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Contents

Federal Register

Vol. 77, No. 242

Monday, December 17, 2012

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74633–74634

Alcohol and Tobacco Tax and Trade Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74740–74743

Animal and Plant Health Inspection Service
RULES
Importation of Live Swine, Swine Semen, Pork, and Pork Products; Estonia, Hungary, Slovakia, and Slovenia, 74555–74559

Bureau of Consumer Financial Protection
PROPOSED RULES
Policy to Encourage Trial Disclosure Programs; Information Collection, 74625–74628

Centers for Disease Control and Prevention
NOTICES
Environmental Impact Statements; Availability, etc.:
2015–2025 Facilities Master Plan for Edward R. Roybal Campus in Atlanta, GA, 74665–74666

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Understanding Dynamics of Disconnection from Employment and Assistance, 74666–74667

Coast Guard
RULES
Drawbridge Operations:
Elizabeth River, Eastern Branch, Norfolk, VA, 74586
Safety Zones:
Grain-Shipment Vessels, Columbia and Willamette Rivers, 74587–74589
PROPOSED RULES
Medical Waivers:
Merchant Mariner Credential Applicants with Anti-Tachycardia Devices or Implantable Cardioverter Defibrillators, 74630–74631
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74686–74687

Commerce Department
See Economic Development Administration
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Pre-Award Notification Requirements for Grants and Cooperative Agreements, 74634–74643

Commodity Futures Trading Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Notice Filing for Counterparties to Unreported Trade Options, 74647–74652

Defense Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulations; Accident Prevention Plans and Recordkeeping, 74662–74663
Notification of Ownership Changes, 74663–74664

Economic Development Administration
NOTICES
Petitions for Determinations of Eligibility to Apply for Trade Adjustment Assistance, 74643–74644

Energy Department
See Federal Energy Regulatory Commission
RULES
Energy Conservation Program for Consumer Products:
Test Procedures for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (Standby Mode and Off Mode), 74559–74573
PROPOSED RULES
Amendments and Correction to Petitions for Waiver and Interim Waiver for Consumer Products and Commercial and Industrial Equipment, 74616–74625

Environmental Protection Agency
RULES
Approvals and Promulgations of Air Quality Implementation Plans:
Indiana; South Bend/Elkhart Ozone Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets, 74590–74592
Supplemental Determination for Renewable Fuels Produced under the Final RFS2 Program from Grain Sorghum, 74592–74607
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure Plans, 74659–74661

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness Directives:
Gulfstream Aerospace Corporation Airplanes, 74579–74582
PROPOSED RULES
Airworthiness Directives:
Embraer S.A. Airplanes, 74628–74630

Federal Communications Commission
NOTICES
Meetings:
Open Internet Advisory Committee, 74661–74662

Federal Deposit Insurance Corporation
RULES
Rules of Practice and Procedure, 74573–74579
NOTICES
Designated Reserve Ratio for 2013, 74662

Federal Emergency Management Agency
RULES
Final Flood Elevation Determinations, 74610–74612
Suspensions of Community Eligibility, 74607–74610

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 74652–74657
Environmental Assessments; Availability, etc.:
Gas Transmission Northwest LLC, 74657
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Mammoth One, LLC, 74658
MET Southwest Trading LLC, 74658
Technical Conferences:
Algonquin Gas Transmission, 74659
Texas Eastern Transmission, LP, 74658

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
I–10 Corridor Improvement Study, Maricopa County, AZ; Rescission, 74729–74730

Federal Motor Carrier Safety Administration
NOTICES
Qualification of Drivers; Exemption Applications; Vision, 74730–74736

Federal Railroad Administration
NOTICES
Applications:
Approval of Discontinuance or Modification of Railroad Signal System, 74736
Petitions for Waivers of Compliance, 74736–74739

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 74662

Federal Trade Commission
PROPOSED RULES
Used Motor Vehicle Trade Regulation Rule, 74746–74774

Fish and Wildlife Service
NOTICES
Final Recovery Plan, First Revision:
Mexican Spotted Owl, 74688–74689

Food and Drug Administration
RULES
Small Entity Compliance Guides; Availability, etc.:
What You Need to Know About Registration of Food Facilities, 74582–74583
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Information to Accompany Humanitarian Device Exemption Applications, etc., 74667–74668
Compliance Policy Guides:
Radiofrequency Identification Feasibility Studies and Pilot Programs for Drugs; Extend Expiration Date, 74668–74669
Draft and Revised Draft Guidances for Industry; Availability, etc.:
Product-Specific Bioequivalence Recommendations, 74669–74670
Draft Guidances for Industry; Availability, etc.:
Enrichment Strategies for Clinical Trials to Support Approval of Human Drugs and Biological Products, 74670–74671
Guidances for Industry; Availability, etc.:
Questions and Answers Regarding Food Facility Registration, 74671–74672
Proposals to Withdraw Approvals of New Animal Drug Applications:
Ag-Mark, Inc., et al.; Opportunity for Hearing, 74672–74673

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Okanogan–Wenatchee National Forest, Okanogan County, Washington Bannon, Aeneas, Revis, and Tunk Grazing Allotments; Correction, 74634

General Services Administration
PROPOSED RULES
GSAR Clause Modifications (Multiple Award Schedules), 74631–74632
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulations; Accident Prevention Plans and Recordkeeping, 74662–74663
Notification of Ownership Changes, 74663–74664

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
Advisory Council on Alzheimer's Research, Care, and Services, 74664

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
See U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Chemical Facility Anti-Terrorism Standards, 74677–74678
Chemical Facility Anti-Terrorism Standards Chemical-Terrorism Vulnerability Information, 74685–74686
Chemical Security Assessment Tool, 74678–74685

Indian Affairs Bureau
NOTICES
Land Acquisitions:
Tonkawa Tribe of Oklahoma, 74689–74690

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property, 74583–74586
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74743

International Trade Administration
NOTICES
Antidumping Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Oil Country Tubular Goods from the People's Republic of China, 74644–74647
Applications for Duty-Free Entry of Scientific Instruments, 74647

International Trade Commission
NOTICES
Determination Not to Close Any Part of Hearing to the Public:
Utility Scale Wind Towers from China and Vietnam, 74694–74695

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Partial Termination of Segregative Effect:
AZ, CA, CO, NV, NM and UT; Amended Proposed Withdrawal, 74690–74694

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Federal Acquisition Regulations; Accident Prevention Plans and Recordkeeping, 74662–74663
Notification of Ownership Changes, 74663–74664

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 74675–74676
National Center for Advancing Translational Sciences, 74674
National Human Genome Research Institute, 74676
National Institute of Allergy and Infectious Diseases, 74674, 74676–74677
National Institute of Biomedical Imaging and Bioengineering, 74675
National Institute of Dental and Craniofacial Research, 74674–74676
National Institute on Aging, 74677
Office of the Director, National Institutes Of Health, 74673–74674

National Oceanic and Atmospheric Administration
RULES
Atlantic Highly Migratory Species:
Atlantic Bluefin Tuna Fisheries, 74612–74615

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 74694

Nuclear Regulatory Commission
NOTICES
Meetings:
Advisory Committee on Reactor Safeguards, Subcommittee on AP–1000, 74696–74697
Advisory Committee on Reactor Safeguards, Subcommittee on Fukushima, 74697–74698
Advisory Committee on Reactor Safeguards, Subcommittee on Future Plant Designs, 74698
Advisory Committee on Reactor Safeguards, Subcommittee on Materials, Metallurgy and Reactor Fuels, 74698–74699
Advisory Committee on Reactor Safeguards, Subcommittee on U.S. Evolutionary Power Reactor, 74697

Occupational Safety and Health Administration
NOTICES
Meetings:
Preventing Backover Injuries and Fatalities, 74695–74696

Office of United States Trade Representative
See Trade Representative, Office of United States

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Mercantile Exchange Inc., 74722–74723
Financial Industry Regulatory Authority, Inc., 74712–74715
International Securities Exchange, LLC, 74700–74703
NASDAQ OMX PHLX LLC, 74699–74700, 74715–74718
NYSE Arca, Inc., 74707–74710, 74719–74725
NYSE MKT LLC, 74710–74712
NASDAQ Stock Market LLC, 74703–74705
Options Clearing Corp., 74705–74707

Small Business Administration
NOTICES
Disaster Declarations:
New Hampshire, 74725

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16, 74725–74726

Surface Transportation Board
NOTICES
Petitions for Declaratory Orders:
Norfolk Southern Railway Co., 74739–74740

Trade Representative, Office of United States
NOTICES
Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products:
Chile, Morocco, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama, 74726–74729

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Surface Transportation Board
NOTICES
Guidance on Review and Approval of Public Charter Prospectuses:
Extension of Effective Date to January 14, 2013, 74729

Treasury Department
See Alcohol and Tobacco Tax and Trade Bureau
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 74740

U.S. Citizenship and Immigration Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for Employment Authorization, 74687–74688

Veterans Affairs Department
NOTICES
Allowance for Private Purchase of an Outer Burial Receptacle for Use in VA National Cemeteries, 74743–74744

Separate Parts In This Issue

Part II
Federal Trade Commission, 74746–74774

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

9 CFR
98.....74555

10 CFR
430.....74559

Proposed Rules:
430.....74616
431.....74616

12 CFR
308.....74573
390.....74573

Proposed Rules:
Ch. X.....74625

14 CFR
39.....74579

Proposed Rules:
39.....74628

16 CFR

Proposed Rules:
455.....74746

21 CFR
1.....74582

26 CFR
1.....74583

33 CFR
117.....74586
165.....74587

40 CFR
52.....74590
80.....74592

44 CFR
64.....74607
67.....74610

46 CFR

Proposed Rules:
10.....74630

48 CFR

Proposed Rules:
538.....74631
552.....74631

50 CFR
635.....74612

Rules and Regulations

Federal Register

Vol. 77, No. 242

Monday, December 17, 2012

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

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 98

[Docket No. APHIS–2008–0043]

RIN 0579–AD20

Importation of Live Swine, Swine Semen, Pork, and Pork Products; Estonia, Hungary, Slovakia, and Slovenia

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: APHIS is amending the regulations governing the importation of certain animal embryos and animal semen by removing one of the conditions for the importation of swine semen from the APHIS-defined European CSF region, a region of Europe that we recognize as a single low-risk region for classical swine fever. We have determined that the 40-day holding period for swine semen and donor boars after the collection of swine semen is unnecessary. We are also announcing the addition of Estonia, Hungary, Slovakia, and Slovenia to the APHIS-defined European CSF region, the addition of Estonia, Slovakia, and Slovenia to the list of regions APHIS considers free of swine vesicular disease (SVD), and the addition of Slovakia and Slovenia to the list of regions APHIS considers free of foot-and-mouth disease (FMD) and rinderpest. These actions will relieve some restrictions on the importation into the United States of certain animals and animal products from those regions, while continuing to protect against the introduction of CSF, SVD, FMD, and rinderpest into the United States.

DATES: *Effective Date:* January 16, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Link, Import Risk Analyst, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 920 Main Campus Drive, Suite 200, Raleigh, NC 27606; (919) 855–7731.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country.

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including classical swine fever (CSF), foot-and-mouth disease (FMD), swine vesicular disease (SVD), and rinderpest. These are dangerous and communicable diseases of ruminants and swine.

The regulations in 9 CFR part 98 govern the importation of animal germplasm to prevent the introduction of contagious diseases of livestock and poultry into the United States. Subparts A and B of part 98 apply to animal embryos, and subpart C (§§ 98.30 through 98.38) applies to animal semen.

Sections 94.0, 94.9, and 94.10 of the regulations provide for the listing of regions of the world that APHIS considers free of, or low-risk for, CSF. The APHIS-defined European CSF region, consisting of countries of Europe that we currently recognize as a single region with regard to CSF, is currently the only region we consider low-risk for CSF. Sections 94.24 and 98.38 specify restrictions necessary to mitigate the risk of introducing CSF into the United States via pork, pork products, live swine, and swine semen from that region.

Section 94.12 of the regulations provides for the listing of regions that are declared free of SVD, and § 94.13 of the regulations provides for the listing of regions that have been determined to be free of SVD, but that are subject to certain restrictions because of their proximity to or trading relationships with SVD-affected regions.

Section 94.1 of the regulations provides for the listing of regions of the world that are declared free of rinderpest or free of both rinderpest and FMD. Section 94.11 of the regulations provides for the listing of regions that have been determined to be free of rinderpest and FMD, but that are subject to certain restrictions because of their proximity to or trading relationships with rinderpest- or FMD-affected regions.

On February 11, 2011, we published in the **Federal Register** a proposed rule [1] (76 FR 7721–7731, Docket No. APHIS–2008–0043) to add Estonia, Hungary, Slovakia, and Slovenia to the APHIS-defined EU CSF region. (NOTE: In a final rule published on November 10, 2011 [76 FR 70037–70040, Docket No. APHIS–2009–0093], APHIS changed the term ''APHIS-defined EU CSF region'' to ''APHIS-defined European CSF region.'') We also proposed to add Estonia, Slovakia, and Slovenia to the list of regions we consider free of SVD and to add Slovakia and Slovenia to the list of regions considered free of FMD and rinderpest. Finally, we proposed to amend § 98.38 to remove the 40-day post-collection holding period for swine semen and donor boars prior to export of swine semen from the APHIS-defined EU CSF region to the United States. Except for semen collected from swine in Denmark, Finland, the Republic of Ireland, Sweden, or the United Kingdom, we required that, before swine semen may be exported to the United States, the semen and donor boars be held at the semen collection center for at least 40 days following collection of the semen, and that the donor boars, along with all other swine at the semen collection center, exhibit no clinical signs of CSF.

We solicited comments concerning the proposed rule for 60 days ending April 12, 2011, and received three comments by that date. They were from an organization representing the pork industry within the United States and two private citizens. These comments are discussed below by topic.

[1] To view the proposed rule, supporting documents, or the comments we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0043.*

Comments Regarding Evaluations of Animal Disease Status in Support of the Proposed Rule

In order for APHIS to evaluate the CSF, SVD, FMD, and/or rinderpest status of their respective countries, the Governments of Estonia, Hungary, Slovakia, and Slovenia provided us with information regarding the authority, organization, and infrastructure of the official veterinary services in their countries; the status of their countries and adjacent regions with regard to the disease(s) under evaluation; the degree to which their countries are separated from regions of higher risk; and livestock demographics and marketing practices. They also provided information regarding vaccination against the disease(s) of interest; the extent of active disease control programs for the diseases; movement controls and biosecurity for movement from higher risk regions; disease surveillance; diagnostic laboratory capabilities; and emergency response capacity.

Based on this information, a site visit to each country, and other publicly available information, APHIS prepared an evaluation regarding the CSF and SVD status of Estonia; an evaluation regarding the CSF status of Hungary; an evaluation regarding the CSF, SVD, FMD, and rinderpest status of Slovakia; and an evaluation regarding the CSF, SVD, FMD, and rinderpest status of Slovenia. The conclusions in these evaluations led us to issue the proposed rule.

One commenter stated that, since the evaluations were finalized, FMD has been detected in Bulgaria. The commenter stated that European Commission [2] (EC) regulations regarding FMD are adequate to monitor, detect, control, and eradicate the disease in Member States, but also suggested that the introduction of FMD into Bulgaria was due to that country's failure to adhere to EC regulations regarding passive surveillance and disease reporting. The commenter suggested that this failure may be indicative of the potential for similar failures in passive surveillance and disease reporting in Estonia, Hungary, Slovakia, and Slovenia. Accordingly, the commenter requested that we not finalize the proposed rule until the EC finishes its review of the outbreaks in Bulgaria and implements corrective actions to make certain that all EU Member States are conducting adequate passive surveillance for FMD, and until we prepare new evaluations to take those additional measures into consideration insofar as they pertain to Estonia, Hungary, Slovakia, and Slovenia.

Because Bulgaria is an EU Member State, and thus eligible for intra-Community trade, APHIS concurs with the commenter that the outbreaks of FMD in Bulgaria are an issue of concern, and accordingly has been monitoring the disease situation in that country. The EC has provided APHIS officials stationed within the EU with regular updates regarding the outbreaks, and has posted updated outbreak information for the general public at the Web site for its Standing Committee on the Food Chain and Animal Health.

To summarize, on January 4, 2011, FMD was detected in a single wild boar in Bulgaria. Since then, there have been multiple outbreaks, primarily along the border between Bulgaria and Turkey. In response to the outbreaks, Bulgarian officials implemented measures to delineate the scope of the outbreaks and to control and eradicate the disease in domestic livestock within the country.

To date, we have no evidence that domestic ruminant populations in other Member States should be considered exposed to or potentially affected with FMD. Indeed, the EC recently reduced the restricted area of Bulgaria that is covered by EC measures designed to prevent the spread of FMD. Furthermore, as the commenter conceded, current EC regulations, if adhered to, are sufficient to detect, control, and eradicate FMD whenever it occurs within a Member State.

Based on the information provided to us by Estonia, Hungary, Slovakia, and Slovenia, as corroborated by our site visits to the countries, we believe the countries have implemented the relevant EC legislation regarding surveillance for CSF, SVD, FMD and/or rinderpest, and that producers in these countries can recognize clinical signs of the diseases and report any such potentially affected animals in a timely manner. Therefore, we are not granting the commenter's request. We will, however, continue to closely monitor the current FMD situation in Bulgaria.

The same commenter asserted that our conclusion—that live swine, swine semen, pork, and pork products may safely be imported into the United States from Estonia, Hungary, Slovakia, and Slovenia, subject to the restrictions of the regulations—was based on the absence of FMD within the EU. Accordingly, the commenter requested that we not finalize the proposed rule until we prepare new assessments that take into consideration the presence of FMD in Bulgaria. Similarly, another commenter asked what information had been taken into consideration in reaching our conclusions.

As noted above, our conclusions were based on an evaluation of the information supplied by Estonia, Hungary, Slovakia, and Slovenia regarding the authority, organization, and infrastructure of the veterinary services in their countries; the status of their countries and adjacent regions with regard to the disease(s) under evaluation; the degree to which their countries are separated from regions of higher risk; livestock demographics and marketing practices; vaccination against the disease(s) of interest; the extent of active disease control programs for the diseases; movement controls and biosecurity for movement from higher risk regions; disease surveillance; diagnostic laboratory capabilities; and emergency response capacity. Cumulatively, this information demonstrated the countries' compliance with existing EC regulations, which mitigate the likelihood that CSF, SVD, FMD, and/or rinderpest will be introduced into the domestic swine populations within the countries, and led to our conclusion that, by applying the restrictions of the regulations, swine, swine semen, pork, and pork products may safely be imported from Estonia, Hungary, Slovakia, or Slovenia into the United States.

In addition, we note that Estonia and Hungary have been listed under § 94.11 since 2002 and 1994, respectively, as regions that are free of FMD but subject to certain restrictions because of their trading relationships with FMD-affected countries.

A commenter pointed out that, in our evaluation of Slovakia with regard to CSF, SVD, FMD, and rinderpest, we noted that Slovakian veterinary inspectors are not stationed at every border crossing into the country to inspect passenger baggage. The commenter also pointed out that, at those crossings where inspectors are stationed, there are certain hours throughout the day when the crossings are unattended by the inspectors. The commenter suggested that Slovakia needed to position inspectors at all ports of entry and needed to expand inspection coverage beyond normal working hours. Additionally, the commenter pointed out that, in the evaluation of Hungary with regard to CSF, we noted that posters alerting travelers to prohibitions on the importation of certain animal products in personal baggage were not displayed at several of the border inspection posts

[2] The European Commission is the EU institution responsible for representing the EU as a whole. It proposes legislation, policies, and programs of action and implements decisions of the EU Parliament and Council.

(BIPs) in the country. As a result, the commenter questioned our basis for concluding that the risk posed by the importation of contaminated animal products in passenger baggage is sufficiently mitigated at ports of entry into these two countries and stated that we had not provided sufficient evidence to support this conclusion.

Slovakia has stationed inspectors at the busiest border crossings during those hours of the day when the most travelers enter the country through these border crossings. Slovakia's actions are consistent with EC regulation (EC) 206/2009, which allows a country to utilize a risk-based approach to establishing controls at ports of entry to minimize the likelihood that animal products imported into the country in personal baggage will serve as fomites for diseases affecting livestock.[3] Our determination that the risk posed by the importation of contaminated animal products in passenger baggage is sufficiently mitigated at ports of entry into Slovakia was based on this consistency, on the physical and technological infrastructure of the BIPs, on the apparent volume of passenger baggage entering through these BIPs at the time of our site visit, on the number of inspectors employed at the BIPs and the training afforded to these inspectors, and on the auditing and monitoring of inspections conducted by the State Veterinary and Food Administration of the Slovak Republic, the veterinary authority for Slovakia.

Requiring Slovakia to station inspectors at all ports of entry and beyond normal business hours would be significantly more stringent than EC standards, and is not necessary to reach a determination that the risk that contaminated products will enter the country in passenger baggage has been sufficiently mitigated.

We agree with the commenter that posters alerting travelers to prohibitions and restrictions on the importation of animal products in personal baggage help to reduce the risk that contaminated products may enter Hungary in such baggage, and should be fully incorporated into their controls at all ports of entry into the country. However, the presence or absence of such posters was not our sole consideration in determining whether Hungary has sufficiently mitigated the risk that contaminated products will enter Hungary in passenger baggage. As we did for Slovakia, we evaluated the physical and technological infrastructure of the BIPs, the number of inspectors stationed at BIPs and other border crossings, the degree to which these inspectors have been trained to inspect personal baggage, the volume of passenger baggage entering the country, the number of random and targeted luggage searches, and the reporting and monitoring requirements governing these inspections that have been imposed by the veterinary authority for Hungary. Collectively, the results of these evaluations led us to conclude that the risk that contaminated products will enter Hungary in passenger baggage is sufficiently mitigated.

The same commenter pointed out that, in our evaluation of Slovakia, we noted that the majority of swine holdings in the country are small, and that biosecurity on those farms is somewhat lacking in comparison to biosecurity standards at larger, commercially maintained premises within the country. The commenter further pointed out that we conceded that these swine have more of a risk of exposure to CSF, SVD, FMD, and rinderpest, and that the primary mitigation we cited was the lack of movement of swine from these facilities or the movement only for custom slaughter. The commenter suggested that access to a lucrative market such as the United States could change these production practices, and increase the likelihood that such producers will instead choose to export their swine. The commenter suggested that this, in turn, could increase the risk that swine or pork products contaminated with CSF, SVD, FMD, or rinderpest virus could be imported to the United States from Slovakia. Accordingly, the commenter requested that we prepare a new evaluation that takes this possible change in marketing practices into consideration.

We do not consider a new evaluation to be necessary. Such producers have had access to foreign markets within the EU and throughout the world for an extended period of time, and have not changed their marketing practices. Moreover, even if these marketing practices were to change in the manner suggested by the commenter, all such animals and animal products would still be subject to EC regulations and U.S. import requirements, which we consider to be effective in mitigating the risk of importation of affected swine and/or contaminated products into the United States.

Comment Regarding the Removal of the 40-Day Post-Collection Holding Period for Swine Semen Imported From the APHIS-Defined EU CSF Region

As noted above, we proposed to remove one of the conditions for the importation of swine semen from the APHIS-defined EU CSF region, which required, with limited exceptions, that before swine semen may be exported to the United States, the semen and donor boars be held at the semen collection center for at least 40 days following collection of the semen, and that the donor boars, along with all other swine at the semen collection center, exhibit no clinical signs of CSF. We proposed to remove this requirement on the grounds that, since we established the requirement, the EC has modified its regulations to strengthen controls for CSF introduction or dissemination via infected germplasm, and we have strengthened our own regulations governing the importation of swine semen from a CSF-affected region. We also noted that the majority of swine semen used for artificial insemination is less than 5 days old and the current prohibition, therefore, was burdensome to exporters and inhibited trade.

One commenter stated that, in the event of an outbreak of CSF, it often takes several days to conduct an epidemiological investigation. The commenter stated that, if we were to remove the requirement, there is a possibility that swine semen contaminated with CSF virus could be imported into the United States and used to inseminate domestic sows before the scope of the outbreak is delineated and a prohibition on the importation of swine semen from the affected country into the United States is put in place. The commenter asked that APHIS provide to the U.S. pork industry a detailed response plan for exposure of U.S. swine to fresh semen that is epidemiologically linked to a CSF case in the exporting country.

Current EU regulations specify conditions for approval and supervision of artificial insemination centers, pre-admission quarantine and testing of boars, serologic testing for CSF, clinical observation of donor boars, and movement controls and epidemiologic investigation procedures in the event that an outbreak of CSF is suspected. The movement controls include restrictions on the movement of swine semen, and epidemiologic investigations may include inspections of swine semen collection facilities. Because of these interlocking safeguards and our own regulations and policies, we consider the possibility that CSF

[3] Available at *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:077:0001:0019:EN:pdf.* Accessed on May 6, 2011.

virus-contaminated germplasm will be exported to the United States from a country within the APHIS-defined European CSF region to be remote, even with the removal of the 40-day holding period.

In the unlikely event that the scenario proposed by the commenter comes to pass, we would take actions consistent with the outbreak of any foreign animal disease within the United States. In collaboration with State animal health officials and other emergency response partners, we would determine the scope of the outbreak, identify potentially affected animals, place the appropriate restrictions or prohibitions on the movement of those animals, implement the mitigation measures necessary to prevent further disease spread, and conduct cleaning and disinfection of affected premises and articles.

Lists of Regions Removed From the CFR

When we published the proposed rule for this action in February 2011, the countries included in the APHIS-defined EU CSF region (now APHIS-defined European CSF region), and foreign regions considered free of or affected with various animal diseases and pests, including CSF, SVD, rinderpest, and FMD, were listed in our animal and animal product import regulations in 9 CFR parts 92, 93, 94, 96, and 98. In a final rule[4] published in the **Federal Register** on January 10, 2012 (77 FR 1388–1396, Docket No. APHIS–2009–0035), we removed lists of regions classified with respect to certain animal diseases and pests from those regulations. The lists are now posted on APHIS' Web site, rather than published in the Code of Federal Regulations.

Accordingly, the proposed addition of Estonia, Hungary, Slovakia, and Slovenia to the APHIS-defined European CSF region, the proposed additions of Estonia, Slovakia, and Slovenia to the list of regions APHIS considers free of SVD, and the proposed addition of Slovakia and Slovenia to the list of regions APHIS considers free of FMD and rinderpest do not need to be finalized through rulemaking. Instead, this preamble provides notice that we are amending the lists on APHIS' Web site (*http://www.aphis.usda.gov/import_export/animals/animal_disease_status.shtml*). Copies of the lists are also be available via postal mail, fax, or email upon request to the Sanitary Trade Issues Team, National Center for Import and Export, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road Unit 38, Riverdale, Maryland 20737.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes described above.

Executive Order 12866 and the Regulatory Flexibility Act

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

We have prepared an economic analysis for this rule. The economic analysis identifies hog and pig producers as the small entities most likely to be affected by this action, and considers the effects on domestic prices associated with increased imports of swine, swine semen, pork, and pork products. Based on the information presented in the analysis, we expect that domestic pork producers will experience only a minimal loss of welfare as a result of this action. The analysis provides a basis for the APHIS Administrator's determination that this action will not have a significant economic impact on a substantial number of small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1), or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

Environmental assessments and findings of no significant impact have been prepared for this final rule. The environmental assessments provide a basis for the conclusion that the importation of swine, swine semen, pork, and pork products from Estonia, Hungary, Slovakia, and Slovenia under the conditions specified in the rule will not have a significant impact on the quality of the human environment. Based on the findings of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

The environmental assessments and findings of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

The environmental assessments and findings of no significant impact may be viewed on the Regulations.gov Web site.[5] Copies of the environmental assessments and findings of no significant impact are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 98

Animal diseases, Imports.

Accordingly, we are amending 9 CFR part 98 as follows:

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.38 [Amended]

■ 2. Section 98.38 is amended as follows:

■ a. In the introductory text, by removing the words ", except as noted in paragraph (h) of this section with regard to swine semen imported from Denmark, Finland, the Republic of Ireland, Sweden, or the United Kingdom".

■ b. By removing paragraph (h).

■ c. By redesignating paragraph (i) as paragraph (h).

[4] See *http://www.regulations.gov/#!docketDetail;D=APHIS–2009–0035.*

[5] Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2008-0043.* The environmental assessments and findings of no significant impact will appear in the resulting list of documents.

■ d. In newly redesignated paragraph (h), by removing the words ''through (h)'' and adding the words ''through (g)'' in their place.

Done in Washington, DC, this 11th day of December 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–30259 Filed 12–14–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket No. EERE–2009–BT–TP–0013]

RIN 1904–AB95

Energy Conservation Program for Consumer Products: Test Procedures for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (Standby Mode and Off Mode)

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: Where appropriate, the U.S. Department of Energy (DOE) is amending its test procedures for residential water heaters, direct heating equipment (DHE), and pool heaters to include provisions for measuring standby mode and off mode energy consumption, as required by the Energy Independence and Security Act of 2007 (EISA 2007). DOE has concluded that such amendments are necessary for direct heating equipment and pool heaters, but test procedure amendments are not necessary for residential water heaters, because the existing test procedures for those products already address standby mode and off mode energy use. These test procedure amendments are primarily based upon provisions of the latest version of the International Electrotechnical Commission (IEC) Standard 62301 (Second Edition 2011–01), ''Household electrical appliances—Measurement of standby power,'' which is incorporated by reference. For direct heating equipment and pool heaters, this final rule also adds new calculations to determine the annual energy consumption associated with product operation in standby mode and off mode, and it modifies the existing energy consumption equations to integrate standby mode and off mode energy consumption into the calculation of overall annual energy consumption of these products. For pool heaters only, the standby mode and off mode energy consumption is integrated into the efficiency metric. This rulemaking also adopts a number of definitions for key terms, as well as clarifies the rounding guidance and sampling provisions for the new measurement of standby mode and off mode.

DATES: This rule is effective January 16, 2013. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register on January 16, 2013.

The compliance date for any representations relating to standby mode and off mode of residential direct heating equipment and pool heaters is June 17, 2013; on and after this date, any such representations must be based upon results generated under these test procedures and sampling plans. For purposes of compliance with energy conservation standards, these test procedure amendments related to standby mode and off mode are not required at this time, but their use will be required upon the compliance date of the next standards final rule which will address standby mode and off mode.

ADDRESSES: The docket for this rulemaking is available for review at *www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at *www.regulations.gov.* This Web page will contain a link to the docket for this notice in the *www.regulations.gov* Web site. The *www.regulations.gov* Web page contains 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. Mohammed Khan, 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) 586–7892. Email: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: This final rule incorporates by reference into Part 430 the following standard:

ANSI Z21.56–2006 (''ANSI Z21.56''), Standard for Gas-Fired Pool Heaters, approved December 13, 2005, IBR approved for Appendix P to Subpart B.

Copies of the ANSI Z21.56–2006 can be purchased from the American National Standards Institute, 11 West 42nd Street, New York, New York 10036, (212) 642–4936, or *http://webstore.ansi.org.*

Table of Contents

I. Background and Authority
II. Summary of the Final Rule
III. Discussion
A. Determination Not To Amend Test Procedures for Residential Water Heaters
B. Use of IEC Standard 62301 (Second Edition), ''Household Electrical Appliances—Measurement of Standby Power''
C. Requirements for Unvented Heaters and Exclusion From Testing
D. Technical Feasibility of an Integrated Efficiency Metric for Vented Heaters and Pool Heaters
E. Hearth Products Coverage
F. Review of Burner Operating Hours Estimates
G. Other Issues Raised in the Supplemental Notice of Proposed Rulemaking
IV. Effective Date and Compliance Date
V. Compliance With Other EPCA Requirements
VI. Procedural Issues and Regulatory Review
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act of 1995
D. Review Under the National Environmental Policy Act of 1969
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 12630
J. Review Under the Treasury and General Government Appropriations Act, 2001
K. Review Under Executive Order 13211
L. Review Under Section 32 of the Federal Energy Administration Act of 1974
M. Congressional Notification
VII. Approval of the Office of the Secretary

I. Background and Authority

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. Part A [1] of Title III (42 U.S.C. 6291–6309) establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles,'' including

[1] This part was originally titled Part B. It was redesignated Part A in the United States Code for editorial reasons.

residential water heaters, direct heating equipment, and pool heaters (all of which are referenced below as ''covered products'').[2] (42 U.S.C. 6292(a)(4), (9), and (11))

Under the Act, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) establishing 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 applicable energy conservation standards adopted pursuant to EPCA and for making representations about the efficiency of those products. (42 U.S.C. 6293(c); 42 U.S.C. 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted under EPCA. (42 U.S.C. 6295(s))

Under 42 U.S.C. 6293, EPCA sets forth criteria and procedures that DOE must follow when prescribing or amending test procedures for covered products. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must 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 must 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 the extent to which the proposed test procedure would alter the product's measured energy efficiency. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

On December 19, 2007, the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, was enacted. The EISA 2007 amendments to EPCA, in relevant part, require DOE to amend the test procedures for all covered products to include measures of standby mode and off mode energy consumption. Specifically, section 310 of EISA 2007 provides definitions of ''active mode,'' ''standby mode,'' and ''off mode'' (42 U.S.C. 6295(gg)(1)(A)); however, the statute 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: (1) 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 (2) 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))

Under the statutory provisions adopted by EISA 2007, 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* .[3] *Id.* At the time of enactment of EISA 2007, the most current version of the relevant IEC standard was IEC Standard 62301 (First Edition 2005–06).[4]

DOE's test procedures for residential water heaters are found in the Code of Federal Regulations (CFR) at 10 CFR 430.23(e) and 10 CFR part 430, subpart B, appendix E. The test procedures include provisions for determining the energy efficiency (energy factor (EF)), as well as the annual energy consumption of these products.

There are separate test procedures for the two types of direct heating equipment (*i.e.,* vented home heating equipment and unvented home heating equipment), specifically 10 CFR 430.23(g) and 10 CFR part 430, subpart B, appendix G for unvented home heating equipment, and 10 CFR 430.23(o) and 10 CFR part 430, subpart B, appendix O for vented home heating equipment. (Hereafter in this notice, the terms ''vented heater'' and ''unvented heater'' are used as shorthand to describe the two types of direct heating equipment.) The vented heater test procedures include provisions for determining energy efficiency (annual fuel utilization efficiency (AFUE)), as well as annual energy consumption. The unvented heater test procedures currently have no provisions for determining energy efficiency, as all unvented heaters are considered 100-percent efficient, because there is no opportunity for energy loss as is the case for vented heaters. However, for unvented heaters that are the primary heating source for the home, there is a calculation of annual energy consumption based on a single assignment of active mode hours. For unvented heaters that are not the primary heating source for the home, there are no calculation provisions for either efficiency or annual energy consumption. Given that unvented heaters are considered 100-percent efficient, DOE has not established a test procedure for determining energy efficiency of these products (and thus, has not established energy conservation standards for these products), as there would be no energy savings that would result from such actions.

DOE's test procedures for pool heaters are found at 10 CFR 430.23(p) and 10 CFR part 430, subpart B, appendix P. The test procedures include provisions for determining two energy efficiency descriptors (*i.e.,* thermal efficiency and pool heater heating seasonal efficiency), as well as seasonal energy consumption.

The test procedures for residential water heaters include a full-year accounting of energy use, both electricity and fossil fuel as applicable to a given water heater. Specifically, the standby loss testing in the existing test procedure is synonymous with what EISA 2007 asks for inclusion in all test procedures, and, the EISA 2007 definition of ''off mode'' is inapposite to water heater operation. Accordingly, it was tentatively concluded that the current test procedures for water heaters already fully account for and incorporate measurement of standby mode and off mode energy consumption, as required by EISA 2007.

It is important to note that fossil-fueled direct heating equipment and pool heaters typically consume both fossil fuel and electricity. Electric direct heating equipment only consumes electricity. In the existing test procedures for direct heating equipment, fossil-fuel energy consumption is accounted for comprehensively over a full-year cycle, thereby satisfying EISA 2007

[2] All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007, Public Law 110–140.

[3] IEC standards are available for purchase at: *www.iec.ch.*

[4] EISA 2007 directs DOE to also consider IEC Standard 62087 when amending its test procedures to include standby mode and off mode energy consumption. *See* 42 U.S.C. 6295(gg)(2)(A). However, IEC Standard 62087 addresses the methods ofmeasuring the power consumption of audio, video, and related equipment. Accordingly, the narrow scope of this particular IEC standard reduces its relevance to today's rule.

requirements for fossil-fuel standby mode and off mode energy consumption. In the existing test procedures for pool heaters, fossil-fuel standby mode is included but off mode is not included. Electrical energy consumption in standby mode and off mode is not accounted for in either the direct heating equipment or pool heater test procedure.

Proposed amendments to account for the energy consumption in standby mode and off mode of the products subject to this rulemaking were included in a notice of proposed rulemaking (NOPR) that was published in the **Federal Register** on August 30, 2010. 75 FR 52892. DOE's proposal was presented and explained at a public meeting on September 24, 2010 at DOE headquarters in Washington, DC. DOE invited written comments, data, and information on the NOPR and accepted such material through November 15, 2010. Based upon public comments, DOE subsequently issued a supplemental notice of proposed rulemaking (SNOPR) which would reference the updated second edition of the IEC Standard 62301. 76 FR 56347 (Sept. 13, 2011). DOE invited written comments, data, and information on the SNOPR through October 13, 2011.[5]

II. Summary of the Final Rule

In general, DOE has retained the approach to incorporate standby mode and off mode presented in the August 2010 NOPR, as well as incorporation by reference of the latest version of the relevant industry standard proposed in the September 2011 SNOPR, with some modifications based upon public comment input.

As proposed in the August 2010 NOPR, DOE is amending its test procedures for direct heating equipment and pool heaters to provide for the measurement of electrical standby mode and off mode power by using the IEC's Standard 62301, ''Household electrical appliances—Measurement of standby power,'' as well as language to clarify application of this IEC standard. In addition, this final rule adds new calculations to determine annual energy consumption associated with the standby mode and off mode measured power. For pool heaters, the calculations are expanded to include an off mode for fossil-fuel energy consumption, which was not previously accounted for by the test procedure. For vented direct heating equipment, DOE has determined that it is not technically feasible to integrate standby mode and off mode electrical energy consumption into the calculation of overall energy efficiency (annual fuel utilization efficiency (AFUE)). This is primarily because the magnitude of the electrical energy for standby mode and off mode would be so comparatively small that in most cases, no change in the reported AFUE would result from the integration. However, the amendments for pool heaters provide for an integrated efficiency metric, because, for this product, it is technically feasible to integrate standby mode and off mode energy consumption into the calculation of overall annual energy efficiency. The amendments for unvented heaters only required measurement of standby mode and off mode energy consumption and, unlike the amendments for vented heaters, do not require this consumption to be integrated into an annual energy consumption accounting. This is because a detailed annual energy consumption accounting is not deemed appropriate for this product type (*i.e.,* no annual accounting at all for supplemental heaters and only a simplified assigned value for primary heaters). No amendments are prescribed for residential water heaters, because the existing test procedure and metric for water heaters already account for standby mode and off mode energy consumption.

III. Discussion

In the August 30, 2010 NOPR and at the subsequent September 24, 2010 public meeting, DOE sought input from interested parties on the proposed amendments to the DOE test procedures to address the standby mode and off mode energy consumption of residential water heaters, direct heating equipment, and pool heaters. Seven written comments were received from interested parties including: Bradford White Corporation (BWC), the Hearth, Patio & Barbecue Association (HPBA), the Air-Conditioning, Heating and Refrigeration Institute (AHRI), the American Council for an Energy-Efficient Economy (ACEEE), the Association of Home Appliance Manufacturers (AHAM), Natural Resources Defense Council (NRDC), and Pacific Gas and Electric Company (PG&E). All comments were generally supportive of the proposed amendments but asked for clarification and consideration of some specific modifications to possibly improve the amendments.

In addition, three comments were received in response to the September 13, 2011 SNOPR to incorporate IEC Standard 62301 (Second Edition). Comments were submitted by AHRI, AHAM, and a joint comment from Appliance Standards Awareness Project, American Council for an Energy-Efficiency Economy, and Northwest Energy Efficiency Alliance (ASAP *et al*). These comments were all supportive of the incorporation of IEC Standard 62301 (Second Edition).

The following discussion addresses the five specific issues that were identified in both comment periods and at the public hearing.

A. Determination Not To Amend Test Procedures for Residential Water Heaters

As discussed in the August 2010 NOPR, the test procedures for residential water heaters include a full-year accounting of energy use, both electricity and fossil fuel as applicable to a given water heater. 75 FR 52892, 52895 (August 30, 2010). Specifically, the standby loss testing in the existing test procedure is synonymous with what EISA 2007 asks for inclusion in all test procedures, and the EISA 2007 definition of ''off mode'' is inapposite to water heater operation. Accordingly, it was tentatively concluded that the current test procedures for water heaters already fully account for and incorporate measurement of standby mode and off mode energy consumption, as required by EISA 2007. (42 U.S.C. 6295(gg)(2)(A))

Bradford White and AHRI were supportive of DOE's determination that the existing water heater test procedures already fully account for standby mode and off mode energy consumption and that no amendments are necessary. (Bradford White, No. 7 at p.1, AHRI, No. 13 at p. 2)

ACEEE also supported the determination, but expressed concern that DOE ''does not recognize that some 'residential' water heaters now have a true 'Off' switch and that the future may bring more water heaters with 'off' modes that are power consuming.'' ACEEE also opined that consideration of this issue, now rather than later, would be beneficial. (ACEEE, No. 14 at p. 1) DOE agrees that if a more complete or accurate measure of energy consumption or energy efficiency can be developed, it should be considered for adoption in the DOE test procedures as soon as possible. However, there exist a number of analytical questions that would need to be investigated and answered before DOE could take such

[5] DOE notes that it is currently considering potential revisions to the test procedures for residential water heaters, direct heating equipment, and pool heaters in a separate rulemaking. This inquiry is more broadly focused and includes consideration of active mode operation, in contrast to today's final rule, which is limited to standby mode and off mode. DOE published a request for information (RFI) for this rulemaking in the **Federal Register** on October 12, 2011. 76 FR 63211.

action for residential water heaters, as explained below.

The ACEEE comment focuses on adding provisions to measure the power that might be consumed during a possible off mode and not on the due diligence necessary to develop a consistent and credible basis for defining and measuring off mode energy consumption in the water heater test procedures. DOE's market research did not identify any residential water heater with an ''Off'' switch. Moreover, ACEEE did not identify any basic model of water heater with an ''Off'' switch, so DOE is unaware of the existence of such products and thus cannot analyze them for power consumption in off mode. Consequently, DOE has concluded that while ACEEE raises an issue that should be kept in mind, it remains a hypothetical concern at this time. The current test procedure accounting assumes residential water heaters are in service for the entire year and do not have or operate in an off mode. This assumed level of service is representative of how residential water heaters are used in most households and, therefore, consistent with statutory requirements. More specifically, EPCA requires that new or amended test procedures 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) (emphasis added)) This is not to say that every residential water heater will be used this way in the field, but rather, it is the most representative use cycle or period of use. The commenter's suggested off mode that might be the subject of a DOE water heater test procedure amendment would be best described as ''out of service'' mode. Here, it is important to note that all water heaters can be taken out of service for various reasons and by various methods (*e.g.,* circuit breakers, gas valves). DOE realizes that residential water heaters can be taken out of service for various reasons, but DOE is not aware what design feature of current residential water heaters would in fact produce an out of service mode different (*i.e.,* an off mode) than that which would occur normally (*e.g.,* disconnecting the power supply in a unoccupied home).

