meets the criteria of subheading 1.

A complainant will have the burden of showing that the network at issue satisfies this definition.

56. Given consumers' growing preference for HD programming, we will analyze the HD version of a network separately from the standard definition (''SD'') version of the network for purposes of determining whether an exclusive contract involving satellite-delivered, cable-affiliated programming has the purpose or effect set forth in section 628(b). The Commission has recognized that consumers are increasingly demanding HD programming and do not view the SD version of a particular network to be an acceptable substitute for the HD version due to the different technical characteristics and sometimes different content of these versions. The DC Circuit upheld under both First Amendment and APA review the Commission's decision in the *2010 Program Access Order* to analyze the HD and SD versions of a network separately when evaluating section

[28] Comcast maintains that section 628(b) cannot be read to mean that every exclusive contract involving satellite-delivered, cable-affiliated programming would violate the ''hinder significantly or prevent'' prong of section 628(b) because the contract would ''prevent'' an MVPD from providing the particular satellite-delivered programming subject to the exclusive contract. We agree. As the Commission and the DC Circuit have explained previously, the ''hinder significantly or prevent'' prong of section 628(b) focuses on how the withholding at issue impacts the MVPD's ability to provide a competing video service, not particular video programming.

[29] We recognize that not all potential complainants will have the resources to perform a regression analysis or market survey and reiterate that these examples are illustrative only.

[30] To be sure, some vertically integrated cable operators and cable-affiliated programmers claim that there is no basis to presume that exclusive contracts for any RSNs significantly hinder MVPDs from providing a competing video service, noting that certain MVPDs do not carry one or more RSNs in certain markets and that DBS operators' collective market share in Philadelphia (where they do not carry a Comcast-affiliated RSN) is higher than in some other markets where DBS operators carry some or all of the applicable RSNs. We find that this evidence fails to refute the existing precedent and evidence concerning the importance of RSNs, including the rigorous empirical analysis set forth in the *Adelphia Order.*

[31] *See supra* paragraphs 18–20.

[32] A defendant may overcome this presumption by establishing that the exclusive contract does not have the purpose or effect of significantly hindering or preventing the MVPD from providing satellite cable programming or satellite broadcast programming. As the Commission and the DC Circuit have explained, ''a rebuttable presumption does not shift the burden of proof to defendants; rather, it requires defendants to come forward with evidence that rebuts or meets the presumption.''

628(b) complaints involving terrestrially delivered programming. The same analysis and findings from the *2010 Program Access Order* pertaining to the distinction between HD and SD versions of a network apply here. Thus, in considering a complaint regarding an exclusive contract involving a satellite-delivered, cable-affiliated HD network, the mere fact that the complainant offers the SD version of the network to subscribers will not alone be sufficient to refute a claim under section 628(b). In cases involving an RSN, there will be a rebuttable presumption that an exclusive contract involving the HD version of the RSN results in ''significant hindrance'' even if the complainant offers the SD version of the RSN to subscribers.

57. We decline to establish a rebuttable presumption of ''significant hindrance'' for any categories of satellite-delivered, cable-affiliated programming other than RSNs.[33] Several commenters offer examples of networks and programming that they consider to be ''must have'' programming. These commenters, however, fail to provide empirical data supporting their positions, nor do they offer a rational and workable definition of such programming that can be applied objectively. Accordingly, we conclude that there is insufficient evidence in the record to support adoption of a rebuttable presumption for any other categories of satellite-delivered, cable-affiliated programming.[34]

(ii) 45-Day Answer Period

58. We amend our rules to provide for the same 45-day answer period for all complaints alleging a violation of section 628(b), regardless of whether the complaint involves satellite-delivered or terrestrially delivered programming. While our current program access procedural rules require a defendant to a complaint involving satellite-delivered programming to file an answer within 20 days after service, the Commission allows a defendant to a complaint involving terrestrially delivered programming 45 days after service to file an answer. The Commission determined that additional time is appropriate because, unlike complaints alleging a violation of the prohibitions set forth in section 628(c), a complaint alleging a violation of section 628(b) entails additional factual inquiries, including whether the allegedly ''unfair act'' at issue has the purpose or effect set forth in section 628(b). Although one commenter expresses concern that a 45-day answer period will lead to delays in resolving complaints, we conclude that the same 45-day answer period should apply in all complaint proceedings alleging a violation of section 628(b) because all such complaints will involve the factual issue of whether the challenged conduct has the purpose or effect set forth in section 628(b). To the extent a complaint alleges a violation of both section 628(b) and section 628(c), the longer (45-day) answer period will apply.

b. Section 628(c)(2)(B) Discrimination Complaints

59. Price and non-price discrimination complaints under section 628(c)(2)(B) of the Act will also continue to protect MVPDs in their efforts to compete following expiration of the exclusive contract prohibition. With respect to non-price discrimination, the sunset of the exclusive contract prohibition does not impact the ability of MVPDs to challenge selective refusals to license under section 628(c)(2)(B), which does not contain a sunset provision. In addition, the statute and our precedent provide that an exclusive ''arrangement'' (as opposed to an exclusive ''contract'') may violate section 628(c)(2)(B) of the Act.[35]

60. As described in the *NPRM,* a selective refusal to license occurs when a satellite-delivered, cable-affiliated programmer singles out a particular MVPD (such as a satellite provider or a small, rural, or new entrant MVPD) for differential treatment by refusing to license its content to the MVPD while simultaneously licensing its content to other MVPDs competing in the same geographic area. Commission precedent establishes that a selective refusal to license is a violation of the discrimination provision in section 628(c)(2)(B), unless the programmer can establish a ''legitimate business reason'' for the conduct. Thus, if a satellite-delivered, cable-affiliated programmer discriminates against an MVPD in this manner, the expiration of the exclusive contract prohibition does not limit the existing right of an MVPD to file a complaint challenging the selective refusal to license as a form of non-price discrimination in violation of section 628(c)(2)(B).[36]

61. As described in the *NPRM,* an exclusive ''arrangement'' exists when a satellite-delivered, cable-affiliated programmer unilaterally refuses to license its programming to all MVPDs competing in a geographic area except for one (such as its affiliated cable operator), without any exclusive contract with the MVPD. While the expiration of the exclusive contract prohibition in section 628(c)(2)(D) will generally permit ''exclusive contracts'' between cable operators and satellite-delivered, cable-affiliated programmers,[37] it does not permit the unilateral action of the programmer described here, unless the programmer can establish a ''legitimate business reason'' for the conduct. Accordingly, the expiration of the exclusive contract prohibition does not limit the existing right of an MVPD to challenge the unilateral action of a satellite-delivered, cable-affiliated programmer to refuse to license its programming to all MVPDs in a market except for one as a form of non-price discrimination in violation of section 628(c)(2)(B).[38]

[33] The Commission also sought comment in the *NPRM* on whether to establish a rebuttable presumption that, once a complainant succeeds in demonstrating an exclusive contract involving a satellite-delivered, cable-affiliated programming network violates section 628(b) or section 628(c)(2)(B), any other exclusive contract involving the same network violates section 628(b) or section 628(c)(2)(B). While we have received a few *ex parte* submissions on this issue, we do not believe the record on this issue is sufficiently developed and thus decline to adopt this rebuttable presumption at this time.

[34] This lack of record evidence supporting a rebuttable presumption for this programming should not be read to state or imply that a complainant could not show that withholding of such programming results in significant hindrance under section 628(b) based on the facts presented in a complaint proceeding.

[35] The Commission also sought comment in the *NPRM* on whether an exclusive contract can be challenged post-sunset as an unreasonable refusal to license in violation of section 628(c)(2)(B). The record on this issue, however, is not well developed. Accordingly, we defer consideration of this issue. We will instead assess this issue based on the facts presented in an individual adjudication.

[36] Complaints alleging a violation of section 628(c)(2)(B) do not require a showing of harm to the complainant.

[37] Section 628(c)(2)(D) of the Act prohibits ''exclusive contracts * * * between a cable operator and a satellite cable programming vendor in which a cable operator has an attributable interest.'' 47 U.S.C. 548(c)(2)(D). This language presumes that an agreement exists between the cable operator and the satellite-delivered, cable-affiliated programmer that would provide the cable operator with exclusivity.

[38] This scenario assumes that a satellite-delivered, cable-affiliated programmer licenses its programming to one MVPD in a geographic area, to the exclusion of all other MVPDs competing in that geographic area. Conversely, as discussed above, a selective refusal to license assumes that a satellite-delivered, cable-affiliated programmer licenses its programming to more than one MVPD competing in a geographic area, but refuses to license its programming to one or more other MVPDs competing in the same geographic area. In either scenario, an aggrieved MVPD can challenge this conduct as a form of non-price discrimination in violation of section 628(c)(2)(B).

c. Deadline for Media Bureau Action on Complaints Alleging a Denial of Programming

62. We adopt a six-month deadline (calculated from the date of filing of the complaint) for the Media Bureau to act on a complaint alleging a denial of programming. This deadline will apply regardless of whether the programming subject to the exclusive contract is terrestrially delivered or satellite-delivered. As noted above, some commenters claim that a case-by-case complaint process is burdensome and time-consuming. We believe that codifying a specific deadline in our rules for the Media Bureau to act on a complaint alleging a denial of programming will help to resolve disputes quickly and efficiently, provide certainty to all parties to the complaint, and fulfill our statutory mandate to ''provide for expedited review'' of program access complaints.

63. A complainant alleging a denial of programming may bring a claim pursuant to section 628(b) or section 628(c) or both. For complaints brought pursuant to section 628(b), an initial 60-day pleading cycle applies. For complaints brought pursuant to section 628(c), an initial 35-day pleading cycle applies.[39] After the close of the pleading cycle, the parties may elect to engage in discovery and then file post-discovery pleadings.[40] Although the length of the discovery process will necessarily vary on a case-by-case basis, given our experience in other complaint proceedings, we expect that parties will agree on the scope of discovery and complete discovery and post-discovery briefing within approximately 60 days. When combined with the initial 60-day pleading cycle (in a section 628(b) complaint) or 35-day pleading cycle (in a section 628(c) complaint), this would provide the Media Bureau with the complete record on which to base its decision approximately four months (in a section 628(b) complaint) or three months (in a section 628(c) complaint) after the filing of the complaint. Thus, based on these assumptions, the Media Bureau would have approximately two months (in a section 628(b) denial of programming complaint) or three months (in a section 628(c) denial of programming complaint) to reach a decision once the record closes. We believe this timeframe is sufficient to allow for the Media Bureau to review the record and draft and release a decision while also providing for the ''expedited review'' required by Congress and ensuring fairness to all parties.[41]

d. Petitions for Exclusivity

64. We retain our exclusivity petition process, whereby a cable operator or satellite-delivered, cable-affiliated programmer may file a Petition for Exclusivity seeking a Commission ruling that an exclusive contract involving satellite-delivered, cable-affiliated programming serves the public interest. To be sure, post-sunset, there is no requirement for a cable operator or a satellite-delivered, cable-affiliated programmer to seek prior approval for an exclusive contract. However, should a cable operator or satellite-delivered, cable-affiliated programmer elect to pursue a Petition for Exclusivity, grant of such a petition will immunize the contract from potential complaints alleging a violation of section 628(c)(2)(B), as required by the terms of section 628(c)(2)(B)(iv).

e. First Amendment

65. We conclude that addressing complaints challenging exclusive contracts for satellite-delivered, cable-affiliated programming on a case-by-case basis comports with the First Amendment. As explained below, the case-by-case process we adopt for exclusive contracts involving satellite-delivered, cable-affiliated programming satisfies intermediate scrutiny.

66. Although we conclude herein that changes in the video programming market warrant the expiration of the broad, prophylactic exclusive contract prohibition, regulation of exclusive contracts involving satellite-delivered, cable-affiliated programming on a case-by-case basis is still necessary to preserve and promote competition and diversity in the video distribution market. Cable operators continue to control 57.4 percent of MVPD subscribers nationwide and have an overwhelming share of subscribers in many regional markets, in the 80 percent range in some cases. Moreover, there is evidence that cable prices have risen in excess of inflation. In addition, as discussed above, the record indicates that vertically integrated cable operators may still have an incentive and ability to enter into exclusive contracts for satellite-delivered, cable-affiliated programming in some cases, and there may be instances where this programming is necessary for competition and has no good substitutes. In rejecting a First Amendment challenge to the case-by-case approach adopted by the Commission for considering unfair acts involving terrestrially delivered, cable-affiliated programming, the D.C. Circuit in *Cablevision II* stated that ''[t]he Commission has no obligation to establish that vertically integrated cable companies retain a stranglehold on competition nationally or that all withholding of terrestrially delivered programming negatively affects competition.'' Rather, the Commission ''need only show that vertically integrated cable operators remain dominant in *some* video distribution markets, that the withholding of highly desirable terrestrially delivered cable programming, like RSNs, inhibits competition in those markets, and that providing other MVPDs access to such programming will 'promot[e] * * * fair competition in the video marketplace.''' Given the clear evidence in the record that cable operators remain dominant in some regional markets and in some cases may enter into exclusive contracts for satellite-delivered, cable-affiliated programming that is necessary for competition and has no good substitutes, we find that the case-by-case approach adopted in this *Order* serves an important governmental interest.

67. Our decision to address exclusive contracts involving satellite-delivered, cable-affiliated programming on a case-by-case basis is not based on programming content but rather is intended to address the impact on competition in the video distribution market. Because the regulations we adopt herein respond to concerns about competition, not content, they are content-neutral and unrelated to the suppression of free speech. Similarly, our decision to adopt a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated RSN has the prohibited purpose or effect set forth in section 628(b) is based not on content but on the existing precedent and record evidence before us regarding the importance of RSNs for competition. As the DC Circuit explained in upholding a similar rebuttable presumption for terrestrially delivered, cable-affiliated RSNs, the ''clear and undisputed evidence shows that the Commission established presumptions for RSN programming due to that programming's economic characteristics, not to its communicative impact.''

[39] As stated above, to the extent a complaint alleges a violation of both section 628(b) and section 628(c), the longer (45-day) answer period will apply.

[40] In light of the expedited timeframe for the Media Bureau's decision adopted herein, we emphasize that complainants should not raise new matters in a reply.