The ACEEE comment seems to suggest that a more conveniently placed ''Off'' switch (one which would allow the consumer to disconnect the water heater from its electrical power or fossil-fuel source) could be a design feature that needs to be addressed in the test procedure. Here, it is important to note that the purpose of the test procedures is to develop a uniform basis of differentiation in terms of energy efficiency or annual consumption that would be associated with any design feature. As such, for purposes of a possible test procedure amendment, a determination would need to be made regarding the consumer behavioral difference that, in fact, may result from an off mode design feature and what, if any, energy savings would result. As noted above, DOE is not aware of any developments in this area by the water heating industry. Further, DOE published a request for information (RFI) which initiated a rulemaking and data collection process broadly to consider amendments to DOE's test procedures for residential water heaters. 76 FR 63211 (Oct. 12, 2011). This RFI did identify those portions of the test procedure where DOE believes amendments may be warranted, but it also invited interested parties to provide comments on any aspect of the residential water heater test procedure. DOE did not receive any comments asking for adoption of an off period, as suggested by ACEEE.

This is not to say there may not be some possible energy savings potential for this concept eventually, but rather that DOE believes it is not appropriate to include such concept in the analytical basis of the test procedure at this time.

In consideration of all of the above, DOE cannot, at this time take action to amend the water heater test procedure in the manner suggested by the commenter until the off switch concept is more fully developed and the need for such amendment has been established. With that said, DOE continues to monitor advancements in technologies related to all regulated products, including water heaters, and it will consider applicable technological improvements in its development of both test procedures and energy conservation standards in the context of future rulemakings.

B. Use of IEC Standard 62301 (Second Edition), ''Household Electrical Appliances—Measurement of Standby Power''

As noted in the August 2010 NOPR, EPCA, as amended by EISA 2007, requires that test procedures be amended to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the International Electrotechnical Commission. 75 FR 52892, 52893–94 (August 30, 2010) (*citing* 42 U.S.C. 6295(gg)(2)(A)). The August 2010 NOPR proposed to amend the DOE test procedures for direct heating equipment and pool heaters by referencing IEC Standard 62301 (First Edition) to obtain the standby mode and off mode measured wattage. *Id.* at 52895. The amended DOE test procedures would use these measured wattages in calculations to accomplish the incorporation of 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 direct heating equipment and pool heaters, although some clarification would be needed. Specifically, because there is a possible conflict with provisions of the existing procedures, the NOPR proposed to clarify where the IEC provisions would apply and where the DOE test procedure provisions would apply. *Id.* at 52897 and 52900–01. With these clarifications, the NOPR proposed to reference IEC Standard 62301 (First Edition) for the wattage measurements. It is noted that IEC Standard 62301 (First Edition) had been incorporated by reference in 10 CFR 430.3, *Materials incorporated by reference,* as part of the final rule amending the residential furnaces and boilers test procedure. 75 FR 64621 (Oct. 20, 2010).

In written comments on the August 2010 NOPR, AHRI and AHAM asked that DOE consider referencing a revised version of the industry standard—IEC Standard 62301 (Second Edition). Both commenters cited technical improvements in the latter version that they expect would enhance repeatability and reproducibility of test results. (AHRI, No. 13 at p. 1, AHAM, No. 15 at p. 2) AHAM additionally commented that the Final Draft International Standard (FDIS) version of IEC Standard 62301 would be preferable to the Committee Draft for Vote (CDV) version of the standard, both of which were available at the time of DOE's NOPR. (AHAM, No. 15 at p.2) The CDV of IEC Standard 62301 was released on August 28, 2009, and the FDIS of IEC Standard 62301 was released on October 29, 2010. On this matter, DOE notes that because IEC has now formally adopted IEC Standard 62301 (Second Edition), DOE is no longer considering earlier draft versions. In any event, the adopted version is consistent with the preference suggested by AHRI and AHAM.

As mentioned above, since the time of the August 2010 NOPR, the IEC Standard 62301 technical committee has officially revised its standard. Specifically, a second edition of IEC

Standard 62301 has been issued by IEC with a final publication date of January 27, 2011.

DOE has conducted a review of the second edition of IEC Standard 62301, which is consistent with the requirement in EISA 2007 for DOE to consider the most current version of that standard. (42 U.S.C. 6295(gg)(2)(A)) As a result of its investigation, DOE agrees with AHRI and AHAM that some improvement to the test procedures may be possible with the incorporation of the second edition of the IEC standard as applied to the products that are the subject of this rulemaking. Specifically, IEC Standard 62301 (Second Edition) revises the standard's power measurement accuracy provisions, based on technical submissions that showed the inability to achieve the accuracy levels required by the first edition for certain operating regimes with the use of typical instrumentation. A more comprehensive specification of required accuracy is provided in IEC Standard 62301 (Second Edition) that depends upon the characteristics of the power being measured. The other major change in IEC Standard 62301 (Second Edition) that relates to the measurement of standby mode power consumption of covered products involves the specification of stability criteria required to measure that power. IEC Standard 62301 (Second Edition) contains more detailed techniques to evaluate the stability of the power consumption and to measure the power consumption for stable loads with less burdensome methods such as direct meter reading, if certain clearly described conditions are met. DOE believes that the changes incorporated in IEC Standard 62301 (Second Edition) would allow for use of less burdensome methods when appropriate and would ensure accurate measures of standby mode energy consumption over a range of operating conditions encountered by typical residential heating products.

As discussed above, DOE published a supplemental notice of proposed rulemaking in the **Federal Register** on September 13, 2011 (the September 2011 SNOPR), which proposed to use the second edition of IEC Standard 62301 in lieu of the first edition. 76 FR 56347. Comments on the SNOPR were received from AHAM and AHRI, and a joint comment was submitted by the Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, and Northwest Energy Efficiency Alliance (ASAP *et al*). All comments were supportive of the use of IEC Standard 62301 (Second Edition). (AHAM, No. 22 at p. 1, AHRI, No. 24 at p. 1, and ASAP *et al,* No. 23 at p. 1) In addition, ASAP *et al* added that referencing the most recent version of the IEC Standard 62301 would facilitate international harmonization of standby mode and off mode test procedures. (ASAP *et al,* No. 23 at p. 1)

Accordingly, for the reasons discussed above, DOE is incorporating IEC Standard 62301 (Second Edition) into DOE's test procedure regulations for residential direct heating equipment and pool heaters. To this end, this final rule adds a new reference in 10 CFR 430.3, *Materials incorporated by reference,* for IEC Standard 62301 (Second Edition) but does not remove the existing reference to IEC Standard 62301 (First Edition) at 10 CFR 430.3(m)(1). (Although DOE has determined that the provisions of IEC Standard 62301 (Second Edition) shall be applicable to residential direct heating equipment and pool heaters, the Department is currently maintaining the existing reference to IEC Standard 62301 (First Edition), because other covered products continue to reference that standard.) In addition, DOE is issuing a number of editorial changes in the various appendices (G, O, and P) which are necessary for residential direct heating equipment and pool heaters to allow for the correct referencing. For example, the definition sections of the individual appendices need to define IEC Standard 62301 as the second edition instead of the first edition. Also, there are some section numbering differences in the second edition which impact the text of the measurement provisions of DOE's various test procedures. Finally, as an editorial improvement, DOE is unifying the standby mode and off mode nomenclature used in the various test procedures. Specifically, the uniform nomenclature for electrical power consumption in standby mode and off mode will be $P_{W,SB}$ and $P_{W,OFF}$, respectively. All of these changes are reflected in the regulatory text which can be found at the end of this final rule.

C. Requirements for Unvented Heaters and Exclusion From Testing

In the August 2010 NOPR, DOE proposed only to add certain measurement provisions to the existing test procedures for unvented heaters and not to include added or amended calculations to quantify annual standby mode and off mode energy consumption. In addition, DOE tentatively concluded that for some manually-controlled portable heaters, no testing for standby mode or off mode is required, because the units are expected to be inoperable during these modes. 75 FR 52892, 52898–99 (August 30, 2010). AHRI, AHAM, and NRDC were supportive of the proposed amendments for unvented heaters, including the exclusion from the requirement to conduct standby mode and off mode testing when there is a means to disconnect the power source and instructions to do so are clearly visible. AHRI and NRDC asked that the exclusion provisions be clarified to avoid ambiguity and possible operational problems. AHAM fully supported these provisions and offered further evidence as to the appropriateness of the exclusion provisions. (AHRI, No. 13 at p. 2, AHAM, No. 15 at p. 2–3, and, NRDC, No. 16 at p. 1–2.) AHAM restated its support for these provisions in its comments on the September 2011 SNOPR. (AHAM, No. 22 at p. 2.) AHRI additionally questioned the necessity of any amendments for unvented gas space heaters. (AHRI, No. 13 at p. 2.)

The August NOPR proposed for unvented heaters to add separate provisions to measure the possible standby mode and off mode energy consumption for both fossil fuel and electricity. These added provisions would allow for exclusion from the standby mode and off mode requirements if there is means to disconnect the electric or gas power source when not in use and instructions to do so are clearly visible. This exclusion is identical to what is currently in the existing vented heater test procedures as applied to pilot lights on manually-controlled heaters. DOE believes this exclusion should also apply to unvented heaters so equipped.

After carefully considering the public comments and available information, DOE reviewed the proposed provisions for unvented heaters, particularly the exclusion provisions, and has reached the following conclusions. For electric heaters, DOE has decided to adopt the regulatory provisions, as proposed. The commenters did not provide specific additional clarification, and DOE does not see where such additional guidance or information would be beneficial. For gas unvented heaters, DOE recognizes the point the commenters make regarding clear instructions and the point that AHRI raises concerning the unnecessary turning on and off of pilot lights during the heating season. (AHRI, No. 13 at p. 2) However, DOE believes this issue is best addressed by the industry in its development of instructions and labels and not within the scope of this DOE test procedure rulemaking.

Regarding AHRI's suggestion to not require any amendments for unvented heaters (because to AHRI's knowledge,

there are not any unvented heaters that have electrical standby mode and off mode energy consumption), DOE is not convinced there is no possibility for these products to experience electrical standby mode or off mode energy consumption, either currently or in the future. It is important to note, today's final rule does not require any testing for the products that AHRI reports as having no possibility of electrical standby mode or off mode energy consumption (*i.e.,* unvented heaters that have no electrical connection at all). Adopting the amendments as proposed will allow DOE to meet its EISA 2007 mandate without adding unnecessary burden on the manufacturers of current products of this product type.

D. Technical Feasibility of an Integrated Efficiency Metric for Vented Heaters and Pool Heaters

The NOPR proposed an integrated thermal efficiency metric for pool heaters, but did not propose an integrated annual fuel utilization efficiency for vented heaters. All commenters that provided input on this issue were supportive of the proposal not to integrate the standby mode and off mode energy consumption into the AFUE metric for vented heaters because such integration would not likely change the reported AFUE numerical value. AHRI, NRDC, and PG&E all recommended that DOE adopt the same approach for pool heaters. AHRI restated its opposition to integrating standby mode and off mode energy consumption into the efficiency metric for pool heaters when commenting on the September 2011 SNOPR. These commenters believed that integration would not materially affect the reported value generated by the efficiency metric for pool heaters. A second objection raised by these commenters involved the use of the term ''integrated thermal efficiency,'' who argued that this terminology has specific meaning in the pool heater industry which is not consistent with the meaning proposed by DOE. (AHRI, No. 13 at pp. 2–5, ACEEE, No. 14 at pp. 1–2, NRDC, No. 016 at pp. 2–3, PG&G 017 at p. 2, and, AHRI, No. 24 at p. 1)

DOE considered proposing an integrated AFUE for vented heaters that would incorporate the standby mode and off mode energy consumption into the existing AFUE metric by adding this additional energy consumption to the active energy consumption already captured by the AFUE quotient. However, DOE has determined that such integration is technically infeasible for vented heaters. This is because the electrical standby mode and off mode energy usage would typically be relegated to background noise vis-à-vis the much greater active mode energy consumption, due to the fact that most manufacturers' ratings of AFUE (as well as the current energy conservation standards) are presented to the nearest whole number, and the magnitude of the energy for standby mode and off mode would be so comparatively small that it would not likely change the reported value. As a result, DOE expects that in most cases, no change in the reported AFUE would result from integration. For these reasons, DOE believes integrating electrical standby mode and off mode energy consumption into the AFUE descriptor for vented heaters would not provide useful or meaningful information and is, therefore, technically infeasible.

DOE's proposed approach for vented heaters would allow for the measurement of standby mode and off mode electrical [6] energy consumption of all vented heater products. Although the magnitude of energy savings may be small for a given unit, it could be substantial when aggregated across the full range of this covered product over DOE's typical 30-year analysis period for setting standards. As required by EPCA, DOE will further address the standby mode and off mode electrical energy consumption of vented heaters in the next energy conservation standards rulemaking. (42 U.S.C. 6295(gg)(3))

Unlike the integrated AFUE for vented heaters, DOE tentatively concluded in the August 2010 NOPR that an integrated efficiency metric for pool heaters is technically feasible and would provide measurable performance differentiation. 75 FR 52892, 52900 (August 30, 2010). As explained in the NOPR, this is because the standby mode and off mode energy consumption for pool heaters is significant relative to the active mode energy consumption, as expressed in the original thermal efficiency descriptor. There were two contributing factors to this conclusion: (1) The standby mode and off mode energy consumption includes both fossil fuel and electrical energy consumption (thereby contributing to the overall magnitude of such energy consumption), and (2) pool heaters have a relatively smaller number of operating hours associated with active mode energy consumption. In support of this determination of a significant difference, the NOPR maintained that a standing pilot light alone could move the efficiency metric a few percentage points. *Id.* Further in support, and realizing that some pool heaters do not have standing pilot lights, DOE testing shows a 1 percentage point difference based solely on the added electrical standby mode and off mode consumption of a unit without a standing pilot light. Certain commenters argued that although the relative magnitude of the effect is larger for pool heaters than direct heating equipment, it is still very small and, as a result, would not allow for effective consumer information or government regulation. (AHRI, No. 13 at pp. 3–5, and, PG&G 017 at p. 2) Additional opposition to the integration was pointed out in the comments of NRDC, which stated that the commingling of electricity and fossil fuels in the integrated metric is not preferred, because it does not allow for separate analysis of the source energy value of electrical standby mode and off mode energy consumption. (NRDC, No. 016 at pp. 2–3.) These commenters preferred the separate metric approach for both test procedures and energy conservation standards.

DOE has reviewed this issue, carefully considering the public comments, and has determined it must maintain the integrated efficiency metric approach for pool heaters because it is technically feasible to do so. This is DOE's mandate under EPCA, as amended by EISA 2007. (42 U.S.C. 6295(gg)(2)(A)) As with vented heaters (and any other future energy conservation standards rulemaking for covered consumer products), DOE must address the standby mode and off mode energy consumption in the next standards rulemaking. The integrated metric adopted in this final rule will be the regulating metric for purposes of pool heater standards, once the standard is amended to also address standby mode and off mode energy consumption.

Finally, on the matter of the commenters' objection to the terminology ''integrated thermal efficiency,'' DOE has retained this terminology in this final rule, for the reasons described below. By way of background, EPCA's definition of ''efficiency descriptor'' specifically states that for pool heaters, the descriptor shall be thermal efficiency. (42 U.S.C. 6291(22)(E)) Accordingly, the ''integrated thermal efficiency'' terminology was proposed to maintain consistency with the statute. This approach would allow for the integration and incorporation of standby mode and off mode energy consumption into the test procedure as called for in 42 U.S.C. 6295(gg)(2)(A) and eventual incorporation in the energy

[6] Fossil-fuel standby mode and off mode energy consumption is already accounted for in the AFUE metric.

conservation standard as called for in 42 U.S.C. 6295(gg)(3). The original ''thermal efficiency'' descriptor would remain in the test procedure to provide the regulating basis for the current energy conservation standard. Commenters pointed out that the term ''thermal efficiency'' has a specific meaning in the industry. Specifically, ''thermal efficiency'' is based on the industry test methods (ANSI Z21.56, ''Standard for Gas-Fired Pool Heaters'') and describes the pool heater's performance in terms of heating water and not the unit's overall performance, including the energy liability that might be associated with standby mode and off mode operation. AHRI suggested that the existing test procedure terminology ''heating seasonal efficiency'' would be preferable, because it is an extension of thermal efficiency that includes the pilot light consumption in standby mode and is ideally suited for modification to include the standby mode and off mode electrical energy consumption. (However, DOE notes that the heating seasonal efficiency descriptor, as suggested by AHRI, does not fully account for the standby hours in the non-heating season, unlike DOE's integrated thermal efficiency descriptor. Moreover, DOE believes that including the non-heating standby hours in a seaonal metric could also cause confusion, because the metric would then be a bit of a misnomer.)

Nevertheless, despite commenters' preference for a different metric and terminology to measure the performance of pool heaters, one cannot lose sight of the fact that EPCA specifically states that the efficiency descriptor for pool heaters shall be thermal efficiency (42 U.S.C. 6291(22)(E)), and the statute also requires DOE to account for standby mode and off mode energy consumption in an integrated metric, if technically feasible (42 U.S.C. 6295(gg)(2)(A) and (3)). Thus, DOE does not have lattitude to adopt other metrics as commenters suggested. Instead, the Department is adopting integrated thermal efficiency in order to implement both of these statutory requirements. Furthermore, DOE also believes that there are advantages to maintaining consistency of its terminology related to standby mode and off mode across the test procedures for various products. DOE is confident that manufacturers and other interested stakeholders will be able to grasp the relevant terminology for purposes of the DOE test procedure. Accordingly, DOE has today prescribed ''integrated thermal efficiency'' (TE_I) as the integrated efficiency descriptor for pool heaters.

To further clarify its test procedure regulations for pool heaters, DOE is also prescribing a number of editorial changes to 10 CFR 430.23(p). These edits are largely housekeeping matters designed to correct the references to sections of appendix P that have now changed numerically because of today's final rule.

E. Hearth Products Coverage

HPBA filed two sets of comments on the August 2010 NOPR. In the first set of comments, HPBA concluded that the provisions related to measurement of standby mode and off mode energy consumption ''will probably have a minimal inpact on vented hearth heating products.'' However, in its second set of comments, HPBA stated more broadly that the test procedures for direct heating equipment are not applicable to decorative hearth products, specifically the products covered by ANSI Standard Z21.50, ''Vented Gas Fireplaces.'' According to HPBA, decorative hearth products are intended to provide ambiance rather than heat, so, therefore, HPBA believes decorative hearth products are not covered ''direct heating equipment'' and that heating efficiency is not an appropriate measure of performance for these products. Further, HPBA maintains that even if heating efficiency was desired for these appliances, the DOE test method is inapplicable as a means to determine heating efficiency, given a number of inappropriate assumptions regarding their representative average use. ACEEE recognized this concern of HPBA but suggested the matter not be addressed in a test method rulemaking. (HPBA, No. 8 at p. 1 and No. 12 at p. 1–4. ACEEE, No. 14 at p. 1.)

In response, DOE notes that the scope of the current test procedure rulemaking is limited to provisions related to measurement of standby mode and off mode energy consumption of residential water heaters, direct heating equipment, and pool heaters. HPBA concedes that the specific provisions at issue here would have minimal impact on vented hearth heating products. On HPBA's larger question regarding the applicability of the DOE test procedure for measuring the AFUE of vented hearth heaters, DOE has concluded that the test procedure does provide the technical capability to generate AFUE values for all vented hearth heaters. If modifications to the test procedure are warranted to optimize the testing of such units, such concerns will be addressed in a separate test procedure rulemaking for water heaters, direct heating equipment, and pool heaters, which is currently underway. As noted earlier, DOE published an RFI for that rulemaking in the **Federal Register** on October 12, 2011. 76 FR 63211.

However, DOE notes that in its November 18, 2011 final rule for direct heating equipment energy conservation standards, DOE adopted a definition of ''vented hearth heater'' which contains an exclusion for decorative hearth products. 76 FR 71836, 71859. Units that fall within the exclusion would not be subject to the otherwise applicable energy conservation standards, and they would likewise not be required to be tested under the DOE test procedure.

F. Review of Burner Operating Hours Estimates

NRDC suggested that DOE should review the burner operating hours (BOH) estimate in the test procedures for each appliance type. (NRDC No. 016, pp. 1–2) NRDC further added that these estimates are referenced from earlier ANSI standards, some of which are well over ten years old. It is noted here that these estimates are relevant to the matter of this rulemaking because BOH is used as an approximation of the active mode time duration for both direct heating equipment and pool heaters. This concept of using the existing test procedures assignment of BOH as an approximation of active mode time duration was developed in the August 2010 NOPR. 75 FR 52892, 52897 (August 30, 2010). No comments were received objecting to this assignment. The NRDC comment relates to the numerical value of the current test procedure estimate and whether there is a need to update the numerical value of these assignments in the test procedures.

DOE has reviewed this matter, and for the reasons explained below, DOE has concluded that there is not a need to change the test procedure estimates of BOH for direct heating equipment or pool heaters. These test procedure estimates are not referenced from old ANSI standards as the commenter suggests, but rather independent assignments and equations developed within the various rulemakings establishing the DOE test procedures. With these representative bases established, the test procedures can yield uniform results. The direct heating equipment BOH is based primarily on an estimate of heating degree days that would be typical of where direct heating equipment is used. For the national average case, 2950 heating degree days is assigned. 43 FR 20147, 20182 (May 10, 1978). The BOH for direct heating equipment is then calculated from this heating degree day assignment and a

number of other factors that can affect the BOH of direct heating equipment. Typically, the test procedure yields values of 700–800 BOH for DHE. The level of national average heating degree days is representative of a southern-tier U.S. location which DOE believes is still appropriate for the distribution of direct heating equipment. That is, the inherently smaller capacities of DHE, as compared to central furnaces would suggest that DHE product types address on average a relatively milder or more southern heating requirement. A review of the 2009 Residential Energy Consumption Survey (available at *www.eia.gov*) supports this southern tier approach for DHE products. Specifically, the RECS 2009 Table HC6.6, ''Space Heating in U.S. Homes, By Climate Region,'' reports that a majority of households having this type of product (termed in RECS 2009 as ''room heaters'' and ''wall and floor pipeless furnaces'') are in the two southernmost of the five climate zones used by RECS.

Further, a review of the 2005 Residential Energy Consumption Survey (also available at *www.eia.gov*) provided more data supporting DOE's current approach to BOH. A weighted average of the heating degree days using the distribution of room heaters and wall and floor pipeless furnaces resulted in an estimate that homes in which direct heating equipment is installed are subjected to an annual heating degree day number of 2900. Considering the uncertainty in this value, DOE considers this estimate to be highly consistent with the existing value in the test method, and accordingly, DOE has concluded that there is no justification for modifying the heating degree days that form the basis of the determination of burner operating hours for direct heating equipment. It should be noted that the data released for the 2009 RECS do not yet contain sufficient information to determine this weighted average more precisely. However, these data are supportive of the southern tier assignment for national average heating degree days as currently provided in the DOE test procedure. It is important to note that the regional calculations in this test procedure allow for other assignments based on geographic location.

Investigating this issue further, DOE looked at another source of information to determine if the DHE test procedures' overall calculation methodology would need amending. To this end, DOE reviewed the estimates of energy consumption contained in the recent analysis supporting amended energy conservation standards for DHE. 75 FR 20112 (April 16, 2010). That analysis reported BOH similar to that estimated in the DOE test procedure (700–800 hours) for DHE used as primary heating appliances; however, a smaller number is reported for BOH in this analysis for some types of DHE that could be used as supplemental heaters.[7] That lower estimate is important to bear in mind in a standards analysis in order to avoid overestimating the energy savings that might be associated with a given standard level. However, DOE believes supplemental use or any non-use of a product should not be part of the test procedures' representative use calculations. Rather, a better basis of the representative use calculations would be calculations that include full use of the product. Given the significant portion of DHE products that are used as primary heating sources and the product's potential to be used on a regular basis, DOE has concluded that the test procedure should assume full use. Moreover, persons relying on energy use estimates when making purchasing decisions and planning on frequent use of the product would not be served by reducing the estimate to account for the marginal use of the product by others.

In sum, DOE has reviewed all aspects of the current BOH assignments and calculations for direct heating equipment and has not found any potential for systematic error or unrepresentative results. More specifically, DOE did not find any research or data that contradicts the representativeness of this existing basis of determining direct heating equipment BOH.

Somewhat less complicated than direct heating equipment, the pool heater test procedure includes a direct assignment of BOH, without need for the complicated suite of calculations found in the DHE test procedure. This simplified approach is reasonable because the energy consumption of pool heaters is not typically affected by the various factors accounted for in the DHE test procedure calculations (*e.g.,* oversizing, climatic effects, and the lack of modulating controls). Accordingly, the pool heater test procedure assumes a single assignment of 104 BOH. This assignment is based on survey data available at the time proposed amendments for the test procedure were developed in 1993. 58 FR 44538, 44548, 44571 (August 23, 1993). On review, this level of usage is still deemed representative. Specifically, the 2005 Residential Energy Conservation Survey (available at *www.eia.gov*) reports similar usage for pool heaters.

In sum, DOE has reviewed the numerical assignments as well as the analytical basis for BOH in both the direct heating equipment and pool heaters test procedures and maintains that they are representative of the average use cycles that would be encountered by present day appliances.

G. Other Issues Raised in the September 2011 SNOPR

In addition to proposing the use of the second edition of IEC Standard 62301, the September 2011 SNOPR clarified rounding guidance and sampling provisions applicable to the new measures of energy consumption (*i.e.,* $P_{W,SB}$ and $P_{W,OFF}$).

For these new values of energy consumption, the September 2011 SNOPR clarified that the rounding guidance provided in IEC Standard 62301 (Second Edition) would apply. 76 FR 56347, 56350–51 (Sept. 13, 2011). Specifically, DOE proposed to add the following sentence to the measurement provisions of the proposed regulatory text, where appropriate: ''The recorded standby power ($P_{W,SB}$) (or off mode power $P_{W,OFF}$, where appropriate) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.'' *Id.* at 56353–54. DOE requested comments as to the adequacy and appropriateness of this clarification. AHRI opined that the second decimal place rounding represents an unnecessarily stringent level of precision when one considers the annualized accounting of total electrical energy consumption as represented in the term E_{SO}. (AHRI No. 24 at p. 2) DOE believes the IEC rounding provisions for the wattage measurements are appropriate and within the capabilities of the instrumentation specified in the IEC standard. Specifically, DOE's review of IEC Standard 62301—compliant instrumentation has determined that one can easily support this level of reporting precision. Moreover, the test procedures for other DOE covered products already utilize IEC Standard 62301 for the wattage measurements, and DOE believes there is benefit in measuring standby mode and off mode energy consumption of various covered products in a consistent manner. In sum, carrying the IEC level of precision through the annualized consumption calculations does not represent any additional burden, because it is simply a matter of running a calculation and reporting the results. Accordingly, DOE

[7] For more information, see the DHE life-cycle cost and payback period spread sheet which is available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/heating_products_fr_spreadsheets.html.*

has concluded that these comments do not justify a departure from the IEC provisions, so DOE is adopting the rounding guidance as proposed.

The September 2011 SNOPR clarified that the sampling provisions already used for the measures of energy consumption in the existing test procedures for direct heating equipment and pool heaters would also apply to the new measures of energy consumption for standby mode and off mode. *Id.* at 56350–51. No comments were received regarding the clarification of applicable sampling provisions for the new measures of energy consumption. Accordingly, for the reasons above, DOE has decided to adopt the proposed approach presented in the SNOPR in today's final rule.

IV. Effective Date and Compliance Date

The effective date for these amendments is January 16, 2013. At that time, representations may be made about residential direct heating equipment and pool heaters using the new metrics $P_{W,SB}$ and $P_{W,OFF}$ reflecting standby mode and off mode energy use, as well as any other measure of energy consumption which depends on $P_{W,SB}$ and $P_{W,OFF}$, which were adopted pursuant to these amendments. The compliance date for any representations relating to standby mode and off mode of direct heating equipment and pool heaters is June 17, 2013; on or after that date, any such representations must be based upon results generated under these test procedures and sampling plans. However, DOE would clarify that use of these proposed test procedure amendments related to standby mode and off mode energy consumption would not be required for purposes of energy conservation standards compliance, until the compliance date of the next standards final rule that addresses standby mode and off mode.

More specifically, the introductory sentences to 10 CFR part 430, subpart B, Appendix O for vented direct heating equipment and Appendix P for pool heaters, read as follows: ''The procedures and calculations that refer to standby mode and off mode energy consumption * * * need not be performed to determine compliance with energy conservation standards for these products at this time.'' The above statement will be removed as part of a future rulemaking to amend either energy conservation standards for direct heating equipment or standards for pool heaters to account for standby mode and off mode energy consumption, and compliance with the applicable test procedure provisions will be required on the compliance date of those amended energy conservation standards. A statement has also been added to the introductory note to these appendices to clarify that any representations pertaining to standby mode and off mode energy consumption of these products that are made on or after a date 180 days after the date of publication of this test procedure final rule in the **Federal Register** must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). Although this is a statutory requirement under 42 U.S.C. 6293(c), DOE has concluded that it would be useful to explicitly state this requirement in DOE's regulations.

V. Compliance With Other EPCA Requirements

In amending a test procedure, EPCA directs DOE to determine to what extent, if any, the test procedure would alter the measured energy efficiency or measured energy use of a covered product. (42 U.S.C. 6293(e)(1)) If the amended test procedure alters the measured energy efficiency or measured energy use, the Secretary must amend the applicable energy conservation standard to the extent the amended test procedure changes the energy efficiency of products that minimally comply with the existing standard. (42 U.S.C. 6293(e)(2)) The current energy conservation standards for vented direct heating equipment and pool heaters are based on existing test procedure metrics—annual fuel utilization efficiency (AFUE) and thermal efficiency (E_t), respectively—neither of which is affected by the inclusion of electrical standby mode and off mode energy consumption in other metrics adopted as part of today's final rule. There are no energy conservation standards for unvented direct heating equipment. As explained further below, today's test procedure final rule has no effect on any current energy conservation standard.

As provided by EPCA, amendments to the test procedures to include standby mode and off mode energy consumption shall not be used to determine compliance with previously established standards. (42 U.S.C. 6295(gg)(2)(C)) The inclusion of a standby mode and off mode test method in this final rule will not affect a manufacturer's ability, using existing metrics, to demonstrate compliance with the existing energy conservation standards for direct heating equipment or pool heaters. The standby mode and off mode tests need not be performed to determine compliance with the current energy conservation standards for these products, because the current standards do not comprehensively account for electrical standby mode and off mode energy consumption. (For the reasons stated above, this final rule does not prescribe test procedure amendments for residential water heaters. Accordingly, there is no effect on water heater compliance.)

EPCA requires that new or amended test procedures 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)) For the reasons that follow, DOE has determined that incorporation by reference of IEC Standard 62301 (Second Edition), along with the other modifications and additional calculations described above, satisfy this requirement.

As noted previously, the DOE test procedures, as amended, reference provisions from the incorporated IEC Standard 62301 (Second Edition) for the measurement of standby mode and off mode energy consumption, which is a widely-accepted and used international standard. Based on its analysis of IEC Standard 62301 (Second Edition), DOE has determined that the test methods and equipment that the amendments require for measuring standby mode and off mode power do not differ substantially from the test methods and equipment in the current DOE test procedure for residential direct heating equipment and pool heaters. Therefore, testing of these products pursuant to today's final rule will not require any significant investment in new test facilities or equipment. For these reasons, DOE does not believe that the standby mode and off mode test procedure provisions will add significant costs.

VI. 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 regulatory action was not subject to review under that 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.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that, by law, must be proposed for public comment and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative effects. Also, as required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 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 at *www.gc.doe.gov/gc/office-general-counsel*.

Today's final rule adopts test procedure provisions to measure standby mode and off mode energy consumption of residential direct heating equipment and pool heaters, generally through the incorporation by reference of IEC Standard 62301 (Second Edition) and the modifications and additional calculations described in detail in the August 2010 NOPR. DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the policies and procedures published on February 19, 2003. 68 FR 7990.

As noted above, the test procedure incorporates by reference provisions from IEC Standard 62301 (Second Edition) [8] for the measurement of standby mode and off mode energy consumption. IEC Standard 62301 (Second Edition) is widely accepted and used internationally to measure electric power in standby mode and off mode. Based on its analysis of IEC Standard 62301 (Second Edition), DOE determined that the test methods and equipment that the amendments require for measuring standby mode and off mode power do not differ substantially from the test methods and equipment in the current DOE test procedure for direct heating equipment and pool heaters. Even if the testing facility decides to upgrade its measurement instrumentation to meet today's rule, an applicable meter (i.e., one that complies with IEC Standard 62301) would cost $3,000 or less. Therefore, testing of direct heating equipment and pool heaters pursuant to today's final rule will not require any significant investment in test facilities or new equipment. The testing time to conduct the standby mode and off mode testing on a single unit is estimated at 15 minutes to 60 minutes. Assuming a laboratory technician would be present at a cost of $60 per hour, this time represents a labor cost range of $15 to $60. This range of cost would be related to the stability of the electrical consumption being measured, with a longer testing time being required for unstable measurements in order to allow for accurate averaging. It is important to note, that the second edition of IEC Standard 62301 sought improvement in this area by more clearly defining the stability criteria and allowing for less burdensome direct meter reading methods, thereby reducing testing time in cases where the criteria are met. In the worst case, the impacts of the potential incremental instrument and labor costs are still small compared to the overall financial investment needed to undertake a business enterprise involving the testing of consumer products. For these reasons, DOE has concluded that the standby mode and off mode test procedure provisions will not add significant costs.

For the manufacturers of the three types of heating products, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848–49 (May 15, 2000), as amended at 65 FR 53533, 53544–45 (Sept. 5, 2000) and codified at 13 CFR part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table(1).pdf*. Residential water heater manufacturing is classified under NAICS 335228—''Other Major Household Appliance Manufacturing.'' DHE and pool heater manufacturing are classified under NAICS 333414—''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for both of these categories. However, since DOE has determined that it is not necessary to establish additional standby mode and off mode test procedure provisions for water heaters in this rulemaking, there is no need to analyze the impact of this rulemaking on water heater manufacturers.

In a recent review of the residential DHE and pool heater markets, DOE identified 10 manufacturers of only vented DHE, 3 manufacturers of only unvented DHE, 2 manufacturers of both vented and unvented DHE, and 1 pool heater manufacturer that can be considered small businesses. DOE's research involved reviewing several industry trade association membership directories (*e.g.,* AHRI and HPBA), product databases (*e.g.* AHRI, CEC, and ENERGY STAR databases), individual company Web sites, and marketing research tools (*e.g.* Dun and Bradstreet reports) to create a list of all domestic small business manufacturers of direct heating equipment and gas-fired pool heaters covered by this rulemaking. In the August 2010 NOPR, DOE identified a similar number of small business manufacturers and tentatively certified that this rule would not have a significant impact on a substantial number of small entities. 75 FR 52892, 52901–02 (August 30, 2010). Additionally, as discussed above, DOE hereby confirms that the IEC Standard 62301 (Second Edition) would be expected to reduce testing burden relative to the first edition and confirms that this rule would 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's certification and supporting statement of factual basis was provided to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). DOE did not receive any comments or public testimony regarding a significant economic impact on any small entities. Thus, DOE reaffirms and certifies that this rule will not have a significant economic impact on a substantial number of small entities.

[8] The August 2010 NOPR review under the Regulatory Flexibly Act was regarding IEC Standard 62301 (First Edition). In the subsequent September 2011 SNOPR which proposed to adopt the IEC Standard 62301 (Second Edition), it was tentatively determined that the second edition would be expected to reduce testing burden relative to the first edition. 76 FR 56347, 56351 (Sept. 13, 2011). DOE hereby confirms that conclusion in today's final rule.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of residential direct heating equipment and pool heaters must certify to DOE that their products comply with all applicable energy conservation standards. In certifying compliance, manufacturers must test according to the applicable DOE test procedures, including any amendments adopted for those test procedures on the date that compliance is required. DOE has established regulations for the certification and recordkeeping requirements for all covered products and commercial equipment, including residential direct heating equipment and pool heaters (76 FR 12422 (March 7, 2011)). The collection-of-information requirement for 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

DOE is establishing a final rule to amend the test procedure for residential direct heating equipment and pool heaters to address measurement of the standby mode and off mode energy consumption of these products. DOE has determined that this final 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 final rule, which adopts an industry standard for measurement of standby mode and off mode energy consumption, 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 found in 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,'' imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). 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 that it will follow in the development of such regulations. 65 FR 13735. DOE has examined this final rule and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. 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 U.S.C. 6297(d)) Therefore, Executive Order 13132 requires no further action.

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. Regarding the review required by section 3(a), 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 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. (Pub. L. 104–4, sec. 201 (codified at 2 U.S.C. 1531)) For regulatory actions likely to result in a rule that may cause expenditures 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) and (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 ''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 them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (This policy is also available at *http://www.gc.doe.gov.*) DOE examined today's final rule, which modifies the current test procedures for direct heating equipment and pool heaters 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 by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

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. This rule would 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

Pursuant to Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 15, 1988), DOE has determined that this final rule would not result in any takings that might require compensation under the Fifth Amendment to the United States Constitution.

J. Review Under the 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 Federal agencies to review most disseminations of information to the public under information quality 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 OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates 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 proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's final rule is not a significant regulatory action under Executive Order 12866 or any successor order; would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, DOE has determined that this rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects for this rulemaking.

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 *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788) Section 32 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 Federal Trade Commission (FTC) concerning the impact of commercial or industry standards on competition.

Certain of the amendments and revisions in this final rule incorporate testing methods contained in the following commercial standard, the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power'' (Second Edition, 2011–01). DOE has evaluated this standard and is unable to conclude whether it fully complies with the requirements of section 32(b) of the Federal Energy Administration Act (*i.e.,* that it was developed in a manner that fully provides for public participation, comment, and review). DOE has consulted with the Attorney General and the Chairman of the FTC concerning the impact on competition of requiring manufacturers to use the test methods contained in this standard, and neither recommended against incorporation of this standard.

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).

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects in 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 November 16, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is amending part 430 of Chapter II, Subchapter D of Title 10 of the Code of Federal Regulations, as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.3 is amended by revising paragraphs (d)(16) and (m)(2) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(d) * * *

(16) ANSI Z21.56–2006, section 2.10 (''ANSI Z21.56''), Standard for Gas-Fired Pool Heaters, approved December 13, 2005, IBR approved for appendix P to subpart B.

(m) * * *

(2) IEC 62301 (''IEC 62301''), *Household electrical appliances—Measurement of standby power,* (Edition 2.0, 2011–01), IBR approved for appendices C1, G, I, J2, O, P, and X1 to subpart B.

* * * * *

§ 430.23 [Amended]

■ 3. Section 430.23 is amended by:

■ a. Removing the words ''section 4.2 of appendix P'' in paragraph (p)(1)(i) and adding in their place ''section 5.2 of appendix P''; and

■ b. Removing the words ''section 4.3 of appendix P'' in paragraph (p)(1)(ii) and adding in their place ''section 5.3 of appendix P''.

■ 4. Appendix G to Subpart B of Part 430 is amended in section 2 by adding sections 2.3, 2.3.1, 2.4, and 2.4.1 to read as follows:

Appendix G to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Unvented Home Heating Equipment

* * * * *

2. * * *

2.3 *Pilot light measurement.* Except as provided in section 2.3.1 of this appendix, measure the energy input rate to the pilot light (Q_p), with an error no greater than 3 percent, for unvented heaters so equipped.

2.3.1 The measurement of Q_p is not required for unvented heaters where the pilot light is designed to be turned off by the user when the heater is not in use (*i.e.,* for units where turning the control to the OFF position will shut off the gas supply to the burner(s) and the pilot light). This provision applies only if an instruction to turn off the unit is provided on the heater near the gas control value (*e.g.,* by label) by the manufacturer.

2.4 *Electrical standby mode power measurement.* Except as provided in section 2.4.1 of this appendix, for all electric heaters and unvented heaters with electrical auxiliaries, measure the standby power ($P_{W,SB}$) in accordance with the procedures in IEC 62301 Second Edition (incorporated by reference; see § 430.3), with all electrical auxiliaries not activated. Voltage shall be as specified in section 1.4.1 *Electrical supply* of this appendix. The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

2.4.1 The measurement of $P_{W,SB}$ is not required for heaters designed to be turned off by the user when the heater is not in use (*i.e.,* for units where turning the control to the OFF position will shut off the electrical supply to the heater). This provision applies only if an instruction to turn off the unit is provided on the heater (*e.g.,* by label) by the manufacturer.

* * * * *

■ 5. Appendix O to Subpart B of Part 430 is amended by:

■ a. Adding a Note after the heading;

■ b. Redesignating sections 1.1 through 1.32 as follows:

Old sections	New sections
1.1 to 1.14	1.2 to 1.15
1.15 to 1.19	1.17 to 1.21
1.20 and 1.21	1.23 and 1.24
1.22 to 1.25	1.26 to 1.29
1.26 to 1.32	1.31 to 1.37

■ c. Adding new sections 1.1, 1.16, 1.22, 1.25 and 1.30;

■ d. Adding sections 3.7, 3.7.1, and 3.7.2; and

■ e. Revising sections 4.6.3 and 4.6.3.1, and adding section 4.7.

The additions and revisions read as follows:

Appendix O to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Vented Home Heating Equipment

NOTE: The procedures and calculations that refer to standby mode and off mode energy consumption, (*i.e.,* sections 3.7 and 4.7 of this appendix) need not be performed to determine compliance with energy conservation standards for vented heaters at this time. However, on or after June 17, 2013, any representation related to standby mode and off mode energy consumption of these products must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For vented home heating equipment, the statute requires that after July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1.0 *Definitions.*

1.1 ''Active mode'' means the condition during the heating season in which the vented heater is connected to the power source, and either the burner or any electrical auxiliary is activated.

* * * * *

1.16 ''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).

* * * * *

1.22 ''Off mode'' means the condition during the non-heating season in which the vented heater is connected to the power source, and neither the burner nor any electrical auxiliary is activated.

* * * * *

1.25 ''Seasonal off switch'' means the control device, such as a lever or toggle, on the vented heater that affects a difference in off mode energy consumption as compared to standby mode consumption.

* * * * *

1.30 ''Standby mode'' means the condition during the heating season in which the vented heater is connected to the power source, and neither the burner nor any electrical auxiliary is activated.

* * * * *

3.0 * * *

3.7 *Measurement of electrical standby mode and off mode power.*

3.7.1 *Standby power measurements.* With all electrical auxiliaries of the vented heater not activated, measure the standby power ($P_{W,SB}$) in accordance with the procedures in IEC 62301 (Second Edition) (incorporated by reference, see § 430.3), except that section 2.9, *Room ambient temperature,* and the voltage provision of section 2.3.5, *Electrical supply,* of this appendix shall apply in lieu of the IEC 62301 (Second Edition) corresponding sections 4.2, *Test room,* and 4.3, *Power supply.* Clarifying further, the IEC 62301 (Second Edition) sections 4.4, *Power measuring instruments,* and section 5, *Measurements,* shall apply in lieu of section 2.8, *Energy flow instrumentation,* of this appendix. Measure the wattage so that all possible standby mode wattage for the entire appliance is recorded, not just the standby mode wattage of a single auxiliary. The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

3.7.2 *Off mode power measurement.* If the unit is equipped with a seasonal off switch or there is an expected difference between off mode power and standby mode power, measure off mode power ($P_{W,OFF}$) in accordance with the standby power procedures in IEC 62301 (Second Edition) (incorporated by reference, see § 430.3), except that section 2.9, *Room ambient temperature,* and the voltage provision of section 2.3.5, *Electrical supply,* of this appendix shall apply in lieu of the IEC 62301 (Second Edition) corresponding sections 4.2, *Test room,* and 4.3, *Power supply.* Clarifying further, the IEC 62301 (Second Edition) sections 4.4, *Power measuring instruments,* and section 5, *Measurements,* shall apply in lieu of section 2.8, *Energy flow instrumentation,* of this appendix. Measure the wattage so that all possible off mode wattage for the entire appliance is recorded, not just the off mode wattage of a single auxiliary. If there is no expected difference in off mode power and standby mode power, let $P_{W,OFF} = P_{W,SB}$, in which case no separate measurement of off mode power is necessary. The recorded off mode power ($P_{W,OFF}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

4.0 * * *

4.6.3 *Average annual auxiliary electrical energy consumption for vented heaters.* For vented heaters with single-stage controls or manual controls, the average annual auxiliary electrical consumption (E_{AE}) is expressed in kilowatt-hours and defined as:

$$E_{AE} = BOH_{SS}P_E + E_{SO}$$

Where:

BOH_{SS} = as defined in 4.6.1 of this appendix

P_E = as defined in 3.1.3 of this appendix

E_{SO} = as defined in 4.7 of this appendix

4.6.3.1 For vented heaters with two-stage or modulating controls, E_{AE} is defined as:

$$E_{AE} = (BOH_R + BOH_H)P_E + E_{SO}$$

Where:

BOH_R = as defined in 4.6.1 of this appendix

BOH_H = as defined in 4.6.1 of this appendix

P_E = as defined in 3.1.3 of this appendix
E_{SO} = as defined in 4.7 of this appendix

* * * * *

4.7 *Average annual electric standby mode and off mode energy consumption.*

Calculate the annual electric standby mode and off mode energy consumption, E_{SO}, defined as, in kilowatt-hours:

$$E_{SO} = ((P_{W,SB} * (4160 - BOH)) + (P_{W,OFF} * 4600)) * K$$

Where:

$P_{W,SB}$ = vented heater standby mode power, in watts, as measured in section 3.7 of this appendix
4160 = average heating season hours per year
$P_{W,OFF}$ = vented heater off mode power, in watts, as measured in section 3.7 of this appendix
4600 = average non-heating season hours per year
K = 0.001 kWh/Wh, conversion factor for watt-hours to kilowatt-hours
BOH = burner operating hours as calculated in section 4.6.1 of this appendix where for single-stage controls or manual controls vented heaters BOH = BOH_{SS} and for vented heaters equipped with two-stage or modulating controls BOH = (BOH_R + BOH_H).

■ 6. Appendix P to Subpart B of Part 430 is revised to read as follows:

Appendix P to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Pool Heaters

Note: The procedures and calculations that refer to standby mode and off mode energy consumption (*i.e.,* sections 2.2, 2.3, 3.2, 4.2, 4.3, 5.3 equation (3), and 5.4 of this appendix P) need not be performed to determine compliance with energy conservation standards for pool heaters at this time. However, on or after June 17, 2013, any representations related to standby mode and off mode energy consumption of these products must be based upon results generated under this test procedure, consistent with the requirements of 42 U.S.C. 6293(c)(2). For pool heaters, the statute requires that after July 1, 2010, any adopted energy conservation standard shall incorporate standby mode and off mode energy consumption, and upon the compliance date for such standards, compliance with the applicable provisions of this test procedure will also be required.

1. *Definitions.*

1.1 *Active mode* means the condition during the pool heating season in which the pool heater is connected to the power source, and the main burner, electric resistance element, or heat pump is activated to heat pool water.

1.2 *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)

1.3 *Off mode* means the condition during the pool non-heating season in which the pool heater is connected to the power source, and neither the main burner, electric resistance elements, nor heat pump is activated.

1.4 *Seasonal off switch* means a switch present on the pool heater that effects a difference in off mode energy consumption as compared to standby mode energy consumption.

1.5 *Standby mode* means the condition during the pool heating season in which the pool heater is connected to the power source, and neither the main burner, electric resistance elements, nor heat pump is activated.

2. *Test Method.*

2.1 *Active mode.* The test method for testing pool heaters in active mode is as specified in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3).

2.2 *Standby mode.* The test method for testing the energy consumption of pool heaters in standby mode is as described in sections 3 through 5 of this appendix.

2.3 *Off mode.*

2.3.1 *Pool heaters with a seasonal off switch.*

For pool heaters with a seasonal off switch, no off-mode test is required.

2.3.2 *Pool heaters without a seasonal off switch.*

For pool heaters without a seasonal off switch, the test method for testing the energy consumption of the pool heater is as described in sections 3 through 5 of this appendix.

3. *Test conditions.*

3.1 *Active mode.* Establish the test conditions specified in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3).

3.2 *Standby mode and off mode.* Following the conclusion of the 30-minute active mode test described in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3), reduce the thermostat setting to a low enough temperature to put the pool heater into standby mode. Operate the pool heater in standby mode for 60 minutes.

4. *Measurements.*

4.1 *Active mode.* Measure the quantities delineated in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3). The measurement of energy consumption for oil-fired pool heaters in Btu is to be carried out in appropriate units (*e.g.,* gallons).

4.2 *Standby mode.* Record the average electric power consumption during the standby mode test, $P_{W,SB}$, in W, in accordance with section 5 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3) and the fossil fuel energy consumption during the standby test, Q_p, in Btu. Ambient temperature and voltage specifications of ANSI Z21.56 (incorporated by reference; see § 430.3) shall apply to this standby mode testing. The recorded standby power ($P_{W,SB}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

4.3 *Off mode.*

4.3.1 *Pool heaters with a seasonal off switch.* For pool heaters with a seasonal off switch, the average electric power consumption during the off mode, $P_{W,OFF}$ = 0, and the fossil fuel energy consumed during the off mode, Q_{off} = 0.

4.3.2 *Pool heaters without a seasonal off switch.* Record the average electric power consumption during the standby/off mode test, $P_{W,OFF}$ (= $P_{W,SB}$), in W, in accordance with section 5 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), and the fossil fuel energy consumption during the off mode test, Q_{off} (= Q_p), in Btu. Ambient temperature and voltage specifications of ANSI Z21.56 (incorporated by reference; see § 430.3) shall apply to this off mode testing. The recorded off mode power ($P_{W,OFF}$) shall be rounded to the second decimal place, and for loads greater than or equal to 10W, at least three significant figures shall be reported.

5. *Calculations.*

5.1 *Thermal efficiency.* Calculate the thermal efficiency, E_t (expressed as a percent), as specified in section 2.10 of ANSI Z21.56 (incorporated by reference; see § 430.3). The expression of fuel consumption for oil-fired pool heaters shall be in Btu.

5.2 *Average annual fossil fuel energy for pool heaters.* The average annual fuel energy for pool heaters, E_F, is defined as:

$$E_F = BOH\ Q_{IN} + (POH - BOH)Q_{PR} + (8760 - POH)\ Q_{off,R}$$

Where:

BOH = average number of burner operating hours = 104 h
POH = average number of pool operating hours = 4464 h
Q_{IN} = rated fuel energy input as defined according to section 2.10.1 or section 2.10.2 of ANSI Z21.56, as appropriate.
Q_{PR} = average energy consumption rate of continuously operating pilot light, if employed, = (Q_P/1 h)
Q_P = energy consumption of continuously operating pilot light, if employed, as measured in section 4.2 of this appendix, in Btu
8760 = number of hours in one year
$Q_{off,R}$ = average off mode fossil fuel energy consumption rate = Q_{off}/(1 h)
Q_{off} = off mode energy consumption as defined in section 4.3 of this appendix

5.3 *Average annual auxiliary electrical energy consumption for pool heaters.* The average annual auxiliary electrical energy consumption for pool heaters, E_{AE}, is expressed in Btu and defined as:

(1) $E_{AE} = E_{AE,active} + E_{AE,standby,off}$
(2) $E_{AE,active}$ = BOH * PE
(3) $E_{AE,standby,off}$ = (POH − BOH) $P_{W,SB}$(Btu/h) + (8760 − POH) $P_{W,OFF}$(Btu/h)

Where:

$E_{AE,active}$ = auxiliary electrical consumption in the active mode
$E_{AE,standby,off}$ = auxiliary electrical consumption in the standby mode and off mode
PE = $2E_c$, if heater is tested according to section 2.10.1 of ANSI Z21.56, in Btu/h = 3.412 PE_{rated}, if heater is tested according to section 2.10.2 of ANSI Z21.56, in Btu/h
E_c = electrical consumption of the heater (converted to equivalent unit of Btu), including the electrical energy to the recirculating pump if used, during the 30-minute thermal efficiency test, as defined in section 2.10.1 of ANSI Z21.56, in Btu per 30 min.

2 = conversion factor to convert unit from per 30 min. to per h.
PE_{rated} = nameplate rating of auxiliary electrical equipment of heater, in Watts
BOH = as defined in 5.2 of this appendix
POH = as defined in 5.2 of this appendix
$P_{W,SB}$ (Btu/h) = electrical energy consumption rate during standby mode expressed in Btu/h = 3.412 $P_{W,SB}$, Btu/h
$P_{W,SB}$ = as defined in 4.2 of this appendix
$P_{W,OFF}$ (Btu/h) = electrical energy consumption rate during off mode expressed in Btu/h = 3.412 $P_{W,OFF}$, Btu/h
$P_{W,OFF}$ = as defined in 4.3 of this appendix

5.4 Integrated thermal efficiency.

5.4.1 Calculate the seasonal useful output of the pool heater as:

$$E_{OUT} = BOH[(E_t/100)(Q_{IN} + PE)]$$

Where:

BOH = as defined in 5.2 of this appendix
E_t = thermal efficiency as defined in 5.1 of this appendix
Q_{IN} = as defined in 5.2 of this appendix
PE = as defined in 5.3 of this appendix
100 = conversion factor, from percent to fraction

5.4.2 Calculate the annual input to the pool heater as:

$$E_{IN} = E_F + E_{AE}$$

Where:

E_F = as defined in 5.2 of this appendix
E_{AE} = as defined in 5.3 of this appendix

5.4.3 Calculate the pool heater integrated thermal efficiency (TE_I) (in percent).

$$TE_I = 100(E_{OUT}/E_{IN})$$

Where:

E_{OUT} = as defined in 5.4.1 of this appendix
E_{IN} = as defined in 5.4.2 of this appendix
100 = conversion factor, from fraction to percent

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 308 and 390

Rules of Practice and Procedure

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, requires all Federal agencies that have statutory authority to impose civil money penalties (CMPs), every four years, to publish, as adjusted for inflation, the maximum authorized amount of those CMPs. The Federal Deposit Insurance Corporation (FDIC) last adjusted the maximum amounts of CMPs under its jurisdiction in 2008. The FDIC is issuing this final rule to publish the adjusted maximum CMPs.

DATES: This rule is effective on December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Carl J. Gold, Counsel, Legal Division (202) 898–8702, or David Chapman, Chief Statistician, (703) 254–0227, Division of Insurance and Research.

SUPPLEMENTARY INFORMATION:

I. Background

The Debt Collection Improvement Act of 1996 (DCIA) amended section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act) (28 U.S.C. 2461 note), to require the head of each Federal agency, by regulation published within 180 days of the enactment of the DCIA, and at least once every four years thereafter, to adjust the maximum authorized amount of each CMP which the agency is authorized to assess. The agency is required to use the inflation adjustment formula set forth in section 5(b) of the Inflation Adjustment Act.

To satisfy the requirements of the DCIA, the FDIC is amending part 308 of its regulations (12 CFR part 308) of its regulations pertaining to its Rules of Practice and Procedure that address CMPs. The amount of each CMP that the FDIC has jurisdiction to impose has been increased according to the prescribed formula, or maintained at the previous level if warranted. The penalties specified in part 308 of the FDIC's regulations were last adjusted in 2008 (73 FR 73153, Dec. 2, 2008).

In addition, the FDIC is amending Part 390 of its regulations (12 CFR part 390) to adjust the maximum authorized CMP amounts it may assess against State savings associations under applicable laws. Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) transferred the functions, powers, and duties of the Office of Thrift Supervision (OTS) relating to State savings associations to the FDIC effective one year after July 21, 2010, the date that the Dodd-Frank Act was enacted. The Dodd-Frank Act also amended section 3 of the Federal Deposit Insurance Act (FDI Act) to designate the FDIC as the ''appropriate Federal banking agency'' for State savings associations. The FDIC transferred 12 CFR 509.103, the OTS regulation that prescribed procedures regarding assessment of CMPs against State savings associations, and the maximum permissible CMP amounts, to new part 390 of the FDIC's regulations. *See* 76 FR 47652 (Aug. 5, 2011). The amounts in the OTS regulation were last adjusted in 2008, and therefore are also subject to review and adjustment as provided by the DCIA.

Any increase in penalty amounts under the DCIA shall apply only to violations that occur after the effective date of the amended regulations.

Summary of Calculation

The Inflation Adjustment Act requires that each CMP amount be increased by the ''cost of living'' adjustment, which is defined as the percentage by which the Consumer Price Index (CPI–U) [1] for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the CMP was last set or adjusted pursuant to law. Any increase is to be rounded to the nearest multiple of: (A) $10 in the case of penalties less than or equal to $100; (B) $100 in the case of penalties greater than $100, but less than or equal to $1,000; (C) $1,000 in the case of penalties greater than $1,000, but less than or equal to $10,000; (D) $5,000 in the case of penalties greater than $10,000, but less than or equal to $100,000; (E) $10,000 in the case of penalties greater than $100,000, but less than or equal to $200,000; and (F) $25,000 in the case of penalties greater than $200,000. Under the DCIA, the first time that a CMP was adjusted following implementation of the DCIA in 1996, the increase could not exceed ten percent of the then-current original penalty amount, even though the intervening cost-of-living exceeded ten percent. As a general matter, under the DCIA, a particular CMP will not be increased for inflation or cost-of-living when the ''rounding'' process fails to reach the level warranting adjustment, as shown in the Summary of Adjustments chart below. In those cases, a particular CMP might be increased at a subsequent future quadrennial adjustment, when the level of inflation for the years since the last prior adjustment is taken into account. An example of the computation steps is found at 73 FR 73153 (Dec. 2, 2008), which published the FDIC's adjustments of CMPs in 2008.

Summary of Adjustments

Under the Inflation Adjustment Act, the FDIC must adjust for inflation the maximum civil monetary penalties which it has authority to assess under the FDIA and other statutes. The

[1] The CPI–U is compiled by the Bureau of Statistics of the Department of Labor. To calculate the adjustment, the FDIC used the Department of Labor, Bureau of Labor Statistics B All Urban Consumers tables to arrive at the CPI–U values.

following chart displays the adjusted civil money penalty amounts for the enumerated statutes. The amounts in this chart apply to violations that occur after December 31, 2012:

U.S. Code citation	Current maximum amount	New maximum amount
12 U.S.C. 1464(v), 1817(a):		
Tier One CMP	2,200	3,200
Tier Two CMP	32,000	32,000
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 1464(v), 1817(c):		
Tier One CMP	2,200	3,200
Tier Two CMP	32,000	32,000
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 1817(j):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 1818(i)(2):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 1467(d), 1820(e)(4)	7,500	7,500
12 U.S.C. 1820(k)(6)	275,000	275,000
12 U.S.C. 1828(a)(3)	110	110
12 U.S.C. 1828(h)	100	100
12 U.S.C. 1829b(j)	16,000	16,000
12 U.S.C. 1832(c)	1,100	1,100
12 U.S.C. 1884	110	110
12 U.S.C. 1972(2)(F):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 3108(b):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 3349(b):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
12 U.S.C. 3909(d)	1,100	1,100
12 U.S.C. 4717(b):		
Tier One CMP	7,500	7,500
Tier Two CMP	37,500	37,500
Tier Three CMP	1,375,000	1,425,000
15 U.S.C. 78u–2:		
Tier One CMP (individuals)	7,500	7,500
Tier One CMP (others)	70,000	70,000
Tier Two CMP (individuals)	70,000	70,000
Tier Two CMP (others)	140,000	140,000
Tier Three CMP (individuals)	350,000	350,000
Tier Three penalty (others)	675,000	700,000
31 U.S.C. 3802	7,500	7,500
42 U.S.C. 4012a(f):		
Maximum CMP per violation	385	2000

CFR Citation	Current maximum amount	New maximum amount
12 CFR 308.132(c)(2)(i):		
First Offense—Reports of Condition & Income (Call Reports)		
$25 million or more assets 1 to 15 days late	330	330
$25 million or more assets 16 or more days late	660	660
under $25 million assets 1 to 15 days late	110	110
under $25 million assets 16 or more days late	220	220
Subsequent Offenses—Reports of Condition & Income (Call Reports)		
$25 million or more assets 1 to 15 days late	550	550
$25 million or more assets 16 or more days late	1,100	1,100

II. Summary of Key Amendments

The following analysis discusses only those sections of the regulation where at least one of the maximum CMPs (e.g. Tier Three in the case of a multi-tiered CMP) is increasing or there is another pertinent change to the regulatory text. While there has been inflation as measured by the applicable index, many maximum CMPs are not increasing because of the rounding rules in the Inflation Adjustment Act. As noted, with the exception of flood insurance-related CMP amounts, which are already effective due to a recent statutory amendment, any increase in maximum CMP amounts will apply to violations and other acts and omissions covered by the various laws and regulations cited herein, that occur after December 31, 2012.

Section 308.116(b)

Section 308.116(b)(4) pertains to the amount of CMPs that may be assessed for violations of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). This section has been amended by increasing the Tier Three CMP amount from $1,375,000 to $1,425,000 for each day that the violation continues or, in the case of a depository institution, increasing the CMP from an amount not to exceed the lesser of $1,425,000 or one percent of the total assets of the institution for each day that the violation continues. No change has been made to the Tier One or Tier Two CMP amount.

Section 308.132

Section 308.132 sets forth the procedure by which the FDIC assesses CMPs, and lists the maximum CMPs for violations other than those covered by § 308.116. Paragraph (c) is being amended in various places to change the word ''bank'' to ''institution''. This reflects that, as noted above, the Dodd-Frank Act made the FDIC the appropriate Federal banking agency for State savings associations as well as State nonmember banks and other institutions. As of March 2012, savings associations have been required to file Call Reports instead of Thrift Financial Reports with their appropriate Federal banking agency. The changes in the provisions that are discussed in the following paragraphs reflect that change.

Paragraph (c)(2) of § 308.132 pertains to the CMPs imposed pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) or section 5 of the Home Owners' Loan Act (12 U.S.C. 1464(v)) for the late filing of Reports of Condition and Income (Call Reports) or for the submission of false or misleading Call Reports or information. With respect to late filings of Call Reports, paragraph (c)(2)(i) of § 308.132 has been amended to reflect the increase in the Tier One CMPs from $2,200 for each day the violation continues to $3,200 for each day the violation continues.

Tier Two CMPs for failure to file call reports under paragraph (c)(2)(ii) of § 308.132 have not been adjusted. Paragraph (c)(2)(iii) of § 308.132 pertains to CMPs for the submission of false or misleading Call Reports or information. Paragraph (c)(2)(iii)(A) of that section has been amended to reflect the increase in the Tier One CMP amount from a maximum of $2,200 per day for each day that the information is not corrected to a maximum of $3,200 per day for each day that the information is not corrected. No change has been made to the Tier Two CMP amount.

Paragraph (c)(2)(iii)(C) of § 308.132 reflects the increase in Tier Three CMPs from an amount not to exceed the lesser of $1,375,000 or one percent of the total assets of the institution for each day the information is not corrected, to an amount not to exceed the lesser of $1,425,000 or one percent of the total assets of such institution for each day the information is not corrected.

Paragraph (c)(3)(i) of § 308.132 sets forth the increases for CMPs assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). A Tier Three CMP will increase from an amount not to exceed, in the case of any person other than an insured depository institution, $1,375,000 to a maximum of $1,425,000 or, in the case of any insured depository institution, the amount will increase from a maximum of $1,375,000 to $1,425,000 or an amount not to exceed the lesser of $1,425,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. No change has been made to the Tier One or Tier Two CMP amount.

Paragraph (c)(3)(i)(A) of § 308.132 lists a number of statutes which grant jurisdiction to the FDIC to assess CMPs under section 8(i)(2) of the FDIA, including the Home Mortgage Disclosure Act (12 U.S.C. 2804 *et seq.* and 12 CFR 203.6), the Expedited Funds Availability Act (12 U.S.C. 4001 *et seq.*), the Truth in Savings Act (12 U.S.C. 4301 *et seq.*), the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.* and 12 CFR 3500), the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), the Fair Debt Collection Practices Act (15 U.S.C. 1692 *et seq.*), the Electronic Funds Transfer Act (15 U.S.C. 1693 *et seq.*), and the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Increases in the amount of any CMP that the FDIC may assess for violation of those statutes are the same as the increases for CMPs under section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)) cited above. As in section 8(i)(2) of the FDIA, only the Tier Three CMP amount will increase accordingly.

Paragraph (c)(3)(ii) of § 308.132 reflects the increases in CMP amounts that may be assessed pursuant to section 7(c) of the FDIA (12 U.S.C. 1817(c)) for late filing or the submission of false or misleading certified statements. A Tier One CMP pursuant to section 7(c)(4)(A) of the FDIA (12 U.S.C. 1817(c)(4)(A)) will increase from an amount not to exceed $2,200 per day to an amount not to exceed $3,200 for each day during which the failure to file continues or the false or misleading information is not corrected. A Tier Three CMP will increase from an amount not to exceed, in the case of any person other than an insured depository institution, $1,375,000 to a maximum of $1,425,000 or, in the case of any insured depository institution, the amount will increase from a maximum of $1,375,000 to $1,425,000 or an amount not to exceed the lesser of $1,425,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. No change has been made to the Tier Two CMP amount.

Paragraph (c)(3)(ix) of § 308.132 sets forth the increases in the CMP amounts that may be assessed pursuant to the Bank Holding Company Act of 1970 for prohibited tying arrangements. A Tier Three CMP which may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) will increase from an amount not to exceed, in the case of any person other than an insured depository institution, $1,375,000 for each day during which the violation, practice, or breach continues, to an amount not to exceed $1,425,000 for each day during which the violation, practice, or breach continues. In the case of any insured depository institution, a Tier Three CMP will increase from an amount not to exceed the lesser of $1,375,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues, to an amount not to exceed the lesser of $1,425,000 or one percent of the total assets of such institution for each day during which the violation, practice, or breach continues. No change has been made to the Tier One or Tier Two CMP amount.

Paragraph (c)(3)(x) of § 308.132 pertains to the assessment of CMPs under the International Banking Act of 1978 (IBA) (12 U.S.C. 3108(b)), for failure to comply with the requirements of the IBA, pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). For each day that a violation continues, the amount of a Tier Three CMP will increase from $1,375,000 to $1,425,000. No change has been made to the Tier One or Tier Two CMP amount.

Paragraph (c)(3)(xi) of § 308.132 sets forth the increase in CMP amounts that may be assessed pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)), as made applicable by 12 U.S.C. 3349(b), where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally-related transaction. For each day that a violation continues, the amount of a Tier Three CMP will increase from $1,375,000 to $1,425,000. No change has been made to the Tier One or Tier Two CMP amount.

Paragraph (c)(3)(xiii) of § 308.132 states that pursuant to the Community Development Banking and Financial Institution Act (CDBA) (12 U.S.C. 4717(b)) a CMP may be assessed for violation of the CDBA pursuant to section 8(i)(2) of the FDIA (12 U.S.C. 1818(i)(2)). For each day that a violation continues, the amount of a Tier Three CMP will increase from $1,375,000 to $1,425,000. No change has been made to the Tier One or Tier Two CMP amount.

Paragraph (c)(3)(xiv) of § 308.132 states that pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78u–2), CMPs may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. The Tier Three CMPs that may be assessed pursuant to 15 U.S.C. 78u–2(b)(3) for each violation set forth in 15 U.S.C. 78u–2(a) are currently an amount not to exceed $350,000 for a natural person or $675,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission. The amount for a natural person will not be increased. The amount for any other person will increase to $700,000. No change has been made to the Tier One or Tier Two CMP amount.

Paragraph (c)(3)(xvi) of § 308.132 states that CMPs may be assessed pursuant to the Flood Disaster Protection Act (FDPA) (42 U.S.C. 4012a(f)) against any regulated lending institution that engages in a pattern or practice of violations of the FDPA. In § 100208 of the Biggert-Waters Flood Insurance Reform Act of 2012,[2] Congress increased the maximum CMP prescribed in 42 U.S.C. 4012a(f)(5) per violation from $385 to $2,000, and eliminated the $135,000 cap on the total amount of penalties assessed against a single regulated lender in any calendar year. These amendments took effect on July 1, 2012. Accordingly, the maximum amount for violating 42 U.S.C. 4012a(f)(5) is $2,000 per violation.

Section 390.74

The FDIC finds that it is unnecessary to maintain 12 CFR 390.74(c), which sets forth the maximum CMP amounts that may be assessed against State savings associations under various statutes, as a separate subsection. As noted above, the Dodd-Frank Act made the FDIC the appropriate Federal banking agency for State savings associations. As such, most of potential CMP amounts for which inflation-adjusted maximum CMP amounts are listed in subsection 390.74(c) are authorized by the same statutes that authorize the FDIC to assess CMPs against State nonmember banks and other entities that were already under the FDIC's supervision before the Dodd-Frank Act. In two cases, CMPs against State savings associations are authorized by statutes specific to savings associations (12 U.S.C. 1464, which authorizes CMPs for non-filing or late filing of reports of condition, and 12 U.S.C. 1467, which authorizes CMPs for refusal of an affiliate to cooperate with an examination). All of the inflation adjustments being made under parallel statutes that apply to State nonmember banks are the same as those that need to be made for State savings associations. Accordingly, the maximum permissible CMP amounts for State savings associations following the effective date of this regulation will be found in Part 308.

III. Exemption From Public Notice and Comment

Since the law requires the FDIC to amend its rules, provides the specific adjustments to be made and leaves the FDIC no discretion in calculating the amount of those adjustments, the changes are ministerial, technical, and noncontroversial. The FDIC has thus determined for good cause that public notice and comment is unnecessary and impracticable under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)), and that the rule should be published in the **Federal Register** as a final rule.

IV. Effective Date

For the same reasons that the FDIC for good cause has determined that public notice and comment is unnecessary and impractical, the FDIC also finds that it has good cause to adopt an effective date that would be less than 30 days after the date of publication in the **Federal Register** pursuant to the APA (5 U.S.C. 553(d)). In the interest of fairness, however, the increase in the maximum amount of civil money penalties in this regulation applies only to violations that occur after December 31, 2012, rather than to violations that occur immediately after the date of publication of this rule in the **Federal Register**. While section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802) states that a final rule imposing new requirements must take effect on the first day of a calendar quarter following its publication, this rule does not impose any additional compliance, reporting or other new substantive requirements. Therefore section 302 is inapplicable.

V. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 603) is required only when an agency must publish a general notice of proposed rulemaking. As already noted, the FDIC has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

VI. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857) provides generally for agencies to report rules to Congress and for Congress to review such rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the APA (5 U.S.C. 551 *et seq.*). Because the FDIC is issuing a

[2] Public Law 112–241, 126 Stat. 405 (July 6, 2012).

final rule as defined by the APA, the FDIC will file the reports required by the SBREFA.

The Office of Management and Budget has determined that this final revision to 12 CFR 308 does not constitute a ''major'' rule as defined by the statute.

VII. The Treasury and General Government Appropriations Act, 1999 Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681 (1998)).

VIII. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) is contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Banks, Banking, Claims, Crime, Equal access to justice, Ex parte communications, Hearing procedure, Lawyers, Penalties, State nonmember banks.

For the reasons set out in the preamble, the FDIC amends 12 CFR part 308 as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority for part 308 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1819, 1820, 1828, 1829, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

§ 308.116 [Amended]

■ 2. In § 308.116:

■ a. Paragraph (b)(4) introductory text is amended by removing ''December 31, 2008'' and adding ''December 31, 2012'' in its place

■ b. Paragraph (b)(4)(iii)(A) is amended by removing ''$1,375,000'' and adding ''$1,425,000'' in its place; and

■ c. Paragraph (b)(4)(iii)(B) is amended by removing ''$1,375,000'' and adding ''$1,425,000'' in its place.

■ 3. Revise § 308.132 to read as follows:

§ 308.132 Assessment of penalties.

(a) *Scope.* The rules and procedures of this subpart, subpart B of the Local Rules, and the Uniform Rules shall apply to proceedings to assess and collect civil money penalties.

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board of Directors or its designee shall consider the financial resources and good faith of the institution or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* (1) The Board of Directors or its designee may assess civil money penalties pursuant to section 8(i) of the FDIA (*12 U.S.C. 1818(i)*), and § 308.01(e)(1) of the Uniform Rules (this part).

(2) The Board of Directors or its designee may assess civil money penalties pursuant to section 7(a) of the FDIA (12 U.S.C. 1817(a)) or section 5 of the Home Owners' Loan Act (12 U.S.C. 1464(v)) as follows:

(i) *Late filing—Tier One penalties.* In cases in which an institution fails to make or publish its Report of Condition and Income (Call Report) within the appropriate time periods, a civil money penalty of not more than $3,200 per day may be assessed where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the late filing occurred unintentionally and as a result of such error; or the institution inadvertently transmitted a Call Report which is minimally late. Pursuant to the Debt Collection Improvement Act of 1996, for violations of this paragraph (c)(2)(i) which occur after December 31, 2012, the following maximum Tier One penalty amounts contained in paragraphs (c)(2)(i)(A) and (B) of this section shall apply for each day that the violation continues.

(A) *First offense.* Generally, in such cases, the amount assessed shall be $330 per day for each of the first 15 days for which the failure continues, and $660 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than $25,000,000 in assets, the amount assessed shall be the greater of $110 per day or 1/1000th of the institution's total assets (1/10th of a basis point) for each of the first 15 days for which the failure continues, and $220 or 1/500th of the institution's total assets, ⅕ of a basis point) for each subsequent day the failure continues, beginning on the sixteenth day.

(B) *Subsequent offense.* Where the institution has been delinquent in making or publishing its Call Report within the preceding five quarters, the amount assessed for the most current failure shall generally be $550 per day for each of the first 15 days for which the failure continues, and $1,100 per day for each subsequent day the failure continues, beginning on the sixteenth day. For institutions with less than $25,000,000 in assets, those amounts, respectively, shall be 1/500th of the bank's total assets and 1/250th of the institution's total assets.

(C) *Mitigating factors.* The amounts set forth in paragraph (c)(2)(i)(A) of this section may be reduced based upon the factors set forth in paragraph (b) of this section.

(D) *Lengthy or repeated violations.* The amounts set forth in this paragraph (c)(2)(i) will be assessed on a case by case basis where the amount of time of the institution's delinquency is lengthy or the institution has been delinquent repeatedly in making or publishing its Call Reports.

(E) *Waiver.* Absent extraordinary circumstances outside the control of the institution, penalties assessed for late filing shall not be waived.

(ii) *Late-filing—Tier Two penalties.* Where an institution fails to make or publish its Call Report within the appropriate time period, the Board of Directors or its designee may assess a civil money penalty of not more than $32,000 per day for each day the failure continues.

(iii) *False or misleading reports or information.* (A) *Tier One penalties.* In cases in which an institution submits or publishes any false or misleading Call Report or information, the Board of Directors or its designee may assess a civil money penalty of not more than $3,200 per day for each day the information is not corrected, where the institution maintains procedures in place reasonably adapted to avoid inadvertent error and the violation occurred unintentionally and as a result of such error; or the institution inadvertently transmits a Call Report or information which is false or misleading.

(B) *Tier Two penalties.* Where an institution submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess a civil money penalty of not more than $32,000 per day for each day the information is not corrected.

(C) *Tier Three penalties.* Where an institution knowingly or with reckless disregard for the accuracy of any Call Report or information submits or publishes any false or misleading Call Report or other information, the Board of Directors or its designee may assess

a civil money penalty of not more than the lesser of $1,425,000 or 1 percent of the institution's total assets per day for each day the information is not corrected.

(D) *Mitigating factors.* The amounts set forth in this paragraph (c)(2) may be reduced based upon the factors set forth in paragraph (b) of this section.

(3) *Adjustment of civil money penalties by the rate of inflation pursuant to section 31001(s) of the Debt Collection Improvement Act.* Pursuant to section 31001(s) of the Debt Collection Improvement Act, for violations which occur after December 31, 2012, the Board of Directors or its designee may assess civil money penalties in the maximum amounts as follows:

(i) *Civil money penalties assessed pursuant to section 8(i)(2) of the FDIA.* Tier One civil money penalties may be assessed pursuant to section 8(i)(2)(A) of the FDIA (*12 U.S.C. 1818(i)*(2)(A)) in an amount not to exceed $7,500 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to section 8(i)(2)(B) of the FDIA (12 U.S.C. 1818(i)(2)(B)) in an amount not to exceed $37,500 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to section 8(i)(2)(C) (12 U.S.C. 1818(i)(2)(C)) in an amount not to exceed, in the case of any person other than an insured depository institution $1,425,000 or, in the case of any insured depository institution, an amount not to exceed the lesser of $1,375,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(A) Civil money penalties may be assessed pursuant to section 8(i)(2) of the FDIA in the amounts set forth in this paragraph (c)(3)(i) for violations of various consumer laws, including, the Home Mortgage Disclosure Act (*12 U.S.C. 2804* et seq. and 12 CFR 203.6), the Expedited Funds Availability Act (*12 U.S.C. 4001* et seq.), the Truth in Savings Act (*12 U.S.C. 4301* et seq.), the Real Estate Settlement Procedures Act (*12 U.S.C. 2601* et seq. and 12 CFR part 3500), the Truth in Lending Act (*15 U.S.C. 1601* et seq.), the Fair Credit Reporting Act (*15 U.S.C. 1681* et seq.), the Equal Credit Opportunity Act (*15 U.S.C. 1691* et seq.), the Fair Debt Collection Practices Act (*15 U.S.C. 1692* et seq.), the Electronic Funds Transfer Act (*15 U.S.C. 1693* et seq.) and the Fair Housing Act (*42 U.S.C. 3601* et seq.) in the amounts set forth in paragraphs (c)(3)(i) through (iii) of this section.

(B) [Reserved]

(ii) *Civil money penalties assessed pursuant to section 7(c) of the FDIA for late filing or the submission of false or misleading certified statements.* Tier One civil money penalties may be assessed pursuant to section 7(c)(4)(A) of the FDIA (*12 U.S.C. 1817(c)*(4)(A)) or section 5(v)(4) (12 U.S.C. 1464(v)(4) in an amount not to exceed $3,200 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Two civil money penalties may be assessed pursuant to section 7(c)(4)(B) of the FDIA (12 U.S.C. 1817(c)(4)(B)) in an amount not to exceed $32,000 for each day during which the failure to file continues or the false or misleading information is not corrected. Tier Three civil money penalties may be assessed pursuant to section 7(c)(4)(C) in an amount not to exceed the lesser of $1,425,000 or 1 percent of the total assets of the institution for each day during which the failure to file continues or the false or misleading information is not corrected.

(iii) *Civil money penalties assessed pursuant to section 10(e)(4) of the FDIA for refusal to allow examination or to provide required information during an examination.* Pursuant to section 10(e)(4) of the FDIA (*12 U.S.C. 1820(e)*(4)), civil money penalties may be assessed against any affiliate of an insured depository institution which refuses to permit a duly-appointed examiner to conduct an examination or to provide information during the course of an examination as set forth in section 20(b) of the FDIA (12 U.S.C. 1820(b)), in an amount not to exceed $7,500 for each day the refusal continues.

(iv) *Civil money penalties assessed pursuant to section 18(a)(3) of the FDIA, for incorrect display of insurance logo.* Pursuant to section 18(a)(3) of the FDIA (*12 U.S.C. 1828(a)*(3)), civil money penalties may be assessed against an insured depository institution which fails to correctly display its insurance logo pursuant to that section, in an amount not to exceed $110 for each day the violation continues.

(v) *Civil money penalties assessed pursuant to section 18(h) of the FDI Act for failure to timely pay assessment.* (A) *In General.* Subject to paragraph (c)(3)(v)(C) of this section, any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(B) *Exception in case of dispute.* Paragraph (c)(3)(v)(A) of this section shall not apply if—

(1) The failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(2) The insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(C) *Special rule for small assessment amounts.* If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (c)(3)(v)(A) of this section shall not exceed $100 for each day that such violation continues.

(D) *Authority to modify or remit penalty.* The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (c)(3)(v)(A) of this section upon a finding that good cause prevented the timely payment of an assessment.

(vi) *Civil money penalties assessed pursuant to section 19b(j) of the FDIA for recordkeeping violations.* Pursuant to section 19b(j) of the FDIA (*12 U.S.C. 1829b(j)*), civil money penalties may be assessed against an insured depository institution and any director, officer or employee thereof who willfully or through gross negligence violates or causes a violation of the recordkeeping requirements of that section or its implementing regulations in an amount not to exceed $16,000 per violation.

(vii) *Civil fine pursuant to 12 U.S.C. 1832(c) for violation of provisions forbidding interest-bearing demand deposit accounts.* Pursuant to 12 U.S.C. 1832(c), any depository institution which violates the prohibition on deposit or withdrawal from interest-bearing accounts via negotiable or transferable instruments payable to third parties shall be subject to a fine of $1,100 per violation.

(viii) *Civil penalties for violations of security measure requirements under 12 U.S.C. 1884.* Pursuant to 12 U.S.C. 1884, an institution which violates a rule establishing minimum security requirements as set forth in *12 U.S.C. 1882*, shall be subject to a civil penalty not to exceed $110 for each day of the violation.

(ix) *Civil money penalties assessed pursuant to the Bank Holding Company Act of 1970 for prohibited tying arrangements.* Pursuant to the Bank

Holding Company Act of 1970, Tier One civil money penalties may be assessed pursuant to *12 U.S.C. 1972*(2)(F)(i) in an amount not to exceed $7,500 for each day during which the violation continues. Tier Two civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(ii) in an amount not to exceed $37,500 for each day during which the violation, practice or breach continues. Tier Three civil money penalties may be assessed pursuant to 12 U.S.C. 1972(2)(F)(iii) in an amount not to exceed, in the case of any person other than an insured depository institution $1,375,000 for each day during which the violation, practice, or breach continues or, in the case of any insured depository institution, an amount not to exceed the lesser of $1,425,000 or 1 percent of the total assets of such institution for each day during which the violation, practice, or breach continues.

(x) *Civil money penalties assessed, pursuant to the International Banking Act of 1978.* Pursuant to the International Banking Act of 1978 (IBA) (*12 U.S.C. 3108(b)*), civil money penalties may be assessed for failure to comply with the requirements of the IBA pursuant to section 8(i)(2) of the FDIA (*12 U.S.C. 1818(i)*(2)), in the amounts set forth in paragraph (c)(3)(i) of this section.

(xi) *Civil money penalties assessed for appraisal violations.* Pursuant to *12 U.S.C. 3349(b)*, where a financial institution seeks, obtains, or gives any other thing of value in exchange for the performance of an appraisal by a person that the institution knows is not a state certified or licensed appraiser in connection with a federally related transaction, a civil money penalty may be assessed pursuant to section 8(i)(2) of the FDIA (*12 U.S.C. 1818(i)(2)*) in the amounts set forth in paragraph (c)(3)(i) of this section.

(xii) *Civil money penalties assessed pursuant to International Lending Supervision Act.* Pursuant to the International Lending Supervision Act (ILSA) (*12 U.S.C. 3909(d)*), the CMP that may be assessed against any institution or any officer, director, employee, agent or other person participating in the conduct of the affairs of such institution is an amount not to exceed $1,100 for each day a violation of the ILSA or any rule, regulation or order issued pursuant to ILSA continues.

(xiii) *Civil money penalties assessed for violations of the Community Development Banking and Financial Institution Act.* Pursuant to the Community Development Banking and Financial Institution Act (Community Development Banking Act) (*12 U.S.C. 4717(b)*) a civil money penalty may be assessed for violations of the Community Development Banking Act pursuant to section 8(i)(2) of the FDIA (*12 U.S.C. 1818(i)*(2)), in the amount set forth in paragraph (c)(3)(i) of this section.

(xiv) *Civil money penalties assessed for violations of the Securities Exchange Act of 1934.* Pursuant to section 21B of the Securities Exchange Act of 1934 (Exchange Act) (*15 U.S.C. 78u–2*), civil money penalties may be assessed for violations of certain provisions of the Exchange Act, where such penalties are in the public interest. Tier One civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(1) in an amount not to exceed $7,500 for a natural person or $70,000 for any other person for violations set forth in 15 U.S.C. 78u–2(a). Tier Two civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(2) in an amount not to exceed—for each violation set forth in 15 U.S.C. 78u–2(a)—$70,000 for a natural person or $350,000 for any other person if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement. Tier Three civil money penalties may be assessed pursuant to 15 U.S.C. 78u–2(b)(3) for each violation set forth in 15 U.S.C. 78u–2(a), in an amount not to exceed $140,000 for a natural person or $700,000 for any other person, if the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and such act or omission directly or indirectly resulted in substantial losses, or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

(xv) Civil money penalties assessed for false claims and statements pursuant to the Program Fraud Civil Remedies Act. Pursuant to the Program Fraud Civil Remedies Act (31 U.S.C. 3802), civil money penalties of not more than $7,500 per claim or statement may be assessed for violations involving false claims and statements.

(xvi) *Civil money penalties assessed for violations of the Flood Disaster Protection Act.* Pursuant to the Flood Disaster Protection Act (FDPA) (*42 U.S.C. 4012a*(f)), as of July 1, 2012, civil money penalties may be assessed against any regulated lending institution that engages in a pattern or practice of violations of the FDPA in an amount not to exceed $2,000 per violation.

(xvii) *Civil money penalties assessed for violation of one-year restriction on Federal examiners of financial institutions.* Pursuant to section 10(k) of the Federal Deposit Insurance Act (12 U.S.C. 1820(k)), the Board of Directors or its designee may assess a civil money penalty of up to $275,000 against any covered former Federal examiner of a financial institution who, in violation of section 1820(k) and within the one-year period following termination of government service as an employee, serves as an officer, director, or consultant of a financial or depository institution, a holding company, or of any other entity listed in section 10(k), without the written waiver or permission by the appropriate Federal banking agency or authority under section 1820(k)(5).

PART 390—REGULATIONS TRANSFERRED FROM THE OFFICE OF THRIFT SUPERVISION

■ 4. The general authority citation for part 390 continues to read as follows:

Authority: 12 U.S.C. 1819.

§ 390.74 [Amended]

■ 5. In § 390.74, remove paragraph (c).

By order of the Board of Directors.

Washington, DC, this 11th day of December 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–30251 Filed 12–14–12; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1225; Directorate Identifier 2012–NM–219–AD; Amendment 39–17288; AD 2012–25–07]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GIV–X airplanes. This AD requires performing a modified system power-on self test (SPOST) of the flap/stabilizer electronic control unit (FSECU), and revising the airplane flight manual to incorporate these test procedures into the daily preflight check. This AD was prompted by

reports indicating that the FSECU does not detect failures of the brake feature within the horizontal stabilizer electric motor unit (HSEMU), or failures of drive solenoids for hydraulic valves within the flap hydraulic control module (FHCM) during the SPOST. We are issuing this AD to detect and correct such failures, which could result in runaway horizontal stabilizer pitch trim system and consequent loss of pitch control.

DATES: This AD is effective December 17, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 17, 2012.

We must receive comments on this AD by January 31, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm*. 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 street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanford Proveaux, Aerospace Engineer, Continued Operational Safety and Certificate Management Branch, ACE–102A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; phone: 404–474–5566; fax: 404–474–5606; email: *sanford.proveaux@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We have received reports that the flap/stabilizer electronic control unit (FSECU) is not detecting failures of the brake feature in the horizontal stabilizer electric motor unit (HSEMU), or failures of drive solenoids for hydraulic valves in the flap hydraulic control module (FHCM) during the system power-on self test (SPOST). The potential for undetected horizontal stabilizer actuator (HSA) brake failures results from the FSECU executing its SPOST before 115VAC and hydraulic power are available during the airplane power-on sequence. The root cause of this issue is the failure of the system power-up test logic to first consider whether hydraulic and electrical power have been supplied to the system articles under test; the test logic therefore does not provide accurate information about the condition of the articles. Failure to test the brake-holding torque functionality and capability exposes the airplane to a potential latent failure of a protective feature critical to the safe operation of the horizontal stabilizer system. These conditions, if not corrected, could result in a potential runaway horizontal stabilizer pitch trim system and consequent loss of pitch control. Further, failure of the FHCM drive solenoid valves to halt uncommanded flap motion could result in uncommanded flap motion or flap runaway.