[41] We will allow the Media Bureau to extend these deadlines under exceptional circumstances, such as where the parties jointly agree to toll the deadline.

68. Finally, we conclude that any incidental restriction on speech which may result from our decision to adopt a case-by-case process to address exclusive contracts involving satellite-delivered, cable-affiliated programming ''is no greater than is essential to the furtherance'' of Congress' interest in promoting competition in the video distribution market. The court in *Cablevision II* explained that, ''[b]y imposing liability only when complainants demonstrate that a company's unfair act has the 'purpose or effect' of 'hinder[ing] significantly or * * * prevent[ing] the provision of satellite programming, * * * the Commission's terrestrial programming rules specifically target activities where the governmental interest is greatest.'' Similarly, the tailored case-by-case process for addressing exclusive contracts involving satellite-delivered, cable-affiliated programming targets activities where the governmental interest is greatest by limiting liability to cases where a complainant demonstrates that an exclusive contract is an ''unfair act'' that has the ''purpose or effect'' of ''significantly hindering or preventing'' the provision of satellite programming in violation of section 628(b).[42] Moreover, with respect to the rebuttable presumption for satellite-delivered, cable-affiliated RSNs adopted herein, the DC Circuit has explained regarding a similar rebuttable presumption for terrestrially delivered, cable-affiliated RSNs that ''[g]iven record evidence demonstrating the significant impact of RSN programming withholding, the Commission's presumptions represent a narrowly tailored effort to further the important governmental interest of increasing competition in video programming.''

C. Subdistribution Agreements

69. Consistent with our decision to decline to extend the exclusive contract prohibition beyond its sunset date, we eliminate the restrictions on exclusive subdistribution agreements in served areas between cable operators and satellite-delivered, cable-affiliated programmers. The Commission's rules define a subdistribution agreement as ''an arrangement by which a local cable operator is given the right by a satellite cable programming vendor or a satellite broadcast programming vendor to distribute the vendor's programming to competing multichannel video programming distributors.'' Based on the exclusive contract prohibition, the Commission adopted certain restrictions on exclusive subdistribution agreements in the *1993 Program Access Order* to ''address any incentives for a subdistributor to refuse to sell to a competing MVPD that may be inherent in such rights'' and to ensure ''appropriate safeguards to limit the potential for anticompetitive behavior.'' Because we have concluded that the exclusive contract prohibition in served areas is no longer necessary to preserve and protect competition and diversity in the video distribution market, we conclude that the restrictions on exclusive subdistribution agreements in served areas are likewise no longer necessary and we accordingly eliminate them. In addition, as proposed in the *NPRM,* we conform § 76.1002(c)(3) as it pertains to exclusive subdistribution agreements in unserved areas to the amendments previously adopted in the *1994 Program Access Order.*

D. Common Carriers and Open Video Systems

70. The Commission's rules contain provisions pertaining to exclusive contracts involving common carriers or OVS and their affiliated programmers in served areas that mirror the rules applicable to exclusive contracts involving cable operators and their affiliated programmers in served areas. We conclude that the amendments adopted herein to the rules pertaining to exclusive contracts between cable operators and satellite-delivered, cable-affiliated programmers in served areas will apply equally to common carriers and OVS. Thus, with respect to common carriers, the prohibition on exclusive contracts in served areas between a satellite-delivered, common carrier-affiliated programmer and a common carrier or its affiliate that provides video programming by any means directly to a subscriber will expire. Similarly, the exclusive contract prohibition in served areas will expire as to exclusive contracts (i) between a satellite-delivered, OVS-affiliated programmer and an OVS or its affiliate that provides video programming on its OVS; and (ii) between a satellite-delivered, cable-affiliated programmer and an OVS video programming provider in which a cable operator has an attributable interest. Instead, we will rely on the protections provided by the case-by-case complaint process described above. We also conform the rules pertaining to exclusive subdistribution agreements involving common carriers and OVS to the rules adopted herein for cable operators by eliminating the restrictions on such agreements in served areas. In addition, as proposed in the *NPRM,* we conform § 76.1507 as it pertains to exclusive subdistribution agreements involving OVS in unserved areas to the amendments previously adopted in the *1994 Program Access Order.*

E. Liberty Media Order Merger Conditions

71. We modify the exclusivity conditions adopted in the *Liberty Media Order,* which prohibit certain programmers affiliated with Liberty Media and DIRECTV from entering into exclusive contracts. DIRECTV, the only commenter to address this issue, states that if the Commission declines to extend the exclusive contract prohibition beyond its sunset date, conforming modifications to the exclusivity conditions in the *Liberty Media Order* would be appropriate.[43] We agree. The merger conditions adopted in the *Liberty Media Order* provide that ''if the program access rules are modified these commitments shall be modified, as the Commission deems appropriate, to conform to any revised rules adopted by the Commission.''[44] Consistent with our decision not to extend the exclusive contract

[42] Some vertically integrated cable operators suggest that the program access rules are underinclusive because they apply to cable-affiliated programmers but not other MVPD-affiliated or unaffiliated programmers. As an initial matter, we note that the issue of whether to extend certain program access rules to programmers affiliated with non-cable MVPDs is pending before the Commission. With respect to unaffiliated programmers, the Commission in the *2007 Extension Order* found no record evidence to conclude that exclusive arrangements involving unaffiliated programmers have harmed competition in the video distribution market, and commenters offer no evidence in the record of this proceeding that would cause us to revisit this conclusion. In any event, the DC Circuit in *Cablevision II* rejected claims that the program access rules were underinclusive, explaining that these rules ''focus on vertically integrated cable companies due to their ''special characteristics'' and their unique ability to impact competition.'' *Cablevision II,* 649 F.3d at 713 (citing *Time Warner,* 93 F.3d at 978 (quoting *Turner Broad. Sys.,* 512 U.S. at 660–61, 114 S.Ct. 2445)). Moreover, the court explained that ''[w]ere the Commission to persist in regulating only the conduct of cable operators in the face of evidence that exclusive dealing arrangements involving other MVPDs have similar negative impacts on competition, then our analysis would necessarily change. But nothing in the present record suggests such unjustified discrimination.'' *Id.* The same conclusion applies based on the record in this proceeding.

[43] The Commission also sought comment on the impact of an expiration of the exclusive contract prohibition on merger conditions applicable to TWC adopted in the *Adelphia Order.* These conditions, however, expired in July 2012, after release of the *NPRM* and before adoption of this *Order.*

[44] In contrast to the *Liberty Media Order,* there is no provision in the *Comcast/NBCU Order* requiring the conditions adopted therein to be modified to conform to changes the Commission makes to the program access rules. *See Comcast/NBCU Order,* 26 FCC Rcd at 4381, Appendix A, Condition XX). Accordingly, the conditions adopted in the *Comcast/NBCU Order* will not be affected by the rule changes adopted in this proceeding.

prohibition beyond its sunset date, we modify the exclusivity conditions in the *Liberty Media Order* to provide that exclusive contracts will not be subject to a preemptive prohibition. No commenter opposed this proposal as set forth in the *NPRM.* Because our rules will allow an exclusive contract involving cable-affiliated programming to be challenged on a case-by-case basis post-sunset, however, we further modify these conditions to provide that an exclusive contract involving programming covered by these conditions may be challenged as violating section 628(b) of the Act and § 76.1001(a) of the Commission's rules.[45] Specifically, we modify Conditions III.1 and III.2 in the *Liberty Media Order* to state as follows:

Condition III.1: Liberty Media shall continue to make its existing or future national and regional programming services available to all MVPDs on nondiscriminatory terms and conditions. Notwithstanding the foregoing, Liberty Media may enter into an exclusive contract for any of these services with any MVPD, provided that the exclusive contract may be challenged as violating section 628(b) of the Act and § 76.1001(a) of the Commission's rules.[46]

Condition III.2: DIRECTV may enter into an exclusive contract with any Affiliated Program Rights Holder,[47] provided that the exclusive contract may be challenged as violating section 628(b) of the Act and § 76.1001(a) of the Commission's rules.[48]

72. To the extent that any programming covered under such an exclusive contract is cable-affiliated, the exclusive contract may also be assessed on a case-by-case basis in response to a program access complaint alleging a violation of section 628(b) or, potentially, section 628(c)(2)(B) of the Act.[49]

III. Order on Reconsideration in MB Docket No. 07–29

A. Background

73. For the reasons discussed below, we grant in part and deny in part a Petition for Reconsideration of the *2007 Extension Order* filed by Fox Entertainment Group, Inc. (''Fox'') pertaining to the Commission's program access discovery procedures. In the *2007 Extension Order,* the Commission revised these procedures to ''ensure that the Commission has the information necessary to expeditiously resolve program access complaints.'' The Commission codified its requirement that a respondent must attach to its answer all documents that it expressly references or relies upon in defending a program access claim. In addition, the Commission expanded the discovery procedures to permit party-to-party discovery. Under the expanded discovery procedures, parties to a program access complaint may serve requests for discovery directly on opposing parties and file a copy of the request with the Commission. The respondent has the opportunity to object to any request for documents that are not in its control or relevant to the dispute, and the obligation to produce the documents is suspended until the Commission rules on the objection. Recognizing that the expanded discovery approach requires the submission of confidential and competitively sensitive information, the Commission also revised the standard protective order for use in program access complaint proceedings to ensure that confidential business information is not improperly used for competitive business purposes. Specifically, the Commission modified the language of the protective order to reflect that any counsel or other persons, including in-house counsel, that are involved in ''competitive decision-making'' are prohibited from access to confidential material.

74. Fox filed a petition for reconsideration of the *2007 Extension Order,* arguing that the Commission's decision to permit party-to-party discovery constituted an unexplained departure from agency policy in contravention of the Administrative Procedure Act. AT&T and DISH filed oppositions to Fox's petition for reconsideration, and Time Warner Inc. filed a reply in support of Fox's petition.

B. Discussion

75. We reject Fox's argument that the Commission failed to adequately explain its decision to permit party-to-party discovery. Fox asserts that the Commission departed without explanation from the *1998 Program Access Order,* where the Commission declined to permit party-directed discovery out of concern that it could result in disputes over the production of documents and lengthen resolution times for program access complaints. We disagree. The Commission carefully weighed commenters' arguments in support of and in opposition to expanded discovery and concluded that ''expanded discovery will improve the quality and efficiency of the Commission's resolution of program access complaints.'' In this regard, a number of non-incumbent MVPDs raised concerns that documents necessary for complainants to establish discrimination, including programmers' carriage contracts, are not made available in complaint proceedings. The Commission agreed with these commenters ''that the availability of programmers' carriage contracts, subject to confidential treatment, [is] essential for determining whether the programmer is discriminating in price, terms and conditions.'' The Commission thus found that ''it would be unreasonable for a respondent not to produce all the documents requested by the complainant or ordered by the Commission, provided that such documents are in its control and relevant to the dispute.'' As DISH notes in its opposition, the record in this proceeding reflected ongoing concerns from MVPDs about the availability of relevant documents. Moreover, DISH states that the Commission also had ''an additional ten years of experience with the program access complaint process and discovery rules from which to determine that the existing discovery rules were insufficient.'' Accordingly, the Commission reasonably concluded that party-directed discovery will facilitate the expeditious resolution of program access complaints by ensuring

[45] As discussed above, we defer consideration of whether an exclusive contract can be challenged post-sunset as an unreasonable refusal to license in violation of section 628(c)(2)(B). We will instead assess this issue based on the facts presented in an individual adjudication. We also note that ''Liberty Media RSNs,'' as defined in the *Liberty Media Order,* will continue to be subject to the arbitration condition set forth in the *Liberty Media Order* until February 27, 2014, unless the arbitration condition is modified earlier in response to a petition.

[46] *See Revision of the Commission's Program Access Rules, et al.,* Report and Order and Order on Reconsideration, FCC 12–123, at paragraphs 72–73 (2012) (''*2012 Program Access Order*''). The term ''Liberty Media'' as used in this Appendix includes any entity or program rights holder in which Liberty Media or John Malone holds an attributable interest. Thus, the term ''Liberty Media'' includes Discovery Communications. Liberty Media and DIRECTV are prohibited from acquiring an attributable interest in any non-broadcast national or regional programming service while these conditions are in effect if the programming service is not obligated to abide by such conditions.

[47] The term ''Affiliated Program Rights Holder'' includes (i) any program rights holder in which Liberty Media or DIRECTV holds a non-controlling 'attributable interest' (as determined by the FCC's program access attribution rules) or in which any officer or director of Liberty Media, DIRECTV, or of any other entity controlled by John Malone holds an attributable interest; and (ii) any program rights holder in which an entity or person that holds an attributable interest also holds a non-controlling attributable interest in Liberty Media or DIRECTV, provided that Liberty Media or DIRECTV has actual knowledge of such entity's or person's attributable interest in such program rights holder.

[48] *See 2012 Program Access Order,* FCC 12–123, at paragraphs 72–73.

[49] In addition, regardless of whether the programming is cable-affiliated, the Commission has not foreclosed a challenge under section 628(b) to an exclusive contract with a cable operator involving non-cable-affiliated programming.

that all relevant documents are available to Commission staff and the parties, without the need for the Commission to take action to order the production of such documents. The modifications to the discovery rules were thus appropriate and adequately supported.

76. Contrary to Fox's arguments, the Commission also considered concerns raised by commenters that party-controlled discovery could give rise to overly broad discovery requests and ''fishing expeditions'' for confidential and competitively-sensitive information, which could lead to disputes over discovery and prolong resolution of program access complaints. The Commission adopted several safeguards to address these concerns. For example, the Commission determined that parties should have the opportunity to object to any request for documents that are not in their control or relevant to the dispute and that the obligation to produce the documents would be suspended until the Commission rules on the objection. Moreover, the Commission modified the standard protective order to further limit the individuals who may access competitively sensitive documents, thereby ensuring that confidential business information is not improperly used for competitive business purposes. The Commission emphasized that it has full authority to impose sanctions for violations of its protective orders, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to confidential information in Commission proceedings. Further, the Commission cautioned that it intends to vigorously enforce any transgressions of the provisions of its protective orders.

77. We are unpersuaded by Fox's assertion that, notwithstanding these safeguards, expanded discovery ''is virtually certain to lengthen significantly the time it takes for the Commission to resolve program access complaints'' because the Commission will have to address each disputed discovery demand. Because each party to a program access dispute must respond to discovery requests from the other party, the parties have mutual incentives to avoid overbroad requests and to come to an agreement on the scope of discovery. Indeed, in program access complaint proceedings that have gone to discovery since the expanded discovery rules have been in effect, the parties have generally settled discovery disputes without Commission intervention and, to the extent that they have been unable to resolve discrete issues on their own, the Commission has quickly resolved these issues.

78. Fox also argues that the expanded discovery process fails to adequately protect highly confidential and competitively sensitive documents and urges the Commission, if it continues to allow party-directed discovery, to revise the standard protective order to provide more stringent protection of highly confidential information. Fox acknowledges that the Commission revised the standard protective order to prohibit access to confidential information to individuals who are involved in competitive decision-making, but asserts that there is currently no mechanism for ensuring compliance with this requirement in advance. According to Fox, any *ex post facto* sanction imposed by the Commission for violating a protective order could likely never mitigate the damage to a programmer's business if confidential information falls into the hands of a competitor. Fox argues that the Commission should therefore revise the protective order to permit parties to object if they have concerns about the individuals who seek access to confidential information. Under Fox's proposal, an individual seeking access to confidential information would be required to provide at least five business days' notice to a programmer prior to accessing any protected documents to give the programmer the opportunity to object. If there is an objection, access would not be provided until the Commission rules on the objection. Fox also asserts that the Commission should revise the standard protective order to permit parties to limit access to certain highly confidential information to outside counsel, and to provide parties the right to prohibit copying of highly sensitive documents.

79. We modify the standard protective order as requested by Fox to include a right to object provision. We note that parties are free to negotiate their own protective orders to include a right to object provision and any other protections they deem necessary, and have done so successfully in program access complaint proceedings that have been initiated since the *2007 Extension Order.* Nevertheless, a right to object provision is commonly included in protective orders, and we agree that adding a right to object provision to the standard protective order will further ensure that confidential information is not improperly used for competitive business purposes. Thus, under the revised standard protective order, an individual seeking access to confidential information will be required to provide at least five business days' notice to the submitting party prior to accessing any protected documents to provide the submitting party the opportunity to object. If the submitting party objects, the individual will not be provided access to the protected documents until the Commission rules on the objection. We decline, however, to modify the standard protective order at this time to permit parties to limit access to certain ''highly confidential'' information to outside counsel only. Whether certain categories of confidential information require an enhanced level of protection, and therefore should be restricted to outside counsel, depends on the facts presented in an individual adjudication. Moreover, because protective orders commonly restrict copying of only a subset of ''highly confidential'' documents that are particularly sensitive, we also decline to modify the standard protective order to provide parties the right to prohibit copying of certain documents. Rather, as with the issue of whether certain categories of confidential information require an enhanced level of protection, the issue of whether to preclude copying of certain documents depends on the facts presented in an individual adjudication.

80. Fox further argues that the Commission should expand the rights of a discovery target to object to the scope of a request for documents. Fox states that the *2007 Extension Order* provides that recipients of a discovery request may object ''to any request for documents that are not in its control or relevant to the dispute,'' and asserts that this narrow basis for an objection would preclude opposing a demand for materials that are subject to the attorney-client or attorney work product privileges or that represent confidential exchanges between programmers and their accountants or experts. We clarify that the language referenced by Fox, which is codified in § 76.1003(j) of the Commission's rules, was not intended to preclude the right to assert the attorney-client privilege or the attorney work product privilege for materials subject to a discovery request in a program access complaint proceeding. We amend this rule to reflect this clarification. The work product privilege may also extend to confidential exchanges between programmers and their accountants or experts if these materials are prepared in anticipation of litigation. We note that the adjudicator in a program access complaint proceeding may order the production of documents for which a privilege is asserted for in camera inspection to determine whether the

attorney-client or work product privileges apply.

81. Finally, Fox asserts that the Commission should consider imposing sanctions against program access complainants that make frivolous discovery requests for information that is clearly not relevant or that is outside the scope of the complaint proceeding. As discussed above, we think it is unlikely that parties will use discovery to engage in ''fishing expeditions.'' We will, however, take appropriate action if we find that any party to a program access complaint proceeding is abusing the discovery process.

IV. Procedural Matters

A. Final Regulatory Flexibility Act Analysis

82. As required by the Regulatory Flexibility Act of 1980 (''RFA''), the Commission has prepared a Final Regulatory Flexibility Analysis (''FRFA'') relating to this *Report and Order* in MB Docket No. 12–68 *et al.* and *Order on Reconsideration* in MB Docket No. 07–29.

83. As required by the RFA, an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated in the *Notice of Proposed Rulemaking* (''*NPRM*'') in MB Docket Nos. 12–68, 07–18, and 05–192. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. The Organization for the Promotion and Advancement of Small Telecommunications Companies and the National Telecommunications Cooperative Association (collectively, ''OPASTCO/NTCA'') filed comments directed toward the IRFA and these comments are discussed below. This Final Regulatory Flexibility Analysis (''FRFA'') conforms to the RFA.

Need for, and Objectives of, the Report and Order

84. In areas served by a cable operator, section 628(c)(2)(D) of the Communications Act of 1934, as amended (the ''Act''), generally prohibits exclusive contracts for satellite cable programming or satellite broadcast programming between any cable operator and any cable-affiliated programming vendor (the ''exclusive contract prohibition''). The exclusive contract prohibition applies to all satellite-delivered, cable-affiliated programming and preemptively bans all exclusive contracts for such programming with cable operators, regardless of the popularity of the programming at issue. The exclusive contract prohibition applies only to programming that is delivered via satellite; it does not apply to programming delivered via terrestrial facilities. In section 628(c)(5) of the Act, Congress provided that the exclusive contract prohibition would cease to be effective on October 5, 2002, unless the Commission found that it ''continues to be necessary to preserve and protect competition and diversity in the distribution of video programming.'' On two previous occasions, first in 2002 and again in 2007, the Commission renewed the prohibition for five years, with the latest extension expiring on October 5, 2012. The *NPRM* initiated the third review of the necessity of the exclusive contract prohibition.

85. The *Report and Order* concludes that the exclusive contract prohibition is no longer necessary to preserve and protect competition and diversity in the distribution of video programming considering that a case-by-case process will remain in place after the prohibition expires to assess the impact of individual exclusive contracts. Accordingly, the Commission declines to extend the exclusive contract prohibition beyond its October 5, 2012 sunset date. Post-sunset, the Commission will rely on existing protections provided by the program access rules to protect multichannel video programming distributors (''MVPDs'') in their efforts to compete in the video distribution market, including the case-by-case consideration of exclusive contracts pursuant to section 628(b) of the Act.

86. The *Report and Order* extends the case-by-case complaint process previously adopted to address section 628(b) complaints involving terrestrially delivered, cable-affiliated programming to section 628(b) complaints challenging exclusive contracts involving satellite delivered, cable-affiliated programming. Under this case-by-case process, the complainant will have the burden of proving that the exclusive contract (i) is ''unfair'' based on the facts and circumstances presented; and (ii) has the ''purpose or effect'' of ''significantly hindering or preventing'' the MVPD from providing satellite cable programming or satellite broadcast programming in violation of section 628(b). There will be a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated Regional Sports Network (''RSN'') has the purpose or effect set forth in section 628(b). A defendant may overcome this presumption by demonstrating that the exclusive contract does not have the purpose or effect of significantly hindering or preventing the MVPD from providing satellite cable programming or satellite broadcast programming. The Commission will analyze the HD version of a network separately from the SD version of the network in evaluating whether an exclusive contract involving satellite-delivered programming has the purpose or effect set forth in section 628(b). In cases involving an RSN, there will be a rebuttable presumption that an exclusive contract involving the HD version of the RSN results in significant hindrance even if the complainant offers the SD version of the RSN to subscribers. In addition to claims under section 628(b) of the Act, additional causes of action under section 628 will continue to apply after expiration of the exclusive contract prohibition, including claims alleging undue influence under section 628(c)(2)(A) and claims alleging discrimination under section 628(c)(2)(B).

87. The *Report and Order* retains the exclusivity petition process, whereby a cable operator or satellite-delivered, cable-affiliated programmer may file a Petition for Exclusivity seeking Commission approval for an exclusive contract involving satellite-delivered, cable-affiliated programming by demonstrating that the contract serves the public interest. Grant of a Petition for Exclusivity will immunize an exclusive contract from potential complaints alleging a violation of section 628(c)(2)(B) of the Act, as required by the terms of section 628(c)(2)(B)(iv).

88. Finally, the *Report and Order* adopts a 45-day answer period for complaints alleging a violation of section 628(b); establishes a six-month deadline (calculated from the date of filing of the complaint) for the Media Bureau to act on a complaint alleging a denial of programming; eliminates restrictions on subdistribution agreements involving satellite-delivered, cable-affiliated programming in served areas; determines that the rules applicable post-sunset to exclusive contracts between cable operators and satellite-delivered, cable-affiliated programmers will apply equally to common carriers and Open Video Systems; and modifies the exclusivity conditions set forth in the *Liberty Media Order* to conform those conditions to the Commission's decision to decline to extend the exclusive contract prohibition beyond its October 5, 2012 sunset date.

89. The *Order on Reconsideration* in MB Docket No. 07–29 (i) affirms the expanded discovery procedures for program access complaints adopted in the *2007 Extension Order;* (ii) modifies the standard protective order for use in program access complaint proceedings

to include a provision allowing a party to object to the disclosure of confidential information based on concerns about the individual seeking access; and (iii) clarifies that a party may object to any request for documents that are protected from disclosure by the attorney-client privilege, the work-product doctrine, or other recognized protections from disclosure.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

90. OPASTCO/NTCA filed comments specifically directed toward the IRFA. In addition, several other commenters addressed the effects of the expiration of the exclusive contract prohibition on small businesses in their comments. OPASTCO/NTCA argues that expiration of the exclusive contract prohibition would have a particularly harmful impact on small and rural MVPDs, which lack the resources to produce alternative programming or engage in effective counter-measures. Therefore, OPASTCO/NTCA argues, ''it is particularly imperative to extend the exclusive contract prohibition to avoid the disproportionate consequences that the rule's expiration would impose on the markets served by small MVPDs.'' Several commenters also argue that small MVPDs do not have the resources to litigate complaints involving exclusive contracts on a case-by-case basis.

91. The *Report and Order* concludes that the case-by-case approach for considering exclusive contracts will be sufficient to protect MVPDs, including small, rural, and new entrant MVPDs, in their efforts to compete. The *Report and Order* also finds that the following additional factors will mitigate the risk of any potentially adverse impact of the expiration of the exclusive contract prohibition: (i) A significant percentage of satellite-delivered, cable-affiliated programming is subject until January 2018 to program access merger conditions adopted in the *Comcast/NBCU Order,* which require Comcast/NBCU to make these networks available to competitors even after the expiration of the exclusive contract prohibition; (ii) the Commission expects that any enforcement of exclusive contracts in the near term will be limited by the terms of existing affiliation agreements; (iii) even after the expiration of the exclusive contract prohibition, a satellite-delivered, cable-affiliated programmer's refusal to license its content to a particular MVPD (such as a small, rural, or new entrant MVPD), while simultaneously licensing its content to other MVPDs competing in the same geographic area, will continue to be a violation of the discrimination provision in section 628(c)(2)(B), unless the programmer can establish a ''legitimate business reason'' for the conduct in response to a program access complaint challenging the conduct; and (iv) if the expiration of the exclusive contract prohibition results in harm to consumers or competition, the Commission has statutory authority pursuant to section 628(b) of the Act to take remedial action by adopting rules, including a prohibition on certain types of exclusive contracts involving cable-affiliated programming, to address these concerns.

92. Moreover, the *Report and Order* notes that certain factors will help to minimize the costs of the complaint process. The *Report and Order* establishes a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated RSN has the purpose or effect set forth in section 628(b). This presumption will reduce costs by eliminating the need for litigants and the Commission to undertake repetitive examinations of Commission precedent and empirical evidence on RSNs. Moreover, the *Report and Order* establishes a six-month deadline (calculated from the date of filing of the complaint) for the Media Bureau to act on a complaint alleging a denial of programming. In addition, to the extent that MVPDs are concerned with the costs of pursuing a program access complaint, they may seek to join with other MVPDs in pursuing a complaint.

Description and Estimate of the Number of Small Entities to Which Rules Will Apply

93. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

94. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.

95. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined above. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.

96. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for

the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

97. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

98. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network). Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

99. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

100. *Home Satellite Dish (''HSD'') Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

101. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder

with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

102. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

103. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 1000 employees, and 15 firms had 1000 employees or more. Thus under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

104. *Open Video Systems.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small. In addition, we note that the Commission has certified approximately 42 OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. The Commission does not have financial or employment information regarding the other entities authorized to provide OVS, some of which may not yet be operational. Thus, up to 41 of the OVS operators may qualify as small entities.

105. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis * * *. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for this category, which is: all such firms having $15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 396 firms in this category that operated for the entire year. Of that number, 325 operated with annual revenues of $9,999,999 dollars or less. Seventy-one (71) operated with annual revenues of between $10 million and $100 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

106. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

107. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

108. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

109. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8995 had annual receipts of $24,999,999 or less, and 100 had annual receipts ranging from not less that $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

110. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less that $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

Description of Reporting, Recordkeeping, and Other Compliance Requirements

111. Following the expiration of the exclusive contract prohibition, the Commission will rely on existing protections in the program access rules to protect MVPDs in their efforts to compete in the video distribution market. An MVPD will have the option to file a complaint with the Commission alleging that an exclusive contract between a cable operator and a satellite-delivered, cable-affiliated programmer involving satellite-delivered, cable-affiliated programming violates section 628(b) of the Act. The *Report and Order* extends the case-by-case complaint process previously adopted by the Commission to address unfair acts involving terrestrially delivered, cable-affiliated programming that allegedly violate section 628(b) to section 628(b) complaints challenging exclusive contracts involving satellite-delivered, cable-affiliated programming. In addition to claims under section 628(b) of the Act, additional causes of action under section 628 will continue to apply after expiration of the exclusive contract prohibition, including claims alleging undue influence under section 628(c)(2)(A) and claims alleging discrimination under section 628(c)(2)(B). The *Report and Order* also adopts a 45-day answer period in complaint proceedings alleging a violation of section 628(b) and establishes a six-month deadline (calculated from the date of filing of the complaint) for the Media Bureau to act on a complaint alleging a denial of programming. Moreover, the *Order on Reconsideration* (i) modifies the standard protective order for use in program access complaint proceedings to include a provision allowing a party to object to the disclosure of confidential information based on concerns about the individual seeking access; and (ii) clarifies that a party may object to any request for documents that are protected from disclosure by the attorney-client privilege, the work-product doctrine, or other recognized protections from disclosure.

Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

112. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' The

NPRM invited comment on issues that had the potential to have significant impact on some small entities.

113. In the *Report and Order,* the Commission declines to extend the exclusive contract prohibition beyond its October 5, 2012 sunset date. The Commission will instead rely on existing protections in the program access rules to protect MVPDs, including small entities, in their efforts to compete in the video distribution market. Small MVPDs will have the option to file a complaint alleging that an exclusive contract between a cable operator and a satellite-delivered, cable-affiliated programmer involving satellite-delivered, cable-affiliated programming violates section 628(b) of the Act. In addition to claims under section 628(b) of the Act, additional causes of action under section 628 will continue to apply after expiration of the exclusive contract prohibition, including claims alleging undue influence under section 628(c)(2)(A) and claims alleging discrimination under section 628(c)(2)(B).

114. The *Report and Order* notes that certain factors will help to minimize the costs of the complaint process. The *Report and Order* establishes a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated RSN has the purpose or effect set forth in section 628(b). This presumption will reduce costs by eliminating the need for litigants and the Commission to undertake repetitive examinations of Commission precedent and empirical evidence on RSNs. Moreover, the *Report and Order* establishes a six-month deadline (calculated from the date of filing of the complaint) for the Media Bureau to act on a complaint alleging a denial of programming. To the extent that MVPDs are concerned with the costs of pursuing a program access complaint, they may seek to join with other MVPDs in pursuing a complaint.

115. Finally, the *Report and Order* revises the procedural rules for program access complaints to adopt a 45-day answer period for complaints alleging a violation of section 628(b). The standard answer period for other program access complaints is only 20 days. Small entities may benefit from a lengthier 45-day period within which to file an answer.

116. The *Order on Reconsideration* (i) modifies the standard protective order for use in program access complaint proceedings to include a provision allowing a party to object to the disclosure of confidential information based on concerns about the individual seeking access; and (ii) clarifies that a party may object to any request for documents that are protected from disclosure by the attorney-client privilege, the work-product doctrine, or other recognized protections from disclosure. Small entities may benefit from having the right to object to the disclosure of confidential information.

Report to Congress

117. The Commission will send a copy of the *Report and Order* in MB Docket Nos. 12–68, 07–18, and 05–192, and *Order on Reconsideration* in MB Docket No. 07–29, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report and Order* in MB Docket Nos. 12–68, 07–18, and 05–192, and *Order on Reconsideration* in MB Docket No. 07–29, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order* in MB Docket Nos. 12–68, 07–18, and 05–192, the *Order on Reconsideration* in MB Docket No. 07–29, and FRFA (or summaries thereof) will also be published in the **Federal Register**.

B. Final Paperwork Reduction Act of 1995 Analysis

118. This *Report and Order* in MB Docket No. 12–68 *et al.* and *Order on Reconsideration* in MB Docket No. 07–29 has been analyzed with respect to the Paperwork Reduction Act of 1995 (''PRA''), and does not contain any new or modified information collection requirements. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002.

C. Congressional Review Act

119. The Commission will send a copy of this *Report and Order* in MB Docket No. 12–68 *et al.* and *Order on Reconsideration* in MB Docket No. 07–29 in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.

V. Ordering Clauses

120. *It is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 548, the *Report and Order* in MB Docket Nos. 12–68, 07–18, and 05–192 and *Order on Reconsideration* in MB Docket No. 07–29 *Is Adopted.*

121. *It is further ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 548, the Commission's rules *Are Hereby Amended* as set forth in Appendix C.

122. *It is further ordered* that the rules adopted herein *Will Become Effective* November 30, 2012.

123. *It is further ordered* that, pursuant to sections 4(i), 4(j), 309, and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 309, and 310(d), the conditions previously adopted in the *Liberty Media Order Are Hereby Modified* as set forth in paragraph 72 of the *Report and Order* (FCC 12–123) in MB Docket Nos. 12–68, 07–18, and 05–192 effective 30 days after the date of publication in the **Federal Register**.

124. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and § 1.429 of the Commission's rules, 47 CFR 1.429, the Petition for Reconsideration of Fox Entertainment Group, Inc. in MB Docket No. 07–29 *Is Granted in part and Denied in part* as described herein.

125. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall Send* a copy of this *Report and Order* in MB Docket Nos. 12–68, 07–18, and 05–192 and *Order on Reconsideration* in MB Docket No. 07–29, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

126. *It is further ordered* that the Commission *Shall Send* a copy of this *Report and Order* in MB Docket Nos. 12–68, 07–18, and 05–192 and *Order on Reconsideration* in MB Docket No. 07–29 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 76

Administrative practice and procedure, Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. Section 76.1002 is amended by removing and reserving paragraph (c)(2), revising paragraphs (c)(3)(i) and (c)(3)(ii) introductory text, (c)(4) introductory text, and (c)(5) introductory text, and removing paragraph (c)(6).

The revisions read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(c) * * *

(3) * * *

(i) Unserved areas. No cable operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which a cable operator has an attributable interest or a satellite broadcast programming vendor in which a cable operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992 unless such agreement or arrangement complies with the limitations set forth in paragraph (c)(3)(ii) of this section. (ii) Limitations on subdistribution agreements in unserved areas. No cable operator engaged in subdistribution of satellite cable programming or satellite broadcast programming may require a competing multichannel video programming distributor to

* * * * *

(4) Public interest determination. In determining whether an exclusive contract is in the public interest for purposes of paragraph (c)(5) of this section, the Commission will consider each of the following factors with respect to the effect of such contract on the distribution of video programming in areas that are served by a cable operator:

* * * * *

(5) Commission approval required. Any cable operator, satellite cable programming vendor in which a cable operator has an attributable interest, or satellite broadcast programming vendor in which a cable operator has an attributable interest must submit a ''Petition for Exclusivity'' to the Commission and receive approval from the Commission to preclude the filing of complaints alleging that an exclusive contract with respect to areas served by a cable operator violates section 628(c)(2)(B) of the Communications Act of 1934, as amended, and paragraph (b) of this section.

* * * * *

■ 3. Section 76.1003 is amended by revising paragraphs (e)(1) and (j) and adding paragraph (m) to read as follows:

§ 76.1003 Program access proceedings.

* * * * *

(e) * * *

(1) Except as otherwise provided or directed by the Commission, any cable operator, satellite cable programming vendor or satellite broadcast programming vendor upon which a program access complaint is served under this section shall answer within twenty (20) days of service of the complaint, provided that the answer shall be filed within forty-five (45) days of service of the complaint if the complaint alleges a violation of section 628(b) of the Communications Act of 1934, as amended, or § 76.1001(a). To the extent that a cable operator, satellite cable programming vendor or satellite broadcast programming vendor expressly references and relies upon a document or documents in asserting a defense or responding to a material allegation, such document or documents shall be included as part of the answer.

* * * * *

(j) Discovery. In addition to the general pleading and discovery rules contained in § 76.7, parties to a program access complaint may serve requests for discovery directly on opposing parties, and file a copy of the request with the Commission. The respondent shall have the opportunity to object to any request for documents that are not in its control or relevant to the dispute or protected from disclosure by the attorney-client privilege, the work-product doctrine, or other recognized protections from disclosure. Such request shall be heard, and determination made, by the Commission. Until the objection is ruled upon, the obligation to produce the disputed material is suspended. Any party who fails to timely provide discovery requested by the opposing party to which it has not raised an objection as described above, or who fails to respond to a Commission order for discovery material, may be deemed in default and an order may be entered in accordance with the allegations contained in the complaint, or the complaint may be dismissed with prejudice.

* * * * *

(m) Deadline for Media Bureau Action on Complaints Alleging a Denial of Programming. For complaints alleging a denial of programming, the Chief, Media Bureau shall release a decision resolving the complaint within six (6) months from the date the complaint is filed.

■ 4. Section 76.1004 is amended by revising paragraph (b) to read as follows:

§ 76.1004 Applicability of program access rules to common carriers and affiliates.

* * * * *

(b) Sections 76.1002(c)(1) through (3) shall be applied to a common carrier or its affiliate that provides video programming by any means directly to subscribers as follows: No common carrier or its affiliate that provides video programming directly to subscribers shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a common carrier or its affiliate has an attributable interest, or any satellite broadcasting vendor in which a common carrier or its affiliate has an attributable interest for distribution to persons in areas not served by a cable operator as of October 5, 1992.

■ 5. Section 76.1507 is amended by removing and reserving paragraph (a)(2) and revising paragraphs (a)(3), and (b) to read as follows:

§ 76.1507 Competitive access to satellite cable programming.

(a) * * *

(3) Section 76.1002(c)(3)(i) and (ii) shall only restrict the conduct of an open video system operator, its affiliate that provides video programming on its open video system and a satellite cable programming vendor in which an open video system operator has an attributable interest, as follows: No open video system operator shall enter into any subdistribution agreement or arrangement for satellite cable programming or satellite broadcast programming with a satellite cable programming vendor in which an open video system operator has an attributable interest or a satellite broadcast programming vendor in which an open video system operator has an attributable interest for distribution to persons in areas not served by a cable operator as of October

5, 1992 unless such agreement or arrangement complies with the limitations set forth in § 76.1002(c)(3)(ii).

(b) No open video system programming provider in which a cable operator has an attributable interest shall engage in any practice or activity or enter into any understanding or arrangement, including exclusive contracts, with a satellite cable programming vendor or satellite broadcast programming vendor for satellite cable programming or satellite broadcast programming that prevents a multichannel video programming distributor from obtaining such programming from any satellite cable programming vendor in which a cable operator has an attributable interest, or any satellite broadcasting vendor in which a cable operator has an attributable interest for distribution to person in areas not served by a cable operator as of October 5, 1992.

The following Appendix will not appear in the Code of Federal Regulations (CFR):

Appendix

Standard Protective Order and Declaration for Use in Section 628 Program Access Proceedings Before the Federal Communications Commission Washington, DC 20554

In the Matter of)
[Name of Proceeding])
Docket No.

PROTECTIVE ORDER

1. This Protective Order is intended to facilitate and expedite the review of documents filed in this proceeding or obtained from a person in the course of discovery that contain trade secrets and privileged or confidential commercial or financial information. It establishes the manner in which ''Confidential Information,'' as that term is defined herein, is to be treated. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request under the Freedom of Information Act (''FOIA'') or other applicable law or regulation, including 47 CFR 0.442.

2. *Definitions.*

a. *Authorized Representative.* ''Authorized Representative'' shall have the meaning set forth in Paragraph 7.

b. *Commission.* ''Commission'' means the Federal Communications Commission or any arm of the Commission acting pursuant to delegated authority.

c. *Confidential Information.* ''Confidential Information'' means (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) and (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information. Confidential Information includes additional copies of, notes, and information derived from Confidential Information.

d. *Declaration.* ''Declaration'' means Attachment A to this Protective Order.

e. *Reviewing Party.* ''Reviewing Party'' means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

f. *Submitting Party.* ''Submitting Party'' means a person or entity that seeks confidential treatment of Confidential Information pursuant to this Protective Order.

3. *Claim of Confidentiality.* The Submitting Party may designate information as ''Confidential Information'' consistent with the definition of that term in Paragraph 2.c of this Protective Order. The Commission may, *sua sponte* or upon petition, pursuant to 47 CFR 0.459 and 0.461, determine that all or part of the information claimed as ''Confidential Information'' is not entitled to such treatment.

4. *Procedures for Claiming Information is Confidential.* Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, ''CONTAINS CONFIDENTIAL INFORMATION—DO NOT RELEASE.'' Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information. By designating information as Confidential Information, a Submitting Party signifies that it has determined in good faith that the information should be subject to protection under FOIA, the Commission's implementing rules, and this Protective Order.

5. *Storage of Confidential Information at the Commission.* The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

6. *Commission Access to Confidential Information.* Confidential Information shall be made available to Commission staff and Commission consultants. Consultants under contract to the Commission may obtain access to Confidential Information only if they have signed, as part of their employment contract, a non-disclosure agreement the scope of which includes the Confidential Information, or if they execute the attached Declaration.

7. *Disclosure.* Subject to the requirements of Paragraph 9, Confidential Information may be reviewed by counsel to the Reviewing Parties, or if a Reviewing Party has no counsel, to a person designated by the Reviewing Party. Subject to the requirements of Paragraph 9, counsel to a Reviewing Party or such other person designated by the Reviewing Party may disclose Confidential Information to other Authorized Representatives only after advising such Authorized Representatives of the terms and obligations of the Order and provided that the Authorized Representatives have signed the Declaration and served it appropriately in accordance with paragraph 9, and the Authorized Representatives are of the type of persons listed in subparagraphs 8.a., b., and c.

8. *Authorized Representatives shall be limited to:*

a. Subject to Paragraph 8.d, counsel for the Reviewing Parties to this proceeding, including in-house counsel, actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff and other employees, to the extent reasonably necessary to render professional services in this proceeding;

b. Subject to Paragraph 8.d, specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding; and

c. Subject to Paragraph 8.d., any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper; except that,

d. Disclosure shall be prohibited to any persons in a position to use the Confidential Information for competitive commercial or business purposes, including persons involved in competitive decision-making, which includes, but is not limited to, persons whose activities, association or relationship with the Reviewing Parties or other Authorized Representatives involve rendering advice or participating in any or all of the Reviewing Parties', Authorized Representatives' or any other person's business decisions that are or will be made in light of similar or corresponding information about a competitor.