Relevant Service Information

We reviewed the following service information:

- Gulfstream G350 Alert Customer Bulletin 11, including Service Reply Card, dated December 4, 2012, which includes Revision 31, dated December 4, 2012, of the Gulfstream G350 Airplane Flight Manual Document GAC–AC–G350–OPS–0001.
- Gulfstream G450 Alert Customer Bulletin 11, including Service Reply Card, dated December 4, 2012, which includes Revision 33, dated December 4, 2012, of the Gulfstream G450 Airplane Flight Manual Document GAC–AC–G450–OPS–0001.
- Section 1–27–40, ''Flap/Stabilizer System Preflight Check,'' of the Gulfstream G350 Airplane Flight Manual Document GAC–AC–G350–OPS–0001, Revision 31, dated December 4, 2012.
- Section 1–27–40, ''Flap/Stabilizer System Preflight Check,'' of the Gulfstream G450 Airplane Flight Manual Document GAC–AC–G450–OPS–0001, Revision 33, dated December 4, 2012.
- Section 2–03–20, ''Before Starting Engines,'' of the Gulfstream G350 Airplane Flight Manual Document GAC–AC–G350–OPS–0001, Revision 31, dated December 4, 2012.
- Section 2–03–20, ''Before Starting Engines,'' of the Gulfstream G450 Airplane Flight Manual Document GAC–AC–G450–OPS–0001, Revision 33, dated December 4, 2012.

For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2012–1225.

FAA's Determination

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

AD Requirements

This AD requires accomplishing the actions specified in the service information identified previously, except as discussed under ''Differences Between the AD and the Service Information.''

Differences Between the AD and the Service Information

This AD requires compliance within 3 days. However, these actions are recommended before further flight by Gulfstream G350 Alert Customer Bulletin 11, dated December 4, 2012; and Gulfstream G450 Alert Customer Bulletin 11, dated December 4, 2012. We have determined that the 3-day compliance time required by this AD will adequately ensure safety while avoiding the need to ground the fleet.

Although the service information recommends that operators contact Gulfstream if a successful test is not achieved, this AD requires operators to repair those conditions before further flight in accordance with a method approved by the FAA.

Interim Action

We consider this AD interim action. Gulfstream is in the process of updating software intended to terminate the actions required by this AD. Once this upgrade is developed, approved, and available, we might consider further rulemaking to require the upgraded software.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because failure of the brake feature in the HSEMU could result in a runaway horizontal stabilizer pitch trim system which, if left uncorrected, could result in loss of airplane pitch control. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2012–1225 and Directorate Identifier 2012–NM–219–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD affects 200 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Preflight procedure test	1 work-hour × $85 per hour = $85	$0	$85	$17,000
AFM revision	1 work-hour × $85 per hour = $85	0	85	17,000

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):

2012–25–07 Gulfstream Aerospace Corporation: Amendment 39–17288; Docket No. FAA–2012–1225; Directorate Identifier 2012–NM–219–AD.

(a) Effective Date

This AD is effective December 17, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GIV–X airplanes, certificated in any category, serial numbers 4001 through 4271 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports indicating that the flap/stabilizer electronic control unit (FSECU) does not detect failures of the brake feature within the horizontal stabilizer electric motor unit (HSEMU), or failures of the drive solenoids for hydraulic valves within the flap hydraulic control module (FHCM) during the system power-on self test (SPOST). We are issuing this AD to detect and correct such failures, which could result in runaway horizontal stabilizer pitch trim system and consequent loss of pitch control.

(f) Compliance

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

(g) SPOST

Within 3 days after the effective date of this AD, perform an SPOST of the FSECU, in accordance with the applicable service information identified in paragraph (h)(1) or (h)(2) of this AD.

(1) For Model GIV–X (G350) airplanes: Use Gulfstream G350 Alert Customer Bulletin 11, dated December 4, 2012, excluding Service Reply Card, dated December 4, 2012, and excluding Revision 31, dated December 4, 2012, of the Gulfstream G350 Airplane Flight Manual Document GAC–AC–G350–OPS–0001.

(2) For Model GIV–X (G450) airplanes: Use Gulfstream G450 Alert Customer Bulletin 11, dated December 4, 2012, excluding Service Reply Card, dated December 4, 2012, and excluding Revision 33, dated December 4, 2012, of the Gulfstream G450 Airplane Flight Manual Document GAC–AC–G450–OPS–0001.

(h) Revision of Aircraft Flight Manual (AFM)

Before further flight after the FSECU passes the SPOST required by paragraph (g) of this AD, revise the Normal Procedures and Limitations sections of the AFM to incorporate the information identified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model GIV–X (G350) airplanes: Incorporate the information in Section 1–27–40, ''Flap/Stabilizer System Preflight Check,'' and Section 2–03–20, ''Before Starting Engines,'' of the Gulfstream G350 Airplane Flight Manual Document GAC–AC–G350–OPS–0001, Revision 31, dated December 4, 2012. This may be accomplished by inserting into the AFM a copy of Gulfstream G350 Airplane Flight Manual Document GAC–AC–G350–OPS–0001, Revision 31, dated December 4, 2012.

(2) For Model GIV–X (G450) airplanes: Section 1–27–40, ''Flap/Stabilizer System Preflight Check,'' and Section 2–03–20, ''Before Starting Engines,'' of the Gulfstream G450 Airplane Flight Manual Document GAC–AC–G450–OPS–0001, Revision 33, dated December 4, 2012. This may be accomplished by inserting into the AFM a copy of Gulfstream G450 Airplane Flight Manual Document GAC–AC–G450–OPS–0001, Revision 33, dated December 4, 2012.

(i) Corrective Action for Failed SPOST

If the FSECU fails any SPOST required by this AD or as specified in the applicable AFM, repair before further flight in accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Atlanta ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

(j) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta 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.

(l) Related Information

For more information about this AD, contact Sanford Proveaux, Aerospace Engineer, Continued Operational Safety and Certificate Management Branch, ACE–102A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; phone: 404–474–5566; fax: 404–474–5606; email: *sanford.proveaux@faa.gov.*

(m) 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) Gulfstream G350 Alert Customer Bulletin 11, dated December 4, 2012.

(ii) Gulfstream G450 Alert Customer Bulletin 11, dated December 4, 2012.

(iii) Section 1–27–40, ''Flap/Stabilizer System Preflight Check,'' of the Gulfstream G350 Airplane Flight Manual Document GAC–AC–G350–OPS–0001, Revision 31, dated December 4, 2012. The document number of this document is identified on the revision transmittal page and the first page of the Record of Revisions; no other page of this document contains this information.

(iv) Section 1–27–40, ''Flap/Stabilizer System Preflight Check,'' of the Gulfstream G450 Airplane Flight Manual Document GAC–AC–G450–OPS–0001, Revision 33, dated December 4, 2012. The document number of this document is identified on the revision transmittal page and the first page of the Record of Revisions; no other page of this document contains this information.

(v) Section 2–03–20, ''Before Starting Engines,'' of the Gulfstream G350 Airplane Flight Manual Document GAC–AC–G350–OPS–0001, Revision 31, dated December 4, 2012. The document number of this document is identified on the revision transmittal page and the first page of the Record of Revisions; no other page of this document contains this information.

(vi) Section 2–03–20, ''Before Starting Engines,'' of the Gulfstream G450 Airplane Flight Manual Document GAC–AC–G450–OPS–0001, Revision 33, dated December 4, 2012. The document number of this document is identified on the revision transmittal page and the first page of the Record of Revisions; no other page of this document contains this information.

(3) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; fax 912–965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 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 December 7, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–30058 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No FDA–2012–D–1003]

Small Entity Compliance Guide: What You Need To Know About Registration of Food Facilities; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an updated guidance for industry entitled ''What You Need To Know About Registration of Food Facilities—Small Entity Compliance Guide.'' FDA has prepared this guidance to restate the legal requirements pertaining to registration of food facilities in the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA). Previously, this guidance restated the legal requirements of FDA's food facility registration regulation. This document also served as FDA's Small Entity Compliance Guide for FDA's food facility registration regulation in accordance with the Small Business Regulatory Enforcement Fairness Act. FDA is revising this document to provide guidance intended to help any entity comply with the requirements pertaining to registration of food

facilities in the FD&C Act, including the amendments made by FSMA. This document continues to serve as FDA's Small Entity Compliance Guide for FDA's food facility registration regulation. Further, this guidance is intended to set forth in plain language the requirements for registration of food facilities and help small businesses understand the requirements.

DATES: December 17, 2012. Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Compliance, Division of Field Programs and Guidance (HFS–615), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit electronic comments on this guidance to *http://www.regulations.gov.* Submit written comments on this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amy Barringer, Office of Compliance, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1988.

SUPPLEMENTARY INFORMATION:

I. Background

The FDA Food Safety Modernization Act (FSMA), enacted on January 4, 2011, amended section 415 of the FD&C Act, in relevant part, to require that facilities engaged in manufacturing, processing, packing, or holding food for consumption in the United States submit additional registration information to FDA, including an assurance that FDA will be permitted to inspect the facility at the times and in the manner permitted by the FD&C Act. Section 415 of the FD&C Act, as amended by FSMA, also requires food facilities required to register with FDA to renew such registrations every other year and provides FDA with authority to suspend the registration of a food facility in certain circumstances.

FDA has prepared this guidance to restate the legal requirements in section 415 of the FD&C Act. Previously, this guidance restated the legal requirements of FDA's food facility registration regulation at 21 CFR part 1, Subpart H (§§ 1.225 through 1.243), implementing section 415 of the FD&C Act, as added by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. This guidance also served as FDA's Small Entity Compliance Guide for 21 CFR part 1, Subpart H in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121). Because section 415 of the FD&C Act was amended by section 102 of FSMA in 2011, FDA is revising this document to provide guidance on section 415 of the FD&C Act, as amended by FSMA. This updated guidance is intended to help any entity comply with the requirements of section 415 of the FD&C Act, including the amendments made by section 102 of FSMA. This document continues to serve as FDA's Small Entity Compliance Guide for 21 CFR Part 1, Subpart H.

FDA is issuing this guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115) as level 1 guidance. Consistent with FDA's good guidance practices regulation, the Agency will accept comments, but it is implementing this guidance document immediately, in accordance with 21 CFR 10.115(g)(2), because the Agency has determined that prior public participation is not feasible or appropriate because the updated guidance document is merely specifying the new requirements of section 102 of FSMA, many of which are already in effect. This guidance represents the Agency's current thinking on the registration of food facilities. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations and section 415 of the FD&C Act. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in §§ 1.230 through 1.235 and section 415 of the FD&C Act have been approved under OMB control number 0910–0502.

III. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/RegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.* Always access an FDA guidance document by using FDA's Web site listed previously to find the most current version of the guidance.

Dated: December 12, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30327 Filed 12–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9564]

RIN 1545–BJ93

Guidance Regarding Deduction and Capitalization of Expenditures Related to Tangible Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Technical amendments.

SUMMARY: This document contains amendments to temporary regulations relating to guidance regarding deduction and capitalization of expenditures related to tangible property. These amendments change the applicability dates of the temporary regulations to taxable years beginning on or after January 1, 2014, while permitting taxpayers to choose to apply the temporary regulations for taxable years beginning on or after January 1, 2012. The amendments to the temporary regulations will affect all taxpayers that acquire, produce, or improve tangible property.

DATES: These amendments are effective December 17, 2012.

FOR FURTHER INFORMATION CONTACT: Concerning §§ 1.162–3T, 1.162–4T, 1.162–11T, 1.263(a)–1T, 1.263(a)–2T, 1.263(a)–3T, and 1.263(a)–6T, Merrill D.

Feldstein or Alan S. Williams, Office of Associate Chief Counsel (Income Tax & Accounting), (202) 622–4950 (not a toll-free call); Concerning §§ 1.165–2T, 1.167(a)–4T, 1.167(a)–7T, 1.167(a)–8T, 1.168(i)–1T, 1.168(i)–7T, 1.168(i)–8T, 1.263A–1T, and 1.1016–3T, Kathleen Reed or Patrick Clinton, Office Associate Chief Counsel (Income Tax & Accounting), (202) 622–4930 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations that are the subject of these amendments are under sections 162, 165, 167,168, 263, 263A, and 1016 of the Internal Revenue Code. The temporary regulations (TD 9564) were published in the **Federal Register** on Tuesday, December 27, 2011 (76 FR 81060). Because the temporary regulations are applicable to taxable years beginning on or after January 1, 2012, the IRS and the Treasury Department are concerned that taxpayers are expending resources to comply with temporary regulations that may not be consistent with forthcoming final regulations. For more information about the temporary regulations and these amendments, see Notice 2012–73, which is in IRB 2012–51.

Taxpayers choosing to apply the provisions of the temporary regulations to taxable years beginning on or after January 1, 2012, may continue to rely on the procedures by which a taxpayer may obtain the automatic consent of the Commissioner of Internal Revenue to change its methods of accounting provided in Revenue Procedures 2012–19 (2012–14 IRB 689), and 2012–20 (2012–14 IRB 700), both of which are available at IRS.gov.

Need for Amendments

For the reasons discussed, the IRS and the Treasury Department have decided to amend the applicability dates of the temporary regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments of Publication

Accordingly, 26 CFR part 1 is amended by making the following technical amendments.

PART 1—INCOME TAXES

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

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

Section 1.168(i)–1T also issued under 26 U.S.C. 168(i)(4). * * *

■ **Par. 2.** Section 1.162–3T is amended by revising paragraph (j) to read as follows:

§ 1.162–3T Materials and supplies (temporary).

* * * * *

(j) *Effective/applicability date*—(1) *In general.* This section generally applies to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2014. However, a taxpayer may apply paragraph (e) of this section (the optional method of accounting for rotable and temporary spare parts) to taxable years beginning on or after January 1, 2014. Section 1.162–3 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* Except for paragraph (e) of this section, a taxpayer may choose to apply this section to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2012. A taxpayer may choose to apply paragraph (e) of this section (the optional method of accounting for rotable and temporary spare parts) to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 3.** Section 1.162–4T is amended by revising paragraph (c) to read as follows:

§ 1.162–4T Repairs (temporary).

* * * * *

(c) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.162–4 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 4.** Section 1.162–11T is amended by revising paragraph (c) to read as follows:

§ 1.162–11T Rentals (temporary).

* * * * *

(c) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.162–11 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 5.** Section 1.165–2T is amended by revising paragraph (d) to read as follows:

§ 1.165–2T Obsolescence of nondepreciable property (temporary).

* * * * *

(d) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.165–2 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 6.** Section 1.167(a)–4T is amended by:

■ 1. Revising paragraph (b)(1).

■ 2. Revising the heading and introductory text to paragraph (b)(2).

The revisions read as follows:

§ 1.167(a)–4T Leased property (temporary).

* * * * *

(b) * * *

(1) *In general.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, this section applies to taxable years beginning on or after January 1, 2014.

(2) *Application of this section to leasehold improvements placed in service after December 31, 1986, in taxable years beginning before January 1, 2014.* For leasehold improvements placed in service after December 31, 1986, in taxable years beginning before January 1, 2014, a taxpayer may—

* * * * *

■ **Par. 7.** Section 1.167(a)–7T is amended by revising paragraph (f) to read as follows:

§ 1.167(a)–7T Accounting for depreciable property (temporary).

* * * * *

(f) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.167(a)–7 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 8.** Section 1.167(a)–8T is amended by revising paragraph (h) to read as follows:

§ 1.167(a)–8T Retirements (temporary).

* * * * *

(h) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.167(a)–8 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 9.** Section 1.168(i)–1T is amended by:

■ 1. Revising paragraph (m)(1).

■ 2. Redesignating paragraph (m)(3) as paragraph (m)(4).

■ 3. Redesignating paragraph (m)(2) as paragraph (m)(3) and adding new paragraph (m)(2).

■ 4. In redesignated paragraph (m)(3), last sentence, the language ''paragraph (m)(2)'' is removed and ''paragraph (m)(3)'' is added in its place.

The revision and addition read as follows:

§ 1.168(i)–1T General asset accounts (temporary).

* * * * *

(m) * * *

(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.168(i)–1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 10.** Section 1.168(i)–7T is amended by:

■ 1. Revising paragraph (e)(1).

■ 2. Redesignating paragraph (e)(3) as paragraph (e)(4).

■ 3. Redesignating paragraph (e)(2) as paragraph (e)(3) and adding new paragraph (e)(2).

The revision and addition read as follows:

§ 1.168(i)–7T Accounting for MACRS property (temporary).

* * * * *

(e) * * *

(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 11.** Section 1.168(i)–8T is amended by:

■ 1. Revising paragraph (i)(1).

■ 2. Redesignating paragraph (i)(3) as paragraph (i)(4).

■ 3. Redesignating paragraph (i)(2) as paragraph (i)(3) and adding new paragraph (i)(2).

The revision and addition read as follows:

§ 1.168(i)–8T Dispositions of MACRS property (temporary).

* * * * *

(i) * * *

(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 12.** Section 1.263(a)–0T is amended by:

■ 1. Adding new entries in the table of contents for § 1.263(a)–1T(g)(1) and (g)(2).

■ 2. Adding new entries in the table of contents for § 1.263(a)–2T(k)(1) and (k)(2).

■ 3. Adding new entries in the table of contents for § 1.263(a)–3T(p)(1) and (p)(2).

The additions read as follows:

§ 1.263(a)–0T Table of Contents (temporary).

* * * * *

§ 1.263(a)–1T Capital expenditures; In general (temporary).

* * * * *

(g) * * *

(1) In general.

(2) Optional early application.

* * * * *

§ 1.263(a)–2T Amounts paid to acquire or produce tangible property (temporary).

* * * * *

(k) * * *

(1) In general.

(2) Optional early application.

* * * * *

§ 1.263(a)–3T Amounts paid to improve tangible property (temporary).

* * * * *

(p) * * *

(1) In general.

(2) Optional early application.

* * * * *

§ 1.263(a)–1T [Amended]

■ **Par. 13.** Section 1.263(a)–1T is amended by revising paragraph (g) to read as follows:

§ 1.263(a)–1T Capital expenditures: In general (temporary).

* * * * *

(g) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.263(a)-1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 14.** Section 1.263(a)–2T is amended by revising paragraph (k) to read as follows:

§ 1.263(a)–2T Amounts paid to acquire or produce tangible property (temporary).

* * * * *

(k) *Effective/applicability date*—(1) *In general.* Except for paragraphs (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g) of this section, this section generally applies to taxable years beginning on or after January 1, 2014. Paragraphs (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g) of this section apply to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2014. Section 1.263(a)–2 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* Except for paragraphs (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g) of this section, a taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012. A taxpayer may choose to apply paragraphs (f)(2)(iii), (f)(2)(iv), (f)(3)(ii), and (g) of this section to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 15.** Section 1.263(a)–3T is amended by revising paragraph (p) to read as follows:

§ 1.263(a)–3T Amounts paid to improve tangible property (temporary).

* * * * *

(p) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.263(a)–3 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 16.** Section 1.263(a)–6T is amended by revising paragraph (c) to read as follows:

§ 1.263(a)–6T Election to deduct or capitalize certain expenditures (temporary).

* * * * *

(c) *Effective/applicability date*—(1) *In general.* This section applies to taxable years beginning on or after January 1, 2014. Section 1.263(a)–3 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014. For the effective dates of the enumerated election provisions, see those Internal Revenue Code sections and the regulations thereunder.

(2) *Optional early application.* A taxpayer may choose to apply this section to taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 17.** Section 1.263A–1T is amended by:

■ 1. Revising paragraph (m)(2).

■ 2. Redesignating paragraph (m)(3) as paragraph (n).

The revision reads as follows:

§ 1.263A–1T Uniform capitalization of costs (temporary).

* * * * *

(m) * * *

(2) Paragraph (b)(14), the introductory phrase of paragraph (c)(4), the last sentence of paragraphs (e)(2)(i)(A) and (e)(2)(ii)(E), paragraph (l), and paragraph (m)(2) of this section apply to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2014. Section 1.263A–1 as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014. A taxpayer may choose to apply paragraph (b)(14), the introductory text of paragraph (c)(4), the last sentence of paragraphs (e)(2)(i)(A) and (e)(2)(ii)(E), and paragraph (l) of this section to amounts paid or incurred (to acquire or produce property) in taxable years beginning on or after January 1, 2012.

* * * * *

■ **Par. 18.** Section 1.1016–3T is amended by revising paragraph (j)(3) to read as follows:

§ 1.1016–3T Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 13, 1913 (temporary).

* * * * *

(j) * * *

(3) *Application of § 1.1016–3T(a)(1)(ii)*—(i) *In general.* Paragraph (a)(1)(ii) of this section applies to taxable years beginning on or after January 1, 2014. Section 1.1016–3(a)(1)(ii) as contained in 26 CFR part 1 edition revised as of April 1, 2011, applies to taxable years beginning before January 1, 2014.

(ii) *Optional early application.* A taxpayer may choose to apply paragraph (a)(1)(ii) of this section to taxable years beginning on or after January 1, 2012.

* * * * *

Guy R. Traynor,

Federal Register Liaison, Publication & Regulation Branch, Legal Processing Division, Associate Chief Counsel, Procedure & Administration.

[FR Doc. 2012–30252 Filed 12–14–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–1052]

Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the operation of the Norfolk Southern #V2.8 Railroad Bridge across the Elizabeth River (Eastern Branch), mile 2.7, at Norfolk, VA. This deviation is necessary to facilitate replacing bearings on the Norfolk Southern #V2.8 Railroad Bridge. This temporary deviation will allow the drawbridge to remain in the closed-to-navigation position on specific dates and times.

DATES: This deviation is effective from 8 a.m. on December 18, 2012, until to 8 a.m. on December 21, 2012.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2012–1052 and are available online at *www.regulations.gov,* inserting USCG–2012–1052 in the ''Search'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Mr. Jim Rousseau, Bridge Administration Branch, Fifth Coast Guard District; telephone (757) 398–6557, email *James.L.Rousseau2@uscg.mil.* If you have any questions on reviewing the docket, call Renee V. Wright, Program Manager, Docket Operations, 202–366–9826.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation, owner and operator of the swing span Norfolk Southern #V2.8 Railroad Bridge, mile 2.7, at Norfolk, VA, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.1007(a), to accommodate bearing replacement.

Under the normal operating schedule the bridge shall be left in the open position at all times and will only be closed for the passage of trains and to perform periodic maintenance. The Norfolk Southern #V2.8 Bridge, at mile 2.7, across the Elizabeth River (Eastern Branch) in Norfolk, VA, has a vertical clearance in the closed position to vessels of 6 feet above mean high water.

To facilitate bearing replacement, the drawbridge will be maintained in the closed-to-navigation position from 8 a.m. on December 18, 2012, to 8 a.m. on December 21, 2013. The bridge normally operates in the open position with several vessels transiting a week. Coordination with waterway users has been completed.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by this temporary deviation. There are no alternate routes available. Mariners able to pass under the bridge in the closed position may do so at any time and the bridge is not able to open for emergencies. Mariners are advised to proceed with caution.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: December 5, 2012.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2012–30286 Filed 12–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–1028]

RIN 1625–AA00

Safety Zone; Grain-Shipment Vessels, Columbia and Willamette Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around all inbound and outbound grain-shipment vessels involved in commerce with the Columbia Grain facility on the Willamette River in Portland, OR, and the United Grain Corporation facility on the Columbia River in Vancouver, WA while they are located on the Columbia and Willamette Rivers. This safety zone extends to waters 500 yards ahead of the vessel and 200 yards abeam and astern of the vessel. This safety zone is being established to ensure that protest activities relating to a labor dispute do not create hazardous navigation conditions for any vessel or other river user in the vicinity of the safety zone.

DATES: This rule is effective with actual notice beginning November 16, 2012 until December 17, 2012. This rule is effective in the *Code of Federal Regulations* from December 17, 2012 until January 16, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–1028]. 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 Ensign Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone (503) 240–9319, email *MSUPDXWWM@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this 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 to do so would be impracticable due to the lack of advance notice of the underlying dispute. Delayed promulgation may result in injury or damage to the maritime public, vessel crews, the vessels themselves, the facilities, and law enforcement personnel from protest activities that could occur prior to conclusion of a notice and comment period.

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** because to do otherwise would be impracticable since the arrival of grain-shipment vessels cannot be delayed by the Coast Guard and protest activities are unpredictable and potentially volatile and may result in injury to persons, property, or the environment. Delaying the effective date until 30 days after publication may mean that grain-shipment vessels will have arrived or departed the Columbia and Willamette Rivers before the end of the 30 day period. This delay would eliminate the safety zone's effectiveness and usefulness in protecting persons, property, and the safe navigation of maritime traffic before 30 days have elapsed.

B. Basis and Purpose

Due to a labor dispute regarding grain-shipment vessels involved in commerce with the Columbia Grain facility, a safety zone is needed to help ensure the safe navigation of maritime traffic on the Columbia and Willamette Rivers while grain-shipment vessels transit to and from grain export facilities in the Sector Columbia River Captain of the Port Zone. There is the potential for injury and damage to both protestors and shipping due to the labor dispute. The Coast Guard believes that a safety zone is needed to allow maximal use of the waterway consistent with safe navigation and to ensure that protestors and other river users are not injured by deep-draft vessels with maneuvering characteristics with which they may be unfamiliar.

C. Discussion of the Final Rule

This rule establishes a temporary safety zone around grain-shipment vessels involved in commerce with the Columbia Grain facility on the Willamette River in Portland, OR, and the United Grain Corporation facility on the Columbia River in Vancouver, WA while they are located on the Columbia and Willamette Rivers. This safety zone extends to waters 500 yards ahead of the vessel and 200 yards abeam and astern of the vessel. No person or vessel may enter or remain in the safety zone without authorization from the Sector Columbia River Captain of the Port or his designated representatives.

This rule has been enforced with actual notice since November 16, 2012 and it will be enforced until 30 days from date of publication in the **Federal Register.** If unsafe conditions continue beyond that date, the Coast Guard will consider extending the duration of the safety zone.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this rule will restrict access to the regulated area, the effect of this rule will not be significant because: (i) The safety zone is limited in size; (ii) the official on-scene patrol may authorize access to the safety zone; (iii) the safety zone will effect a limited geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The safety zone is limited in size; (ii) the official on-scene patrol may authorize access to the safety zone; (iii) the safety zone will effect a limited geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

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 the establishment of a temporary safety zone around grain-shipment vessels involved in commerce with the Columbia Grain facility on the Willamette River in Portland, OR, and the United Grain Corporation facility on the Columbia River in Vancouver, WA while they are located on the Columbia and Willamette Rivers. 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, 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. 1226, 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.T13–234 to read as follows:

§ 165.T13–234 Safety Zone; Grain-Shipment Vessels, Columbia and Willamette Rivers.

(a) *Definitions.* As used in this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the Navigation Rules, International-Inland.

(4) *Official Patrol* means those persons designated by the Captain of the Port to monitor a vessel safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(7) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) *Location.* The following areas are safety zones: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone, extending from the surface to the sea floor, that are:

(1) Not more than 500 yards ahead of grain-shipment vessels and 200 yards abeam and astern of grain-shipment vessels underway on the Columbia and Willamette Rivers and involved in commerce with the Columbia Grain facility on the Willamette River in Portland, OR, and the United Grain Corporation facility on the Columbia River in Vancouver, WA.

(2) Within a maximum 200-yard radius of grain-shipment vessels when anchored, at any berth, moored, or in the process of mooring on the Columbia and Willamette Rivers and involved in commerce with the Columbia Grain facility on the Willamette River in Portland, OR, and the United Grain Corporation facility on the Columbia River in Vancouver, WA.

(c) *Effective Period.* The safety zones created in this section will be in effect from November 16, 2012 and will be enforced until January 16, 2013. They will be activated for enforcement as described in paragraph (d) of this section.

(d) *Enforcement Periods.* The Sector Columbia River Captain of the Port will cause notice of the enforcement of the grain-shipment vessels safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Sector Columbia River Captain of the Port will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of the safety zone is suspended.

Upon notice of enforcement by the Sector Columbia River Captain of the Port, the Coast Guard will enforce the safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Sector Columbia River Captain of the Port, all persons and vessels are authorized to enter, transit, and exit the safety zone, consistent with the Navigation Rules.

(e) *Regulation.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Sector Columbia River Captain of the Port, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within the safety zone contact the on-scene official patrol on VHF–FM channel 16 or 13, or the Sector Columbia River Command Center at phone number (503) 861–6211. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within the safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within the safety zone.

(4) Maneuver-restricted vessels. When conditions permit, the on-scene official patrol, or a designated representative of the Captain of the Port at the Sector Columbia River Command Center, should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter or operate within the safety zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within the safety zone; and

(iii) Permit vessels that must transit via a navigable channel or waterway to enter or operate within the safety zone in order to do so.

(f) *Exemption.* Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) *Enforcement.* Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

(h) *Waiver.* The Captain of the Port Columbia River may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: November 30, 2012.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Sector Columbia River.

[FR Doc. 2012–30298 Filed 12–14–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0536; FRL–9761–1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; South Bend/Elkhart, Indiana Ozone Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Indiana's request to revise the South Bend/Elkhart, Indiana 1997 8-hour ozone maintenance state air quality implementation plan (SIP) by replacing the previously approved motor vehicle emissions budgets (budgets) with budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) emissions model. EPA proposed approval on October 4, 2012, and did not receive any public comments on the proposal.

DATES: This final rule is effective on January 16, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2012–0536. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Patricia Morris, Environmental Scientist, at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *morris.patricia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is the background for this action?
II. What public comments were received?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What is the background for this action?

On June 15, 2012, Indiana submitted to EPA replacement budgets based on MOVES2010a for the South Bend/Elkhart, Indiana area. This SIP revision, if approved, would replace MOBILE6.2-based approved budgets in the 1997 8-hour ozone maintenance plan for South Bend/Elkhart, Indiana with MOVES2010a-based budgets. Indiana supplemented the SIP revision request on August 17, 2012. The August 17, 2012, submittal letter with the state public comment documentation completed the requirements for the SIP submittal. On October 4, 2012, EPA proposed to approve the Indiana SIP revision request (see 77 FR 60661). Additional explanatory information is contained in EPA's October 4, 2012, proposal.

Under section 176(c) of the Clean Air Act (CAA), transportation plans, Transportation Improvement Programs (TIPs), and transportation projects must ''conform'' to (i.e., be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or delay an interim milestone. The transportation conformity regulations can be found at 40 CFR parts 51 and 93. The South Bend/Elkhart area must use the updated budgets to demonstrate transportation conformity. On the effective date of EPA's approval of the submitted budgets, the budgets must be used by local, state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA.

The MOVES model is EPA's state-of-the-art tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in the agency's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in MOBILE6.2.

States that revise their existing SIPs to include MOVES budgets must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets. The transportation conformity rule (40 CFR 93.118(e)(4)(iv)) requires that ''the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance (whichever is relevant to the given implementation plan submission).''

EPA has determined, based on its evaluation, that the area's maintenance plan continues to serve its intended purpose with the MOVES2010a-based budgets and that the budgets themselves meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4). The basis for this conclusion is contained in the proposed approval (77 FR 60661).

II. What public comments were received?

The State public comment period on the proposal ended on July 18, 2012. The State offered to hold a public hearing on request but one was not requested. The State received no public comments during the comment period.

EPA had a 30 day public comment period on the proposed approval. The public comment period closed on November 5, 2012. EPA received no comments during the public comment period.

III. What action is EPA taking?

EPA is approving new MOVES2010a-based budgets for the South Bend/Elkhart, Indiana 1997 ozone maintenance area because the submitted budgets should continue to keep emissions below the attainment level and maintain air quality. On the effective date of this rulemaking, the submitted MOVES2010a-based budgets will replace the existing, MOBILE6.2-based budgets in the State's 1997 8-hour ozone maintenance plan and will be used in future transportation conformity analyses for the area. The previously approved MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes. The table below contains the MOVES2010a-based budgets for the South Bend/Elkhart, Indiana area which are being approved in this action.

MOTOR VEHICLE EMISSION BUDGETS FOR SOUTH BEND/ELKHART, INDIANA

[MOVES-based onroad emissions]

Year	2020
Nitrogen oxides tons/day	13.95
Volatile organic compounds tons/day	6.73

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

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

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

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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 15, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Volatile organic compounds.

Dated: November 29, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 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.*

■ 2. The table in § 52.770 paragraph (e) is amended by adding an entry in alphabetical order for ''South Bend-Elkhart 1997 8-hour ozone maintenance plan'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED INDIANA NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Title	Indiana date	EPA approval	Explanation
* * *	*	*	* *
South Bend-Elkhart 1997 8-hour ozone maintenance plan.		12/17/12, [INSERT PAGE NUMBER WHERE THE DOCUMENT BEGINS].	Revision to motor vehicle emission budgets.
* * *	*	*	* *

■ 3. Section 52.777 is amended by redesignating paragraph (hh) as paragraph (hh)(1), and by adding paragraph (hh)(2) to read as follows

§ 52.777 Control Strategy: Photochemical oxidants (hydrocarbons).

* * * * *

(hh)(1) * * *

(2) Approval—On August 17, 2012, Indiana submitted a request to revise the approved MOBILE6.2 motor vehicle emission budgets (budgets) in the 1997 8-hour ozone maintenance plan for the South Bend/Elkhart, Indiana area. The budgets are being revised with budgets developed with the MOVES2010a model. The 2020 budgets for South Bend/Elkhart, Indiana are 6.73 tons per

day volatile organic compounds (VOCs) and 13.95 tons per day nitrogen oxides (NO_X).

* * * * *

[FR Doc. 2012–30107 Filed 12–14–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2011–0542; FRL–9760–2]

Supplemental Determination for Renewable Fuels Produced Under the Final RFS2 Program From Grain Sorghum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing a supplemental rule associated with the Renewable Fuel Standard (RFS) program. This final rule contains a lifecycle GHG analysis for grain sorghum ethanol and a regulatory determination that grain sorghum ethanol qualifies as a renewable fuel under the RFS Program. EPA's analysis indicates that ethanol made from grain sorghum at dry mill facilities that use natural gas for process energy meets the lifecycle greenhouse gas emissions reduction threshold of 20 percent compared to the baseline petroleum fuel it would replace, and therefore qualifies as renewable fuel. It also contains our regulatory determination that grain sorghum ethanol produced at dry mill facilities using specified forms of biogas for both process energy and most electricity production, has lifecycle GHG emission reductions of more than 50 percent compared to the baseline petroleum fuel it would replace, and that such grain sorghum ethanol qualifies as an advanced biofuel under the RFS Program.

DATES: This final rule is effective on December 17, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0542. 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 Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. 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 Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Jefferson Cole, Office of Transportation and Air Quality, Transportation and Climate Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460 (MC: 6041A); telephone number: 202–564–1283; fax number: 202–564–1177; email address: *cole.jefferson@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline of This Preamble

I. General Information
A. Does this action apply to me?
II. Analysis of Lifecycle Greenhouse Gas Emissions
A. Methodology
1. Scope of Analysis
2. Models Used
3. Scenarios Modeled for Impacts of Increased Demand for Grain Sorghum
4. Model Modifications
B. Results
1. Agro-Economic Impacts
2. International Land Use Change Emissions
3. Grain Sorghum Ethanol Processing
4. Results of Lifecycle Analysis for Ethanol From Grain Sorghum (Using Dry Mill Natural Gas)
5. Results of Lifecycle Analysis for Ethanol From Grain Sorghum (Using Biogas for Process Energy and On-Site Electricity Production)
6. Other Ethanol Processing Technologies
C. Consideration of Lifecycle Analysis Results
1. Implications for Threshold Determinations
2. Consideration of Uncertainty
D. Other Comments Received
E. Summary
III. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
IV. Statutory Provisions and Legal Authority

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as biodiesel and renewable diesel. Regulated categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to engage in activities that may be affected by today's action. To determine whether your activities would be affected, you should carefully examine the applicability criteria in 40 CFR part 80, subpart M. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

II. Analysis of Lifecycle Greenhouse Gas Emissions

A. Methodology

1. Scope of Analysis

On March 26, 2010, the Environmental Protection Agency (EPA) published changes to the Renewable Fuel Standard program regulations as required by 2007 amendments to CAA 211(o). This rulemaking is commonly referred to as the ''March, 2010 RFS2 final rule''. As part of the March, 2010 RFS2 final rule we analyzed various categories of biofuels to determine whether the complete lifecycle GHG emissions (domestic and international) associated with the production, distribution, and use of those fuels meet minimum lifecycle greenhouse gas reduction thresholds as specified in CAA section 211(o) (i.e., 60% for cellulosic biofuel, 50% for biomass-based diesel and advanced biofuel, and 20% for other renewable fuels). Our final rule focused our lifecycle analyses on fuels that were anticipated to contribute relatively large volumes of renewable fuel by 2022 and thus did not cover all fuels that either are contributing or could potentially contribute to the program. In the preamble to the final rule, EPA indicated that it had not completed the GHG emissions impact analysis for several specific biofuel production pathways but that this work would be completed through supplemental rulemaking processes. Since the final rule was issued, we have continued to examine several additional pathways. On June 12, 2012, we published a Notice of Data Availability Concerning Renewable Fuels Produced From Grain Sorghum Under the RFS Program (*see* 77 FR 34915). In that notice of data availability, we provided an opportunity for comment on EPA's analysis of grain sorghum used as a feedstock to produce ethanol under the RFS program. Today's final rule describes our lifecycle analysis of ethanol made from grain sorghum (''grain sorghum ethanol'') and presents our determination that grain sorghum ethanol qualifies as renewable fuel (20% lifecycle GHG reduction as compared to baseline fuel) or as advanced biofuel (50% lifecycle GHG reduction as compared to baseline fuel) if produced pursuant to specified pathways. The modeling approach EPA used in this analysis is the same general approach used in the March, 2010 RFS2 final rule for lifecycle analyses of other biofuels.[1] The March, 2010 RFS2 final rule preamble and Regulatory Impact Analysis (RIA) provides further discussion of our approach.

2. Models Used

The analysis EPA has prepared for grain sorghum ethanol uses the same set of models that was used for the March, 2010 RFS2 final rule. To estimate the domestic agricultural impacts presented in the following sections, we used the Forestry and Agricultural Sector Optimization Model (FASOM) developed by Texas A&M University. To estimate the international agricultural sector impacts, we used the Food and Agricultural Policy and Research Institute international models as maintained by the Center for Agricultural and Rural Development (FAPRI–CARD) at Iowa State University. For more information on the FASOM and FAPRI–CARD models, refer to the March, 2010 RFS2 final rule preamble (75 FR 14670) or the March, 2010 RFS2 final rule Regulatory Impact Analysis (RIA).[2] The models require a number of inputs that are specific to the pathway being analyzed, including projected yields of feedstock per acre planted, projected fertilizer use, and energy use in feedstock processing and fuel production. The docket includes detailed information on model inputs, assumptions, calculations, and the results of our assessment of the lifecycle GHG emissions performance of specified pathways for producing grain sorghum ethanol.

3. Scenarios Modeled for Impacts of Increased Demand for Grain Sorghum

To assess the impacts of an increase in renewable fuel volume from business-as-usual (what is likely to have occurred without the RFS biofuel mandates) to levels required by the statute, we established a control case and other cases for a number of biofuels analyzed for the March, 2010 RFS2 final rule. The control case included a projection of renewable fuel volumes that might be used to comply with the RFS renewable fuel volume mandates in full. The other cases are designed such that the only difference between a given case and the control case is the volume of an individual biofuel, all other volumes remaining the same. In the March, 2010 RFS2 final rule, for each individual biofuel, we analyzed the incremental GHG emission impacts of increasing the volume of that fuel to the total mix of biofuels needed to meet the EISA requirements.

For the analysis of grain sorghum ethanol, we applied the same methodology as in the March, 2010 RFS2 final rule. In this case, we compared a scenario that included 200 million gallons of grain sorghum ethanol to another scenario that included 300 million gallons of grain sorghum ethanol, ensuring that all other renewable fuel volumes are equal between the two scenarios. The scenario with 200 million gallons of grain sorghum ethanol will henceforth be referred to as the ''control case,'' which was developed to account for the current production of grain sorghum ethanol which is approximately 200 million gallons per year (*see* Chapter 1 of the March, 2010 RFS2 final rule RIA). All other volumes for each individual biofuel in this new control case remain identical to the control case used in the March, 2010 RFS2 final rule. The scenario with 300 million gallons of grain sorghum ethanol will be referred to as the ''grain sorghum'' case. For the grain sorghum case, our modeling assumes approximately 300 million gallons of sorghum ethanol would be consumed in the United States in 2022. The modeled scenario includes 2.06 billion lbs of grain sorghum to be used to produce the additional 100 million gallons of ethanol in 2022.

Our volume scenario of approximately 200 million gallons of grain sorghum ethanol in the control case, and 300 million gallons in the grain sorghum case in 2022, is based on several factors including historical volumes of grain sorghum ethanol production, potential feedstock availability and other competitive uses (*e.g.,* animal feed or exports). Our assessment is described further in the inputs and assumptions document that is available through the docket (EPA 2011). Based in part on consultation with experts at the United States Department of Agriculture (USDA) and industry representatives, we believe that these volumes are reasonable for the purposes of evaluating the impacts of producing additional volumes of ethanol from grain sorghum.

The FASOM and FAPRI–CARD models, described above, project how much grain sorghum will be supplied to ethanol production from a combination of increased production, decreases in others uses (*e.g.,* animal feed), and decreases in exports, in going from the control case to the grain sorghum case.

[1] EPA. 2010. Renewable Fuel Standard Program (RFS2) Regulatory Impact Analysis. EPA–420–R–10–006. *http://www.epa.gov/oms/renewablefuels/420r10006.pdf.*

[2] EPA. 2010. Renewable Fuel Standard Program (RFS2) Regulatory Impact Analysis. EPA–420–R–10–006. *http://www.epa.gov/oms/renewablefuels/420r10006.pdf.* Additional RFS2 related documents can be found at *http://www.epa.gov/otaq/fuels/renewablefuels/regulations.htm.*

4. Model Modifications

Based on information from industry stakeholders, as well as in consultation with USDA, both the FASOM and FAPRI–CARD models assume perfect substitution in the use of grain sorghum and corn in the animal feed market in the U.S. Therefore, when more grain sorghum is used for ethanol production, grain sorghum that is used in feed decreases. Either additional corn or additional sorghum production will be used in the feed market to make up for this decrease, depending upon the relative cost of additional production. This assumption is based on conversations with industry and the USDA, reflecting the primary use of sorghum in the U.S. as animal feed, just like corn. We received a number of comments in response to our Notice of Data Availability (NODA) for Renewable Fuels Produced from Grain Sorghum Under the RFS Program (77 FR 34915, June 12, 2012) that support this assumption.

The United States is one of the largest producers and exporters of grain sorghum. Two other large producers of grain sorghum, India and Nigeria, do not actively participate in the global trade market for sorghum. Rather, all grain sorghum in those two countries is produced for domestic consumption. Therefore, as the U.S. diverts some of its exports of grain sorghum for the purposes of ethanol production, we would expect close to no reaction in the production levels of grain sorghum in India and Nigeria. Historical data on prices, production, and exports from USDA, FAOSTAT (the Statistics Division of the Food and Agriculture Organization of the U.N.), and FAPRI support this assumption.[3] We received several comments in response to our NODA that supported our proposed assumption that production of grain sorghum in India and Nigeria is not impacted by changes in production and trade of grain sorghum in the U.S. It should be noted that India and Nigeria are unique in this behavior in regards to grain sorghum production, consumption and trade. Other countries are expected to vary their harvested area in response to changes in U.S. grain sorghum exports, which can be seen in Table II–4 below.

B. Results

As we did for our analysis of other feedstocks in the March, 2010 RFS2 final rule, we assessed what the GHG emissions impacts would be from the use of additional volumes of sorghum for biofuel production. The information provided in this section discusses the assumptions and outputs of the analysis using the FASOM and FAPRI–CARD agro-economic models to determine changes in the agricultural and livestock markets. These results from FASOM and FAPRI–CARD are then used to determine the GHG emissions impacts due to land use change and other factors. Finally, we include our analysis of the GHG emissions associated with different processing pathways and how the choice of technologies affect the lifecycle GHG emissions associated with grain sorghum ethanol.

As discussed in the March, 2010 RFS2 final rule and the accompanying peer review, there are inherent challenges in reconciling the results from two different models. However, using two models provides a more complete and robust analysis than either model would be able to provide alone. We have attempted to align as many of the key assumptions as possible to get a consistent set of modeling results although there are structural differences in the models that account for some of the differences in the model results. For example, since FASOM is a long-term dynamic optimization model, short-term spikes are smoothed out over the five year reporting period. In comparison, the FAPRI–CARD model captures annual fluctuations that may include short-term supply and demand responses. In addition, some of the discrepancies may be attributed to different underlying assumptions pertaining to elasticities of supply and demand for different commodities. These differences, in turn, affect projections of imports and exports, acreage shifting, and total consumption and production of various commodities.

1. Agro-Economic Impacts

EPA received no significant comments regarding the results from the FASOM and FAPRI–CARD models, nor did EPA receive recommendations that the models be re-run with different assumptions. Therefore, the results from these two models are identical to those results presented and discussed in the NODA. For more detailed results, please refer to the NODA. Given the importance of the land use change results for our emissions analysis we are presenting these identical results for reference in this final rule.

In the FASOM model, the increase in grain sorghum area harvested is relatively modest, at an additional 4 thousand acres, due to the fact that demand for grain sorghum for use in ethanol production is being met by a shift of grain sorghum from one existing use (in the animal feed market) to another (ethanol production). Meeting the subsequent gap in supply of animal feed, however, leads to an increase of 141 thousand corn acres in 2022. Another way to describe this interaction is that it is relatively more profitable to take grain sorghum out of the feed market for ethanol production and grow more corn, than it is to simply grow more grain sorghum for ethanol production. Due to the increased demand for corn production and harvested area, soybean harvested area would decrease by 105 thousand acres (corn and soybeans often compete for land). Other crops in the U.S., such as wheat, hay, and rice, are projected to have a net increase of 53 thousand acres.

TABLE II–1—SUMMARY OF PROJECTED CHANGE IN CROP HARVESTED AREA IN THE U.S. IN 2022 IN THE FASOM MODEL

[Thousands of acres]

	Control case	Grain sorghum case	Difference
Sorghum	11,108	11,111	4
Corn	77,539	77,680	141
Soybeans	69,896	69,791	−105
Other	154,511	154,564	53
Total	313,054	313,146	92

[3] *See* Memo to the Docket, Docket Number EPA–HQ–OAR–2011–0542, Dated May 18, 2012 and personal communication with USDA.

As demand for grain sorghum increases for ethanol production in the U.S., the FAPRI–CARD model estimates that the U.S. will decrease exports of grain sorghum and increase exports of corn to partially satisfy the gap of having less grain sorghum in the worldwide feed market. This combination of impacts on the world trade of grain sorghum and corn has effects both on major importers, as well as on other major exporters. For example, Mexico, one of the largest importers of grain sorghum, decreases its imports of grain sorghum and increases its imports of corn. Brazil also contributes more corn to the global market by increasing its exports.

The change in trade patterns directly impacts the amount of production and harvested crop area around the world. Harvested crop area for grain sorghum is not only predicted to increase in the U.S., but also in Mexico (7.8 thousand acres) and other parts of the world. Worldwide grain sorghum harvested area outside of the U.S. would increase by 39.3 thousand acres. Similarly, the increase in the demand for corn would lead to an increase of 36.8 thousand harvested acres outside of the U.S. While soybean harvested area would decrease in the U.S., Brazil would increase its soybean harvested area (18.4 thousand acres) to satisfy global demand. Although worldwide soybean harvested area decreases by 11.7 thousand acres, non-U.S. harvested area increases by 11.2 thousand acres.

Overall harvested crop area in other countries also increase, particularly in Brazil. Brazil's total harvested area is predicted to increase by 32.6 thousand acres by 2022. This is mostly comprised of an increase in corn of 18.1 thousand acres, and an increase in soybeans of 18.4 thousand acres, along with minor changes in other crops. More details on projected changes in world harvested crop area in 2022 can be found below in Table II–2, Table II–3, Table II–4, and Table II–5.

TABLE II–2—SUMMARY OF PROJECTED CHANGE IN INTERNATIONAL (NON-U.S.) HARVESTED AREA BY COUNTRY IN 2022 IN THE FAPRI–CARD MODEL

[Thousands of acres]

	Control case	Grain sorghum case	Difference
Brazil	137,983	138,016	33
China	272,323	272,334	11
Africa and Middle East	315,843	315,892	48
Rest of World	1,301,417	1,301,441	24
International Total (non-U.S.)	2,027,567	2,027,682	115

TABLE II–3—SUMMARY OF PROJECTED CHANGE IN INTERNATIONAL (NON-U.S.) HARVESTED AREA BY CROP IN 2022 IN THE FAPRI–CARD MODEL

[Thousands of acres]

	Control case	Grain sorghum case	Difference
Sorghum	95,108	95,148	39
Corn	307,342	307,379	37
Soybeans	202,980	202,991	11
Other	1,422,137	1,422,165	28
International Total (non-U.S.)	2,027,567	2,027,682	115

TABLE II–4—SUMMARY OF PROJECTED CHANGE IN INTERNATIONAL (NON-U.S.) GRAIN SORGHUM HARVESTED AREA BY COUNTRY IN 2022 IN THE FAPRI–CARD MODEL

[Thousands of acres]

	Control case	Grain sorghum case	Difference
Mexico	4,569	4,576	8
Argentina	1,915	1,917	2
India	22,261	22,261	0
Nigeria	18,841	18,841	0
Other Africa and Middle East	37,833	37,856	23
Rest of World	9,689	9,695	6
International Total (non-U.S.)	95,108	95,148	39

TABLE II–5—SUMMARY OF PROJECTED CHANGE IN INTERNATIONAL (NON-U.S.) CORN HARVESTED AREA BY COUNTRY IN 2022 IN THE FAPRI–CARD MODEL

[Thousands of Acres]

	Control case	Grain sorghum case	Difference
Africa and Middle East	77,220	77,223	4
Asia	108,751	108,764	13

TABLE II–5—SUMMARY OF PROJECTED CHANGE IN INTERNATIONAL (NON-U.S.) CORN HARVESTED AREA BY COUNTRY IN 2022 IN THE FAPRI–CARD MODEL—Continued

[Thousands of Acres]

	Control case	Grain sorghum case	Difference
Brazil	20,935	20,953	18
India	20,176	20,180	5
Other Latin America	39,599	39,594	−5
Rest of World	40,661	40,664	2
International Total (non-U.S.)	307,342	307,379	37

More detailed information on the agro-economic modeling can be found in the accompanying docket.

2. International Land Use Change Emissions

The methodology used in today's assessment of grain sorghum as an ethanol feedstock is the same as that used in the March 2010 RFS2 final rule for analyses of other biofuel pathways. However, we have updated some of the data underlying the GHG emissions from international land use changes; therefore, we are providing additional detail on these modifications in this section.

In our analysis, GHG emissions per acre of land conversion internationally (i.e., outside of the United States) are determined using the emissions factors developed for the March 2010 RFS2 final rule, following IPCC guidelines. In addition, estimated average forest carbon stocks were updated based on a new study which uses a more robust and higher resolution analysis. For the March 2010 RFS2 final rule, international forest carbon stocks were estimated from several data sources each derived using a different methodological approach. Two new peer-reviewed analyses on forest carbon stock estimation have been completed since the release of the March 2010 RFS2 final rule, one for three continental regions by Saatchi *et al.*[4] and the other for the EU by Gallaun *et al.*[5] We have updated our forest carbon stock estimates based on these new studies because they represent significant improvements as compared to the data used in the March 2010 RFS2 final rule. These updated forest carbon stock estimates were previously used in EPA's Notice of Data Availability Concerning Renewable Fuels Produced From Palm Oil Under the RFS Program (77 FR 4300, January 27, 2012). Forest carbon stocks across the tropics are important in our analysis of grain sorghum ethanol because a significant amount of the land use changes in the scenarios modelled occur in tropical regions such as Brazil. In the scenarios modelled, there are also much smaller amounts of land use change impacts in the EU related to grain sorghum ethanol production. In the interest of using the best available data, we have incorporated the improved forest carbon stocks data in our analysis of lifecycle GHG emissions related to grain sorghum ethanol.

Preliminary results for Latin America and Africa from Saatchi *et al.* were incorporated into the March 2010 RFS2 final rule, but Asia results were not included due to timing considerations. The Saatchi *et al.* analysis is now complete, and so the final map was used to calculate updated area-weighted average forest carbon stocks for the entire area covered by the analysis (Latin America, sub-Saharan Africa and South and Southeast Asia). The Saatchi *et al.* results represent a significant improvement over previous estimates because they incorporate data from more than 4,000 ground inventory plots, about 150,000 biomass values estimated from forest heights measured by space-borne light detection and ranging (LIDAR), and a suite of optical and radar satellite imagery products. Estimates are spatially refined at 1-km grid cell resolution and are directly comparable across countries and regions.

In the March 2010 RFS2 final rule, forest carbon stocks for the European Union were estimated using a combination of data from three different sources. Issues with this 'patchwork' approach were that the biomass estimates were not comparable across countries due to the differences in methodological approaches, and that estimates were not spatially derived (or, the spatial data were not provided to EPA). Since the release of the final rule, Gallaun *et al.* developed EU-wide maps of above-ground biomass in forests based on remote sensing and field measurements. MODIS data were used for the classification, and comprehensive field measurement data from national forest inventories for nearly 100,000 locations from 16 countries were also used to develop the final map. The map covers the whole EU, the European Free Trade Association countries, the Balkans, Belarus, the Ukraine, Moldova, Armenia, Azerbaijan, Georgia, and Turkey.

For both data sources, Saatchi *et al.* and Gallaun *et al.,* we added belowground biomass to reported aboveground biomass values using an equation in Mokany *et al.*[6]

In our analysis, forest stocks are estimated for over 750 regions across 160 countries. For some regions the carbon stocks increased as a result of the updates and in others they declined. For comparison, we ran our grain sorghum analysis using the old forest carbon stock values used in the March 2010 RFS2 final rule and with the updated forest carbon values described above. Using the updated forest carbon stocks increased the land use change GHG emissions related to grain sorghum ethanol by approximately 1.2 kilograms of carbon dioxide equivalent emissions per million British thermal units of grain sorghum ethanol ($kgCO_2e$/mmBtu). Table II–6 includes the international land use change GHG emissions results for the scenarios modeled, in terms of $kgCO_2e$/mmBtu. International land use change GHG emissions for grain sorghum are estimated at 30 $kgCO_2e$/mmBtu.

[4] Saatchi, S.S., Harris, N.L., Brown, S., Lefsky, M., Mitchard, E.T.A., Salas, W., Zutta, B.R., Buermann, W., Lewis, S.L., Hagen, S., Petrova, S., White, L., Silman, M. And Morel, A. 2011. Benchmark map of forest carbon stocks in tropical regions across three continents. PNAS doi: 10.1073/pnas.1019576108.

[5] Gallaun, H., Zanchi, G., Nabuurs, G.J., Hengeveld, G., Schardt, M., Verkerk, P.J. 2010. EU-wide maps of growing stock and above-ground biomass in forests based on remote sensing and field measurements. *Forest Ecology and Management* 260: 252–261.

[6] Mokany, K., R.J. Raison, and A.S. Prokushkin. 2006. Critical analysis of root:shoot ratios in terrestrial biomes. Global Change Biology 12: 84–96.

TABLE II–6—INTERNATIONAL LAND USE CHANGE GHG EMISSIONS

[$kgCO_2e/mmBtu$]

Region	Emissions
Africa and Middle East	9
Asia	5
Brazil	14
India	1
Other Latin America	1
Rest of World	1
International Total (non-U.S.)	30

More detailed information on the land use change emissions can be found in the accompanying docket.

3. Grain Sorghum Ethanol Processing

The dry milling process is the ethanol production process considered here for producing ethanol from grain sorghum. In the dry milling process, the grain sorghum is ground and fermented to produce ethanol. The remaining distillers grains (DG) are then either left wet if used in the near-term or dried for longer term use as animal feed.

For this analysis, the amount of grain sorghum used for ethanol production as modeled by the FASOM and FAPRI–CARD models was based on yield assumptions built into those two models. Specifically, the models assume sorghum ethanol yields of 2.71 gallons per bushel for dry mill plants (yields represents pure ethanol).

As per the analysis done in the March 2010 RFS2 final rule, the energy consumed and emissions generated by a renewable fuel plant must be allocated not only to the renewable fuel produced, but also to each of the by-products. For grain sorghum ethanol production, this analysis accounts for the DG co-product use directly in the FASOM and FAPRI–CARD agricultural sector modeling described in the NODA. DG are considered a replacement animal feed and thus reduce the need to make up for the grain sorghum production that went into ethanol production. Since FASOM takes the production and use of DG into account, no further allocation was needed at the ethanol plant and all plant emissions are accounted for there.

As described in the NODA, the GHG emissions from production of ethanol from grain sorghum were calculated in the same way as other fuels analyzed as part of the March 2010 RFS final rule. The GHG emissions were calculated by multiplying the amount of the different types of energy inputs at the grain sorghum ethanol plant (*e.g.,* natural gas, coal, biogas, electricity) by emissions factors for production and use of those energy sources.

The NODA described how purchased fuel and electricity use for grain sorghum ethanol production was based on the energy use information for corn ethanol production from the March 2010 RFS final rule analysis. These numbers reflect future plant energy use to represent plants that would be built to meet future requirements for increased renewable fuel use, as opposed to current or historic data on energy used in ethanol production. The numbers also reflect adjustments to account for the fact that converting grain sorghum to ethanol will result in slightly different energy use based on the difference in the grains and how they are processed.

Process energy at the plant includes natural gas, coal, or biogas used in boilers to produce steam, in dryers, in thermal oxidizers or used in other production or process equipment. Process electricity is used for running pumps, conveyers, fans, lights, and other electrical equipment. Specifically related to the fuel production process, electricity can be produced on-site or purchased/received from an off-site supplier.

The emissions associated with energy used at grain sorghum ethanol facilities, varies significantly among plants with respect to the production process, type of fuel used (*e.g.,* coal versus natural gas), and whether electricity used at the facility comes from the grid or is produced from low-GHG emissions fuels such as biogas from landfills, waste treatment plants and/or waste digesters. Variation also exists between the same type of plants using the same fuel source based on the design of the production process such as the technology used to separate the ethanol from the water, the extent to which the DG are dried and whether other co-products are produced. Such different pathways were considered for ethanol made from corn. Since for the most part these same production processes are available for ethanol produced from sorghum, our analyses considered a similar set of production pathways for grain sorghum ethanol production. Our focus was to differentiate among facilities based on key differences, namely the type of plant, the type of fuel used and source of electricity.

For grain sorghum, we analyzed several combinations of different process technologies and fuels to determine their impacts on lifecycle GHG emissions. This section describes the different GHG impacts associated with alternative processing technology and fuel options and outlines specific process pathways that would be needed to meet different GHG threshold requirements.

The NODA discussed how several technologies and fuel choices affect emissions. Process energy fuel choice has a significant impact on emissions from a sorghum ethanol plant. Switching from natural gas to biogas from landfills, waste treatment plants and/or waste digesters, for example, was shown to reduce lifecycle GHG emissions by approximately 20 percentage points. Therefore, use of such biogas provides a way for grain sorghum ethanol plants to reduce their GHG emissions. However, in order for the biogas to count as a GHG reduction mechanism under the grain sorghum ethanol pathways discussed in this rulemaking it has to come from landfills, waste treatment plants, or waste digesters. The reason for this is that those sources of biogas are assumed to have zero upstream GHG impacts.

We received comments on the GHG emissions associated with the use of biogas as a process energy source, specifically for biogas from manure digesters. Development and operation of a manure digester system results in fugitive methane and other emissions, though their use also means emissions associated with alternative manure disposal methods are avoided. Putting in place a manure digester and capturing methane will result in a change of emissions from the existing disposal method. There is guidance available for calculating these emission changes.[7] Based on one application of this guidance, one commenter indicated that the upstream GHG impacts of biogas production from a manure digester would be a net increase in GHG emissions. Another commenter using their own application of the guidance indicated that there would be a net reduction in upstream GHG emissions from the use of biogas from a manure digester.

The differences in net emission estimates from manure digesters depend upon the assumptions about the alternative manure disposal methods. If the alternative disposal methods would not have resulted in significant emissions (*e.g.,* if no methane were generated or if the methane generated were captured and destroyed) then the installation of a manure digester could

[7] *See, e.g.,* ''Protocol for Quantifying and Reporting the Performance of Anaerobic Digestion Systems for Livestock Manures,'' Prepared for the U.S. Environmental Protection Agency AgSTAR Program, Prepared by: Eastern Research Group, Inc., March 2011, and ''Climate Leaders Greenhouse Gas Inventory Protocol Offset Project Methodology for Project Type: Managing Manure with Biogas Recovery Systems,'' Climate Protection Partnerships Division/Climate Change Division, Office of Atmospheric Programs, U.S. Environmental Protection Agency, August 2008, Version 1.3.

lead to an increase in emissions. On the other hand, if there would have been significant emissions from an alternative disposal method that would be avoided, then the installation of a manure digester would result in a decrease in net emissions. EPA's approach for projecting the net emissions from manure digesters for the sorghum lifecycle GHG calculations was to assume effectively zero net emissions from digester biogas. This assumption is consistent with our treatment of biogas emissions in previous RFS rulemakings.

Given the uncertainty in the range of possible alternative manure disposal emissions, we feel this approach is reasonable. In order for biogas from manure digesters to result in positive net GHG emissions, the emissions from the alternative disposal method would have to be close to zero. This would only be the case with limited types of disposal in which the decomposition of the manure was mainly aerobic and does not result in methane emissions, such as land application. Although the majority of manure in the United States is handled as a solid, producing little CH4, the general trend in manure management is one of increasing use of liquid systems. The shift in manure management practices is due in part to a shift toward larger livestock facilities which typically use liquid manure management systems. Liquid systems have higher potential CH4 emissions than dry systems.[8] Alternatively, the existing disposal methods could have emissions close to zero if they were capturing methane emissions and destroying them, which is not generally happening in current practice.[9] It is possible that use of manure digesters could provide a net GHG benefit as compared to alternative disposal methods. However, we also do not have enough information to include a generic GHG offset reduction for manure digesters at this time. Assuming zero net emissions for present purposes appears reasonable given the range of possibilities. We plan to seek comment on the possible use of manure digester offsets as part of a future rulemaking and clarify their use for this and other pathways in Table 1 to § 80.1426. Interested parties using manure digesters may also submit a petition under the 40 CFR 80.1416 petition process.

We also received comments to expand the discussion to include ''biomass energy'' that is not restricted to only biogas in the context of a fuel source from landfills, waste treatment plants, and waste digesters. The comments point to existing pathways in Table 1 to § 80.1426 that include the use of biogas or biomass. We plan to clarify the meaning of the term biomass through a separate rulemaking and will consider the comments of adding biomass as a process energy source to the grain sorghum ethanol pathway at that time. In the interim, we believe it is preferable to issue today's rule identifying two qualifying grain sorghum ethanol pathways without delay. Doing so allows producers using these pathways the opportunity to generate RINs while EPA evaluates adding a definition of biomass as an energy source for use in biofuel production.

Another factor that influences GHG impacts from process energy use is the percentage of DG that are dried. If a plant is able to reduce the amount of DG it dries, process energy use and GHG emissions decrease. The impact of going from 100% dry DG to 100% wet DG is larger for natural gas plants (approximately a 10% reduction in overall GHG emissions relative to the petroleum baseline) compared to biogas plants because biogas plants already have low emissions from process energy.

The NODA also discussed how production facilities that utilize combined heat and power (CHP) systems can also reduce GHG emissions relative to less efficient system configurations. The CHP system configuration considered in the NODA calculations were based on using a boiler to power a turbine generator unit that produces electricity, and using waste heat to produce process steam. There are provisions in our regulations stating that combined heat and power (CHP), also known as cogeneration, refers to industrial processes in which waste heat from the production of electricity is used for process energy in the renewable fuel production facility. Table 2 to § 80.1426 includes combined heat and power such that, on a calendar year basis, at least 90% of the thermal energy associated with ethanol production (including thermal energy produced at the facility and that which is derived from an off-site waste heat supplier), exclusive of any thermal energy used for the drying of distillers grains and solubles, is used to produce electricity prior to being used to meet the process heat requirements of the facility.

We received comments that these current provisions only describe ''top cycle'' (high pressure) CHP systems. Commenters requested that we also allow other types of CHP configurations (*e.g.,* ''low pressure'' CHP systems). EPA recognizes that there are many different types of CHP configurations and that some types that do not fit our current regulatory provisions could have similar GHG reductions.

Although not exhaustive, Table II–7 shows the amount of process fuel and electricity from the grid used at a grain sorghum ethanol facility for the different technology and fuel options in terms of Btu/gal of ethanol produced.

The energy use at dry mill ethanol plants was based on ASPEN models developed by USDA and updated to reflect changes in technology out to 2022 as described in the March 2010 RFS2 final rule Regulatory Impact Analysis (RIA) Chapter 1. The work done on grain ethanol production for the March 2010 RFS2 final rule was based on converting corn to ethanol. Converting grain sorghum to ethanol will result in slightly different energy use based on difference in the grains and how they are processed. The same ASPEN USDA models used for corn ethanol in the final rule were also developed for grain sorghum ethanol. Based on the numbers from USDA, a sorghum ethanol plant uses 96.3% of the thermal process energy of a corn ethanol plant (3.7% less), and 99.3% of the electrical energy (0.7% less).

[8] Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2010, U.S. EPA Section 6.2.

[9] Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2010, U.S. EPA Annex 3 Section 3.10, the emissions factors used in calculating methane emissions from manure management do not include methane capture. EPA is not aware of any current or planned regulations that would require methane capture and destruction from existing manure management activities.

TABLE II–7—PROCESS FUEL AND ELECTRICITY OPTIONS AT GRAIN SORGHUM ETHANOL FACILITIES

[Btu/gallon of ethanol produced]

Fuel type and technology	Natural gas use	Biogas use	Grid electricity use
Sorghum Ethanol—Dry Mill Natural Gas			
No CHP, 100% Wet DG	16,449		2,235
Yes CHP, 100% Wet DG	18,605		508
No CHP, 0% Wet DG	27,599		2,235
Yes CHP, 0% Wet DG	29,755		508
Sorghum Ethanol—Dry Mill Biogas			
No CHP, 100% Wet DG		16,449	2,235
Yes CHP, 100% Wet DG		18,605	508
No CHP, 0% Wet DG		27,599	2,235
Yes CHP, 0% Wet DG		29,755	508

As shown in Table II–7, the difference between CHP and non-CHP plants is reflected in their use of different amounts of primary energy (natural gas or biogas) and the amount of electricity used from the grid. The difference in electricity used from the grid is independent of the quantity of dry DG. Furthermore, as the GHG calculations are based on the amount of fuel used times an emission factor plus the amount of electricity used from grid times an emissions factor, the use of CHP versus some other type of electricity generation system only matters for natural gas plants. Although less biogas would be needed if CHP is used versus standard electricity generation using biogas, the GHG emissions are the same since the emission factor for biogas (when it comes from landfills, waste treatment plants and/or waste digesters) is zero. Therefore, because the only advanced biofuel pathway we are adopting today for the production of grain sorghum ethanol involves use of biogas for on-site electricity production, we do not need to specify that CHP be used. We have therefore modified the final rule to instead specify that for the advanced biofuel grain sorghum pathway, biogas from landfills, waste treatment plants and/or waste digesters must be used for on-site electricity production, and we have provided an allowance for a certain amount of grid-purchased electricity that would still be consistent with a finding of 50% lifecycle GHG reduction as compared to baseline fuel. Any configuration of CHP, or a non-CHP system, could be used for the on-site generation of electricity using biogas. We have also included conforming changes to the regulatory registration, recordkeeping and reporting requirements, to require verification of the amount of grid electricity used at facilities using this pathway.

The conforming changes include adding a new paragraph (f)(13) to Section 80.1426 describing detailed requirements for the purchase, measurement and use of biogas and electricity from the grid for facilities using the advanced biofuel grain sorghum pathway. We have also amended Section 80.1450 describing registration requirements for facilities using the advanced biofuel grain sorghum pathway. Sections 80.1451 and 80.1454 are also amended to specify reporting and recordkeeping requirements for this pathway.

The following Table II–8 shows the mean lifecycle GHG reductions compared to the baseline petroleum fuel for a number of different grain sorghum ethanol production technology pathways including natural gas and biogas fired plants. In the following section, we provide detailed analysis of the lifecycle GHG emissions for two scenarios. The first is for a dry mill grain sorghum ethanol plant that uses natural gas for process energy; the second is for a dry mill grain sorghum ethanol plant that uses biogas for both process energy and for on-site electricity production. These two scenarios were chosen as examples of feasible technology that a plant can use to generate either conventional or advanced fuel.

TABLE II–8—LIFECYCLE GHG EMISSION REDUCTIONS FOR CERTAIN DRY MILL GRAIN SORGHUM ETHANOL FACILITIES

[% change compared to petroleum gasoline]

Fuel type and technology	% Change
Sorghum Ethanol—Dry Mill Natural Gas	
No On-Site Electricity Production, 100% Wet DG	−33
On-Site Electricity Production, using 0.15 kWh electricity from the grid per gallon of ethanol, 100% Wet DG	−36
No On-Site Electricity Production, 0% Wet DG	−22
On-Site Electricity Production, using 0.15 kWh electricity from the grid per gallon of ethanol, 0% Wet DG	−25
Sorghum Ethanol—Dry Mill Biogas	
No On-Site Electricity Production, 100% Wet DG	−48
On-Site Electricity Production, using 0.15 kWh electricity from the grid per gallon of ethanol, 100% Wet DG	−53
No On-Site Electricity Production, 0% Wet DG	−47
On-Site Electricity Production, using 0.15 kWh electricity from the grid per gallon of ethanol, 0% Wet DG	−52

The 0.15 kWh was based on data in Table II–7 converted to kWh per gallon.

The docket for this final rule provides more details on our key model inputs and assumptions (*e.g.*, crop yields, biofuel conversion yields, and agricultural energy use). These inputs and assumptions are based on our analysis of peer-reviewed literature and consideration of recommendations of experts from within the grain sorghum and ethanol industries, USDA, and academic institutions.

4. Results of Lifecycle Analysis for Ethanol From Grain Sorghum (Using Dry Mill Natural Gas)

Consistent with our approach for analyzing other pathways, our analysis for grain sorghum ethanol includes a mid-point estimate as well as a range of possible lifecycle GHG emission results based on uncertainty analysis conducted by the Agency. The graph below (Figure II–1) depicts the results of our analysis (including the uncertainty in our land use change modeling) for grain sorghum ethanol produced in a plant that uses natural gas and produces the current industry average of 92% wet DG.

Lifecycle GHG emissions equivalent to the statutory gasoline fuel baseline are represented on the graph by the zero on the X-axis. The midpoint of the range of results is a 32% reduction in GHG emissions compared to the 2005 gasoline baseline.[10] As in the case of other biofuel pathways analyzed as part of the March 2010 RFS2 final rule, the range of results shown in Figure II–1 is based on our assessment of uncertainty regarding the location and types of land that may be impacted as well as the GHG impacts associated with these land use changes (see Section II.B.1. for further information).

Figure II-1. Distribution of Results for Grain Sorghum Ethanol Produced in Dry Mill Plants that Use Natural Gas for Process Energy and Produce 92% Wet Distillers Grains

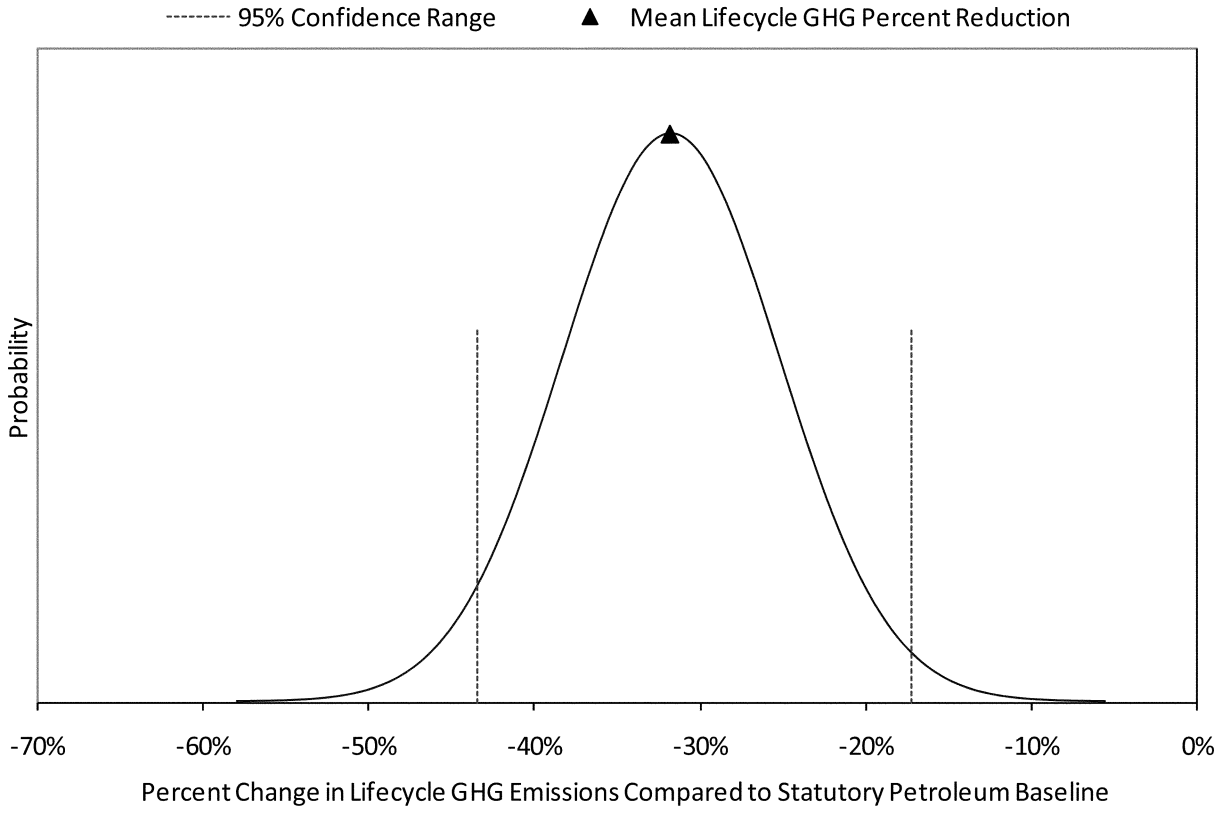

Table II–9 breaks down by stage the lifecycle GHG emissions for a natural gas fired grain sorghum ethanol plant with 92% wet DG in 2022 and the statutory 2005 gasoline baseline.[11] Results are included using our mid-point estimate of land use change emissions, as well as with the low and high end of the 95% confidence interval. Net agricultural emissions include impacts related to changes in crop inputs, such as fertilizer, energy used in agriculture, livestock production and other agricultural changes in the scenarios modeled. The fuel production stage includes emissions from ethanol production plants including drying 8% of the DG. Fuel and feedstock transport includes emissions from transporting bushels of harvested grain sorghum from the farm to the ethanol production facility, as well as the emissions associated with transporting ethanol from the production facility to the fuel-blending facility.

[10] The 95% confidence interval around that midpoint results in range of a 19% reduction to a 44% reduction compared to the 2005 gasoline fuel baseline.

[11] Totals in the table may not sum due to rounding.

TABLE II–9—LIFECYCLE GHG EMISSIONS FOR GRAIN SORGHUM ETHANOL PRODUCED IN DRY MILL PLANTS THAT USE NATURAL GAS FOR PROCESS ENERGY AND PRODUCE 92% WET DISTILLERS GRAINS

[gCO_2e/mmBtu]

Fuel type	Grain sorghum ethanol	2005 gasoline baseline
Net Agriculture (w/o land use change), Domestic and International	12,698	
Land Use Change, Mean *(Low/High),* Domestic and International	27,620 *(16,196/ 41,903)*	
Fuel Production	22,111	19,200
Fuel and Feedstock Transport	3,661	*
Tailpipe Emissions	880	79,004
Total Emissions, Mean *(Low/High)*	66,971 *(55,547/ 81,254)*	98,204
Midpoint Lifecycle GHG Percent Reduction Compared to Petroleum Baseline	32%	

* Emissions included in fuel production stage.

5. Results of Lifecycle Analysis for Ethanol From Grain Sorghum (Using Biogas for Process Energy and On-Site Electricity Production)

The graph below (Figure II–2) depicts the results of our analysis (including the uncertainty in our land use change modeling) for grain sorghum ethanol produced in a dry mill plant that produces 0% wet DG and uses biogas for process energy and for on-site production of all electricity other than 0.15 kWh of grid electricity per gallon of ethanol produced.

Figure II–2 shows the percent difference between lifecycle GHG emissions for the 2005 petroleum gasoline fuel baseline and for 2022 grain sorghum ethanol produced in a plant that dries 100% of its DG, uses only biogas as process energy and uses biogas to produce all electricity used on site except for 0.15 kWh of grid electricity per gallon of ethanol produced. Lifecycle GHG emissions equivalent to the statutory gasoline fuel baseline are represented on the graph by the zero on the X-axis. The midpoint of the range of results for this sorghum ethanol plant configuration is a 52% reduction in GHG emissions compared to the 2005 gasoline baseline.[12] As in the case of other biofuel pathways analyzed as part of the March 2010 RFS2 final rule, the range of results shown in Figure II–2 is based on our assessment of uncertainty regarding the location and types of land that may be impacted as well as the GHG impacts associated with these land use changes (see Section II.B.1). These results justify our determination that sorghum ethanol produced in dry mill plants that dry any amount of DG and use only biogas (from landfills, waste treatment plants and/or waste digesters) for process energy and production of electricity used on site, other than 0.15 kWh of electricity from the grid per gallon of ethanol produced, meet the 50% lifecycle GHG reduction threshold required for the generation of advanced renewable fuel RINs.

[12] The 95% confidence interval around that midpoint results in range of a 38% reduction to a 64% reduction compared to the 2005 gasoline fuel baseline.

Figure II-2. Distribution of Results for Grain Sorghum Ethanol Produced in Dry Mill Plants that Produce 0% wet DG and Use Only Biogas (from Landfills, Waste Treatment Plants, and/or Waste Digesters) for Process Energy and Electricity Production, Except for 0.15 kWh of Electricity from the Grid per Gallon of Ethanol Produced

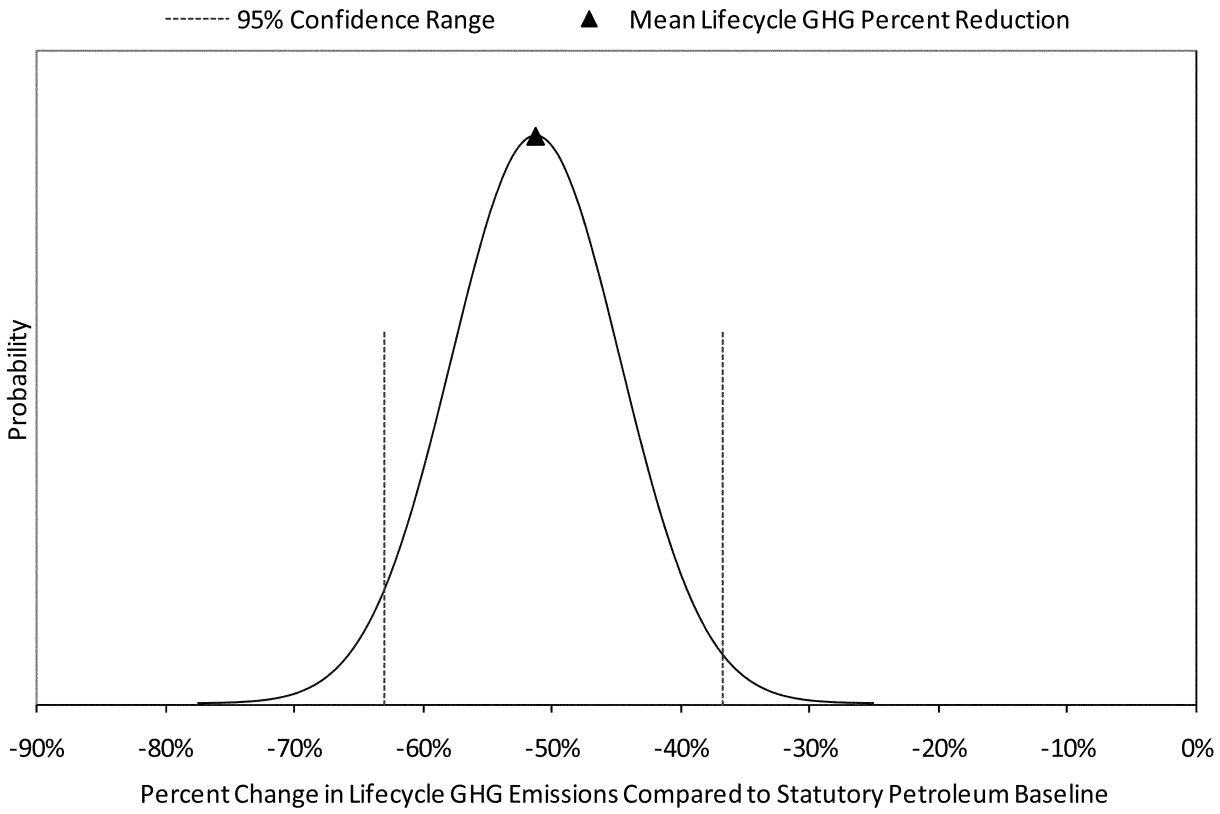

Table II–10 breaks down by stage the lifecycle GHG emissions for grain sorghum ethanol in 2022 produced through this pathway and the statutory 2005 gasoline baseline.[13] Results are included using our mid-point estimate of land use change emissions, as well as with the low and high end of the 95% confidence interval. Net agricultural emissions include impacts related to changes in crop inputs, such as fertilizer, energy used in agriculture, livestock production and other agricultural changes in the scenarios modeled. Emissions from fuel production include emissions from ethanol production and drying 100% of the DG. Fuel and feedstock transport includes emissions from transporting bushels of harvested grain sorghum from the farm to ethanol production facility, as well as the emissions associated with transporting ethanol from the production facility to the fuel-blending facility.

TABLE II–10—LIFECYCLE GHG EMISSIONS FOR GRAIN SORGHUM ETHANOL PRODUCED IN DRY MILL PLANTS THAT PRODUCE 0% WET DG AND USE ONLY BIOGAS (FROM LANDFILLS, WASTE TREATMENT PLANTS, AND/OR WASTE DIGESTERS) FOR PROCESS ENERGY AND ELECTRICITY PRODUCTION, EXCEPT FOR 0.15 KWH OF ELECTRICITY FROM THE GRID PER GALLON OF ETHANOL PRODUCED

[gCO_2e/mmBtu]

Fuel type	Grain sorghum ethanol	2005 gasoline baseline
Net Agriculture (w/o land use change), Domestic and International	12,698	
Land Use Change, Mean *(Low/High),* Domestic and International	27,620 *(16,196/ 41,903)*	

[13] Totals in the table may not sum due to rounding.

TABLE II–10—LIFECYCLE GHG EMISSIONS FOR GRAIN SORGHUM ETHANOL PRODUCED IN DRY MILL PLANTS THAT PRODUCE 0% WET DG AND USE ONLY BIOGAS (FROM LANDFILLS, WASTE TREATMENT PLANTS, AND/OR WASTE DIGESTERS) FOR PROCESS ENERGY AND ELECTRICITY PRODUCTION, EXCEPT FOR 0.15 KWH OF ELECTRICITY FROM THE GRID PER GALLON OF ETHANOL PRODUCED—Continued

[gCO_2e/mmBtu]

Fuel type	Grain sorghum ethanol	2005 gasoline baseline
Fuel Production	1,612	19,200
Fuel and Feedstock Transport	4,276	*
Tailpipe Emissions	880	79,004
Total Emissions, Mean *(Low/High)*	47,086 *(35,662/61,369)*	98,204
Midpoint Lifecycle GHG Percent Reduction Compared to Petroleum Baseline	52%	

* Emissions included in fuel production stage.

6. Other Ethanol Processing Technologies

In the NODA we stated our intention to address other broadly applicable ethanol production technologies that have the potential to reduce lifecycle GHG emissions through a separate rulemaking. In the NODA, we provided a brief description of the use of electricity that is derived from renewable and non-carbon sources, such as wind power, solar power, hydropower, biogas or biomass as power for process units and equipment, and capturing and sequestering CO_2 emissions from an ethanol plant. We received comments supporting the use of electricity that is derived from renewable and non-carbon sources as power for process units and equipment. We also received comments supporting the use of capturing and sequestering CO_2 emissions as part of the RFS2 program. Due to the range of issues before us, and the fact that these issues can pertain to more than just the sorghum pathways, we intend to assess these technologies in a separate action and will consider at that time the comments received in response to the NODA and whether to broaden the number of grain sorghum ethanol pathways that may qualify for RIN generation.

C. Consideration of Lifecycle Analysis Results

1. Implications for Threshold Determinations

As discussed above, EPA's analysis shows that, based on the mid-point of the range of results, ethanol produced from grain sorghum using biogas (from landfills, waste treatment plants and/or waste digesters) for process heat and to produce all electricity used on-site, other than 0.15 kWh of electricity from the grid per gallon of ethanol produced at a dry mill plant drying any amount of DG would meet the 50 percent GHG emissions reduction threshold needed to qualify as an advanced biofuel (D–5 RINs). Grain sorghum ethanol meets the 20% lifecycle GHG emissions reduction threshold for conventional biofuels (D–6 RINs) when natural gas or biogas is used for process energy at a dry mill plant, regardless of how much DG is dried. Therefore, Table 1 to Section 80.1426 is modified to add these new pathways. Table II–11 illustrates how these new pathways are included in the existing table.

TABLE II–11—PATHWAYS AND APPLICABLE D CODES FOR GRAIN SORGHUM ETHANOL

Fuel type	Feedstock	Production process requirements	D-Code
Ethanol	Grain Sorghum	Dry mill process using biogas from landfills, waste treatment plants, and waste digesters, and/or natural gas, for process energy.	6
Ethanol	Grain Sorghum	Dry mill process, using only biogas from landfills, waste treatment plants, and waste digesters for process energy and for on-site production of all electricity used at the site other than up to 0.15 kWh of electricity from the grid per gallon of ethanol produced.	5

2. Consideration of Uncertainty

EPA's threshold determinations for grain sorghum ethanol are based on the weight of evidence currently available. For this pathway, the evidence considered includes the mid-point estimate as well as the range of results based on statistical uncertainty and sensitivity analyses conducted by the Agency. EPA has weighed all of the evidence, while placing the greatest weight on the best-estimate value for the scenarios analyzed.

As part of our assessment of the grain sorghum ethanol pathway, we have identified key areas of uncertainty in our analysis. Although there is uncertainty in all portions of the lifecycle modeling, we focused our analysis on the factors that are the most uncertain and have the biggest impact on the results. The indirect international emissions are the component of our analysis with the highest level of uncertainty. The type of land that is converted internationally and the emissions associated with this land conversion are critical issues that have a large impact on the GHG emissions estimates.