9. *Procedures for Obtaining Access to Confidential Information.* In all cases where access to Confidential Information is permitted pursuant to paragraph 7, before reviewing or having access to any Confidential Information, each person seeking such access shall execute the Declaration in Attachment A and file it with the Commission and serve it upon the Submitting Party through their counsel, so that the Declaration is received by the Submitting Party at least five (5) business days prior to such person's reviewing or having access to Confidential Information. Each Submitting Party shall have an

opportunity to object to the disclosure of its Confidential Information to any such person. Any objection must be filed at the Commission and served on counsel for such person within three (3) business days after receipt of that person's Declaration. Until any such objection is resolved by the Commission and, if appropriate, any court of competent jurisdiction prior to any disclosure, and unless such objection is resolved in favor of the person seeking access, persons subject to an objection from a Submitting Party shall not have access to Confidential Information. If there is no objection or once such objection is resolved, the Submitting Party shall make such material available for review as set forth in Paragraph 10.

10. *Inspection of Confidential Information.* Confidential Information shall be maintained by a Submitting Party for inspection at two or more locations, at least one of which shall be in Washington, D.C. Inspection shall be carried out by Authorized Representatives upon reasonable notice not to exceed one business day during normal business hours.

11. *Copies of Confidential Information.* The Submitting Party shall provide a copy of the Confidential Material to Authorized Representatives upon request and may charge a reasonable copying fee not to exceed twenty five cents per page. Authorized Representatives may make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding. Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly and fully secured from access by unauthorized persons at all times.

12. *Use of Confidential Information.* Confidential Information shall not be used by any person granted access under this Protective Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

13. *Pleadings Using Confidential Information.* Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: ''Confidential Information included pursuant to Protective Order, [cite proceeding];'' and

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notations required by this Paragraph 13 are not removed.

14. *Violations of Protective Order.* Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

15. *Termination of Proceeding.* Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall, at the direction of the Submitting Party, destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, and shall certify in a writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any confidential information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with Paragraphs 11 and 12 of this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction.

16. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.

17. *Additional Rights Preserved.* The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

18. *Effect of Protective Order.* This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

19. *Authority.* This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. 154(i), (j); 47 CFR 0.457(d) and 76.1003(k); and section 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4).

Attachment A to Standard Protective Order

DECLARATION

In the Matter of)
[Name of Proceeding])
Docket No.

I, _____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Commission in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Federal Communications Commission. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party. I am not in a position to use the Confidential Information for competitive commercial or business purposes, including competitive decision-making, and my activities, association or relationship with the Reviewing Parties, Authorized

Representatives, or other persons does not involve rendering advice or participating in any or all of the Reviewing Parties', Authorized Representatives' or other persons' business decisions that are or will be made in light of similar or corresponding information about a competitor.

(signed) _____
(printed name) _____
(representing) _____
(title) _____
(employer) _____
(address) _____
(phone) _____
(date) _____

[FR Doc. 2012–26456 Filed 10–30–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MB Docket No. 12–68; FCC 12–123]

Program Access Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission seeks comment on the following revisions to its program access rules: the establishment of certain rebuttable presumptions in connection with program access complaints challenging exclusive contracts involving cable-affiliated programming; and amendments to its rules to ensure that buying groups utilized by small and medium-sized multichannel video programming distributors (''MVPDs'') can avail themselves of the program access rules.

DATES: Comments are due on or before November 30, 2012; reply comments are due on or before December 17, 2012.

ADDRESSES: You may submit comments, identified by MB Docket No. 12–68, by any of the following methods:

- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact David Konczal, *David.Konczal@fcc.gov*, or Kathy Berthot, *Kathy.Berthot@fcc.gov*, of the Media Bureau, Policy Division, (202) 418–2120.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rulemaking,* FCC 12–123, adopted and released on October 5, 2012. The full text is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, 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. The complete text may be purchased from the Commission's copy contractor, 445 12th Street SW., Room CY–B402, Washington, DC 20554. 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).

Summary of the Further Notice of Proposed Rulemaking

I. Introduction

In the *Further Notice of Proposed Rulemaking* (''*FNPRM*'') in MB Docket No. 12–68, we seek comment on whether to establish (i) a rebuttable presumption that an exclusive contract for a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is an ''unfair act'' under section 628(b); (ii) a rebuttable presumption that a complainant challenging an exclusive contract involving a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is entitled to a standstill of an existing programming contract during the pendency of a complaint; (iii) rebuttable presumptions with respect to the ''unfair act'' element and/or the ''significant hindrance'' element of a section 628(b) claim challenging an exclusive contract involving a cable-affiliated ''national sports network'' (regardless of whether it is terrestrially delivered or satellite-delivered); and (iv) a rebuttable presumption that, once a complainant succeeds in demonstrating that an exclusive contract involving a cable-affiliated network (regardless of whether it is terrestrially delivered or satellite-delivered) violates section 628(b) (or, potentially, section 628(c)(2)(B)), any other exclusive contract involving the same network violates section 628(b) (or section 628(c)(2)(B)). We also seek comment in the *FNPRM* on revisions to the program access rules to ensure that buying groups utilized by small and medium-sized MVPDs can avail themselves of these rules.

A. Rebuttable Presumptions for Cable-Affiliated RSNs

1. We seek comment on whether to establish (i) a rebuttable presumption that an exclusive contract for a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is an ''unfair act'' under section 628(b); and (ii) a rebuttable presumption that a complainant challenging an exclusive contract involving a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is entitled to a standstill of an existing programming contract for that RSN during the pendency of a complaint.

1. Rebuttable Presumption That an Exclusive Contract for a Cable-Affiliated RSN Is an ''Unfair Act''

2. As discussed above, under the case-by-case process for complaints alleging that an exclusive contract violates section 628(b), the complainant will have the burden of proving that the exclusive contract at issue (i) is an ''unfair act'' and (ii) has the ''purpose or effect'' of ''significantly hindering or preventing'' the complainant from providing satellite cable programming or satellite broadcast programming. With respect to the second element, the Commission has established a rebuttable presumption that an exclusive contract involving a satellite-delivered, cable-affiliated RSN has the ''purpose or effect'' of ''significantly hindering or preventing'' the complainant from providing satellite cable programming or satellite broadcast programming, as set forth in section 628(b). The Commission established an identical presumption for terrestrially delivered, cable-affiliated RSNs in the *2010 Program Access Order.*

3. With respect to the first element (the ''unfair act'' element), however, the Commission has not established a rebuttable presumption that an exclusive contract involving a cable-affiliated RSN is an ''unfair act.'' In the *2010 Program Access Order,* the Commission established a categorical rule that all exclusive contracts involving terrestrially delivered, cable-affiliated programming (regardless of whether the programming qualifies as an RSN) are ''unfair'' under section 628(b). The DC Circuit vacated this aspect of the *2010 Program Access Order,* holding that (i) just because Congress treated certain acts involving satellite programming as ''unfair'' does not mean the same acts are necessarily ''unfair'' in the context of terrestrial programming; (ii) even with respect to satellite-delivered programming, Congress established a sunset provision for the exclusivity ban and allowed cable operators or cable-affiliated programmers to seek prior approval to enter into an exclusive contract (neither

of which would apply to terrestrially delivered programming under the *2010 Program Access Order*); and (iii) by labeling conduct ''unfair'' simply because it might in some circumstances negatively affect competition in the video distribution market, the Commission failed to consider whether it should treat conduct as ''unfair'' despite it being procompetitive in a given instance. The court concluded that ''if the Commission believes that conduct involving the withholding of terrestrial programming should be treated as categorically unfair, as opposed to assessing fairness on a case-by-case basis or perhaps adopting a public interest exception mirroring the one for satellite programming, then it must grapple with whether its definition of unfairness would apply to conduct that appears procompetitive and, if so, whether that result would comport with section 628.'' Consistent with the court's decision, as demonstrated by the *Verizon* v. *MSG/Cablevision* and *AT&T* v. *MSG/Cablevision* cases, the Commission to date has elected to address whether challenged conduct, including an exclusive contract, is ''unfair'' on a case-by-case basis.

4. We seek comment on whether to establish a rebuttable presumption that an exclusive contract for a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is an ''unfair act'' under section 628(b). The D.C. Circuit has explained that an evidentiary presumption is only permissible (i) ''if there is a sound and rational connection between the proved and inferred facts'' and (ii) ''when proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact * * * until the adversary disproves it.'' Would a rebuttable presumption that an exclusive contract for a cable-affiliated RSN is an ''unfair act'' under section 628(b) satisfy this requirement? The Commission has held that determining whether challenged conduct is ''unfair'' requires ''balancing the anticompetitive harms of the challenged conduct against the procompetitive benefits.'' What are the potentially procompetitive benefits of an exclusive contract for a cable-affiliated RSN? How do these potential benefits compare to the potentially anticompetitive harms of an exclusive contract for a cable-affiliated RSN? We ask commenters to provide evidence supporting their positions.

2. Rebuttable Presumption That a Complainant Challenging an Exclusive Contract Involving a Cable-Affiliated RSN Is Entitled to a Standstill

5. As discussed above, the Commission in the *2010 Program Access Order* established a process whereby a complainant may seek a standstill of an existing programming contract during the pendency of a complaint. The complainant has the burden of proof to demonstrate how grant of the standstill will meet the following four criteria: (i) The complainant is likely to prevail on the merits of its complaint; (ii) the complainant will suffer irreparable harm absent a stay; (iii) grant of a stay will not substantially harm other interested parties; and (iv) the public interest favors grant of a stay.

6. We seek comment on whether to establish a rebuttable presumption that a complainant challenging an exclusive contract involving a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is entitled to a standstill of an existing programming contract for that RSN during the pendency of a complaint. Would such a rebuttable presumption meet the requirements for establishing such a presumption as set forth by the D.C. Circuit described above? Would this rebuttable presumption meet the requirements set forth by the D.C. Circuit only if we also establish a rebuttable presumption that an exclusive contract for a cable-affiliated RSN is an ''unfair act'' under section 628(b)? Are the rebuttable presumptions applicable to the ''unfair act'' (if adopted) and ''significant hindrance'' elements of a section 628(b) claim rationally related only to the ''likelihood to prevail on the merits'' prong of the four-part test for a standstill? What basis would there be for rationally presuming the other three elements of the test for a standstill (irreparable harm, no significant harm to other parties, and public interest) for purposes of establishing a standstill presumption for claims involving cable-affiliated RSNs? We ask commenters to provide evidence supporting their positions.

B. Other Rebuttable Presumptions

1. Rebuttable Presumptions for Exclusive Contracts Involving Cable-Affiliated National Sports Networks

7. We seek comment on whether to establish rebuttable presumptions with respect to the ''unfair act'' element and/or the ''significant hindrance'' element of a section 628(b) claim challenging an exclusive contract involving a cable-affiliated ''national sports network'' (regardless of whether it is terrestrially delivered or satellite-delivered). How should the Commission define a ''national sports network''? What cable-affiliated national sports networks exist today? Would these rebuttable presumptions meet the requirements for establishing such presumptions as set forth by the D.C. Circuit described above? On what basis can the Commission conclude that these networks have no good substitutes, are important for competition, and are non-replicable, as the Commission has found with respect to RSNs? We ask that commenters provide reliable, empirical data supporting their positions and address Commission precedent.[1] We also request comment on whether and how these rebuttable presumptions would be consistent with the First Amendment. To the extent we adopt these rebuttable presumptions, should we also adopt a rebuttable presumption that a complainant challenging an exclusive contract involving a cable-affiliated national sports network (regardless of whether it is terrestrially delivered or satellite-delivered) is entitled to a standstill of an existing programming contract for that network during the pendency of a complaint?

2. Rebuttable Presumption for Previously Challenged Exclusive Contracts

8. We seek comment on whether the Commission should establish a rebuttable presumption that, once a complainant succeeds in demonstrating that an exclusive contract involving a cable-affiliated network (regardless of whether it is terrestrially delivered or satellite-delivered) violates section 628(b) (or, potentially, section 628(c)(2)(B)), any other exclusive contract involving the same network violates section 628(b) (or section 628(c)(2)(B)). While we sought comment on this issue in the *NPRM* in MB Docket No. 12–68, we concluded that the record on this issue was not sufficiently developed. Would this rebuttable presumption meet the requirements for establishing such a presumption as set forth by the D.C. Circuit described above? Is there a reasonable basis for

[1] *See 2010 Program Access Order,* 25 FCC Rcd at 777 n.182 (discussing exclusive arrangements for ''out-of-market, non-regional sports programming'' and concluding that commenters ''failed to provide evidence in the record of this proceeding of any harm to competition resulting from these arrangements''); *2007 Extension Order,* 22 FCC Rcd at 17843 n.380 (discussing national sports programming and concluding that ''[u]nlike in the case of cable-affiliated regional sports programming, we have no evidence that the inability to access this sports programming has impacted MVPD subscribership'').

presuming liability based on a prior determination of a section 628(b) violation involving the same network? How would differences among complainants (*e.g.,* differences in the complainants' market power) or changing circumstances over time (*e.g.,* whether the network continues to carry the same highly coveted content) impact such a presumption? If we establish such a rebuttable presumption, should it be time limited? If we establish such a rebuttable presumption, should it apply if the complaints concern the same network but different geographic markets?

C. Buying Groups

9. We also solicit comment on possible modifications to the program access rules relating to buying groups. ACA filed comments in this proceeding asserting that revisions to the program access rules are needed to ensure that buying groups utilized by small and medium-sized MVPDs can avail themselves of the program access rules. ACA seeks three modifications to the program access rules: (i) revision of the definition of ''buying group'' to accurately reflect the level of liability assumed by buying groups under current industry practices; (ii) establishment of standards for the right of buying group members to participate in their group's master licensing agreements; and (iii) establishment of a standard of comparability for a buying group regarding volume discounts. In addition to seeking comment on ACA's proposed modifications, we propose to revise our definition of ''buying group'' to provide that a buying group may not unreasonably deny membership to any MVPD requesting membership.