Our analysis of land use change GHG emissions includes an assessment of uncertainty that focuses on two aspects of indirect land use change—the types of land converted and the GHG emissions associated with different types of land converted. These areas of uncertainty were estimated statistically using the Monte Carlo analysis methodology developed for the March,

2010 RFS2 final rule.[14] Figure II–1 and Figure II–2 show the results of our statistical uncertainty assessment.

The docket for this final rule provides more details on all aspects of our analysis of grain sorghum ethanol.

D. Other Comments Received

We received other comments that suggested that if we are to calculate certain indirect emissions and costs of renewable fuels (*e.g.,* land use, and energy used for extraction), the same should be included for petroleum fuels that are being displaced. These comments were similar to comments we responded to in the March, 2010 final RFS rule. Commenters did not provide any new information or data that would cause us to re-evaluate our methodology that was described in more detail in the March, 2010 RFS2 final rule. Therefore, we are not making the suggested modifications to our lifecycle analysis at this time.

We also received comments regarding the situation where a facility could be characterized under two or more separate pathways. For example a facility co-processing different feedstocks, like corn and sorghum, and using two different process energy sources simultaneously, like natural gas and biogas with on-site electricity production. The commenters asked if different RINs could be produced based on the different pathways represented by the different feedstocks and process energy sources used. In response, we note that 40 CFR § 80.1426(f)(3)(i)–(vi) addresses a number of options for the generation of RINs when renewable fuel production can be described by two or more pathways. In situations not covered by the regulations, parties may submit a petition to EPA pursuant to 80.1416.

E. Summary

Based on our GHG lifecycle analysis as discussed above, today's rule includes two pathways for ethanol produced from grain sorghum feedstocks. One pathway will allow the generation of D code 6 RINs for grain sorghum ethanol produced by a natural gas or biogas fired dry mill facility that dries any amount of DG. A second pathway will allow producers of grain sorghum ethanol to generate advanced (D code 5) RINs if they use only biogas for process energy and on-site electricity production and use no more than 0.15 kWh of electricity from the grid per gallon of ethanol produced. In both cases, of course, RINs may only be generated if the fuel meets other definitional criteria for renewable fuel (*e.g.,* produced from renewable biomass as defined in the March, 2010 RFS2 final rule regulations, and used to reduce or replace the quantity of fossil fuel present in transportation fuel, heating oil or jet fuel). In order to qualify for RIN generation, the fuel must meet all other requirements specified in the Clean Air Act and the RFS regulations at 40 CFR part 80 Subpart M. Parties that produce ethanol through either pathway must do so in a matter that is consistent with current regulations. Failure to do so may result in invalid RINs and penalties.

III. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The corrections, clarifications, and modifications to the March, 2010 RFS2 final regulations contained in this rule are within the scope of the information collection requirements submitted to the Office of Management and Budget (OMB) for the March, 2010 RFS2 final regulations.

OMB has approved the information collection requirements contained in the existing regulations at 40 CFR part 80, subpart M under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control numbers 2060–0637 and 2060–0640. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not impose any new requirements on small entities. Rather, we expect that this rule may have a positive impact on entities that would now have the opportunity to generate advanced RINs, where they may have been unable to prior to this rule. The relatively minor corrections and modifications this rule makes to the March, 2010 RFS2 final regulations do not impact small entities.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. We have determined that this action will not result in expenditures of $100 million or more for the above parties and thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this action.

[14] The Monte Carlo analysis is described in EPA (2010a), Section 2.4.4.2.8.

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

This rule does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. This action does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

''This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.''

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order (E.O.) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. These amendments would not relax the control measures on sources regulated by the RFS regulations and therefore would not cause emissions increases from these sources.

K. Congressional Review Act

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. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. 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 the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

IV. Statutory Provisions and Legal Authority

Statutory authority for the rule finalized today can be found in section 211 of the Clean Air Act, 42 U.S.C. 7545. Additional support for today's rule comes from Section 301(a) of the Clean Air Act, 42 U.S.C. 7414, 7542, and 7601(a).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Agriculture, Air pollution control, Confidential business information, Diesel fuel, Energy, Forest and forest products, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Petroleum, Reporting and recordkeeping requirements.

Dated: November 30, 2012.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521(1), 7545 and 7601(a).

■ 2. Section 80.1426 (f)(1) is amended by adding two new entries in Table 1 for ''Ethanol'' to the end of the table and adding paragraph (f)(13) to read as follows:

§ 80.1426 How are RINs generated and assigned to batches of renewable fuel by renewable fuel producers or importers?

* * * * *

(f) * * *

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS

Fuel type	Feedstock	Production process requirements	D Code
*	*	*	*
Ethanol	Grain Sorghum	Dry mill process using biogas from landfills, waste treatment plants, and/or waste digesters, and/or natural gas, for process energy.	6

TABLE 1 TO § 80.1426—APPLICABLE D CODES FOR EACH FUEL PATHWAY FOR USE IN GENERATING RINS—Continued

Fuel type	Feedstock	Production process requirements	D Code
Ethanol	Grain Sorghum	Dry mill process, using only biogas from landfills, waste treatment plants, and/or waste digesters for process energy and for on-site production of all electricity used at the site other than up to 0.15 kWh of electricity from the grid per gallon of ethanol produced, calculated on a per batch basis.	5

* * * * *

(13) In order for facilities to satisfy the requirements of the advanced biofuel grain sorghum pathway all of the following conditions (in addition to other applicable requirements) apply.

(i) The quantity of electricity used at the site that is purchased from the grid must be measured and recorded by continuous metering.

(ii) All electricity used on-site that is not purchased from the grid must be produced on-site from biogas from landfills, waste treatment plants, and/or waste digesters.

(iii) For biogas directly transported to the facility without being placed in a commercial distribution system, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of biogas that specifies the volume of biogas, its heat content, and that the biogas must be derived from a landfill, waste treatment plant and/or waste digester.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume and heat content of biogas injected into the pipeline and the volume of gas used at the renewable fuel production facility are measured by continuous metering.

(iv) Reserved

(v) For biogas that has been gathered, processed and injected into a common carrier pipeline, all of the following conditions must be met:

(A) The producer has entered into a written contract for the procurement of biogas that specifies a specific volume of biogas, with a specific heat content, and that the biogas must be derived from a landfill, waste treatment plant and/or waste digester.

(B) The volume of biogas was sold to the renewable fuel production facility, and to no other facility.

(C) The volume of biogas that is withdrawn from the pipeline is withdrawn in a manner and at a time consistent with the transport of fuel between the injection and withdrawal points.

(D) The volume and heat content of biogas injected into the pipeline and the volume of gas used at the renewable fuel production facility are measured by continuous metering.

(E) The common carrier pipeline into which the biogas is placed ultimately serves the producer's renewable fuel facility.

(vi) No party relied upon the contracted volume of biogas for the creation of RINs.

* * * * *

■ 3. Section 80.1450 is amended by adding paragraph (b)(1)(ix) to read as follows:

§ 80.1450 What are the registration requirements under the RFS program?

* * * * *

(b) * * *

(1) * * *

(ix)(A) For a producer of ethanol from grain sorghum or a foreign ethanol producer making product from grain sorghum and seeking to have it sold as renewable fuel after addition of denaturant, provide a plan that has been submitted and accepted by U.S. EPA that includes the following information:

(*1*) Locations from which the biogas used at the facility was produced or extracted.

(*2*) Name of suppliers of all biogas used at the facility.

(*3*) An affidavit from each biogas supplier stating its intent to supply biogas to the renewable fuel producer or foreign ethanol producer, the quantity and energy content of the biogas that it intends to provide to the renewable fuel producer or foreign ethanol producer, and that the biogas will be derived solely from landfills, waste treatment plants, and/or waste digesters.

(*4*) If the producer intends to generate advanced biofuel RINs, estimates of the total amount of electricity used from the grid, the total amount of ethanol produced, and a calculation of the amount of electricity used from the grid per gallon of ethanol produced.

(*5*) If the producer intends to generate advanced biofuel RINs, a description of how the facility intends to demonstrate and document that not more than 0.15 kWh of grid electricity is used per gallon of ethanol produced, calculated on a per batch basis, at the time of RIN generation.

(B) [Reserved]

* * * * *

■ 4. Section 80.1451 is amended by redesignating paragraph (b)(1)(ii)(S) as (b)(1)(ii)(T) and adding a new paragraph (b)(1)(ii)(S) to read as follows:

§ 80.1451 What are the reporting requirements under the RFS program?

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(S) Producers of advanced biofuel using grain sorghum shall report all of the following:

(*1*) The total amount of electricity that is purchased from the grid and used at the site, based on metering, in kWh.

(*2*) Total amount of ethanol produced.

(*3*) Calculation of the amount of grid electricity used at the site per gallon of ethanol produced in each batch.

(*4*) Each batch number as specified in § 80.1452(b).

(*5*) Reference ID for documents required by § 80.1454(k)(2)(D).

* * * * *

■ 5. Section 80.1454(k) is revised to read as follows:

§ 80.1454 What are the recordkeeping requirements under the RFS program?

* * * * *

(k)(1) biogas and electricity in pathways involving feedstocks other than grain sorghum. A renewable fuel producer that generates RINs for biogas or electricity produced from renewable biomass (renewable electricity) for fuels that are used for transportation pursuant to § 80.1426(f)(1) and (11), or that uses process heat from biogas to generate RINs for renewable fuel pursuant to § 80.1426(f)(12) shall keep all of the following additional records:

(i) Contracts and documents memorializing the sale of biogas or renewable electricity for use as transportation fuel relied upon in § 80.1426(f)(10), § 80.1426(f)(11), or for use of biogas for use as process heat to make renewable fuel as relied upon in § 80.1426(f)(12), and the transfer of title of the biogas or renewable electricity

and all associated environmental attributes from the point of generation to the facility which sells or uses the fuel for transportation purposes.

(ii) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(10) that was delivered to the facility which sells or uses the fuel for transportation purposes.

(iii) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(11), or biogas relied upon under § 80.1426(f)(12), that was placed into the common carrier pipeline (for biogas) or transmission line (for renewable electricity).

(iv) Documents demonstrating the volume and energy content of biogas, or kilowatts of renewable electricity, relied upon under § 80.1426(f)(12) at the point of distribution.

(v) Affidavits from the biogas or renewable electricity producer and all parties that held title to the biogas or renewable electricity confirming that title and environmental attributes of the biogas or renewable electricity relied upon under § 80.1426(f)(10) and

(11) were used for transportation purposes only, and that the environmental attributes of the biogas relied upon under § 80.1426(f)(12) were used for process heat at the renewable fuel producer's facility, and for no other purpose. The renewable fuel producer shall create and/or obtain these affidavits at least once per calendar quarter.

(vi) The biogas or renewable electricity producer's Compliance Certification required under Title V of the Clean Air Act.

(vii) The biogas or renewable electricity producer's Compliance Certification required under Title V of the Clean Air Act.

(viii) Such other records as may be requested by the Administrator.

(2) Biogas and electricity in pathways involving grain sorghum as feedstock.

(i) Contracts and documents memorializing the purchase and sale of biogas and the transfer of biogas from the point of generation to the ethanol production facility.

(ii) If the advanced biofuel pathway is used, documents demonstrating the total kilowatt-hours (kWh) of electricity used from the grid, and the total kWh of grid electricity used on a per gallon of ethanol basis, pursuant to § 80.1426(f)(13).

(iii) Affidavits from the producer of biogas used at the facility, and all parties that held title to the biogas, confirming that title and environmental attributes of the biogas relied upon under § 80.1426(f)(13) were used for producing ethanol at the renewable fuel production facility and for no other purpose. The renewable fuel producer shall obtain these affidavits at least once per calendar quarter.

(iv) The biogas producer's Compliance Certification required under Title V of the Clean Air Act.

(v) Such other records as may be requested by the Administrator.

* * * * *

[FR Doc. 2012–30100 Filed 12–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8259]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

in this final rule have been adequately notified.

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

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

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

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region III				
Virginia:				
Chesterfield County, Unincorporated Areas.	510035	January 26, 1973, Emerg; March 16, 1983, Reg; December 18, 2012, Susp.	December 18, 2012	December 18, 2012.
Region IV				
Florida:				
Astatula, Town of, Lake County	120581	N/A, Emerg; March 4, 1998, Reg; December 18, 2012, Susp.	December 18, 2012	December 18, 2012.
Clermont, City of, Lake County	120133	February 18, 1975, Emerg; August 15, 1984, Reg; December 18, 2012, Susp.	do*	Do.
Eustis, City of, Lake County	120134	May 30, 1975, Emerg; June 4, 1987, Reg; December 18, 2012, Susp.	do	Do.
Fruitland Park, City of, Lake County.	120387	July 17, 1975, Emerg; September 5, 1984, Reg; December 18, 2012, Susp.	do	Do.
Groveland, City of, Lake County	120135	May 16, 1975, Emerg; September 5, 1984, Reg; December 18, 2012, Susp.	do	Do.
Howey in the Hills, Town of, Lake County.	120585	July 18, 1979, Emerg; August 15, 1984, Reg; December 18, 2012, Susp.	do	Do.
Lady Lake, Town of, Lake County	120613	November 14, 1984, Emerg; November 14, 1984, Reg; December 18, 2012, Susp.	do	Do.
Lake County, Unincorporated Areas.	120421	December 21, 1978, Emerg; April 1, 1982, Reg; December 18, 2012, Susp.	do	Do.
Leesburg, City of, Lake County	120136	July 23, 1975, Emerg; July 18, 1985, Reg; December 18, 2012, Susp.	do	Do.
Mascotte, City of, Lake County	120591	December 18, 1984, Emerg; December 18, 1984, Reg; December 18, 2012, Susp.	do	Do.
Minneola, City of, Lake County	120412	January 24, 1977, Emerg; August 15, 1984, Reg; December 18, 2012, Susp.	do	Do.
Montverde, Town of, Lake County	120614	N/A, Emerg; June 11, 1991, Reg; December 18, 2012, Susp.	do	Do.
Mount Dora, City of, Lake County	120137	February 3, 1975, Emerg; April 5, 1988, Reg; December 18, 2012, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Tavares, City of, Lake County	120138	May 15, 1975, Emerg; March 16, 1988, Reg; December 18, 2012, Susp.	.....do	Do.
Umatilla, City of, Lake County	120139	June 13, 1975, Emerg; April 3, 1989, Reg; December 18, 2012, Susp.	.....do	Do.
Region V				
Wisconsin:				
Marquette County, Unincorporated Areas..	550601	N/A, Emerg; January 27, 1992, Reg; December 18, 2012, Susp.	.....do	Do.
Montello, City of, Marquette County	550266	June 5, 1975, Emerg; November 16, 1990, Reg; December 18, 2012, Susp.	.....do	Do.
Neshkoro, Village of, Marquette County.	550267	July 21, 1975, Emerg; September 1, 1988, Reg; December 18, 2012, Susp.	.....do	Do.
Oxford, Village of, Marquette County.	550268	October 22, 1975, Emerg; August 16, 1988, Reg; December 18, 2012, Susp.	.....do	Do.
Westfield, Village of, Marquette County.	550269	June 26, 1975, Emerg; January 17, 1991, Reg; December 18, 2012, Susp.	.....do	Do.
Region VI				
Arkansas:				
Black Rock, City of, Lawrence County.	050118	June 18, 1975, Emerg; January 3, 1986, Reg; December 18, 2012, Susp.	.....do	Do.
Hoxie, City of, Lawrence County	050119	April 14, 1975, Emerg; April 15, 1980, Reg; December 18, 2012, Susp.	.....do	Do.
Imboden, Town of, Lawrence County.	050120	December 28, 1982, Emerg; September 4, 1985, Reg; December 18, 2012, Susp.	.....do	Do.
Lawrence County, Unincorporated Areas..	050443	August 30, 1982, Emerg; June 3, 1991, Reg; December 18, 2012, Susp.	.....do	Do.
Portia, Town of, Lawrence County	050121	May 5, 1975, Emerg; August 31, 1982, Reg; December 18, 2012, Susp.	.....do	Do.
Powhatan, Town of, Lawrence County.	050572	August 17, 1978, Emerg; March 22, 1982, Reg; December 18, 2012, Susp.	.....do	Do.
Ravenden, Town of, Lawrence County.	050470	December 22, 1982, Emerg; August 19, 1985, Reg; December 18, 2012, Susp.	.....do	Do.
Sedgwick, Town of, Lawrence County.	050576	February 1, 1988, Emerg; June 16, 2009, Reg; December 18, 2012, Susp.	.....do	Do.
Walnut Ridge, City of, Lawrence County.	050122	June 4, 1975, Emerg; August 1, 1987, Reg; December 18, 2012, Susp.	.....do	Do.
Region VII				
Iowa:				
Coulter, City of, Franklin County	190388	September 3, 2010, Emerg; N/A, Reg; December 18, 2012, Susp.	.....do	Do.
Franklin County, Unincorporated Areas..	190867	January 13, 2010, Emerg; N/A, Reg; December 18, 2012, Susp.	.....do	Do.
Hampton, City of, Franklin County	190131	August 16, 1974, Emerg; May 1, 1979, Reg; December 18, 2012, Susp.	.....do	Do.
Sheffield, City of, Franklin County	190132	November 21, 1990, Emerg; July 1, 1991, Reg; December 18, 2012, Susp.	.....do	Do.
Region VIII				
Colorado:				
Boulder, City of, Boulder County	080024	April 16, 1971, Emerg; July 17, 1978, Reg; December 18, 2012, Susp.	.....do	Do.
Boulder County, Unincorporated Areas..	080023	May 14, 1971, Emerg; February 1, 1979, Reg; December 18, 2012, Susp.	.....do	Do.
Erie, Town of, Boulder County	080181	July 22, 1975, Emerg; October 17, 1978, Reg; December 18, 2012, Susp.	.....do	Do.
Jamestown, Town of, Boulder County.	080216	June 25, 1975, Emerg; July 18, 1983, Reg; December 18, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Lafayette, City of, Boulder County	080026	August 7, 1975, Emerg; March 18, 1980, Reg; December 18, 2012, Susp.	.....do	Do.
Longmont, City of, Boulder County	080027	November 26, 1971, Emerg; July 5, 1977, Reg; December 18, 2012, Susp.	.....do	Do.
Louisville, City of, Boulder County	085076	March 3, 1972, Emerg; May 4, 1973, Reg; December 18, 2012, Susp.	.....do	Do.
Nederland, Town of, Boulder County.	080255	May 2, 1977, Emerg; August 1, 1979, Reg; December 18, 2012, Susp.	.....do	Do.
Superior, Town of, Boulder County	080203	July 15, 1975, Emerg; September 28, 1979, Reg; December 18, 2012, Susp.	.....do	Do.
Utah: Annabella, Town of, Sevier County.	490122	April 14, 1976, Emerg; October 30, 1979, Reg; December 18, 2012, Susp.	.....do	Do.
Central Valley, Town of, Sevier County.	495519	November 17, 2011, Emerg; N/A, Reg; December 18, 2012, Susp.	.....do	Do.
Elsinore, Town of, Sevier County ..	490125	September 26, 1975, Emerg; August 14, 1979, Reg; December 18, 2012, Susp.	.....do	Do.
Joseph, Town of, Sevier County	490127	March 23, 1976, Emerg; August 28, 1979, Reg; December 18, 2012, Susp.	.....do	Do.
Koosharem, Town of, Sevier County.	490128	July 16, 1979, Emerg; February 2, 1984, Reg; December 18, 2012, Susp.	.....do	Do.
Richfield, City of, Sevier County	490131	September 26, 1974, Emerg; September 29, 1986, Reg; December 18, 2012, Susp.	.....do	Do.
Sevier County, Unincorporated Areas..	490121	November 14, 1975, Emerg; July 1, 1986, Reg; December 18, 2012, Susp.	.....do	Do.
Region IX				
California:				
Tulare County, Unincorporated Areas..	065066	January 29, 1971, Emerg; September 29, 1986, Reg; December 18, 2012, Susp.	.....do	Do.

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

Dated: November 26, 2012.

David L. Miller,

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

[FR Doc. 2012–30260 Filed 12–14–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain

management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Midland County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1223			
Tittabawassee River	Approximately 0.43 mile upstream of Pere Marquette Rail-Trail of Mid-Michigan.	+631	Township of Edenville, Township of Jerome, Village of Sanford.
	Approximately 1 mile upstream of Meridian Road	+638	
Tobacco River	At the Tittabawassee River confluence	+638	Township of Edenville.
	Approximately 0.85 mile upstream of the Tittabawassee River confluence.	+640	

* National Geodetic Vertical Datum.
\+ North American Vertical Datum.
\# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Township of Edenville

Maps are available for inspection at the Township Hall, 467 Moore Street, Edenville, MI 48620.

Township of Jerome

Maps are available for inspection at the Jerome Township Hall, 3243 North West River Road, Sanford, MI 48657.

Village of Sanford

Maps are available for inspection at the Village Hall, 106 Lincoln Street, Sanford, MI 48657.

Saline County, Missouri, and Incorporated Areas Docket No.: FEMA–B–1158			
Bell Branch (backwater effects from Missouri River).	From the confluence with the Missouri River to approximately 0.76 mile upstream of the confluence with the Missouri River.	+657	City of Miami, Unincorporated Areas of Saline County.
Missouri River	Approximately 1,400 feet upstream of the Cooper County boundary.	+611	City of Miami, Village of Arrow Rock, Village of Grand Pass, Unincorporated Areas of Saline County
	At the Lafayette County boundary	+672	
North Fork Finney Creek	Approximately 850 feet downstream of Fairground Road	+703	Unincorporated Areas of Saline County.
	Approximately 900 feet downstream of Arrow Street	+721	
North Fork Finney Creek Tributary.	At the confluence with North Fork Finney Creek	+708	City of Marshall, Unincorporated Areas of Saline County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 60 feet downstream of Miami Avenue	+735	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Marshall

Maps are available for inspection at City Hall, 214 North Lafayette Avenue, Marshall, MO 65340.

City of Miami

Maps are available for inspection at the Saline County Courthouse, 19 East Arrow Street, Marshall, MO 65340.

Village of Arrow Rock

Maps are available for inspection at the Saline County Courthouse, 19 East Arrow Street, Marshall, MO 65340.

Village of Grand Pass

Maps are available for inspection at the Saline County Courthouse, 19 East Arrow Street, Marshall, MO 65340.

Unincorporated Areas of Saline County

Maps are available for inspection at the Saline County Courthouse, 19 East Arrow Street, Marshall, MO 65340.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 28, 2012.

James A. Walke,

Acting Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–30261 Filed 12–14–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 120306154–2241–02]

RIN 0648–XC382

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

ACTION: Temporary rule; inseason quota transfer and General category retention limit adjustment.

SUMMARY: NMFS is transferring 40 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category for the remainder of the 2012 fishing year. NMFS also is adjusting the Atlantic tunas General category BFT daily retention limit to two large medium or giant BFT for the January 2013 subquota period (i.e., from January 1 through March 31, 2013, or until the available subquota for that period is reached, whichever comes first). This action is based on consideration of the regulatory determination criteria regarding inseason adjustments, and applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat category permitted vessels when fishing commercially for BFT.

DATES: The quota transfer is effective December 15, 2012, through December 31, 2012. The General category retention limit adjustment is effective January 1, 2013, through March 31, 2013.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and in accordance with implementing regulations. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota.

The 2010 ICCAT recommendation regarding western BFT management resulted in baseline U.S. quotas for 2011 and for 2012 of 923.7 mt (not including the 25 mt ICCAT allocated to the United States to account for bycatch of BFT in pelagic longline fisheries in the Northeast Distant Gear Restricted Area). The 2011 BFT quota rule (76 FR 39019, July 5, 2011) implemented the base quota of 435.1 mt for the General category fishery (the commercial tunas fishery in which handgear is used). Each of the General category time periods (January, June through August, September, October through November, and December) is allocated a portion of the annual General category quota. The 2012 BFT quota specifications (77 FR 44161, July 27, 2012) also put 41.8 mt into the Reserve category for inseason adjustments, and potential quota transfers, scientific research collection, and accounting for potential overharvest in any category except the Purse Seine category.

The 2012 General category fishery is open until December 31, 2012, or until the General category quota is reached, whichever comes first. The 2013 General category fishery will open on

January 1, 2013. This fishery may remain open until the ''January subquota'' amount is reached or March 31 (whichever comes first). The General category will then reopen for the remainder of the 2013 fishing year on June 1, 2013.

Consistent with the allocation scheme established in the Consolidated HMS FMP and implementing regulations, the baseline category subquotas were established in the 2011 BFT quota rule as follows: 23.1 mt for January; 217.6 mt for June through August; 115.3 mt for September; 56.6 mt for October through November; and 22.6 mt for December. Although NMFS published quota specifications for 2012 (77 FR 44161, July 27, 2012), the baseline General category quota and subquotas as codified have not changed from the amounts established for the 2011 fishing year. The 2012 ICCAT recommendation regarding western BFT management did not result in changes to the baseline U.S. quota for 2013.

Inseason Transfer to the General Category

Under § 635.27(a)(7), NMFS has the authority to allocate any portion of the Reserve category to any other category, other than the Angling category school BFT subquota (for which there is a separate reserve), after considering determination criteria provided under § 635.27(a)(8), which include: The usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; the catches of the particular category quota to date and the likelihood of closure of that segment of the fishery if no adjustment is made; the projected ability of the vessels fishing under the particular category quota to harvest the additional amount of BFT before the end of the fishing year; the estimated amounts by which quotas for other gear categories of the fishery might be exceeded; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal distribution, abundance, or migration patterns of BFT; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and a review of dealer reports, daily landing trends, and the availability of the BFT on the fishing grounds.

NMFS has considered the determination criteria regarding inseason adjustments and their applicability to the General category fishery for the remainder of the 2012 fishing year. These considerations include, but are not limited to, the following:

As of November 28, 2012, the General category has landed 428 mt, or 98.4 percent of its 2012 quota of 435.1 mt. Without a quota transfer at this time, most or all of the December subquota established in the 2011 final quota rule per the Consolidated HMS FMP (i.e., 5.2 percent of the General category quota, which is 22.6 mt for December 2012) effectively would not be available to fishermen who participate in the December fishery because nearly the entire General category quota has been used as of the end of November. Overall, approximately 72 percent (536 mt) of the total of the commercial BFT subquotas (747.2 mt, as published in the 2012 BFT quota specifications) has been harvested as of November 28, 2012. The Purse Seine, Harpoon, and Trap categories are not expected to use all of their available 2012 quotas (i.e., approximately 175 mt or more may remain unused). Also, as set out in the 2012 BFT quota specifications, NMFS will need to account for 2012 BFT landings and dead discards within the U.S. quota, consistent with ICCAT recommendations.

A transfer from the Reserve category decreases the amount of unused quota available, if needed, to account for all landings and dead discards within the total 2012 U.S. quota once the dead discard information is available. However, our best estimates, in part based on a review of dead discard amounts over prior years and an initial examination of preliminary recreational landings estimates, indicate that the risk of exceeding the overall quota is very small. In the process of setting the 2012 BFT specifications, NMFS has already accounted up front for half of the current best estimate of the 2012 bluefin tuna dead discards, and held a portion of the 2011 underharvest in the Reserve category rather than allocating it fully, indicating it could provide for greater management and accounting flexibility later in the fishing year. A quota transfer at this time would provide additional opportunities to harvest the available U.S. bluefin quota without exceeding it, while preserving the opportunity for General category fishermen to participate in the winter mid-Atlantic bluefin fishery that typically begins in December. In addition, several Atlantic tuna dealers are currently providing biological samples from BFT caught by General category vessels to support ongoing NMFS-approved research regarding reproduction status and feeding habits. Continued BFT landings would support the collection of a broad range of data for these studies and for stock monitoring purposes.

Based on the considerations above, as well as the available quota, fishery performance in recent years, and the availability of BFT on the fishing grounds, NMFS has determined that a quota transfer is warranted and transfers 40 mt from the Reserve category to the General category. Thus, the General category quota is adjusted to 475.1 mt for the 2012 fishing year. Once the adjusted General category quota has been reached, or on December 31, 2012 (whichever comes first), the 2012 General category fishery will be closed. The 2013 General category fishery begins January 1, 2013.

Adjustment of General Category Daily Retention Limit

Under § 635.23(a)(4), NMFS may increase or decrease the daily retention limit of large medium and giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) over a range of zero to a maximum of five per vessel based on consideration of the relevant criteria provided under § 635.27(a)(8), and listed above.

For the 2012 fishing year to date, NMFS has adjusted the General category limit from the default level of one large medium or giant BFT as follows: Two large medium or giant BFT for January (76 FR 76900, December 9, 2011), and three large medium or giant BFT for June through August (77 FR 28496, May 15, 2012), and three large medium or giant BFT for September through December (77 FR 53150, August 31, 2012). Unless changed, the General category daily retention limit starting on January 1 would be the default retention limit of one large medium or giant BFT per vessel per day/trip (§ 635.23(a)(2)). This default retention limit applies to General category permitted vessels and to HMS Charter/Headboat category permitted vessels when fishing commercially for BFT.

NMFS has considered the set of criteria cited above and their applicability to the General category BFT retention limit for the January 2013 General category fishery. These considerations include, but are not limited to, the following: Biological samples collected from BFT landed by General category fishermen and provided by BFT dealers continue to provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. As this action would be taken consistent with the quotas previously established and analyzed in the 2011 BFT quotas final rule (76 FR 39019, July 5, 2011), and

consistent with objectives of the Consolidated HMS FMP, it is not expected to negatively impact stock health.

A principal consideration is the objective of providing opportunities to harvest the full General category quota without exceeding it based upon the Consolidated HMS FMP goal: ''Consistent with other objectives of this FMP, to manage Atlantic HMS fisheries for continuing optimum yield so as to provide the greatest overall benefit to the Nation, particularly with respect to food production, providing recreational opportunities, preserving traditional fisheries, and taking into account the protection of marine ecosystems.'' Under the two-fish limit that applied in January 2012, the available subquota was reached on January 22. However, in other recent years, there has been an underharvest of the January subquota. Under the two-fish limit that applied during January 2011 and January 2010 (when fishing on the January subquota was authorized for January 1 through 31), January landings were 34 percent of the baseline subquota (7.9 mt out of 23.1 mt) and 11 percent (2.7 mt out of 23.8 mt), respectively. Thus, the default one-fish limit likely would be overly restrictive and would not support the objective of providing opportunities to harvest the full January subquota, without exceeding it. Based upon the ICCAT recommended quota, the baseline 2013 General category January subquota is 23.1 mt. Although NMFS has the authority to set the daily retention limit higher than two BFT, under a higher limit (and fish availability), the rate of harvest of the January subquota could be accelerated and result in a relatively short fishing season. A short fishing season may preclude or reduce fishing opportunities for some individuals or geographic areas. Therefore, in order to maintain an equitable distribution of fishing opportunities, a retention limit closer to the low end of the allowable range of retention limits (i.e., two fish) is warranted. A potential ancillary benefit from a subquota period that is open for an extended duration is that any scientific information (including biological samples) collected from BFT may be from fish collected over a broader temporal and geographic range than currently sampled. Lastly, fishery participants have supported this retention limit in prior seasons.

Therefore, based on these considerations, NMFS has decided that a two-fish General category retention limit is warranted for the January subquota. It would provide a reasonable opportunity to harvest the U.S. quota of BFT without exceeding it, while maintaining an equitable distribution of fishing opportunities, help achieve optimum yield in the General category BFT fishery, allow collection of a broad range of data for stock monitoring purposes, and be consistent with the objectives of the Consolidated HMS FMP. Therefore, NMFS increases the General category retention limit from the default limit (one) to two large medium or giant BFT per vessel per day/trip, effective January 1, 2013, through March 31, 2013, or until the 23.1- mt January subquota is harvested, whichever comes first.

Regardless of the duration of a fishing trip, the daily retention limit applies upon landing. For example, whether a vessel fishing under the General category limit takes a two-day trip or makes two trips in one day, the daily limit of two fish may not be exceeded upon landing. This General category retention limit is effective in all areas, except for the Gulf of Mexico, and applies to those vessels permitted in the General category as well as to those HMS Charter/Headboat permitted vessels fishing commercially for BFT.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely through the mandatory dealer landing reports, which NMFS requires to be submitted within 24 hours of a dealer receiving BFT. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments or closure are necessary to ensure available quota is not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access *http://hmspermits.noaa.gov,* for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the Consolidated HMS FMP provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment to implement the quota transfer for the remainder of 2012 is impracticable as it would preclude NMFS from acting promptly to allow continued harvest of BFT that are available on the fishing grounds via a quota transfer from the Reserve category to the General category. Affording prior notice and opportunity for public comment to adjust the retention limit for the portion of the General category season that begins January 1, 2013, is impracticable as NMFS needs to wait until it has necessary data and information about the fishery before it can select the appropriate retention limit for a time period prescribed by regulation. By the time NMFS has the needed data, implementing the retention limit following a public comment period would preclude fishermen from harvesting BFT that are legally available consistent with all of the regulatory criteria. Analysis of available data shows that the General category BFT retention limits may be increased with minimal risks of exceeding the ICCAT-allocated quota.

Delays in increasing these retention limits would adversely affect those General and Charter/Headboat category vessels that would otherwise have an opportunity to harvest more than the default retention limit of one BFT per day/trip and may exacerbate the problem of low catch rates and quota rollovers. Limited opportunities to harvest the respective quotas may have negative social and economic impacts for U.S. fishermen that depend upon catching the available quota within the time periods designated in the Consolidated HMS FMP. Adjustment of the retention limit needs to be effective January 1, 2013, or as soon as possible thereafter, to minimize any unnecessary disruption in fishing patterns, to allow the impacted sectors to benefit from the adjustment, and to provide fishing opportunities for fishermen who have access to the fishery only during this time period. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and 635.27(a)(7), and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 11, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–30322 Filed 12–12–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 77, No. 242

Monday, December 17, 2012

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

DEPARTMENT OF ENERGY

10 CFR Parts 430 and 431

[Docket No. EERE–2012–BT–TP–0003]

RIN 1904–AC70

Amendments and Correction to Petitions for Waiver and Interim Waiver for Consumer Products and Commercial and Industrial Equipment

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (''DOE'' or the ''Department'') proposes amendments and corrections to portions of its regulations governing petitions for waiver and interim waiver from DOE test procedures. In finalizing the March 7, 2011 final certification, compliance and enforcement rule for consumer products and commercial equipment, DOE inadvertently deleted language pertaining to petitions for waiver and interim waiver of DOE's test procedure requirements for consumer products. This notice addresses that error by proposing to restore, with minor amendments, the omitted text. DOE also proposes a process by which, within 60 days after DOE grants a waiver for a product employing a particular technology, other manufacturers of that product employing a technology or characteristic that results in the same need for a waiver would submit a petition for waiver. This process would ensure that manufacturers of similar products test and rate those products in a comparable manner. The proposed rule also sets forth a process for manufacturers to request rescission or modification of a waiver if they determine that the waiver is no longer needed, or for other appropriate reasons. DOE also proposes to make other minor modifications to the waiver provisions for both consumer products and commercial equipment and to clarify certain aspects related to the submission and processing of a waiver petition.

DATES: DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) no later than January 16, 2013. See section V, ''Public Participation,'' of this NOPR for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *http://www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2010–BT–CE–0014, by any of the following methods:

- *Email: Amendments-Correction-2012-TP-0003@ee.doe.gov.* Include EERE–2012–BT–TP–0003 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Revisions to Energy Efficiency Enforcement Regulations, EERE–2012–BT–TP–0003, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 586–2945. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Phone: (202) 586–2945. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. Note that all comments received will be posted without change, including any personal information provided.

Docket: For access to the docket to read background documents, or comments received, go to the *Federal eRulemaking Portal* at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, 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) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov.*

Ms. Celia Sher, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6122. Email: *Celia.Sher@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Authority

Title III of the Energy Policy and Conservation Act of 1975, as amended, (''EPCA'' or the ''Act'') sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) [1]

This proposed rule involves the regulatory provisions governing the submission and processing of test procedure waivers for both consumer products under Part A of EPCA and commercial equipment under Part A–1. EPCA directs DOE to prescribe test procedures that are reasonably designed to produce results reflecting the energy efficiency, energy use, and estimated annual operating costs for those products, and that are not unduly burdensome to conduct. 42 U.S.C. 6293(b)(3), 6314(a)(2). DOE's regulations in Title 10 of the Code of Federal Regulations (CFR), Section 430.27 (consumer products) and Section 431.401 (commercial equipment) contain provisions allowing a person to seek a waiver from the test procedure requirements if certain conditions are met. A waiver allows manufacturers to use an alternative test procedure in situations where the DOE test procedure cannot be used to test the products or equipment, or where use of the DOE test procedure would provide unrepresentative results.

II. Background

On March 7, 2011, DOE's Office of Energy Efficiency and Renewable Energy (''EERE'') published a final rule titled ''Energy Conservation Program: Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment.'' 76 FR 12421. Among other things, the

[1] For editorial reasons, Parts B (consumer products) and C (commercial equipment) of Title III of EPCA were re-designated as parts A and A–1, respectively, in the United States Code.

rule added an electronic filing option for submitting petitions for waiver from the test procedure requirements for consumer products located at 10 CFR 430.27. Since the publication of this rule, it has come to the Department's attention that, due to a drafting oversight, certain parts of the existing regulatory text in 10 CFR 430.27 were inadvertently deleted by the rule. Consequently, the provisions formerly located at 10 CFR 430.27(b)(1)(i) through (iv), which address what must be included in a waiver petition for consumer products, no longer exist in the current regulatory text. This notice proposes to correct DOE's existing regulations in 10 CFR 430.27 by reinstating paragraphs (b)(1)(i) through (iv) in 10 CFR 430.27, with minor amendments to paragraph (iii). DOE also proposes a process by which, within 60 days after DOE grants a waiver for a product employing a particular technology, other manufacturers of that product employing a technology or characteristic that results in the same need for a waiver, as specified by DOE in the published petition for waiver in the **Federal Register**, would submit a petition for waiver. (Some recent examples of technologies or characteristics for which multiple manufacturers had the same need for a waiver include large-capacity clothes washers, refrigerator-freezers that employ multiple defrost cycles, and dishwashers with a water softener regeneration system.) This process would ensure that manufacturers of similar products test and rate those products in a comparable manner. The proposed rule also sets forth a process for manufacturers to request rescission or modification of a waiver if they determine that the waiver is no longer needed, or for other appropriate reasons. DOE also proposes to make other minor amendments to its waiver provisions in 10 CFR parts 430 and 431, which include clarifying manufacturer responsibility under the rules and making clear that manufacturers of all types of covered commercial and industrial equipment are eligible to petition for waiver. The proposals are described in more detail in the following section.

III. Discussion of Specific Revisions to Waiver Provisions

In this proposed rule, DOE proposes to add an introductory paragraph to paragraphs 430.27(a) and 431.401(a) to clarify that obtaining a waiver or interim waiver does not exempt a manufacturer of consumer products or commercial equipment from compliance with any other applicable regulatory requirements contained in 10 CFR parts 430 and 431, or the certification and compliance requirements of 10 CFR part 429. DOE believes this new language will make clear that a waiver is solely an authorization to use an alternative test procedure method, and does not relieve the manufacturer from any other regulatory requirements.

With regard to waiver applications for commercial equipment addressed in part 431, DOE is proposing to modify section 431.401(a)(1) to expand the waiver provisions to apply to manufacturers of all types of covered commercial and industrial equipment, rather than just the five types of equipment referenced in the current regulations (i.e., commercial warm air furnaces; commercial packaged boilers; small, large, and very large commercial package air conditioning and heating equipment; packaged terminal air conditioners and packaged terminal heat pumps; and commercial water heaters and hot water supply boilers (other than commercial heat pump water heaters)). This change will ensure that the waiver provisions are available to manufacturers of all commercial equipment types, not limited to only certain equipment types. As a related action, DOE is proposing to amend the definition of ''private labeler'' in section 431.2 to reflect that the term applies to all products covered under part 431, and not only to commercial HVAC and WH products, as the definition currently states. Since this term could be applicable to persons who may submit petitions for waivers, or entities potentially affected by waivers issued under section 431.401, this change will ensure that the term is applied uniformly to all products.

To clarify compliance obligations further, DOE proposes to make explicit in sections 430.27(a)(3) and 431.401(a)(3) that, while any person may petition for waiver and interim waiver, the ultimate responsibility for complying with the waiver provisions lies with the manufacturer, which, by statutory definition, includes importers. DOE believes this additional language will make clear that the compliance burden is on the manufacturer, regardless of which entity submits the waiver.

DOE also proposes to restore, with minor amendments, the inadvertently omitted provisions in section 430.27(b)(1). These provisions would set forth information that must be included in a petition for waiver of the applicable test procedure requirements for consumer products. In particular, the provisions require petitioners to: (1) Specify the basic model(s) to which the waiver applies; (2) identify other manufacturers of similar products; (3) include any known alternate test procedures of the basic model, with the slight modification that any test procedures identified must be specific to the product type; (4) sign the petition, and (5) include any request for confidential treatment for any information deemed confidential. The reinstatement of these provisions would correct a drafting error and would not impose any new regulatory requirements on manufacturers, because these provisions had been part of this section prior to their removal.

This document also proposes to amend sections 430.27(b)(1)(i) and 431.401(b)(1)(i) to require waiver applicants to identify each brand name under which the basic model specified in the waiver will be distributed in commerce in the U.S. While this proposed amendment would not prohibit third party representatives such as original equipment manufacturers (''OEMs'') from submitting waiver applications on behalf of an importer, such OEMs would be required to include all brand names and applicable basic model numbers for which the waiver will apply. DOE believes this requirement would assist the Department in identifying the market-based brand name of a basic model addressed by a waiver granted by DOE. This information should be identical to the information submitted in the certification report for a given basic model.

DOE also proposes to amend sections 430.27(c) and 431.401(c) to require petitioners to notify, on publication of the waiver or interim waiver, all other manufacturers that manufacture products in the same product class as the basic models for which the petition for waiver or interim waiver was requested. In addition, if the technology or characteristic at issue in the petition is known by the petitioner to be used in multiple product classes, notification must also be sent to manufacturers of products in those other product classes. In many cases, notification of all manufacturers of the same product type, as set forth in sections 322 and 325 of EPCA, leads to over-notification. Therefore, DOE proposes to limit manufacturer notification to those manufacturers who manufacture products in the same product class as the basic model(s) specified in the waiver petition, as well as in other product classes where the technology or feature at issue in the waiver is used. In addition, DOE proposes to require notification upon publication of the interim waiver. DOE is proposing this

requirement to address manufacturer concerns about being required to notify other manufacturers (who are also likely to be competitors of the petitioner) prior to the marketing of the basic model(s) specified in the petition. Once a manufacturer receives an interim waiver, the basic model(s) covered in the interim waiver may be distributed in commerce, so competitive concerns are less likely to be an issue.

Additionally, DOE proposes to amend sections 430.27(e) and 431.401(e)(1) to state that, if administratively feasible, DOE will notify an applicant in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the petition. While DOE will continue to notify applicants of its decisions on interim waivers as soon as possible, DOE's experience has been that providing a response within 15 business days is often not feasible.

DOE would also amend sections 430.27(h) and 431.401(e)(4) to specify that an interim waiver would expire within 1 year of issuance unless either of the following occurs first: (1) DOE publishes a final decision and order in the **Federal Register**; or (2) DOE publishes a new or amended test procedure that addresses the issues presented in the waiver, and manufacturers are required to use that test procedure to demonstrate compliance with the applicable standard. This amendment will obviate the need for manufacturers to request an extension of the interim waiver after 180 days, while providing sufficient time for DOE to consider the issues presented in the petition and publish a decision and order or amend the test procedure to eliminate the continued need for the waiver. DOE further proposes to amend the existing 430.27(m) and 431.401(g) (which would be renumbered as 430.27(p) and 431.401(j)) to provide that, as soon as is practicable after DOE grants a waiver, DOE will publish a proposed rule to amend the relevant test procedure regulation to eliminate the need for the continuation of the waiver. The waiver would then terminate on the date when use of the amended test procedure is required to be used by manufacturers to demonstrate compliance with the applicable energy or water conservation standard. Continuation of the waiver until the date when use of an amended test procedure is required to demonstrate compliance, rather than the effective date of that test procedure (i.e., the date on which that procedure officially becomes part of the Code of Federal Regulations), will prevent situations where a waiver has expired while the test procedure is effective but its use is not yet required. DOE will continue to update its test procedures in a timely manner to address issues presented in petitions for waiver.

DOE notes that the metrics for measuring energy or, where appropriate, water consumption or efficiency are established either by EPCA or in DOE rulemakings to set energy conservation standards for a particular covered product or type of covered equipment. Therefore, while a test procedure waiver or interim waiver can provide an alternate test method for a particular basic model, it is inappropriate for a waiver to provide an alternative metric by which to certify compliance with an applicable standard or make representations as to the energy and water use of that basic model. As a result, DOE proposes to amend sections 430.27(a) and 431.401(a) to clarify that a waiver or interim waiver cannot change the metric by which the energy use or efficiency of a basic model is described.

DOE would also add new sections 430.27(m) and 431.401(g) that would specify how manufacturers would certify basic models identified in a petition for an interim waiver and waiver if the test procedure prescribed in the interim waiver differs from the test procedure prescribed in the subsequent decision and order on the waiver. DOE proposes that a manufacturer who has already certified basic models using the procedure permitted in DOE's grant of an interim test procedure waiver does not need to re-test and re-rate those basic models so long as certain criteria are met. The manufacturer would need to have used that alternative procedure after DOE granted the company's interim waiver request, and changes must not have been made to those basic models that would cause them to use more energy or otherwise be less energy efficient. In addition, when DOE publishes a decision and order on a petition for waiver in the **Federal Register**, a manufacturer must use the test procedure contained in that decision and order to rate any basic models covered by the decision and order that have not yet been certified to DOE. Finally, the test procedure in a decision and order must be used for all future testing for any basic models covered by the decision and order.

DOE also proposes to add new sections 430.27(n) and 431.401(h) to specify that once DOE has granted a petition for waiver for a product or type of equipment employing a particular technology, other manufacturers of that product or equipment employing a technology or characteristic that results in the same need for a waiver, as specified by DOE in the published petition for waiver in the **Federal Register**, must submit a petition for waiver within 60 days. (Some recent examples of technologies or characteristics for which multiple manufacturers had the same need for a waiver include large-capacity clothes washers, refrigerator-freezers that employ multiple defrost cycles, and dishwashers with a water softener regeneration system.) This proposal is intended to ensure that all products employing technologies that cannot be tested under DOE's test procedure, or where testing products according to DOE's test procedure would lead to unrepresentative results, are rated in a comparable manner. This change would minimize public confusion regarding manufacturer representations of energy efficiency and would improve DOE's certification procedures for covered products and equipment.

The proposed rule would also add new sections 430.27(o) and 431.401(i) to set forth a process for manufacturers to request rescission or modification of a waiver if they determine that the waiver is no longer needed, or for other appropriate reasons. The provision would set forth the process for DOE to consider and, as appropriate, grant the requested rescission or modification. Subsequent to the effective date of a rescission or modification, the manufacturer would be required to use the applicable DOE test procedure. DOE also proposes to add language that would clarify that DOE may revoke or modify a waiver or interim waiver if it determines that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. Additionally, the proposed rule allows for petitioners to request that DOE extend the scope of a waiver or interim waiver to include additional basic models employing the same technology as the basic models set forth in the original petition. Notice of any such extension would be published in the **Federal Register**.

To keep the regulatory text current, DOE is also proposing to remove all references to the ''Assistant Secretary for Conservation and Renewable Energy'' in 10 CFR 430.27 and the ''Assistant Secretary for Energy Efficiency and Renewable Energy'' in 10 CFR 431.401 and replace these terms with ''DOE.''

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs (OIRA) of 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 an initial regulatory flexibility analysis (IRFA) 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 E.O. 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 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 rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site, *http://energy.gov/gc/office-general-counsel.*

DOE reviewed the waiver requirements being proposed under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have a significant impact on a substantial number of small entities. The factual basis for this certification is set forth below.

The proposed rule may affect small manufacturers of covered consumer products and commercial equipment. DOE does not, however, expect that the impact of the proposal would be significant. The regulatory provisions proposed would clarify the effect of the waiver (the waiver does not release a manufacturer from complying with the applicable standard and certification requirements) and the responsibility for compliance with the waiver provisions (the manufacturer is responsible for the compliance regardless of who submits the petition). The rule would also specify how manufacturers would certify basic models specified in a petition for an interim waiver and waiver if the test procedure prescribed in the interim waiver differs from the test procedure prescribed in the subsequent decision and order on the waiver. This proposed language clarifies existing regulatory requirements and does not add new regulatory burden. The reinstatement of the provisions of 10 CFR 430.27(b)(1) that were inadvertently removed is also not expected to impose a significant regulatory burden. These provisions require petitioners to: specify the basic model(s) to which the waiver applies, identify other manufacturers of similar products, include any known alternate test procedures of the basic model, sign the petition, and include a request seeking confidential treatment for any information deemed confidential. Manufacturers have already been complying with these requirements since they were enacted on November 26, 1986. 51 FR 42826.

In addition, the new waiver requirements would require petitioners to specify the brand names under which a basic model would be sold and expand the eligibility for waivers to all types of commercial equipment. These requirements are not expected to result in a significant impact, as they are consistent with the purpose of the existing waiver process, which is to assist manufacturers in testing their equipment to demonstrate compliance with DOE standards. The new waiver requirements would also amend the timelines for the issuance of an interim waiver from 15 to 30 days, a provision that manufacturers can account for in their product development and marketing schedule without significant difficulty. The proposed requirements would also extend the time periods covered by an interim waiver or waiver, providing more certainty for manufacturers as they rate, certify and market their products. The new proposal to clarify that DOE would not change the established metric in a test procedure waiver is also not expected to result in a significant impact because the established metric is already required as a result of the applicable energy conservation standard.

DOE also proposes to specify that once DOE has granted a petition for waiver for a product or type of equipment employing a particular technology, other manufacturers of that product or equipment employing a technology or characteristic that results in the same need for a waiver must submit a petition for waiver within 60 days. DOE does not expect this requirement to impose significant additional burden because, given that the products or equipment produced by these manufacturers employ a technology that provides the same function that led DOE to grant a waiver in the first instance, these manufacturers would likely need to petition for waiver under DOE's existing regulations. This provision indicates the timeframe in which this process must be completed.

The proposed rule would also set forth a process for manufacturers to request rescission or modification of a waiver. This provision would allow manufacturers to notify DOE if they believe a previously granted waiver is no longer needed, or that rescission or modification is necessary for other appropriate reasons. The provision then sets forth the process for DOE to consider and, as appropriate, grant the request. The intent of this provision is to reduce manufacturer burden by providing a process for manufacturers to request rescission or modification of a waiver that they believe is inappropriate or unworkable. Similarly, the rule would provide a process by which DOE may revoke or modify a previously granted waiver if DOE determines that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. In such cases, the manufacturer would be required to test its products or equipment using the DOE test procedure. DOE does not believe that this provision would result in a significant impact on small manufacturers. Given that a revocation or modification is only issued if the factual basis underlying the original petition was not correct in the first instance, EPCA would already require the manufacturers to use the applicable DOE test procedure.

For the reasons stated above, DOE certifies that this proposed rule, if adopted, would not result in a significant impact on a substantial number of small entities. Accordingly, DOE has not prepared an initial regulatory flexibility analysis for this rulemaking. DOE will transmit this certification to the Small Business Administration (SBA) as required by 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

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. Public reporting burden for the submission of a petition for waiver or interim waiver, or a request for rescission, is estimated to average 5 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.

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 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 or *Amendments-Correction-2012-TP-0003@ee.doe.gov,* and by email to *OIRA_Submission@omb.eop.gov.*

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

DOE has determined that this proposed 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 proposed rule amends an existing rule without changing its environmental effect and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

DOE reviewed this proposed rule pursuant to Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), which imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. In accordance with DOE's statement of policy describing the intergovernmental consultation process it will follow in the development of regulations that have federalism implications, 65 FR 13735 (March 14, 2000), DOE examined today's proposed rule and determined that the rule would not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of Government. See 74 FR 61497. Therefore, DOE has taken no further action in today's proposed rule with respect to Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729 (February 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; and (3) provide a clear legal standard for affected conduct rather than a general standard and 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 section 3(a) and section 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, the proposed regulations meet 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) (Pub. L. 104–4; 2 U.S.C. 1501, *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result 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 estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a),(b)) 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 such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://energy.gov/gc/office-general-counsel.*) Today's proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an 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 proposed rule would 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 determined under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), that today's proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution. See 74 FR 61497–98.

J. Review Under the 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 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's proposed rule under 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 OIRA a Statement of Energy Effects for any proposed significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates 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 proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the proposal is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's proposed regulatory action, which proposes a correction and minor amendments to the Department's waiver application procedures, is not a significant regulatory action under Executive Order 12866, it would not have a significant adverse effect on the supply, distribution, or use of energy; and has not been designated by the Administrator of OIRA as a significant energy action. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding the proposed rule no later than the date provided at the beginning of this notice. Comments, data, and information submitted to DOE's email address for this rulemaking should be provided in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format. Interested parties should avoid the use of special characters or any form of encryption, and, wherever possible, comments should include the electronic signature of the author. Absent an electronic signature, comments submitted electronically must be followed and authenticated by submitting a signed original paper document to the address provided at the beginning of this notice. Comments, data, and information submitted to DOE via mail or hand delivery/courier should include one signed original paper copy. No telefacsimiles (faxes) will be accepted.

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies: one copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination as to the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include (1) a description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning its confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) a date upon which such information might lose its confidential nature due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's NOPR.

List of Subjects

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation, Reporting and recordkeeping requirements.

Issued in Washington, DC, on November 21, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is proposing to amend chapter II, subchapter D, of title 10 of the Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

2. Section 430.27 is amended by:

a. Revising the section heading;

b. Adding introductory text to paragraph (a);

c. Adding a paragraph (a)(3);

d. Revising paragraphs (b), (c), (e), (g), (h), (i), (j) and (l);

e. Redesignating paragraphs (m) and (n) as paragraphs (p) and (q);

f. Adding paragraphs (m), (n) and (o); and

g. Revising newly redesignated paragraphs (p) and (q).

The addition and revisions read as follows:

§ 430.27 Petitions for waiver and interim waiver.

(a) This section provides a means for manufacturers of covered products to seek waivers of the test procedure requirements of this subpart for basic models that meet the requirements of paragraph (a)(1) of this section. In granting a waiver or interim waiver, DOE will not change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy conservation standard or make representations about the energy use or efficiency of the covered product. The granting of a waiver or interim waiver by DOE requires the use of the specified alternative method for testing the basic models addressed in the waiver, and does not exempt such basic models from any other regulatory requirement contained in this part or the certification and compliance requirements of 10 CFR part 429. * * * * * * * * *

(3) Manufacturers of basic model(s) covered by a waiver or interim waiver are responsible for complying with the other requirements of this subpart and with the requirements of 10 CFR part 429 regardless of the person that originally submitted the petition for waiver and/or interim waiver.

(b)(1) A petition for waiver shall be submitted either electronically to *AS_Waiver_Requests@ee.doe.gov* (preferred method of transmission) or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue SW., Mailstop EE–2J, Washington, DC 20585–0121. Each petition for waiver shall:

(i) Identify the particular basic model(s) for which a waiver is requested, each brand name under which the identified basic model(s) will be distributed in commerce, design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived and shall discuss in detail the need for the requested waiver;

(ii) Identify manufacturers of all other basic models distributed in commerce in the United States and known to the petitioner to incorporate similar design characteristic(s);

(iii) Include any alternate test procedures known to the petitioner to evaluate the performance of the product type in a manner representative of the energy consumption characteristics, or water consumption characteristics of the basic model; and

(iv) Be signed by the petitioner or by an authorized representative. In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in a petition for waiver or in supporting documentation must be accompanied by a copy of the petition, application or supporting documentation from which the information claimed to be confidential has been deleted. DOE shall publish in the **Federal Register** the petition and supporting documents from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information with respect to the determination of the petition. Any person submitting written comments to DOE with respect to a Petition for Waiver shall also send a copy of such comments to the petitioner. In accordance with paragraph (i) of this section, a petitioner may submit a rebuttal statement to DOE.

(2) A petition for interim waiver shall be submitted either electronically to *AS_Waiver_Requests@ee.doe.gov* or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue SW., Mailstop EE–2J, Washington, DC 20585–0121. Each petition for interim waiver shall reference the related petition for waiver by identifying the particular basic model(s) for which a waiver is being sought. Each petition for interim waiver shall demonstrate likely success of the petition for waiver. Each petition for interim waiver shall be signed by the applicant or by an authorized representative.

(c)(1) Each petitioner for interim waiver shall, upon publication of a grant of an interim waiver in the **Federal Register**, notify in writing all known manufacturers of domestically marketed basic models of the same product class (as specified in 10 CFR 430.32) and of other product classes known to the petitioner to use the technology or have the characteristic at issue in the waiver. The notice shall include a statement that DOE has published the interim waiver and petition for waiver in the **Federal Register** and the date the petition for waiver was published. The notice must also include a statement that DOE will receive and consider timely written comments on the petition for waiver. Within five working days, each petitioner shall file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

(2) If a petitioner does not request an interim waiver and notification has not been provided pursuant to paragraph (c)(1), each petitioner, after filing a petition for waiver with DOE, and after the petition for waiver has been published in the **Federal Register**, shall, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same product class (as listed in 10 CFR 430.32) and of other product classes known to petitioner to use the technology or have the characteristic at issue in the waiver. The notice shall include a statement that DOE has published the petition in the **Federal Register** and the date the petition for waiver was published. Within five working days of the publication of the petition in the **Federal Register**, each petitioner shall file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

* * * * *

(e) If administratively feasible, a petitioner shall be notified in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the petition. Notice of DOE's determination on the petition for interim waiver shall be published in the **Federal Register**.

* * * * *

(g) An interim waiver from the test procedure requirements will be granted by DOE if it appears likely that the petition for waiver will be granted, and/or DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

(h)(1) An interim waiver will terminate one year after publication in the **Federal Register** unless either of the following occurs first:

(i) DOE publishes in the **Federal Register** a determination on the petition for waiver; or

(ii) DOE publishes in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver, and manufacturers are required to use that test procedure to demonstrate compliance with the applicable standard.

(2) DOE may extend the scope of an interim waiver upon request of the petitioner to include additional basic models employing the same technology as the basic models set forth in the original petition. DOE shall publish any such extension in the **Federal Register**.

(i) Following publication of the petition for waiver in the **Federal Register**, a petitioner may, within 10 working days of receipt of a copy of a comment submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to DOE. A petitioner may rebut more than one response in a single rebuttal statement.

(j) The petitioner shall be notified in writing as soon as practicable of the disposition of each petition for waiver. DOE shall issue a decision on the petition as soon as is practicable following receipt and review of the Petition for Waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

* * * * *

(l) Waivers will be granted by DOE if it is determined either that the basic model(s) for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or that the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy or water consumption characteristics as to provide materially inaccurate comparative data. Waivers may be granted subject to conditions, which may include adherence to alternate test procedures specified by DOE. DOE shall consult with the Federal Trade Commission prior to granting any waiver, and shall promptly

publish in the **Federal Register** notice of each waiver granted or denied, and any limiting conditions of each waiver granted. DOE may extend the scope of a waiver upon request of the petitioner to include additional basic models employing the same technology as the basic models set forth in the original petition. Notification of such extension will be published in the **Federal Register**.

(m)(1) If the alternate test procedure specified in the interim waiver differs from the alternate test procedure specified by DOE in a subsequent decision and order granting the petition for waiver, a manufacturer who has already certified basic models using the procedure permitted in DOE's grant of an interim test procedure waiver does not need to re-test and re-rate those basic models so long as:

(i) The manufacturer used that alternative procedure to certify the compliance of the basic model after DOE granted the company's interim waiver request;

(ii) Changes have not been made to those basic models that would cause them to use more energy or otherwise be less energy efficient; and

(iii) The manufacturer does not modify the certified rating.

(2) After DOE publishes a decision and order in the **Federal Register**, a manufacturer must use the test procedure contained in that notice to rate any basic models covered by the waiver that have not yet been certified to DOE and for any future testing in support of the certification for the basic model(s).

(n) Not later than 60 days after DOE grants a petition for waiver for a product employing a particular technology or having a particular characteristic, any manufacturer of that product employing a technology or characteristic that results in the same need for a waiver, as specified by DOE in the published petition for waiver in the **Federal Register**, must submit a petition for waiver pursuant to the requirements of this section. Manufacturers may also submit a request for interim waiver pursuant to the requirements of this section.

(o)(1) Waivers and interim waivers are conditioned upon the validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify a waiver or interim waiver at any time upon a determination that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. DOE will publish any proposed rescission or modification in the **Federal Register** for public comment. DOE will also publish its decision in the **Federal Register**.

(2) Petitioners may request that DOE rescind or modify a waiver or interim waiver if the petitioner discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. DOE will publish any request for rescission or modification in the **Federal Register** for public comment. DOE will also publish its decision on the request in the **Federal Register**. The decision shall be based on relevant information contained in the record and any comments received. Basic models tested subsequent to the effective date of a rescission must be tested using the applicable DOE test procedure in 10 CFR part 430.

(p) As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. Such waiver will terminate on the date on which use of the test procedure established in such final rule is required to demonstrate compliance with the applicable conservation standard.

(q) In order to exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR part 1003, subpart C.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

3. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

4. Section 431.2 is amended by revising the definition of ''Private labeler'' to read as follows:

§ 431.2 Definitions.

* * * * *

Private labeler means, with respect to any product covered under this part, an owner of a brand or trademark on the label of a covered product which bears a private label. A covered product bears a private label if:

(1) Such product (or its container) is labeled with the brand or trademark of a person other than a manufacturer of such product;

(2) The person with whose brand or trademark such product (or container) is labeled has authorized or caused such product to be so labeled; and

(3) The brand or trademark of a manufacturer of such product does not appear on such label.

* * * * *

5. Section 431.401 is amended by:

a. Revising the section heading;

b. Adding introductory text to paragraph (a);

c. Revising paragraph (a)(1);

d. Adding paragraph (a)(3);

e. Revising paragraphs (b)(1) introductory text, (b)(1)(i), (b)(2), (c), (d)(2), (e)(1), (e)(3), and (e)(4);

f. Adding paragraph (e)(5);

g. Revising paragraphs (f)(1), (f)(2), and (f)(4);

h. Adding paragraph (f)(5);

i. Redesignating paragraph (g) as (j);

j. Adding paragraphs (g), (h), and (i);

k. Revising newly redesignated paragraph (j); and

l. Adding a new paragraph (k).

The additions and revisions read as follows:

§ 431.401 Petitions for waiver and interim waiver.

(a) *General criteria.* This section provides a means for manufacturers of covered equipment to seek waivers of the test procedure requirements of this part for basic models that meet the requirements of paragraph (a)(1) of this section. In granting a waiver or interim waiver, DOE will not change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy conservation standard or make representations about the energy use or efficiency of the covered equipment. The granting of a waiver or interim waiver requires the use of the specified alternative method for testing the basic models addressed in the waiver, and does not exempt such basic models from any other regulatory requirement contained in this part or the certification and compliance requirements of 10 CFR part 429.

(1) Any interested person may submit a petition to waive for a particular basic model the requirements of any uniform test method contained in this part, upon the grounds that either the basic model contains one or more design characteristics that prevent testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

* * * * *

(3) Manufacturers of basic model(s) covered by a waiver or interim waiver are responsible for complying with the other requirements of this part and with the requirements of 10 CFR part 429 regardless of the person that originally submitted the petition for waiver and interim waiver.

(b) *Submission, content, and publication.* (1) A petition for waiver shall be submitted either electronically to *AS_Waiver_Requests@ee.doe.gov* (preferred method of transmission) or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue SW., Mailstop EE–2J, Washington, DC 20585–0121. Each petition for waiver shall:

(i) Identify the particular basic model(s) for which a waiver is requested, each brand name under which the identified basic model(s) will be distributed in commerce, the design characteristic(s) constituting the grounds for the petition, and the specific requirements sought to be waived, and discuss in detail the need for the requested waiver;

* * * * *

(2) Petitions for interim waiver shall be submitted by email to *AS_Waiver_Requests@ee.doe.gov* or (preferred method of transmission), or by mail to U.S. Department of Energy, Building Technologies Program, Test Procedure Waiver, 1000 Independence Avenue SW., Mailstop EE–2J, Washington, DC 20585–0121. Each petition for interim waiver must reference the petition for waiver by identifying the particular basic model(s) for which a waiver is being sought. Each petition for interim waiver must demonstrate likely success of the petition for waiver and address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the petition for interim waiver. Each petition for interim waiver shall be signed by the petitioner or an authorized representative.

(c) *Notification to other manufacturers.* (1) Each petitioner for interim waiver shall, upon publication of a grant of an interim waiver in the **Federal Register**, notify in writing all known manufacturers of domestically marketed units of the same equipment class (as set forth in the relevant subpart of 10 CFR part 431), and of other equipment classes known to the petitioner to use the technology or characteristic at issue in the waiver. The notice must include a statement that DOE has published the interim waiver and petition for waiver in the **Federal Register** and the date the petition for waiver was published. The notice must also include a statement that DOE will receive and consider timely written comments on the petition for interim waiver. Within five working days, each petitioner must file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

(2) If a manufacturer does not request an interim waiver and notification has not been provided pursuant to paragraph (1), each petitioner, after filing a petition for waiver with DOE, and after the petition for waiver has been published in the **Federal Register**, shall, within five working days of such publication, notify in writing all known manufacturers of domestically marketed units of the same equipment class (as listed in the relevant subpart of 10 CFR part 431), and of other product classes known to the petitioner to use the technology or characteristic at issue in the waiver. The notice shall include a statement that DOE has published in the **Federal Register** on a certain date the petition for waiver and supporting documents from which confidential information, if any, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Each petitioner shall file with DOE a statement certifying the names and addresses of each person to whom a notice of the petition for waiver has been sent.

(d) * * *

(2) Any person submitting written comments to DOE with the respect to a petition for waiver must also send a copy of such comments to the petitioner. In accordance with paragraph (b)(1) of this section, a petitioner may submit a rebuttal statement to DOE.

(e) *Provisions specific to interim waivers*—(1) *Disposition of application.* If administratively feasible, DOE will notify the applicant in writing of the disposition of the petition for interim waiver within 30 business days of receipt of the application. Notice of DOE's determination on the petition for interim waiver will be published in the **Federal Register**.

* * * * *

(3) *Criteria for granting.* DOE will grant an interim waiver from test procedure requirements if it appears likely that the petition for waiver will be granted, and/or if DOE determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver.

(4) *Duration.* An interim waiver will terminate one year after publication in the **Federal Register** unless either of the following occurs first:

(i) DOE publishes in the **Federal Register** a determination on the petition for waiver; or

(ii) DOE publishes in the **Federal Register** a new or amended test procedure that addresses the issues presented in the waiver, and manufacturers are required to use that test procedure to demonstrate compliance with the applicable standard.

(5) *Extension to additional basic models.* DOE may extend the scope of an interim waiver upon request of the petitioner to include additional basic models employing the same technology as the basic models set forth in the original petition. Notification of such extension will be published in the **Federal Register**.

(f) * * *

(1) *Rebuttal by petitioner.* Following publication of the petition for waiver in the **Federal Register**, a petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b)(1) of this section, submit a rebuttal statement to DOE. A petitioner may rebut more than one response in a single rebuttal statement.

(2) *Disposition of petition.* DOE will notify the petitioner in writing as soon as practicable of the disposition of each petition for waiver. DOE will issue a decision on the petition as soon as is practicable following receipt and review of the petition for waiver and other applicable documents, including, but not limited to, comments and rebuttal statements.

* * * * *

(4) *Granting: criteria, conditions, and publication.* DOE will grant a waiver if it determines that either the basic model for which the waiver was requested contains a design characteristic that prevents testing of the basic model according to the prescribed test procedures, or the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. DOE may grant a waiver subject to conditions, which may include adherence to alternate test procedures. DOE will promptly publish in the **Federal Register** notice of each waiver granted or denied, and any limiting conditions of each waiver granted. In granting a waiver, DOE will not change the energy use or efficiency metric that the manufacturer must use to certify compliance with the applicable energy

conservation standard or make representations about the energy use or efficiency of the covered product.

(5) *Extension to additional basic models.* DOE may extend the scope of a waiver upon request of the petitioner to include additional basic models employing the same technology as the basic models set forth in the original petition. Notification of such extension will be published in the **Federal Register**.

(g) If the alternate test procedure specified in the interim waiver differs from the alternate test procedure specified by DOE in the subsequent decision and order granting the petition for waiver, a manufacturer who has already certified basic models using the procedure permitted in DOE's grant of an interim test procedure waiver does not need to re-test and re-rate those basic models so long as:

(1) The manufacturer used that alternative procedure after DOE granted the company's interim waiver request; and

(2) Changes have not been made to those basic models that would cause them to use more energy or otherwise be less energy efficient.

(3) After DOE publishes a decision and order in the **Federal Register,** a manufacturer must use the test procedure contained in that notice to rate any basic models that have not yet been certified to DOE and for any future testing of any basic model(s) covered by the decision and order.

(h) Not later than 60 days after DOE grants a petition for waiver for a type of equipment employing a particular technology or characteristic, any manufacturer of that equipment employing a technology or characteristic that results in the same need for a waiver, as specified by DOE in the published petition for waiver in the **Federal Register,** must submit a petition for waiver pursuant to the requirements of this section. Manufacturers may also submit a request for interim waiver pursuant to the requirements of this section.

(i)(1) Waivers and interim waivers are conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify a waiver or interim waiver at any time upon a determination that the factual basis underlying the petition for waiver or interim waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics. DOE will publish any proposed rescission or modification in the **Federal Register** for public comment. DOE will also publish its decision in the **Federal Register**.

(2) Petitioners may request that DOE rescind or modify a waiver or interim waiver if the petitioner discovers an error in the information provided to DOE as part of its petition, determines that the waiver is no longer needed, or for other appropriate reasons. DOE will publish any request for rescission or modification in the **Federal Register** for public comment. DOE will also publish its decision on the request in the **Federal Register**. The decision shall be based on relevant information contained in the record and any comments received. Basic models tested subsequent to the effective date of a rescission must be tested using the applicable DOE test procedure.

(j) *Revision of regulation.* As soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a notice of proposed rulemaking to amend its regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. Such waiver will terminate on the date on which use of the test procedure established in such final rule is required to demonstrate compliance with the applicable conservation standard.

(k) In order to exhaust administrative remedies, any person aggrieved by an action under this section must file an appeal with the DOE's Office of Hearings and Appeals as provided in 10 CFR part 1003, subpart C.

[FR Doc. 2012–30195 Filed 12–14–12; 8:45 am]

BILLING CODE 6450–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

[Docket No. CFPB–2012–0046]

Policy To Encourage Trial Disclosure Programs; Information Collection

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of proposed policy and proposed information collection; request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) invites the general public and other Federal agencies to take this opportunity to comment on its proposed Policy to Encourage Trial Disclosure Programs (Policy), which is intended to carry out the Bureau's authority under Section 1032(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), and also a proposed information collection associated with applications submitted by companies seeking Bureau approval to conduct trial disclosure programs under the proposed Policy as required by the Paperwork Reduction Act of 1995.

DATES: Written comments are encouraged and must be received on or before February 15, 2013 to be assured of consideration.

ADDRESSES: Submit comments on the proposed Policy by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions on this site for submitting comments.
- *Mail/Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

Submit comments on the proposed information collection by any of the following methods:

- *Electronic: CFPB_Public_PRA@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Direct all written comments to Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

Instructions: Submissions should include agency name and the title ''Policy to Encourage Trial Disclosure Programs; Information Collection.'' Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7275. All comments, including any attachments and other supporting materials, will become part of the public record and subject to public disclosure. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. You should only submit information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: For additional information about the proposed information collection, contact the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9011, or through the Internet at *CFPB_Public_PRA@cfpb.gov.* For additional information about the

proposed Policy, contact Will Wade-Gery, Research, Markets & Regulations Division, Bureau of Consumer Financial Protection, (202) 435–7700.

SUPPLEMENTARY INFORMATION: No waiver will issue under the Policy until the Office of Management and Budget approves the proposed information collection and the Policy is finalized in light of comments received.

Title: Policy to Encourage Trial Disclosure Programs; Information Collection.

Office of Management and Budget (OMB) Control Number: 3170–XXXX.

Abstract: In subsection 1032(e) of the Dodd-Frank Act, 12 U.S.C. 5532(e), Congress gave the Bureau authority to provide certain legal protections to companies to conduct trial disclosure programs. This authority can be used to help further the Bureau's statutory objective, stated in subsection 1021(b)(5) of the Act, to ''facilitate access and innovation'' in the ''markets for consumer financial products and services.''

In line with this authority, the Bureau is proposing the Policy that is laid out in full in the next section of this Notice. Under the proposed Policy, if the Bureau approves a specific trial, then, for the duration of an agreed testing period, the Bureau will deem the testing company's disclosure, to the extent that it is used solely by the testing company under the terms and conditions approved by the Bureau, to be in compliance with, or hold it exempt from, applicable federal disclosure requirements. The Bureau believes that there may be significant opportunities to enhance consumer protection by facilitating innovation in financial products and services and enabling companies to research informative, cost-effective disclosures. The Bureau also recognizes that in-market testing, involving companies and consumers in real world situations, may offer particularly valuable information with which to improve disclosure rules and model forms. The Bureau seeks comments on any aspect of this proposed Policy.

The Bureau is also seeking comments on the information to be submitted to the Bureau by any company that is seeking Bureau approval of a proposed trial disclosure program under the proposed Policy. The proposed Policy lays out eligibility criteria for trial programs, which require companies proposing such tests to provide certain information to the Bureau. The Bureau invites the public to comment on all aspects of the proposed information collection that would be occasioned by these eligibility criteria.

Type of Information Collection Review: New collection.

Average Expected Annual Number of Information Collection Activities: 1.

Information Collection—Affected Public: Business or other for-profit or not-for-profit institutions.

Estimated Number of Respondents: 2–10.

Estimated Time per Respondent: 10 hours.

Frequency of Response: 1.

Estimated Total Annual Burden Hours: 20–100.

Proposed Policy To Encourage Trial Disclosure Programs

The text of the proposed Policy is laid out in full below.

Consumers need timely and understandable information to make the financial decisions that they believe are best for themselves and their families. Much federal consumer protection law rests on the premise that accurate and effective disclosures are critical in helping Americans understand the costs, benefits, and risks of different consumer financial products and services. In Section 1032 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Congress gave the Consumer Financial Protection Bureau (Bureau) authority to develop rules to ensure that consumers receive such disclosures, as well as model forms to help companies comply with those rules.[1]

In subsection 1032(e) of the Dodd-Frank Act, Congress also gave the Bureau authority to approve ''trial disclosure programs.''[2] This authority can be used to help further the Bureau's statutory objective, stated in subsection 1021(b)(5) of the Dodd-Frank Act, to ''facilitate access and innovation'' in the ''markets for consumer financial products and services.'' In particular, Congress empowered the Bureau to provide a legal ''safe harbor'' to companies testing revised disclosures. For disclosure trials it approves, therefore, the Bureau will ''deem'' a participating company ''to be in compliance with'' or ''exempt from'' otherwise applicable federal disclosure requirements for a defined period.[3] The Bureau believes that there may be significant opportunities to enhance consumer protection by facilitating innovation in financial products and services and by enabling responsible companies to research informative, cost-effective disclosures in test programs. We also recognize that ''in-market'' testing, involving companies and consumers in real world situations, may offer particularly valuable information with which to improve disclosure rules and model forms.

Accordingly, the Bureau is releasing its proposed Policy on trial disclosure programs.[4] Our intent is for the Policy to encourage banks, thrifts, credit unions, and other financial services companies to innovate by proposing and conducting such programs.[5] The information generated by such programs may then help the Bureau to establish more effective disclosure rules and practices.[6]

The policy has four sections:

- Section A describes which proposed programs will be considered eligible for a temporary waiver;
- Section B lists factors the Bureau may consider in deciding which eligible programs to approve for such a waiver;
- Section C describes the Bureau's procedures for issuing waivers; and
- Section D describes how we will disclose information about these programs.

A. Eligibility

Trial disclosure program proposals should be submitted in writing to the Bureau. To be considered eligible for a waiver, a proposal should:

1. Describe the disclosures that are to be tested;[7]

[1] *See* 12 U.S.C. 5532(a)–(d).

[2] 12 U.S.C. 5532(e).

[3] 12 U.S.C. 5532(e)(2). For convenience, this statutory authority to deem companies in compliance with or to exempt them from disclosure requirements—in each case for a limited period of time—is hereinafter referred to as the authority to issue ''waivers'' for approved programs.

[4] The Bureau may permit a covered person or covered persons to conduct a trial disclosure program ''subject to specified standards and procedures.'' 12 U.S.C. 5532(e)(1).

[5] The Policy is not intended to nor should it be construed to: (1) Restrict or limit in any way the CFPB's discretion in exercising its authorities; (2) constitute an interpretation of law; or (3) create or confer upon any covered person (including one who is the subject of CFPB supervisory, investigation or enforcement activity) or consumer, any substantive or procedural rights or defenses that are enforceable in any manner. Of course, if the Bureau approves a waiver in connection with a trial disclosure program, the terms of its approval will specify certain legal rights granted to the recipient or recipients of the waiver. Those rights, however, are based on the approval notice, and not on the present policy guidance.

[6] The Policy should not be viewed as substituting for the normal process of rulemaking. In the event that information learned from trial disclosure programs triggers or otherwise informs follow-on rulemaking, the Bureau would follow the standard rulemaking process, which affords the public the opportunity of submitting comments on a proposed regulation.

[7] So long as otherwise consistent with the minimum eligibility standards, new disclosures could include modifications to an existing model form, changed delivery mechanisms, wholesale replacement of a model form or existing disclosure requirements with new disclosure requirements or forms, and/or the elimination of select disclosure

2. Describe how these changes are expected to improve upon existing disclosures,[8] particularly with respect to consumer understanding and/or cost-effectiveness; [9]

3. Provide a reasonable explanation for expecting these improvements;

4. Provide metrics for testing whether such improvements are realized;

5. Identify the duration of the test and the size, location, and nature of the consumer population involved in the test, and explain why that duration and scope are reasonably necessary for sound testing;

6. Identify with particularity which current rules or enumerated consumer laws are to be temporarily waived in connection with the trial disclosure program; [10]

7. Identify any third-party vendors to be used in connection with the proposed program and describe their proposed role;

8. Contain a commitment to sharing test result data [11] with the Bureau;

9. Acknowledge that the Bureau may revoke any approved waiver if the program violates the terms and conditions under which the Bureau approves the program; and

10. Explain how the company will address disclosure requirements for the test population at the conclusion of the test period.

B. Approval of Proposals for Waivers

To decide whether to approve a proposed program for a waiver,[12] the Bureau may take account of a number of factors, including:

1. The extent to which the program may help the Bureau develop disclosure rules or policies that better enable consumers to understand the costs, benefits, and risks associated with consumer financial products or services;

2. The extent to which the program may help the Bureau develop rules or policies to correct or mitigate market failure;

3. The extent to which the program may help the Bureau develop more cost-effective disclosure rules or policies;

4. The extent to which the program controls for and mitigates risks to consumers; [13]

5. The strength of the company's compliance management system relative to the size, nature, and complexity of the company's consumer business;

6. How effectively and efficiently the program will test for potential improvements to consumer understanding and/or the cost-effectiveness of disclosures, and how narrowly the program is tailored to the testing objectives;

7. The extent to which existing data or other evidence indicate that the proposed changes will realize the intended improvements; and

9. The extent to which the company intends to permit public disclosure of test results.

In reviewing and approving applications, the Bureau will also take into consideration the scope and nature of programs currently underway as well as the Bureau's currently available resources.

C. Waiver Procedures for Approved Programs

When the Bureau approves a waiver, it will provide the company or companies that receive the waiver with the specific terms and conditions of its approval.[14] Waivers will require companies to certify, and document or otherwise demonstrate to the Bureau, their compliance with these approved terms and conditions. If a company does not follow the terms and conditions of the waiver, the Bureau may revoke the waiver in whole or in part.[15]

Waiver terms and conditions will be in writing in an integrated document entitled ''1032(e) Trial Disclosure Waiver: Terms and Conditions.'' This document will be signed by the Director of the Bureau or by his or her designee, and by an officer of each company approved for a waiver in connection with the program.

In addition, the document will:

1. List the company or companies that are receiving a waiver;

2. Specify the temporary duration of the waiver;

3. Specify the rules and statutory provisions that the Bureau will waive during the test period for the testing company or companies;

4. Describe and delineate the test population;

5. Specify the changed disclosure or disclosures to be used; and

6. List any other conditions on the effectiveness of the waiver, such as the terms of testing, data sharing, certification of compliance with the terms of the waiver, and/or public disclosure.

D. Bureau Disclosure of Information Regarding Trial Programs

The Bureau will publish notice on its Web site of any trial disclosure program that it approves for a waiver. The notice will: (i) Identify the company or companies conducting the trial disclosure program; (ii) summarize the changed disclosures to be used, their intended purpose, and the duration of their intended use; (iii) summarize the scope of the waiver and the Bureau's reasons for granting it; and (iv) state that the waiver only applies to the testing company in accordance with the approved terms of use.

Public disclosure of any other information regarding trial programs is governed by the Bureau's Interim Final Rule on Disclosure of Records and Information.[16] For example, the rule requires the Bureau to make available records requested by the public unless they are subject to a FOIA exemption or exclusion.[17] To the extent the Bureau wishes to disclose information regarding trial programs, the terms of such disclosure will be included in the 1032(e) Trial Disclosure Waiver: Terms

requirements. All proposals should include a copy of the trial disclosures to be tested and a clear statement of how they would be provided to consumers.

[8] The relevant existing disclosures are those made in accordance with disclosure rules issued either under the authority of Section 1032(a) or to implement an enumerated consumer law. *See* 12 U.S.C. 5481(12).

[9] Trial disclosures should be ''designed to improve upon'' existing disclosures. (12 U.S.C. 5532(e)(1).) Intended improvements may go to consumer understanding of the relevant product or service and/or to the cost-effectiveness of disclosures. The Bureau anticipates approving trial disclosure programs that are intended to improve both consumer understanding and cost-effectiveness.

[10] Under subsection 1032(e)(2), the Bureau has authority to waive ''a requirement of a rule or an enumerated consumer law,'' as that term is defined in the Dodd-Frank Act. *See* 12 U.S.C. 5481(12). As used in subsection 1032(e)(2), the term ''rule'' includes: (i) rules implementing an enumerated consumer law; and (ii) rules implementing the Consumer Financial Protection Act of 2010, including rules promulgated by the Bureau under its authority to prevent unfair, abusive, or deceptive acts or practices, or to enable full, accurate and effective disclosure.

[11] The proposal should commit to sharing test result data with the Bureau at the end of the program. In addition, it should contain either (1) a commitment to sharing with the Bureau interim data on test results during the course of the program, or (2) an explanation for why such interim data cannot reasonably be provided.

[12] The decision whether to approve a proposed program for a waiver will be within the Bureau's sole discretion. The Bureau will review reasonable requests to reconsider its position on programs for which it has not approved a waiver.

[13] This includes the extent to which a proposal contains reasonable contingency plans for addressing unanticipated consumer harms that arise during the duration of the test.

[14] If the Bureau determines not to approve a proposed trial program, it will inform the company of its determination.

[15] If the Bureau revokes or partially revokes a waiver for failure to follow the waiver's terms, it will do so in writing and it will specify the reason or reasons for its action. The Bureau may offer an opportunity to correct any such failure before revoking a waiver.

[16] *See* 12 CFR 1070 *et seq.*

[17] *See* 12 CRF 1070.14.

and Conditions document. Consistent with applicable law and its own rules, the Bureau will not seek to disclose any test data that would conflict with consumers' privacy interests.

Request for Comments

Comments are invited with respect to the proposed Policy and/or the related information collection effected by the application process for potential approval of a proposed trial disclosure program. All comments will become a matter of public record.

Comments related to the proposed information collection will be summarized and/or included in the request for OMB approval. With respect to the information collection, comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and the assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. 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.

Dated: December 10, 2012.

Garry Reeder,

Chief of Staff, Bureau of Consumer Financial Protection.

[FR Doc. 2012–30159 Filed 12–14–12; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1227; Directorate Identifier 2012–NM–016–AD]

RIN 2120–AA64

Airworthiness Directives; Embraer S.A. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Embraer S.A. Model ERJ 190 airplanes. This proposed AD was prompted by reports of cracks on the side stay of the main landing gear (MLG). This proposed AD would require repetitive measurements of the left-hand (LH) and right-hand (RH) MLG side stay support fitting to detect bushing migration, replacement of the bushing if necessary, and eventual replacement of the bushing; a detailed inspection for damage on the LH and RH MLG side stay support assembly, and related investigative and corrective actions if necessary. We are proposing this AD to prevent excessive bearing friction, which might compromise the MLG free fall extension, and cause fatigue cracking on the MLG side stay and on its support assembly, resulting in reduced structural integrity of the MLG.

DATES: We must receive comments on this proposed AD by January 31, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.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 Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2768; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1227; Directorate Identifier 2012–NM–016–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directive 2012–01–01, effective January 28, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This [ANAC] AD results from reports of cracks on the Main Landing Gear (MLG) Side Stay. Further investigation has revealed that the cracks were caused by excessive friction on the MLG Side Stay Support Fitting due to its outer bushing migration. This [ANAC] AD is being issued to prevent such excessive bearing friction which may compromise the MLG free fall extension and; cause fatigue cracks on the MLG Side Stay and on the MLG Side Stay Support Assembly resulting in reduced structural integrity of the MLG.
>
> * * * * *

The required actions include repetitive measurements of the LH and RH MLG side stay support fitting to detect bushing migration, replacement the bushing if necessary, and eventual replacement of the bushing; a detailed

inspection for damage on the LH and RH MLG side stay support assembly, and related investigative and corrective actions if necessary. The related investigative actions include a general visual inspection and an eddy current inspection for any cracking on the upper and lower side stays of the affected side stay support assembly. The corrective actions include replacing or repairing the MLG side stay or MLG side stay assembly, and removing corrosion. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Embraer S.A. has issued the following service information:

- EMBRAER Service Bulletin 190–32–0043, Revision 02, dated August 23, 2011.
- EMBRAER Service Bulletin 190–57–0036, Revision 02, dated August 12, 2011.
- EMBRAER Service Bulletin 190LIN–32–0017, dated June 10, 2011.
- EMBRAER Service Bulletin 190LIN–57–0016, dated June 10, 2011.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 97 products of U.S. registry. We also estimate that it would take about 44 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $362,780, or $3,740 per product.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Embraer S.A.: Docket No. FAA–2012–1227; Directorate Identifier 2012–NM–016–AD.

(a) Comments Due Date

We must receive comments by January 31, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Embraer S.A. Model ERJ 190–100 STD, –100 LR, –100 ECJ, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes; certificated in any category; as identified in the service information specified in paragraphs (c)(1) and (c)(2) of this AD.

(1) EMBRAER Service Bulletin 190–57–0036, Revision 02, dated August 12, 2011.