1. Definition of ''Buying Group''

10. As ACA explains, buying groups play an important role in the market for video programming distribution, both for small and medium-sized MVPDs and for programmers. A buying group negotiates master agreements with video programmers that its MVPD members can opt into and then acts as an interface between its members and the programmers so that the programmers are able to deal with a single entity. Thus, a buying group is generally able to obtain lower license fees for its members than they could obtain through direct deals with the programmers and lower transaction costs for programmers by enabling them to deal with a single entity, rather than many individual MVPDs, for their negotiations and fee collections. Because small and medium-sized MVPDs rely on buying groups as the primary means by which they purchase their programming, ACA asserts that small and medium-sized MVPDs are protected under the program access rules only to the extent that buying groups are given the same protection in their dealings with cable-affiliated programmers as individual MVPDs are given. ACA notes that Congress, recognizing small MVPDs' reliance on buying groups, explicitly extended the non-discrimination protections of section 628(c)(2)(B) of the Act to buying groups.[2] The Commission likewise extended the protections of the non-discrimination provision of the program access rules to buying groups by including ''buying groups'' within the definition of ''multichannel video programming distributor'' set forth in § 76.1000(e) of the Commission's program access rules.

11. Although Congress did not define the term ''buying group,'' the Commission has adopted a definition for this term. Section 76.1000(c) of the Commission's rules sets forth the requirements that an entity must satisfy in order to be considered a ''buying group'' eligible to avail itself of the non-discrimination protections afforded to MVPDs under the program access rules. One of these requirements pertains to the liability of the buying group or its members to the programmer for payments. The Commission has established three alternative ways for the buying group to satisfy this requirement. First, the entity seeking to qualify as a ''buying group'' may agree ''to be financially liable for any fees due pursuant to a * * * programming contract which it signs as a contracting party as a representative of its members'' (the ''full liability'' option). Second, the members of the buying group, as contracting parties, may agree to joint and several liability (the ''joint and several liability'' option). Third, the entity seeking to qualify as a ''buying group'' may maintain liquid cash or credit reserves equal to the cost of one month of programming fees for all buying group members and each member of the buying group must remain liable for its pro rata share (the ''cash reserve'' option).[3]

12. ACA asserts that none of these alternative liability options reflects current industry practice. First, with respect to the ''full liability'' option, ACA asserts that buying groups, such as the National Cable Television Cooperative (''NCTC''),[4] never assume full liability for the contractual commitment that each member company makes when it opts into a master agreement. Rather, NCTC's obligation is limited to forwarding any payments that are received from members to the programmer and notifying the programmer of any default by one of its members. Additionally, NCTC's general practice is to deal with delinquent members by terminating their membership and thus all of the master agreements of the delinquent member. Second, with respect to the ''joint and several liability'' option, ACA notes that NCTC found this option impracticable because it would interfere with some members' loan covenants as to debt and result in fewer MVPDs being able to participate in NCTC master agreements. Third, with respect to the ''cash reserve'' option, ACA notes that NCTC's standard practice in its early years was to require its members to deposit 30 days of payments into an escrow account when they opted into a master agreement, but programmers and NCTC eventually decided this protection was unnecessary.

13. According to ACA, programmers have widely accepted NCTC's current business model, including the reduced level of liability that NCTC assumes

[2] The legislative history of section 628(c)(2)(B) also reflects Congress's intent to afford small MVPDs that purchase programming through buying groups the same protection against discrimination as other MVPDs. *See* S. Rep. No. 102–92, at 25 (1991), *reprinted in* 1992 U.S.C.C.A.N. 1133, 1160 (''To address the complaints of small cable operators that cable programmers will not deal with them or will unreasonably discriminate against them in the sale of programming, the legislation requires vertically integrated, national cable programmers to make programming available to all cable operators and their buying agents on similar price, terms, and conditions.''); H.R. Conf. Rep. No. 102–862, at 91 (1992), *reprinted in* 1992 U.S.C.C.A.N. 1231, 1273 (''National and regional programmers affiliated with cable operators are required by the Senate bill to offer their programming to buying groups on terms similar to those offered to cable operators.'').

[3] ACA notes that the changes to § 76.1000(c)(1) to reflect the ''cash reserve'' option were not included in the *1998 Program Access Order* and that a subsequent Erratum making the relevant changes to § 76.1000(c)(1) was not published in the **Federal Register**. While ACA notes that, as a result, the changes to § 76.1000(c)(1) to reflect the ''cash reserve'' option are not reflected in the *Code of Federal Regulations,* a summary of the *1998 Program Access Order,* including a discussion of the ''cash reserve'' option, was published in the **Federal Register** and is thus a binding rule. *See Development of Competition and Diversity in Video Programming Distribution and Carriage,* 63 FR 45740–02, 45742 (1998).

[4] NCTC is a buying group with approximately 910 member companies representing approximately 25 million MVPD subscribers. NCTC's members vary widely in size, from a few dozen subscribers to several million subscribers. More than half of NCTC's 910 members have fewer than 1,000 subscribers, while a little over 100 of its members have more than 10,000 subscribers. In addition to negotiating the rates, terms, and conditions of master agreements with programmers, NCTC acts as an interface for all billing and collection activities between its member companies and the programmer.

under a master agreement. Because the existing definition of ''buying group'' does not conform to these widely accepted practices, ACA asserts that NCTC is effectively barred from bringing a program access complaint concerning a master agreement on behalf of its member companies. ACA accordingly recommends that the Commission modernize the definition of ''buying group'' in § 76.1000(c)(1) by adding, as an alternative to the existing liability options, a requirement that the entity seeking to qualify as a ''buying group'' assumes liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer.

14. Based on ACA's comments, it appears that our existing definition of ''buying group'' set forth in § 76.1000(c)(1) does not reflect accepted industry practices and thus may have the unintended effect of barring some buying groups from availing themselves of the protections of the non-discrimination provision of the program access rules, in contravention of Congress's express intent in enacting section 628(c)(2)(B) of the Act. We tentatively conclude that we should revise § 76.1000(c)(1) to require, as an alternative to the current liability options, that the buying group agree to assume liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer.[5] We seek comment on this tentative conclusion. We also seek comment on whether NCTC's practices in terms of the level of liability it assumes under a master agreement are consistent with that of other buying groups. To the extent that the practices of other buying groups differ, how do they differ?

15. We note that the Commission adopted the liability options in § 76.1000(c)(1) to address concerns about the creditworthiness and financial stability of buying groups and protect programmers from excessive financial risk. We do not believe that revising the definition of buying group as discussed above would subject programmers to greater financial risk when contracting with a buying group than they would be when contracting with an individual MVPD. According to ACA, if an individual MVPD defaults on its payments for programming, a programmer may attempt to require the MVPD to continue making payments over the life of the agreement, or it may cease delivery of the programming to the MVPD. ACA states that the programmer's legal rights are the same regardless of whether the defaulting MVPD has purchased service on an individual basis or through a buying group. Moreover, we note that NCTC's general practice of terminating membership, and thus all of the master agreements, of a delinquent member, may reduce the risk of delinquency, which could provide the programmer greater protection than when dealing with an individual MVPD. We invite commenters to address whether the proposed revision to the buying group definition sufficiently protects programmers from financial risks in dealing with buying groups. If not, what additional measures are needed to protect programmers from financial risk? Should we codify NCTC's practice of terminating membership and all of the master agreements of a delinquent member? Do other buying groups utilize this same practice?

16. We further propose to revise the definition of ''buying group'' to provide that a buying group may not unreasonably deny membership to any MVPD requesting membership. As ACA submits, ''[b]uying groups play an extremely important role in today's marketplace, for both small and medium-sized MVPDs,'' because they provide ''significantly lower license fees for [their] members than these MVPDs could obtain through direct deals with programmers.'' Although a buying group would presumably benefit from increasing its membership in order to obtain better deals from programmers, we are aware of allegations in recent years that NCTC has denied membership to certain MVPDs. In light of the significance of buying groups in the marketplace today and Congress's recognition of the importance of buying groups for small MVPDs, we propose to require that a ''buying group'' eligible to receive the benefits of the non-discrimination provision of the program access rules may not unreasonably deny membership to any MVPD requesting membership. Under this proposal, a buying group would not be required to accept all members. Rather, it would only be prohibited from ''unreasonably'' denying membership. For example, if an MVPD seeking membership has a history of defaulting on its payments for programming, or if there are legitimate antitrust reasons for denying membership to a particular MVPD, then the buying group's denial of membership would not be ''unreasonable.'' Upon being denied membership, an MVPD could file a Petition for Declaratory Ruling that the buying group no longer qualifies as a ''buying group'' as defined in § 76.1000(c) because it has ''unreasonably'' denied the MVPD membership. The central issue in the Declaratory Ruling proceeding would be whether the buying group's conduct in denying membership was ''unreasonable.'' If the Commission finds that the buying group's conduct was ''unreasonable,'' the buying group would no longer be eligible to receive the benefits of the non-discrimination provision of the program access rules. We seek comment on this proposal.

17. We invite commenters to discuss the potential costs and benefits of each of the proposed revisions of the buying group definition. To the extent possible, we encourage commenters to quantify any costs and benefits and submit supporting data. Commenters that propose an alternative approach should similarly provide data regarding the costs and benefits of the alternative approach.

2. Participation of Buying Group Members in Master Agreements

18. ACA also urges the Commission to revise the program access rules to prohibit cable-affiliated programmers from unreasonably preventing particular members of a buying group from opting into a master agreement. ACA contends that, while the program access rules prohibit unfair methods of competition and discriminatory practices, including selective refusals to license, these rules do not explicitly restrain the ability of a cable-affiliated programmer to unreasonably prevent particular members of a buying group from participating in a master agreement, even if the member normally purchases a substantial share of its programming from the buying group. ACA asserts that if a cable-affiliated programmer had the right to arbitrarily exclude any buying group member that it wished from a master agreement, the requirement that cable-affiliated programmers negotiate non-discriminatory agreements with buying groups could be rendered meaningless.

19. To remedy its concern, ACA recommends that the Commission adopt clear and easily verifiable standards for determining when a buying group member is presumptively allowed to participate in a master agreement with a cable-affiliated programmer. Specifically, ACA suggests that the Commission establish a ''safe harbor'' subscriber level for buying group

[5] As discussed above, the changes to § 76.1000(c)(1) to reflect the ''cash reserve'' option adopted in the *1998 Program Access Order* are not reflected in the *Code of Federal Regulations.* We intend to conform § 76.1000(c)(1) as amended in this proceeding to the amendment previously adopted in the *1998 Program Access Order.*

member MVPDs to participate in a master agreement. Under ACA's proposed approach, a buying group member MVPD with no more than the ''safe harbor'' number of subscribers would be presumptively entitled to participate in master agreements between the programmer and the buying group. A buying group member MVPD which has more than the safe harbor number of subscribers would also be entitled to participate if it demonstrates that it incurs some specified minimum share of its total expenditures on programming through the buying group. Further, when an expiring master agreement is up for renewal, buying group members participating in the expiring agreement would have the right to participate in the renewed agreement. ACA states that, as a consequence of this safe harbor, it would be a violation of the section 628(c)(2)(B) prohibition on discriminatory practices for a cable-affiliated programmer to refuse to deal with a buying group member that regularly participates in a master agreement. Although not mentioned by ACA, consistent with section 628(c)(2)(B), a cable-affiliated programmer could refuse to deal with a buying group member for a legitimate business reason, such as the distributor's history of defaulting on other programming contracts.

20. We seek comment generally on the need for a safe harbor for buying group participation in master agreements and, more specifically, on ACA's proposed safe harbor. Although several commenters make generalized allegations that cable-affiliated programmers have excluded particular buying group members from participating in master agreements negotiated with the buying group, we have not received information regarding specific instances in which such exclusions have occurred. We seek detailed information on the extent to which the exclusion of particular buying group members from participation in master agreements has occurred in the past or is occurring now. To the extent that some buying group members are being excluded from participating in master agreements, why are they being excluded?

21. If we determine that it is necessary to establish a safe harbor for buying group participation in master agreements, what subscriber level should we establish as the safe harbor? ACA suggests that we set the safe harbor subscriber number at 3 million subscribers. Is this an appropriate safe harbor subscriber number? Commenters that recommend a specific safe harbor subscriber number should explain the basis for their recommendation. Further, under ACA's suggested approach, a buying group member with more than the safe harbor number of subscribers would be entitled to participate in a master agreement if it demonstrates that it incurs some specified minimum share of its total expenditures on programming through the buying group. What minimum share of programming expenditures should such a buying group member have to incur through the buying group in order to be entitled to participate in a master agreement and over what period of time? ACA suggests that we require a buying group member with more than the safe harbor number of subscribers to demonstrate that the share of programming that it licenses through the buying group is not significantly smaller than the average share of programming that other buying group members license through the buying group. We seek comment on this proposal. What share of programming should be considered ''significantly smaller'' than the average share for purposes of this proposal? Over what period of time should we measure the ''average share'' of programming that other buying group members license through the buying group? In addition, we seek comment on ACA's proposal that, when an expiring master agreement is up for renewal, buying group members participating in the expiring agreement would have the right to participate in the renewed agreement. We also invite commenters to suggest any alternatives to ACA's proposed safe harbors and explain why the alternative is preferable or less burdensome. For example, would it be preferable to simply require that, if a cable-affiliated programmer enters into a master agreement with a buying group, all buying group members have a right to participate in the master agreement? What are the potential costs and benefits of ACA's safe harbor approach and any alternative proposals? Commenters should quantify any potential costs and benefits to the extent possible and provide supporting data.

3. Standard of Comparability for Buying Groups Regarding Volume Discounts

22. The Commission has explained that a complainant MVPD alleging program access discrimination must make a *prima facie* showing that there is a difference between the rates, terms, or conditions charged or offered by a cable-affiliated programmer to the complainant MVPD and to a ''competing distributor.'' The Commission has explained that buying groups that are ''fundamentally national in operation'' may make a comparison to the rates, terms, or conditions charged or offered by a cable-affiliated programmer to a ''national competitor.'' Once the complainant MVPD establishes a *prima facie* case of discrimination, the defendant programmer must demonstrate that the difference in prices, terms, and conditions is justified by the four factors set forth in section 628(c)(2)(B)(i)–(iv) of the Act. One of those factors allows programmers to use volume-related justifications to establish price differentials. If the programmer believes that the complainant MVPD and the ''competing distributor'' are not sufficiently similar, and thus cannot be realistically compared, it can state its reasons for this conclusion and submit an alternative contract for comparison with another more ''similarly situated'' alternative MVPD. The Commission's rules provide that the analysis of whether an alternative MVPD is properly comparable to the complainant includes consideration of, but is not limited to, the following factors: (i) Whether the alternative MVPD operates within a geographic region proximate to the complainant; (ii) whether the alternative MVPD has roughly the same number of subscribers as the complainant; and (iii) whether the alternative MVPD purchases a similar service as the complainant. Moreover, the Commission's rules provide that the alternative MVPD ''must use the same distribution technology as the 'competing' distributor with whom the complainant seeks to compare itself.''

23. ACA proposes that we amend our rules to clarify that the standard to be applied in determining whether buying groups are being discriminated against is the same as that applied to an individual MVPD providing the same number of subscribers to the programmer. In other words, ACA states, for purposes of determining whether prices offered to a buying group are discriminatory, the buying group should be considered ''similarly situated'' to an individual MVPD offering the programmer the same number of subscribers. According to ACA, ''the utility of the program access rules has been dramatically undercut for buying groups because the Commission has never established a clear standard upon which a buying group is to be compared for purposes of determining whether it is being discriminated against by a cable-affiliated programmer.''

24. We invite comment on ACA's proposal. In particular, we seek comment on whether and how any perceived lack of clarity regarding the standard of comparability for buying groups has affected negotiations

between buying groups and cable-affiliated programmers on volume discounts or has discouraged buying groups from filing program access complaints. We note, in this regard, that neither section 628 nor the Commission's rules distinguish between individual MVPDs and buying groups in describing the justifications for volume discounts. Therefore, it is arguably already clear that a buying group would be compared to an individual MVPD providing the same number of subscribers to the programmer. Moreover, in the *1993 Program Access Order,* the Commission established the conditions that a buying group must meet ''in order to benefit from treatment as a single entity for purposes of subscriber volume.'' The Commission therein stated that ''[v]endors can extend [to buying groups] the same volume discounts based on number of subscribers that they would ordinarily extend to single entities of comparable size provided that such discounts are offered in a nondiscriminatory fashion.'' Thus, to the extent that we adopt the revised definition of ''buying group'' proposed by ACA, we seek comment on whether it is also necessary to revise the rules to establish an explicit standard of comparability. Are there differences between individual MVPDs and buying groups that would argue against the standard of comparability advocated by ACA? As discussed above, the Commission's analysis of whether MVPDs are ''similarly situated'' for purposes of a program access discrimination complaint extends beyond consideration of whether MVPDs offer roughly the same number of subscribers to include other factors, such as the geographic region where the MVPDs operate, the services purchased, and the date of their contracts with the defendant programmer. What impact, if any, do these and other factors have on the standard of comparability advocated by ACA?

25. Moreover, as discussed above, a complainant MVPD alleging program access discrimination must make a *prima facie* showing of a differential in the price, terms, or conditions offered or charged to the complainant MVPD and to a ''competing distributor.'' In the case of a national buying group, the comparison is made to a ''national competitor.'' We seek comment on how this requirement impacts discrimination complaints brought by national buying groups and how, if at all, this requirement should be modified for discrimination complaints filed by national buying groups. For example, are there any ''national competitors,'' other than DBS operators, to which a national buying group can make a comparison? If only a DBS operator qualifies as a ''national competitor,'' but a defendant programmer believes that a DBS operator is not comparable to the national buying group, the defendant programmer may submit an alternative contract for comparison with another more ''similarly situated'' alternative MVPD. As discussed above, however, the Commission's rules provide that the alternative MVPD ''must use the same distribution technology as the 'competing' distributor with whom the complainant seeks to compare itself.'' If only a DBS operator can qualify as a ''competing distributor'' for a national buying group, does this limit the alternative MVPDs that can qualify as ''similarly situated'' to only other DBS operators?

26. ACA further proposes that we make clear that a cable-affiliated programmer cannot refuse to offer a master agreement to a buying group that specifies a schedule of non-discriminatory license fees over any range of subscribership levels that the buying group requests, so long as it is possible that the buying group could provide this number of subscribers from its current members eligible to participate in the master agreement. Under this proposal, a cable-affiliated programmer would violate section 628(c)(2)(B)'s prohibition on discriminatory practices if it fails or refuses to offer a non-discriminatory schedule of prices based on the number of subscribers that members of the buying group could provide if they chose to opt into the master agreement. ACA explains that under the current NCTC model, NCTC negotiates the deal with the programmer and then its members decide whether to opt into the deal. Thus, at the time of negotiation, neither NCTC nor the programmer knows exactly which NCTC members will take their programming through NCTC—and therefore neither party knows the precise number of subscribers that NCTC will provide. ACA maintains that its proposal ''will solve the 'chicken and egg' problem that might occur if certain members of a buying group are unwilling to opt into a master agreement because license fees are too high, even though the license fees would go down if the members decided to opt in.'' We seek comment on the benefits and burdens of ACA's proposal. To what extent has the ''chicken and egg'' problem described above hampered negotiations between buying groups and programmers? If, at the time of negotiation, neither the buying group nor the programmer knows precisely which buying group members will participate in the agreement, how are volume discounts calculated for buying groups? Has past participation been a reliable indicator of which buying group members are likely to opt into a master agreement? Additionally, we seek comment on whether the Commission has the authority under section 628 or some other provision of the Act to require programmers to provide buying groups generally applicable rate schedules for differing subscribership levels.

27. Finally, we seek comment on ACA's request that we clarify that the standard of comparability applies for purposes of evaluating all terms and conditions of the agreement, not just the price. As discussed above, to the extent that we adopt the revised definition of ''buying group'' proposed by ACA, is this proposed clarification necessary? We also invite commenters to analyze the potential costs and benefits of each of ACA's proposals relating to the standard of comparability for buying groups, as well as any alternative proposals, quantify any costs and benefits of the proposals to the extent possible, and submit appropriate supporting data.

II. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

28. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared this present Initial Regulatory Flexibility Analysis (''IRFA'') concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Further Notice of Proposed Rulemaking* (''*FNPRM*''). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *FNPRM* specified *supra.* The Commission will send a copy of the *FNPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA''). In addition, the *FNPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rule Changes

29. We seek comment in the *FNPRM* on whether to establish a rebuttable presumption that an exclusive contract for a cable-affiliated Regional Sports Network (''RSN'') (regardless of whether it is terrestrially delivered or satellite-delivered) is an ''unfair act'' under

section 628(b) of the Communications Act of 1934, as amended (the ''Act''). Under the case-by-case process for complaints alleging that an exclusive contract violates section 628(b), the complainant has the burden of proving that the exclusive contract at issue (i) is an ''unfair act'' and (ii) has the ''purpose or effect'' of ''significantly hindering or preventing'' the complainant from providing satellite cable programming or satellite broadcast programming. With respect to the second element, the Commission has established a rebuttable presumption that an exclusive contract involving a cable-affiliated RSN has the ''purpose or effect'' of ''significantly hindering or preventing'' the complainant from providing satellite cable programming or satellite broadcast programming, as set forth in section 628(b). With respect to the first element (the ''unfair act'' element), however, the Commission has not established a rebuttable presumption that an exclusive contract involving a cable-affiliated RSN is an ''unfair act.'' The *FNPRM* seeks comment on whether to establish this rebuttable presumption.

30. We also seek comment in the *FNPRM* on whether to establish a rebuttable presumption that a complainant challenging an exclusive contract involving a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is entitled to a standstill of an existing programming contract during the pendency of a complaint. The Commission previously established a process whereby a complainant may seek a standstill of an existing programming contract during the pendency of a complaint. The complainant has the burden of proof to demonstrate how grant of the standstill will meet the following four criteria: (i) The complainant is likely to prevail on the merits of its complaint; (ii) the complainant will suffer irreparable harm absent a stay; (iii) grant of a stay will not substantially harm other interested parties; and (iv) the public interest favors grant of a stay. The *FNPRM* seeks comment on whether to establish a rebuttable presumption that a complainant is entitled to a standstill when challenging an exclusive contract involving a cable-affiliated RSN.

31. The *FNPRM* also seeks comment on whether to establish rebuttable presumptions with respect to the ''unfair act'' element and/or the ''significant hindrance'' element of a section 628(b) claim challenging an exclusive contract involving a cable-affiliated ''national sports network'' (regardless of whether it is terrestrially delivered or satellite-delivered). We also seek comment in the *FNPRM* on whether the Commission should establish a rebuttable presumption that, once a complainant succeeds in demonstrating that an exclusive contract involving a cable-affiliated network (regardless of whether it is terrestrially delivered or satellite-delivered) violates section 628(b) (or, potentially, section 628(c)(2)(B)), any other exclusive contract involving the same network violates section 628(b) (or section 628(c)(2)(B)).

32. We also solicit comment on modifications to the program access rules relating to buying groups proposed by the American Cable Association (''ACA'') in its comments on the *Notice of Proposed Rulemaking* in MB Docket Nos. 12–68, 07–18, and 05–182. ACA asserts that revisions to the program access rules are needed to ensure that buying groups utilized by small and medium-sized multi-channel video programming distributors (''MVPDs'') can avail themselves of the non-discrimination protections of the program access rules. ACA seeks three modifications to the program access rules: (i) The revision of the definition of ''buying group'' to accurately reflect the level of liability assumed by buying groups under current industry practices; (ii) the establishment of standards for the right of buying group members to participate in their group's master licensing agreements; and (iii) the establishment of a standard of comparability for a buying group regarding volume discounts. In addition to ACA's proposed modifications, we propose to revise our definition of ''buying group'' to provide that a buying group may not unreasonably deny membership to any MVPD requesting membership.

33. Buying groups play an important role in the market for video programming distribution, both for small and medium-sized MVPDs and for programmers. A buying group negotiates master agreements with video programmers that its MVPD members can opt into and then acts as an interface between its members and the programmers so that the programmers are able to deal with a single entity. Thus, a buying group is generally able to obtain lower license fees for its members than they could obtain through direct deals with the programmers, and lower transaction costs for programmers by enabling them to deal with a single entity, rather than many individual MVPDs, for their negotiations and fee collections. Because small and medium-sized MVPDs rely on buying groups as the primary means by which they purchase their programming, small and medium-sized MVPDs are only protected under the program access rules to the extent that buying groups are given the same protection in their dealings with cable-affiliated programmers as individual MVPDs are given. The non-discrimination protections of section 628(c)(2)(B) of the Communications Act of 1934, as amended (the ''Act'') explicitly apply to buying groups. Further, the Commission's rules extend the non-discrimination protections of the program access rules to buying groups by including ''buying groups'' within the definition of ''multichannel video programming distributor'' set forth in § 76.1000(e) of the Commission's rules.

34. Section 76.1000(c) of the Commission's rules sets forth the requirements that an entity must satisfy in order to be considered a ''buying group'' for purposes of the definition of ''multichannel video programming distributor'' in § 76.1000(e)—that is, to avail itself of the non-discrimination protections afforded to MVPDs under the program access rules. One of these requirements pertains to the liability of the buying group or its members to the programmer for payments. The Commission has established three alternatives ways for the buying group to satisfy this requirement. First, the entity seeking to qualify as a ''buying group'' may agree ''to be financially liable for any fees due pursuant to a * * * programming contract which it signs as a contracting party as a representative of its members'' (the ''full liability'' option). Second, the members of the buying group, as contracting parties, may agree to joint and several liability (the ''joint and several liability'' option). Third, the entity seeking to qualify as a ''buying group'' may maintain liquid cash or credit reserves equal to the cost of one month of programming fees for all buying group members and each member of the buying group must remain liable for its pro rata share (the ''cash reserve'' option).

35. ACA asserts that none of these alternative liability options reflect current industry practice. First, with respect to the ''full liability'' option, ACA asserts that buying groups, such as the National Cable Television Cooperative (''NCTC''), never assume full liability for the contractual commitment that each member company makes when it opts into a master agreement. Rather, NCTC's obligation is limited to forwarding any payments that are received from members to the programmer and notifying the programmer of any default

by one of its members. Second, with respect to the ''joint and several liability'' option, ACA notes that NCTC found this option impracticable because it would interfere with some members' loan covenants as to debt and result in fewer MVPDs being able to participate in NCTC master agreements. Third, with respect to the ''cash reserve'' option, ACA states that NCTC's standard practice in its early years was to require its members to deposit 30 days of payments into an escrow account when they opted into a master agreement, but programmers and NCTC eventually decided this protection was unnecessary.

36. According to ACA, programmers have widely accepted NCTC's current business model, including the reduced level of liability that NCTC assumes under a master agreement. Because the existing definition of ''buying group'' does not conform to these widely accepted practices, ACA asserts that NCTC is effectively barred from bringing a program access complaint concerning a master agreement on behalf of its member companies. ACA accordingly recommends that the Commission modernize the definition of ''buying group'' in § 76.1000(c)(1) by adding, as an alternative to the existing liability options, a requirement that the entity seeking to qualify as a ''buying group'' assumes liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer.

37. In the *FNPRM,* we tentatively conclude that we should revise § 76.1000(c)(1) to require, as an alternative to the current liability options, that the buying group agree to assume liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer. In light of the significance of buying groups in the marketplace today and Congress's recognition of the importance of buying groups for small MVPDs, we further propose to revise the definition of ''buying group'' to provide that a buying group may not unreasonably deny membership to any MVPD requesting membership.

38. In addition, we seek comment on ACA's proposal that we establish a ''safe harbor'' subscriber level for buying group members to participate in a master agreement negotiated with a cable-affiliated programmer. Under ACA's proposed approach, a buying group member MVPD with no more than three million subscribers would be presumptively entitled to participate in master agreements between the programmer and the buying group. A buying group member MVPD which has more than the safe harbor number of subscribers would also be entitled to participate if it demonstrates that it incurs some specified minimum share of its total expenditures on programming through the buying group. Further, when an expiring master agreement is up for renewal, buying group members participating in the expiring agreement would have the right to participate in the renewed agreement. As a consequence of this safe harbor, it would be a violation of the section 628(c)(2)(B) prohibition on discriminatory practices for a cable-affiliated programmer to refuse to deal with a buying group member that regularly participates in a master agreement.

39. Finally, we seek comment on ACA's proposals that we revise the rules to clarify that: (i) The standard to be applied in determining whether buying groups are being discriminated against is the same as that applied to an individual MVPD providing the same number of subscribers to the programmer; (ii) a cable-affiliated programmer cannot refuse to offer a master agreement to a buying group that specifies a schedule of non-discriminatory license fees over any range of subscribership levels that the buying group requests, so long as it is possible that the buying group could provide this number of subscribers from its current members eligible to participate in the master agreement; and (iii) the standard of comparability for a buying group is an MVPD providing the same number of customers for purposes of evaluating all terms and conditions of the agreement, not just the price.

Legal Basis

40. The proposed action is authorized pursuant to sections 4(i), 4(j), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 548.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

41. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Below, we provide a description of such small entities, as well as an estimate of the number of such small entities, where feasible.

42. *Wired Telecommunications Carriers.* The 2007 North American Industry Classification System (''NAICS'') defines ''Wired Telecommunications Carriers'' as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services; wired (cable) audio and video programming distribution; and wired broadband Internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.'' The SBA has developed a small business size standard for wireline firms within the broad economic census category, ''Wired Telecommunications Carriers.'' Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.

43. *Cable Television Distribution Services.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined above. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that

operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small.

44. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Industry data indicate that all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 6,101 systems nationwide, 4,410 systems have under 10,000 subscribers, and an additional 258 systems have 10,000–19,999 subscribers. Thus, under this standard, most cable systems are small.

45. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that all but nine cable operators nationwide are small under this subscriber size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

46. *Direct Broadcast Satellite (''DBS'') Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS, by exception, is now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the majority of these firms can be considered small. Currently, only two entities provide DBS service, which requires a great investment of capital for operation: DIRECTV and DISH Network). Each currently offers subscription services. DIRECTV and DISH Network each report annual revenues that are in excess of the threshold for a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS service provider.

47. *Satellite Master Antenna Television (SMATV) Systems, also known as Private Cable Operators (PCOs).* SMATV systems or PCOs are video distribution facilities that use closed transmission paths without using any public right-of-way. They acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. SMATV systems or PCOs are now included in the SBA's broad economic census category, ''Wired Telecommunications Carriers,'' which was developed for small wireline firms. Under this category, the SBA deems a wireline business to be small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

48. *Home Satellite Dish (''HSD'') Service.* HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers' receipt of video programming. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Wired Telecommunications Carriers. The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

49. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues

that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

50. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

51. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 31,428 common carrier fixed licensees and 79,732 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 120 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 1000 employees, and 15 firms had 1000 employees or more. Thus under this category and the associated small business size standard, the majority of firms can be considered small. We note that the number of firms does not necessarily track the number of licensees. We estimate that virtually all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition.

52. *Open Video Systems.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small. In addition, we note that the Commission has certified approximately 42 OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. Affiliates of Residential Communications Network, Inc. (''RCN'') received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. The Commission does not have financial or employment information regarding the other entities authorized to provide OVS, some of which may not yet be operational. Thus, up to 41 of the OVS operators may qualify as small entities.

53. *Cable and Other Subscription Programming.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in operating studios and facilities for the broadcasting of programs on a subscription or fee basis * * *. These establishments produce programming in their own facilities or acquire programming from external sources. The programming material is usually delivered to a third party, such as cable systems or direct-to-home satellite systems, for transmission to viewers.'' The SBA has developed a small business size standard for this category, which is: All such firms having $15 million dollars or less in annual revenues. To gauge small business prevalence in the Cable and Other Subscription Programming industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 396 firms in this category that operated for the entire year. Of that number, 325 operated with annual revenues of $9,999,999 dollars or less. Seventy-one (71) operated with annual revenues of between $10 million and $100 million or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

54. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. A ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant

in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

55. *Incumbent Local Exchange Carriers (''LECs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small.

56. *Competitive Local Exchange Carriers, Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus, under this category and the associated small business size standard, the majority of these firms can be considered small. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities.

57. *Motion Picture and Video Production.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in producing, or producing and distributing motion pictures, videos, television programs, or television commercials.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Production industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 9,095 firms in this category that operated for the entire year. Of these, 8995 had annual receipts of $24,999,999 or less, and 100 had annual receipts ranging from not less that $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

58. *Motion Picture and Video Distribution.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in acquiring distribution rights and distributing film and video productions to motion picture theaters, television networks and stations, and exhibitors.'' We note that firms in this category may be engaged in various industries, including cable programming. Specific figures are not available regarding how many of these firms produce and/or distribute programming for cable television. The SBA has developed a small business size standard for this category, which is: all such firms having $29.5 million dollars or less in annual revenues. To gauge small business prevalence in the Motion Picture and Video Distribution industries, the Commission relies on data currently available from the U.S. Census for the year 2007. Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 450 firms in this category that operated for the entire year. Of these, 434 had annual receipts of $24,999,999 or less, and 16 had annual receipts ranging from not less that $25,000,000 to $100,000,000 or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

59. Certain proposed rule changes discussed in the *FNPRM* would affect reporting, recordkeeping, or other compliance requirements. The *FNPRM* seeks comment on whether to establish (i) a rebuttable presumption that an exclusive contract for a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is an ''unfair act'' under section 628(b); (ii) a rebuttable presumption that a complainant challenging an exclusive contract involving a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is entitled to a standstill of an existing programming contract during the pendency of a complaint; (iii) rebuttable presumptions with respect to the ''unfair act'' element and/or the ''significant hindrance'' element of a section 628(b) claim challenging an exclusive contract involving a cable-affiliated ''national sports network'' (regardless of whether it is terrestrially delivered or satellite-delivered); and (iv) a rebuttable presumption that, once a complainant succeeds in demonstrating that an exclusive contract involving a cable-affiliated network (regardless of whether it is terrestrially delivered or satellite-delivered) violates section 628(b) (or, potentially, section 628(c)(2)(B)), any other exclusive contract involving the same network violates section 628(b) (or section 628(c)(2)(B)). The *FNPRM* tentatively concludes that the Commission should revise definition of ''buying group'' to require, as an alternative to the current liability options, that the buying group agree to assume liability to forward all payments due and received from its members for payment under a master agreement to the appropriate programmer. The *FNPRM* also proposes to revise the definition of ''buying group'' to provide that a buying group may not unreasonably deny membership to any MVPD requesting membership. In addition, the *FNPRM* seeks comment on whether the Commission should establish a ''safe harbor'' subscriber level for buying group members to participate in master agreements with cable-affiliated programmers. As a consequence of this safe harbor, it would be a violation of the section 628(c)(2)(B) prohibition on discriminatory practices for a cable-affiliated programmer to refuse to deal with a buying group member that

regularly participates in a master agreement. Finally, the *FNPRM* seeks comment on whether the Commission should revise the rules to clarify that: (i) The standard to be applied in determining whether buying groups are being discriminated against is the same as that applied to an individual MVPD providing the same number of subscribers to the programmer; (ii) a cable-affiliated programmer cannot refuse to offer a master agreement to a buying group that specifies a schedule of non-discriminatory license fees over any range of subscribership levels that the buying group requests, so long as it is possible that the buying group could provide this number of subscribers from its current members eligible to participate in the master agreement; and (iii) the standard of comparability for a buying group is an MVPD providing the same number of customers for purposes of evaluating all terms and conditions of the agreement, not just the price.

Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

60. The RFA requires an agency to describe any significant alternatives that it has considered in developing its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

61. The *FNPRM* seeks comment on whether to establish (i) a rebuttable presumption that an exclusive contract for a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is an ''unfair act'' under section 628(b); (ii) a rebuttable presumption that a complainant challenging an exclusive contract involving a cable-affiliated RSN (regardless of whether it is terrestrially delivered or satellite-delivered) is entitled to a standstill of an existing programming contract during the pendency of a complaint; (iii) rebuttable presumptions with respect to the ''unfair act'' element and/or the ''significant hindrance'' element of a section 628(b) claim challenging an exclusive contract involving a cable-affiliated ''national sports network'' (regardless of whether it is terrestrially delivered or satellite-delivered); and (iv) a rebuttable presumption that, once a complainant succeeds in demonstrating that an exclusive contract involving a cable-affiliated network (regardless of whether it is terrestrially delivered or satellite-delivered) violates section 628(b) (or, potentially, section 628(c)(2)(B)), any other exclusive contract involving the same network violates section 628(b) (or section 628(c)(2)(B)). These presumptions may benefit small entities by reducing costs by eliminating the need for litigants and the Commission to undertake repetitive examinations of Commission precedent and empirical evidence on RSNs.

62. The *FNPRM* also seeks comment on proposed modifications to the program access rules that are intended to ensure that buying groups utilized by small and medium-sized MVPDs can avail themselves of the non-discrimination protections of the program access rules. Thus, the proposed modifications would benefit small entities. Specifically, the proposed revision of the definition of ''buying group'' to include an alternative liability option may benefit small entities by enabling buying groups that do not fall within the scope of the existing definition to file complaints with the Commission alleging violations of the non-discrimination provisions of the program access rules on behalf of their small and medium-sized MVPD members. Additionally, the proposed revision of the ''buying group'' definition to provide that a buying group may not unreasonably deny membership to any MVPD requesting membership may benefit small entities by making the benefits of buying group membership available to more small entities. Small entities may also benefit from the establishment of a ''safe harbor'' subscriber level for buying group members to participate in master agreements with cable-affiliated programmers and from clarifications to the rules addressing the standard of comparability for a buying group regarding volume discounts.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

63. None.

B. Paperwork Reduction Act

64. The *FNPRM* in MB Docket No. 12–68 does not contain proposed information collections subject to the PRA. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

C. Ex Parte Rules

65. *Permit-But-Disclose.* The proceeding the *FNPRM* in MB Docket No. 12–68 initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule § 1.1206(b). In proceedings governed by rule § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

D. Filing Requirements

66. *Comments and Replies.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (''ECFS'').

• *Electronic Filers:* Comments may be filed electronically using the Internet by

accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

• *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

67. *Availability of Documents.* Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

68. *People with Disabilities.* 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 FCC's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

69. *Additional Information.* For additional information on this proceeding, contact David Konczal, *David.Konczal@fcc.gov,* or Kathy Berthot, *Kathy.Berthot@fcc.gov,* of the Media Bureau, Policy Division, (202) 418–2120.

III. Ordering Clauses

70. *It is ordered* that, pursuant to the authority found in sections 4(i), 4(j), 303(r), and 628 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and 548, the *Further Notice of Proposed Rulemaking* in MB Docket No. 12–68 *Is Adopted.*

71. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *Shall Send* a copy of the *Further Notice of Proposed Rulemaking* in MB Docket No. 12–68, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76

Administrative practice and procedure, Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, Part 76 of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 339, 340, 341, 503, 521, 522, 531, 532, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1000 is amended by revising paragraphs (c)(1) and (c)(3), adding paragraph (c)(4), and revising paragraph (j) to read as follows:

§ 76.1000 Definitions.

* * * * *

(c) * * *

(1)(i) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, satellite broadcast programming, or terrestrial cable programming contract which it signs as a contracting party as a representative of its members, or

(ii) Whose members, as contracting parties, agree to joint and several liability, or

(iii) Maintains liquid cash or credit reserves (*i.e.,* cash, cash equivalents, or letters or lines of credit) equal to cover the cost of one month's programming for all buying group members, or

(iv) Agrees to assume liability to forward to the appropriate programmer all fees due and received from its members for payment under a programming contract; and

* * * * *

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group; and

(4) Does not unreasonably deny membership to any multichannel video programming distributor that requests membership.

* * * * *

(j) Similarly situated. The term ''similarly situated'' means, for the purposes of evaluating alternative programming contracts offered by a defendant programming vendor or by a terrestrial cable programming vendor alleged to have engaged in conduct described in § 76.1001(b)(1)(ii), that an alternative multichannel video programming distributor has been identified by the defendant as being more properly compared to the complainant in order to determine whether a violation of § 76.1001(a) or § 76.1002(b) has occurred. The analysis of whether an alternative multichannel video programming distributor is properly comparable to the complainant includes consideration of, but is not limited to, such factors as whether the alternative multichannel video programming distributor operates within a geographic region proximate to the complainant, has roughly the same number of subscribers as the complainant, and purchases a similar service as the complainant. Such alternative multichannel video programming distributor, however, must use the same distribution technology as the ''competing'' distributor with whom the complainant seeks to compare itself. For purposes of determining the size of a volume discount applicable to a buying group, a buying group will be considered similarly situated to an alternative multichannel video programming distributor with approximately the same number of subscribers for the programming as expected to be supplied by the buying group.

* * * * *

3. Section 76.1002 is amended by revising the Note to paragraph (b)(3) and adding paragraph (g) to read as follows:

§ 76.1002 Specific unfair practices prohibited.

* * * * *

(b) * * *

(3) * * *

Note: Vendors may use volume-related justifications to establish price differentials to the extent that such justifications are made available to similarly situated distributors on

a technology-neutral basis. When relying upon standardized volume-related factors that are made available to all multichannel video programming distributors using all technologies, the vendor may be required to demonstrate that such volume discounts are reasonably related to direct and legitimate economic benefits reasonably attributable to the number of subscribers served by the distributor if questions arise about the application of that discount. In such demonstrations, vendors will not be required to provide a strict cost justification for the structure of such standard volume-related factors, but may also identify non-cost economic benefits related to increased viewership. Vendors may not use volume-related justifications to establish price differentials between a buying group and an alternative multichannel video programming distributor that has approximately the same number of subscribers for the programming as expected to be supplied by the buying group.

* * * * *

(g) *Buying Groups.* (1) Right to Participate in Buying Group Programming Contracts. No satellite cable programming vendor in which a cable operator has an attributable interest or satellite broadcast programming vendor may unreasonably interfere with or prevent a member of a buying group from participating in a programming contract in which a buying group signs as a contracting party as a representative of its members if:

(i) The member has no more than three million subscribers; or

(ii) The share of programming that the member licenses through the buying group is not significantly smaller than the average share of programming that other members of the buying group license through the buying group. Upon the expiration of a satellite cable programming or satellite broadcast programming contract which a buying group signs as a contracting party as a representative of its members, all buying group members participating in the expiring programming contract shall be presumptively entitled to participate in the renewed programming contract.

(2) *License Fee Schedule.* A programming vendor must offer a programming contract to a buying group that specifies a schedule of non-discriminatory license fees over any range of subscribership levels that the buying group requests, provided that it is possible that the buying group could provide this number of subscribers from its current members eligible to participate in the programming contract.

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