(2) EMBRAER Service Bulletin 190LIN–57–0016, dated June 10, 2011.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Reason

This AD was prompted by reports of cracks on the side stay of the main landing gear (MLG). We are issuing this AD to prevent excessive bearing friction, which might compromise the MLG free fall extension, and cause fatigue cracking on the MLG side stay and on its support assembly, resulting in reduced structural integrity 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) Measurement for Bushing Migration of the MLG Side Stay Support Fitting

Within 100 flight cycles after the effective date of this AD: Measure the left-hand (LH) and right-hand (RH) MLG side stay support fitting to detect bushing migration, in accordance with Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 190–57–0036, Revision 02, dated August 12, 2011 (for Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or EMBRAER Service Bulletin 190LIN–57–0016, dated June 10, 2011 (Model ERJ 190–100 ECJ airplanes).

(1) If the distance of bushing migration is less than 5 millimeters (mm), repeat the measurement required by paragraph (g) of this AD thereafter at intervals not to exceed 100 flight cycles until the actions required by paragraph (h) of this AD are accomplished.

(2) If the distance of bushing migration is equal to or more than 5 mm, before further flight, do the actions required by paragraph (h) of this AD.

(h) Replacement of the MLG Side Stay Support Fitting Bushing

Within 1,200 flight cycles after the effective date of this AD, except as specified by the compliance time in paragraph (g)(2) of this AD: Replace the LH and RH MLG side stay support fitting bushing, in accordance with Part II and Part III, respectively, of the

Accomplishment Instructions of EMBRAER Service Bulletin 190–57–0036, Revision 02, dated August 12, 2011 (Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or EMBRAER Service Bulletin 190LIN–57–0016, dated June 10, 2011 (Model ERJ 190–100 ECJ airplanes). Replacing the bushings terminates the repetitive measurements required by paragraph (g)(1) of this AD.

(i) MLG Side Stay and MLG Side Stay Support Assembly Inspection and Repair

At the applicable time specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD: Perform a detailed inspection for damage on the LH and RH MLG side stay support assembly, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190–32–0043, Revision 02, dated August 23, 2011 (Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes; and Model ERJ 190–200 STD, –200 LR, and –200 IGW airplanes); or EMBRAER Service Bulletin 190LIN–32–0017, dated June 10, 2011 (Model ERJ 190–100 ECJ airplanes). Do all applicable related investigative and corrective actions before further flight.

(1) For airplanes on which the actions specified in Part II and Part III of EMBRAER Service Bulletin 190–57–0036, or EMBRAER Service Bulletin 190LIN–57–0016, have been done, as applicable, as of the effective date of this AD: Within 100 flight cycles after the effective date of this AD.

(2) For airplanes on which the actions specified in EMBRAER Service Bulletin 190–57–0036, or EMBRAER Service Bulletin 190LIN–57–0016, dated June 10, 2011, as applicable, have not been done as of the effective date of this AD; except for airplanes identified in paragraph (i)(3) of this AD: Within 1,200 flight cycles after the effective date of this AD.

(3) For airplanes on which the actions specified in EMBRAER Service Bulletin 190–32–0043, dated March 1, 2011, have been done as the effective date of this AD, and a repair of the MLG side stay support assembly was done if damage was found: Within 600 flight cycles after the effective date of this AD.

(j) Credit for Previous Actions

(1) This paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using EMBRAER Service Bulletin 190–57–0036, dated September 20, 2010; or EMBRAER Service Bulletin 190–57–0036, Revision 01, dated February 28, 2011; which are not incorporated by reference in this AD.

(2) This paragraph provides credit for the actions required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD EMBRAER Service Bulletin 190–32–0043, Revision 01, dated April 29, 2011, which is not incorporated by reference in this AD.

(k) 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: Cindy Ashforth, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2768; 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.

(l) Special Flight Permits

Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the airplane can be modified (if the operator elects to do so), provided that it is not a revenue flight and it meets weight limitations requirements specified by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA.

(m) Related Information

(1) Refer to MCAI Brazilian Airworthiness Directive 2012–01–01, effective January 28, 2012, and the service information specified in paragraphs (m)(1)(i) through (m)(1)(iv) of this AD, for related information.

(i) EMBRAER Service Bulletin 190–32–0043, Revision 02, dated August 23, 2011.

(ii) EMBRAER Service Bulletin 190–57–0036, Revision 02, dated August 12, 2011.

(iii) EMBRAER Service Bulletin 190LIN–32–0017, dated June 10, 2011.

(iv) EMBRAER Service Bulletin 190LIN–57–0016, dated June 10, 2011.

(2) For service information identified in this AD, contact Embraer S.A., Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone +55 12 3927–5852 or +55 12 3309–0732; fax +55 12 3927–7546; email *distrib@embraer.com.br;* Internet *http://www.flyembraer.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on December 6, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–30368 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 10

[Docket No. USCG–2012–0734]

Medical Waivers for Merchant Mariner Credential Applicants With Anti-Tachycardia Devices or Implantable Cardioverter Defibrillators

AGENCY: Coast Guard, DHS.

ACTION: Notice to reopen public comment period.

SUMMARY: On September 7, 2012, the Coast Guard published a notice of proposed policy change and request for comments regarding criteria for granting medical waivers to mariners who have anti-tachycardia devices or implantable cardioverter defibrillators (ICDs). The public comment period for the notice expired on October 9, 2012. In today's action, the Coast Guard is reopening the public comment period to provide additional time for interested parties to submit comments.

DATES: Comments and related material must either be submitted to our online docket via *http://www.regulations.gov* on or before January 16, 2013 or reach the Docket Management Facility by that date.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0734 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice, call or email Lieutenant Ashley Holm, Mariner Credentialing Program Policy Division (CG–CVC–4), U.S. Coast Guard, telephone 202–372–1128, email *MMCPolicy@uscg.mil*. If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation

You may submit comments and related material regarding whether the proposed policy change should be incorporated into a final policy on issuing medical waivers to mariners with ICDs. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2012–0734) and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and insert ''USCG–2012–0734'' in the ''Search'' box. Click ''Search,'' find this notice in the list of Results, and then click on the corresponding ''Comment Now'' 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.

Viewing the comments: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov* and insert ''USCG–2012–0734'' in the ''Search'' box. Click ''Search'' and use the filters on the left side of the page to highlight ''Public Submissions'' or other document types. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act: Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act system of records notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Background and Purpose

On September 7, 2012, the Coast Guard published a notice of proposed policy change and request for comments regarding criteria for granting medical waivers to mariners who have anti-tachycardia devices or ICDs (77 FR 55174). The notice contains a detailed description of the relevant regulatory provisions, guidance documents, and policy considerations. The notice also lists a series of 12 questions we are considering as the criteria for granting a medical waiver. The notice requests public comment regarding whether the 12 questions represent an appropriate and sufficient list of the criteria a mariner should be required to meet in order to be eligible for waiver consideration, or whether we should eliminate or modify any of the questions, or add other questions to the list.

We received 33 public comments in response to the notice before the comment period closed on October 9, 2012. Because of the complexity and importance of the issues involved, we are reopening the comment period to provide interested parties additional time to submit comments. We request that you not re-submit comments already in the docket. You may, however, comment on other comments already in the docket; if you choose to do so, please ensure you identify which comment you are responding to.

Request for Comments

We encourage your participation by submitting your comments to the Docket Management Facility as specified in the **ADDRESSES** section above. We will consider comments received during the reopened comment period prior to establishing a final policy on whether waivers should be granted for anti-tachycardia devices or ICDs, and if so, under what circumstances.

Authority

We issue this request for public comments under the authority of 5 U.S.C. 552(a).

Dated: December 7, 2012.

P.F. Thomas,

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2012–30296 Filed 12–14–12; 8:45 am]

BILLING CODE 9110–04–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552 and 538

[OMB Control No. 3090–00XX; Docket 2012–0001; Sequence 21]

General Services Administration Acquisition Regulation: Modifications (Multiple Award Schedules); Information Collection

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Request for public comments on an information collection requirement for a new OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement regarding General Services Administration Acquisition Regulation (GSAR) clause Modifications (Multiple Award Schedule).

DATES: Submit comments on or before: February 15, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Dana Munson, General Services Acquisition Policy Division, GSA, (202) 357–9652 or email *Dana.Munson@gsa.gov* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202–501–4755. Please cite information collection 3090–00XX.

ADDRESSES: Submit comments identified by Information Collection 3090–00XX, Modifications, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–00XX, Modifications''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–

00XX, Modifications'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 3090–00XX, Modifications.

Instructions: Please submit comments only and cite Information Collection 3090–00XX, Modifications, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

SUPPLEMENTARY INFORMATION: Public comments are invited on: (1) Whether this collection of information is necessary and whether it will have practical utility; (2) whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and (3) to identify ways to enhance the quality, utility, and clarity of the information to be collected.

A. Purpose

GSA is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to add clause 552.243–72; Modifications (Multiple Award Schedules). Under the modifications clause, vendors may request a contract modification by submitting a request to the Contracting Officer for approval. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).

B. Annual Reporting Burden

Respondents: 20,500.

Responses per Respondent: 3.

Total Responses: 61,500.

Hours per Response: 5.

Total Burden Hours: 307,000.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417; telephone (202) 501–4755. Please cite OMB Control No. 3090–XXXX, ''Modifications'' in all correspondence.

Dated: December 10, 2012.

Joseph A. Neurauter,

Director, Office of Acquisition Policy, Senior Procurement Executive.

[FR Doc. 2012–30205 Filed 12–14–12; 8:45 am]

BILLING CODE 6820–61–P

Notices

Federal Register
Vol. 77, No. 242
Monday, December 17, 2012

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

December 11, 2012.

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

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

Forest Service

Title: Recreation Fee and Wilderness Program Administration.

OMB Control Number: 0596–0106.

Summary of Collection: The Federal Lands Recreation and Enhancement Act (16 U.S.C. 6801–6814) authorizes the Forest Service (FS) to collect recreation fees for use of government facilities and services. The Organic Administration Act (16 U.S.C. 473), the Wilderness Act (16 U.S.C. 1131), and Wild and Scenic Rivers Act (16 U.S.C. 1271) authorize FS to collect information from National Forest System visitors who are asked to describe the location of their visit and estimated duration of stay. Every year millions of people visit National Forest System recreations sites. At some of these sites, the public is required to pay a fee to use the site. Fees are charged to help cover the costs of operating and maintaining fee sites, areas, and facilities such as campgrounds. With this revision the FS renamed this collection to include the information collection requirements currently approved under 0596–0019 and two new forms. FS will collect information from the forms to document when visitors pay a required recreation fee and to schedule requests for use and occupancy of government owned facilities.

Need and Use of the Information: Forms used to collection information and fees from visitors: (1) The Recreation Fee Permit Envelope (FS 2300–26 and 26a); (2) Permit for Short-Term, Non-commercial Use of Government-Owned Cabins and Lookouts (FS 2300–43); (3) Visitor Permit (FS–2300–30); (4) Visitor Registration Card (FS–2300–32); and two new forms (5) National Recreation Application (FS–2300–47) and (6) National Recreation Permit (FS–2300–48). Personal information includes, but not limited to, names, addresses, telephone number, length of stay, amount paid, requested dates of occupancy, party size and vehicle registration are collected. If this information and fees was not collected FS could not monitor visitation rates in special management areas to prevent overuse and site deterioration in environmentally sensitive areas.

Description of Respondents: Individuals or households.

Number of Respondents: 2,383,600.

Frequency of Responses: Reporting: Other (per visit).

Total Burden Hours: 126,871.

Forest Service

Title: Forest Service Ride-Along Program Application.

OMB Control Number: 0596–0170.

Summary of Collection: The Forest Service (FS) ride-along program allows the general public or other interested person to accompany agency law enforcement personnel as they conduct their normal field duties, including access to and discussions about agency law enforcement vehicles, procedures, and facilities. The program provides an opportunity for officers to enhance the public's understanding and support of the agency program and to increase agency understanding of public and community concerns. The program also aids the agency's recruitment program by allowing interested persons to observe a potential career choice or to participate in innovative intern-type programs, and by allowing the agency to showcase the quality of its program and services.

Need and Use of the Information: Information will be collected from any person who voluntarily approaches the FS and wishes to participate in the program. The FS 5300–33 program application form will be used to conduct a minimal background check and the FS 5300–34 is a liability waiver form that requires the applicant's signature and their written assurance that they have read and understood the form. The information collected from the forms will be used by FS and, in appropriate part, by any person or entity needed and authorized by the FS to provide the needed background information (primarily applicable local law enforcement agencies, state criminal justice agencies maintaining state justice records, and by the FBI). If the information is not collected, the program could not operate.

Description of Respondents: Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 150.

Frequency of Responses: Reporting: Other (per applicant).

Total Burden Hours: 24.

Forest Service

Title: The Role of Local Communities in the Development of Agreement or Contract Plans through Stewardship Contracting.

OMB Control Number: 0596–0201.

Summary of Collection: Section 323 of Public Law 108–7 (16 U.S.C. 2104 Note) requires the Forest Service (FS) and Bureau of Land Management (BLM) to report to Congress annually on the role of local communities in the development of agreement or contract plans through stewardship contracting. To meet that requirement FS conducts an annual telephone survey to gather the necessary information for use by both the FS and BLM in developing their separate annual reports to Congress.

Need and Use of the Information: The survey will collect information on the role of local communities in the development of agreement or contract plans through stewardship contracting. The survey will provide information regarding the nature of the local community involved in developing agreement or contract plans, the nature of roles played by the entities involved in developing agreement or contract plans, the benefits to the community and agency by being involved in planning and development of contract plans, and the usefulness of stewardship contracting in helping meet the needs of local communities. FS posts the report on its Web page for viewing by the public. Congress also makes the agency reports available for use by organizations both inside and outside the government.

Description of Respondents: Individuals or households; business or other for-profit; not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 507.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 380.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2012–30258 Filed 12–14–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan-Wenatchee National Forest, Okanogan County, WA Bannon, Aeneas, Revis, and Tunk Grazing Allotments Environmental Impact Statement; Correction

AGENCY: Forest Service, USDA.

ACTION: Notice; Correction.

SUMMARY: The USDA Forest Service published a document in the **Federal Register** of November 27, 2012, concerning requests for comments on the proposed grazing allotments and dates of document availability. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Christina Bauman, 509–486–5112.

Correction

In the **Federal Register** of November 27, 2012, in FR Doc. 2012–28420, on page 70137, in the second column, correct the **DATES** caption to read:

DATES: Comments concerning the scope of the analysis should be received by January 18, 2013. The draft environmental impact statement is expected to be filed with the Environmental Protection Agency and made available for public review in February 2013. The final environmental impact statement is expected to be available for review in April 2013.

Dated: December 11, 2012.

Clinton Kyhl,

Deputy Forest Supervisor.

[FR Doc. 2012–30311 Filed 12–14–12; 8:45 am]

BILLING CODE 3410–75–P

DEPARTMENT OF COMMERCE

[Docket No.: 121115633–2633–01]

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

AGENCY: Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: This notice revises and updates the *Department of Commerce (DOC) Pre-Award Notification Requirements for Grants and Cooperative Agreements,* as published in the **Federal Register** (66 FR 49917) on October 1, 2001, and as amended on October 30, 2002 (67 FR 66109), on December 30, 2004 (69 FR 78389), and February 11, 2008 (73 FR 7696). This announcement constitutes a recompilation of the Department of Commerce pre-award requirements for grants and cooperative agreements, including all amendments and revisions to date.

DATES: These provisions are effective December 17, 2012.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Department of Commerce Office of Acquisition Management, Telephone Number: 202–482–1679.

SUPPLEMENTARY INFORMATION: The DOC is authorized to award grants and cooperative agreements under a wide range of programs that support economic development; international trade; minority businesses; standards and technology; oceanic/atmospheric services; and telecommunications and information.

It is the policy of the DOC to seek full and open competition for awards of discretionary financial assistance funds whenever possible. Moreover, DOC financial assistance must be awarded through a merit-based review and selection process. Notices announcing the availability of Federal funds for new awards for each DOC competitive financial assistance program will be posted on www.grants.gov by the sponsoring operating unit in the uniform format for an announcement of Federal Funding Opportunity (FFO) published by the Office of Management and Budget (OMB). In limited circumstances (*e.g.,* when required by statute), DOC will also publish notices in the **Federal Register** announcing the availability of Federal funds for new awards. These announcements will reference or include the DOC Pre-Award Notification Requirements identified in Sections A and B of this notice, and the program-specific information identified in Section C of this notice, and will follow the uniform format for announcements of funding opportunities as identified in Section D.

This announcement provides notice of the DOC Pre-Award Notification Requirements that apply to all DOC-sponsored grant and cooperative agreement programs, and that may supplement those program announcements that reference this notice. Some of the DOC general provisions published herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the U.S. Code (U.S.C.), **Federal Register**, or Code of Federal Regulations (CFR), or requirements provided in Executive Orders, OMB Circulars (circulars), or Assurances (Forms SF–424B and SF–424D). This notice does not intend to be a derogation of, or amend, any statute, regulation, Executive Order, circular, or Standard Form.

Each individual award notice will complete and include the relevant analyses pursuant to the requirements in Executive Order 12866, Executive Order 13132, the Administrative Procedure Act, the Regulatory Flexibility Act, and the Paperwork Reduction Act, as applicable.

A. The following pre-award notice provisions apply to all applicants for and recipients of DOC grants and cooperative agreements:

1. Federal Policies and Procedures. Applicants, recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance.

2. Debarment, Suspension, Drug-Free Workplace, and Lobbying Provisions. All applicants must comply with the requirements of subpart C of 2 CFR part 1326, ''Nonprocurement Debarment and Suspension,'' 15 CFR part 29, ''Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)'' and 15 CFR part 28, ''New Restrictions on Lobbying,'' including the submission of required forms and obtaining certification from lower tier applicants and bidders.

3. Pre-Award Screening of Applicant's and Recipient's Management Capabilities, Financial Condition, and Present Responsibility. It is the policy of the DOC to make awards to applicants and recipients that are competently managed, responsible, financially capable and committed to achieving the objectives of the award(s) they receive. Therefore, pre-award screening may include, but is not limited to, the following reviews:

(a) *Past Performance.* Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(b) *Credit Checks.* A credit check will be performed on individuals, for-profit, and non-profit organizations.

(c) *Delinquent Federal Debts.* No award of Federal funds shall be made to an applicant that has an outstanding delinquent Federal debt until:

(1) The delinquent account is paid in full;

(2) A negotiated repayment schedule is established and at least one payment is received; or

(3) Other arrangements satisfactory to the DOC are made.

Pursuant to 31 U.S.C. 720B and 31 CFR 901.6, unless waived, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

Pursuant to 28 U.S.C. 3201(e), a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan which is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied. The DOC sponsoring operating units may promulgate regulations to allow for waiver of this restriction on eligibility for such grants and cooperative agreements.

(d) *List of Parties Excluded from Procurement and Nonprocurement Programs.* The System for Award Management (SAM) (previously this information was located within the Excluded Parties Listing System), maintained by the General Services Administration (GSA), is available at *https://www.sam.gov.* SAM encompasses the capabilities of the Central Contractor Registration (CCR)/ Federal Agency Registration (FedReg), Online Representations and Certifications Application (ORCA), and the Excluded Parties List System (EPLS), among other federal databases, and will be checked by DOC to ensure that an applicant is properly registered and eligible to receive a DOC financial assistance award.

(e) *Pre-Award Accounting System Surveys.* The Grants Office may require a pre-award survey of the applicant's financial management system in cases where the recommended applicant has had no prior Federal support, the operating unit has reason to question whether the financial management system meets Federal financial management standards, or the applicant is being considered for a high-risk designation.

(f) *Other.* DOC may conduct additional pre-award screenings in accordance with new public laws or administrative directives.

4. *No Obligation for Future Funding.* If the DOC obligates funding for an applicant's project, the DOC has no obligation to provide any additional future funding in connection with that award. Any amendment of an award to increase funding or to extend the period of performance is at the total discretion of the DOC.

5. *Pre-Award Activities.* If an applicant incurs any costs prior to receiving an award, it does so solely at its own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made, or as authorized for awards that support research by 15 CFR 14.25(e)(4).

6. *Freedom of Information Act (FOIA) Disclosure.* The FOIA (5 U.S.C. 552 and DOC regulations at 15 CFR part 4) sets forth the process and procedure the DOC follows to make requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications, proposals, and other information submitted by applicants may be released in response to FOIA requests. In accordance with 15 CFR 4.9, applicants and recipients should designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submissions that it considers protected from disclosure under 5 U.S.C. 552(b)(4). In addition, Federal contractors may assist with program implementation and have access to materials applicants and recipients submit.

7. *False Statements.* A false statement on an application is grounds for denial or termination of an award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

8. *Application Forms.* Unless the individual programs specify differently in notices announcing the availability of funding, the following forms, family of forms, and/or certifications are required, as applicable, for DOC grants and cooperative agreements: OMB Standard Forms (SF) SF–424, *Application for Federal Assistance;* SF–424A, *Budget Information—Non-Construction Programs;* SF–424B, *Assurances—Non-Construction Programs;* SF–424C, *Budget Information—Construction Programs;* SF–424D, *Assurances—Construction Programs;* SF–424 Family of Forms for Research and Related Programs; SF–424 Short Organizational Family; SF–424 Individual Form Family; and SF–424 Mandatory Family. In addition, Commerce Department (CD) Forms CD–511, *Certification Regarding Lobbying;* CD–512, *Certification Regarding Lobbying—Lower-Tier Covered Transactions;* and SF–LLL, *Disclosure of Lobbying Activities,* will be used as appropriate.

9. *Environmental Requirements.* Environmental impacts must be considered by Federal decision makers in their decisions whether to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Applicants, recipients and subrecipients must comply with all environmental standards, to include those prescribed under the following

statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. The failure to do so is a basis for not selecting an application. In some cases, if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

(a) *The National Environmental Policy Act (42 U.S.C. 4321 et seq.).* Applicants for and recipients of Federal financial assistance awards are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with the National Environmental Policy Act, when the award activities remain subject to Federal authority and control. Applicants for and recipients of assistance may be requested to assist DOC in drafting an environmental impact assessment or environmental impact statement as part of a proposal if DOC determines such documentation is required.

(b) *National Historic Preservation Act (16 U.S.C. 470 et seq.).* Applicants for and recipients of Federal financial assistance awards are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Applicants and recipients may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties.

(c) *Executive Order 11988 (''Floodplain Management'') and Executive Order 11990 (''Protection of Wetlands'').* Applicants and recipients must identify proposed actions located in Federally defined floodplains and wetlands to enable DOC to make a determination whether there is an alternative to minimize any potential harm.

(d) *Clean Air Act (42 U.S.C. 7401 et seq.), Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (Clean Water Act), and Executive Order 11738 (''Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans'').* Applicants and recipients must comply with the provisions of the Clean Air Act (42 U.S.C. 7401 *et seq.*), Clean Water Act (33 U.S.C. 1251 *et seq.*), and Executive Order 11738. Recipients shall not use a facility that EPA has placed on the Environmental Protection Agency's (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System which is incorporated into the SAM located at *https://www.sam.gov/portal/public/SAM*) in performing any award that is nonexempt under subpart J of 2 CFR part 1532.

(e) *The Flood Disaster Protection Act (42 U.S.C. 4002 et seq.).* Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

(f) *The Endangered Species Act (16 U.S.C. 1531 et seq.).* Applicants and recipients must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility for ensuring that a protected species or habitat does not incur adverse effects from actions under Federal assistance awards, and for conducting the required reviews under the Endangered Species Act, as applicable.

(g) *The Coastal Zone Management Act (16 U.S.C. 1451 et seq.).* Funded projects must be consistent with a coastal state's approved management program for the coastal zone.

(h) *The Coastal Barriers Resources Act (16 U.S.C. 3501 et seq.).* Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

(i) *The Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.).* This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

(j) *The Safe Drinking Water Act (42 U.S.C. 300 et seq.).* This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

(k) *The Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.).* This act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

(l) *The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. 9601) and the Community Environmental Response Facilitation Act (42 U.S.C. 9601 et seq.).* These requirements address responsibilities related to actual or threatened hazardous substance releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

(m) *Executive Order 12898 (''Environmental Justice in Minority Populations and Low Income Populations'').* This Order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

10. *Limitation of Liability.* In no event will the Department of Commerce be responsible for proposal preparation costs if a program fails to receive funding or is cancelled because of other agency priorities. The publication of an announcement of funding availability does not oblige the agency to award any specific project or to obligate any available funds.

B. The following general provisions will apply to all DOC grant and cooperative agreement awards:

1. *Administrative Requirements and Cost Principles.* The uniform administrative requirements for all DOC grants and cooperative agreements are codified at 15 CFR part 14, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations,'' and at 15 CFR part 24, ''Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.'' The following list of cost principles, which are incorporated by reference in 15 CFR parts 14 and 24, are included in the DOC's grants and cooperative agreements: 2 CFR part 220 (OMB Circular A–21), ''Cost Principles for Educational Institutions;'' 2 CFR part 225 (OMB Circular A–87), ''Cost Principles for State, Local and Indian Tribal Governments;'' 2 CFR part 230 (OMB Circular A–122), ''Cost Principles for Nonprofit Organizations;'' Federal Acquisition Regulation subpart 31.2, ''Contracts with Commercial Organizations,'' codified at 48 CFR 31.2; and 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' Applicable administrative requirements and cost principles are identified in each award and are incorporated by reference into the award. Expenditures for any financial assistance award must be necessary to carry out the authorized project and be consistent with the applicable cost principles.

2. *Award Payments.* Advances will be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case

should advances exceed the amount of cash required for a 30-day period. Any advanced funds that are not disbursed in a timely manner and any applicable interest must be returned promptly to the DOC. Certain bureaus within the DOC use the Department of Treasury's Automated Standard Application for Payment (ASAP) system. In order to receive payments under ASAP, recipients will be required to enroll electronically in the ASAP system by providing their Federal Awarding Agency with pertinent information to begin the enrollment process, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. It is the recipient's responsibility to ensure that its contact information is correct. The funding agency must be provided a Point of Contact name, mailing address, email address, telephone number, Data Universal Number System (DUNS) identifier issued by the commercial company Dun & Bradstreet (D&B), and taxpayer identification number (TIN) to commence the enrollment process. In order to be able to complete the enrollment process, the recipient will need to identify a Head of Organization, an Authorizing Official, and a Financial Officer. It is very important that the recipient's banking data be linked to the funding agency's Agency Location Code in order to ensure proper payment under an award. For additional information on this requirement, prospective applicants should contact their Federal Awarding Agency.

3. *Federal and Non-Federal Cost Sharing.*

(a) Awards that include Federal and non-Federal cost sharing will incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share will not exceed the total Federal dollar amount authorized by the award.

(b) The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, recipients must meet the cost share commitment over the life of the award.

4. *Budget Changes and Transfers Among Cost Categories.* When the terms of an award allow the recipient to transfer funds among approved direct cost categories, the transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, the recipient will not be authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

5. *Indirect Costs and Facilities and Administrative Costs.*

(a) Indirect costs, or facilities and administrative (F&A) costs for educational institutions, will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

(b) Excess indirect costs may not be used to offset unallowable direct costs.

(c) OMB established the cognizant agency concept, under which a single agency represents all others in dealing with grantees in common areas. The cognizant agency reviews and approves grantees' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the recipient would like to include indirect costs in its budget, but the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate will be subject to the procedures in the applicable cost principles and the following subparagraphs:

(1)(i) State, local, and Indian Tribal Governments; Educational Institutions; Hospitals and Non-Profit Organizations (Non-Commercial Organizations).

For those organizations for which the DOC is cognizant or has oversight, the DOC or its designee will either negotiate a fixed rate with carry-forward provisions or, in some instances, limit its review to evaluating the procedures described in the recipient's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

(ii) Commercial Organizations

For commercial organizations, the term ''cognizant federal agency'' generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 CFR part 42. If the only federal funds received by a commercial organization are DOC award funds, then the DOC becomes the cognizant federal agency for the purpose of indirect cost negotiations. For those organizations for which the DOC is cognizant, DOC or its designee will negotiate a fixed rate with carry-forward provisions for the recipient. ''Fixed rate'' means an indirect cost rate which has the same characteristics as a pre-determined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of the subsequent period. DOC or its designee will negotiate indirect cost rates using the cost principles found in 48 CFR part 31, ''Contract Cost Principles and Procedures.'' For guidance on how to put an indirect cost plan together go to: *http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm.*

(2) Within 90 days of the award date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Room 6412, Washington, DC 20230.

(3) The recipient can use the fixed rate proposed in the indirect cost plan until such time as the DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each recipient's fiscal year.

(d) When the DOC is not the oversight or cognizant Federal agency, the recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

(e) If the recipient fails to submit the required documentation to the DOC within 90 days of the award date, the recipient may be precluded from recovering any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is good cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-

day due date may be approved by the Grants Officer.

(f) The maximum dollar amount of allocable indirect costs for which the DOC will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and applicable to the period in which the cost was occurred, provided the rate is approved on or before the award end date.

6. *Tax Refunds.* Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by a recipient during or after the project period must be refunded or credited to the DOC where the benefits were financed with Federal funds under the award. Recipients are required to contact the Grants Officer immediately upon receipt of these refunds. Recipients are required to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the project period ends.

7. *Other Federal Awards with Similar Programmatic Activities.* Recipients will be required to provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. The DOC will not pay for costs that are funded by other sources.

8. *Non-Compliance with Award Provisions.* Failure to comply with any or all of the provisions of an award, or the requirements of this notice, may have a negative impact on future funding by the DOC and may be considered grounds for any or all of the following enforcement actions: establishment of an account receivable, withholding payments under any DOC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any DOC active awards, or termination of any DOC active awards.

9. *Prohibition Against Assignment by the Recipient.* Notwithstanding any other provision of an award, recipients may not transfer, pledge, mortgage, or otherwise assign an award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

10. *Non-Discrimination Requirements.* There are several Federal statutes, regulations, Executive Orders, and policies relating to nondiscrimination. No person in the United States shall, on the grounds of race, color, national origin, handicap, religion, age, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. These requirements include but are not limited to:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and the DOC's implementing regulations published at 15 CFR part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and the DOC's implementing regulations at 15 CFR part 8a prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) and the DOC's implementing regulations published at 15 CFR part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance. The U.S. Department of Justice issued regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 CFR part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 CFR part 36; 75 FR 56164, as amended by 76 FR 13286). These regulations adopt enforceable accessibility standards called the ''2010 ADA Standards for Accessible Design'' (2010 Standards). For purposes of complying with DOC's regulations, the 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 CFR 8b.18(c), as follows:

(1) Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 CFR 35.151(c)(2));

(2) Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 CFR 36.406(a)(2)); and

(3) In all cases, once a recipient selects an applicable ADA accessibility standard (*i.e.,* the 2010 Standards or UFAS), that standard must be applied to the entire facility. As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.

(d) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) and the DOC's implementing regulations published at 15 CFR part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;

(e) The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;

(f) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), relating to nondiscrimination in the sale, rental or financing of housing;

(g) Parts II and III of Executive Order 11246, as amended by Executive Orders 11375 and 12086 requiring Federally assisted construction contracts to include the nondiscrimination provisions of sections 202 and 203 of that Executive Order and the Department of Labor's regulations at 41 CFR 60–1.4(b) implementing Executive Order 11246;

(h) Executive Order 13166 (August 11, 2000), ''Improving Access to Services for Persons With Limited English Proficiency,'' requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national

origin discrimination affecting LEP persons; and

(i) In recognition of the constitutionally-protected interest of religious organizations in making religiously-motivated employment decisions, Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.,* which expressly exempts religious organizations from the prohibition against discrimination on the basis of religion. *See* 42 U.S.C. 2000e-1(a).

11. Audits of Organizations Covered by OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' and the related Compliance Supplement. Recipients that are subject to OMB Circular A–133, and that expend $500,000 or more in Federal awards in a fiscal year shall have an audit conducted for that year in accordance with the requirements of OMB Circular A–133, issued pursuant to the Single Audit Act of 1984 (Pub. L. 98–502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. 104–156).

12. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 CFR § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A–133 shall have a program-specific audit performed by an independent auditor when the federal share amount awarded is $500,000 or more over the duration of the project period. An audit is required at least once every two years using the following schedule for audit report submission.

(a) For awards where the project period is less than two years, an audit is required within 90 days of the end of the project period to cover the entire project (the award close-out period is included in the 90 days);

(b) For awards with a two- or three-year project period, an audit is required within 90 days after the end of the first year to cover Year 1, which is the period of time when Federal funding is available for obligation by the recipient, and within 90 days of the end of the project period to cover Year 2 and Year 3 (if applicable) (the award close-out period is included in the 90 days); or

(c) For awards with a four- to five-year project period, an audit is required within 90 days after the end of the first year to cover Year 1, within 90 days after the end of the third year to cover Year 2 and Year 3, and within 90 days of the end of the project period to cover Year 4 for and Year 5 (if applicable) (the award close-out period is included in the 90 days).

Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A–133, subpart B, §____.235. The Recipient may include a line item in the budget for the cost of the audit for approval by the Grants Officer.

13. Policies and Procedures for Resolution of Audit-Related Debts. The DOC has established policies and procedures for handling the resolution and reconsideration of financial assistance audits which have resulted in, or may result in, the establishment of a debt (account receivable) for financial assistance awards. These policies and procedures are contained in the **Federal Register** notice dated January 27, 1989. *See* 54 FR 4053. The policies and procedures also are provided in more detail in the *Department of Commerce Financial Assistance Standard Terms and Conditions.*

14. *Debts.* Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. The DOC's debt collection procedures are set out in 15 CFR part 19. In accordance with 15 CFR § 19.1, delinquent debt is a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 15 CFR § 19.5 and 31 U.S.C. 3717, failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. 3717 and 31 CFR § 901.9. DOC entities will transfer any DOC debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as ''cross-servicing,'' pursuant 31 U.S.C. 3711(g), 31 CFR § 285.12 and 15 CFR § 19.9, and may result in the DOC taking further action as specified in the terms of the award. Funds for payment of a debt must not come from other federally sponsored programs. Verification that other Federal funds have not been used will be made, *e.g.,* during on-site visits and audits.

15. *Post-Award Discovery of Adverse Information.* After an award is made, if adverse information on a recipient or any key individual associated with a recipient is discovered which reflects significantly and adversely on the recipient's responsibility, the Grants Officer may take the following actions:

(a) Require the recipient to correct the conditions.

(b) Consider the recipient to be ''high risk'' and unilaterally impose special award conditions to protect the Federal Government's interest.

(c) Suspend or terminate an active award. The recipient will be afforded due process while effecting such actions.

(d) Require the removal of personnel from association with the management of and/or implementation of the project and require Grants Officer approval of personnel replacements.

16. *Competition and Codes of Conduct.*

(a) Pursuant to the certification in Form SF–424B, paragraph 3, recipients must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest, or personal gain in the administration of this award and any subawards.

(b) Recipients must maintain written standards of conduct governing the performance of their employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if such participation would cause a real or apparent conflict of interest. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient may not solicit or accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of a recipient.

(c) All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. Recipients must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to

ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals will be excluded from competing for such subawards.

(d) For purposes of the award, a financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with an applicant. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to act in an impartial manner. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

17. *Small Businesses, Minority Business Enterprises and Women's Business Enterprises.* The DOC encourages recipients to utilize small businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The DOC's Minority Business Development Agency can assist recipients in matching qualified minority business enterprises with contract opportunities.

18. *Subaward and/or Contract to a Federal Agency.* Recipients, subrecipients, contractors, and/or subcontractors may not sub-grant or sub-contract any part of an approved project to any Federal department, agency, instrumentality, or employee thereof, without the prior written approval of the Grants Officer.

19. Foreign Travel. Recipients must comply with the provisions of the Fly America Act (49 U.S.C. 40118) and the implementing Federal Travel Regulations (41 CFR §§ 301–10.131 through 301–10.143). The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag carrier service will not accomplish the agency's mission. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the recipient must receive prior approval from the Grants Officer.

20. *Purchase of American-Made Equipment and Products.* Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under DOC financial assistance awards.

21. *Intellectual Property Rights.*

(a) *Inventions.* The rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, as amended (Pub. L. 96–517), as amended, and codified at 35 U.S.C. 200 *et seq.,* except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 CFR part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14, which is incorporated by reference into awards. Recipients of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at *www.iedison.gov.* Recipients may obtain a waiver of this electronic submission requirement by providing to the DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

(b) Patent Notification Procedures. Pursuant to Executive Order 12889, the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient will be required to notify the Grants Officer. This notice does not necessarily mean that the government authorizes and consents to any copyright or patent infringement occurring under the financial assistance award.

(c) *Data, Databases, and Software.* The rights to any work produced or purchased under a DOC financial assistance award are determined by 15 CFR §§ 14.36, for State and Local Governments, or 24.34, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations, as applicable. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Federal Government purposes.

(d) *Copyright.* The recipient may copyright any work produced under a DOC financial assistance award subject to the DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work, or authorize others to do so for Federal Government purposes. Works jointly authored by the DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. On occasion, the DOC may require the recipient to transfer to DOC its copyright in a particular work for government purposes or when the DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Federal Government through assignment is permitted by 17 U.S.C. 105.

22. *Seat Belt Use.* Pursuant to Executive Order 13043, recipients shall seek to encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating recipient/company-owned, rented or personally owned vehicles.

23. *Research Involving Human Subjects.* All proposed research involving human subjects must be conducted in accordance with 15 CFR part 27, ''Protection of Human Subject.'' No research involving human subjects is permitted under any DOC financial assistance award unless expressly authorized by the Grants Officer.

24. *Federal Employee Expenses.* Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee, may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

25. *Minority Serving Institutions (MSIs) Initiative.* Pursuant to Executive Orders 13555 (''White House Initiative on Educational Excellence for Hispanics''), 13270 (''Tribal Colleges and Universities''), and 13532 (''Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities''), the DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance award programs. The DOC's goals include achieving full

participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education's Web site.

26. *Access to Records.* The DOC, the Inspector General of the DOC, the Comptroller General of the United States, or any of their duly authorized representatives, and, if appropriate, the State, shall have access to any pertinent books, documents, papers and records of the parties to a grant or cooperative agreement, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. An audit of an award may be conducted at any time.

27. *Research Misconduct.* The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The DOC requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

28. *Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728–4763).* Recipients must comply with this Act relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of the Office of Personnel Management Standards for a Merit System of Personnel Administration (5 CFR part 900, subpart F).

29. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*) and the DOC's implementing regulations issued at 15 CFR part 11. These provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

30. *Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.).* This Act prohibits the use of lead-based paint in construction or rehabilitation of residential structures.

31. *Hatch Act (5 U.S.C. 1501–1508 and 7324–7328).* This Act limits the political activities of employees or officers of State or local governments whose principal employment activities are funded in whole or in part with Federal funds.

32. *Labor standards for Federally-assisted construction subagreements (wage guarantees).* Recipients must comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-7); the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874); and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

33. *Care and Use of Live Vertebrate Animals.* Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. 89–544), as amended (7 U.S.C. 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects) and implementing regulations, 9 CFR parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

34. Publications, Videos, and Acknowledgment of Sponsorship. Publication of the results or findings in appropriate professional journals and production of videos or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.,* scientific research). The recipient may be required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials to the funding agency. When releasing information related to a funded project the recipient must include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material based on, developed under or otherwise produced under a DOC award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved by the Grants Officer: ''This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.''

35. *Homeland Security Presidential Directive—12.* If the performance of a grant award requires recipient organization personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term ''routine access'' is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award shall comply

with the DOC personal identity verification procedures that implement Homeland Security Presidential Directive—12, ''Policy for a Common Identification Standard for Federal Employees and Contractors,'' FIPS PUB 201, and OMB Memorandum M–05–24. The recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient shall insert the following terms in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

(a) The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD–12), Office of Management and Budget (OMB) Guidance M–05–24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

(b) The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) upon completion of the subrecipient or contractor employee's employment; (3) upon completion of the subaward or contract.

36. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.

(a) This clause applies to the extent that a financial assistance award involves access to export-controlled items.

(b) In performing a financial assistance award, the recipient may gain access to items subject to export controls (export-controlled items) under the Export Administration Regulations (EAR). The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexport provisions. The recipient shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls relating to physical, verbal, visual and electronic access to export-controlled items, including by foreign nationals.

(c) Definitions:

(1) Export-controlled items. Items (commodities, software or technology) that are subject to the EAR (15 CFR §§ 730–774), implemented by the DOC's Bureau of Industry and Security. These are generally known as ''dual-use'' items, items with military and commercial application.

(2) *Deemed Export/Reexport.* The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is ''deemed'' to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from DOC may be required for deemed exports or reexports.

(d) The recipient shall control access to all export-controlled items that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations, including the EAR.

(e) As applicable, recipient personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.

(f) To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.

(g) Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, Executive Orders or regulations.

(h) Compliance with this term will not satisfy any legal obligations the recipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120–130), including releases of such items to foreign nationals.

(i) The recipient shall include this term, including this paragraph, in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

37. The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 CFR part 175. The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons. The DOC incorporates the award term required by 2 CFR § 175.15(b) into all financial assistance awards. *See http://www.gpo.gov/fdsys/pkg/CFR–2012-title2-vol1/pdf/CFR–2012-title2-vol1-sec175–15.pdf* for the full award term.

38. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282; codified at 31 U.S.C. 6101 note) (FFATA).

(a) The FFATA requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable Web site. This information is available at USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:

(1) Name of entity receiving award;

(2) Award amount;

(3) Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;

(4) Location of: entity, primary location of performance (City/State/Congressional District/Country; and

(5) Unique identifier of entity.

(b) Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to $25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in 2 CFR part 170. The prime recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime recipient awards any sub-grant greater than or equal to $25,000. *See* Public Law 109–282, as

amended by section 6202(a) of Public Law 110–252 (*see* 31 U.S.C. 6101 note). The DOC incorporates the award term required by Appendix A of 2 CFR part 170 into all financial assistance awards. *See http://www.gpo.gov/fdsys/pkg/CFR–2011-title2-vol1/pdf/CFR–2011-title2-vol1-part170-appA.pdf* for the full award term.

(c) *Central Contractor Registration (CCR) and Universal Identifier Requirements.* Unless an exemption applies under 2 CFR § 25.110, applicants for federal financial assistance awards must be registered in the Central Contractor Registration (CCR) prior to submitting an application for financial assistance, maintain an active CCR registration with current information at all times during which it has an active Federal award or an application under consideration by an agency, and provide its DUNS number in each application it submits to the agency. For this purpose, the DOC incorporates the award term required by Appendix A of 2 CFR part 25 into all financial assistance awards. *See http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=d1bbde1c530112e7133a03bb635bf2fe&rgn=div9&view=text&node=2:1.1.1.3.3.3.1.14.1&idno=2* for the full award term.

C. In limited circumstances (*e.g.,* when required by statute), the DOC will issue a **Federal Register** notice, in addition to a notice on *www.grants.gov,* announcing the availability of Federal funds for each DOC competitive financial assistance program. Unless statute or regulation requires otherwise, such **Federal Register** notices will contain only the following program-specific information: Summary description of program; deadline date for receipt of applications; addresses for submission of applications; information contacts (including electronic access); the amount of funding available; statutory authority; the applicable Catalog of Federal Domestic Assistance (CFDA) number(s); eligibility requirements; cost-sharing or matching requirements; Intergovernmental Review requirements; evaluation criteria used by the merit reviewers; selection procedures, including funding priorities/selection factors/policy factors to be applied by the selecting official; and administrative and national policy requirements; and information about how to access the full program notice at *www.grants.gov.*

D. The DOC follows the uniform format for an announcement of Federal Funding Opportunity (FFO) for discretionary grants and cooperative agreements established by OMB in a guidance published in the **Federal Register** (see 68 FR 37370 (June 23, 2003) and 68 FR 58146 (October 8, 2003)). FFOs published by DOC are available at *www.grants.gov.* Applicants are strongly encouraged and in some cases required to apply through *www.grants.gov.* It can take up to two weeks to register with *www.grants.gov* if problems are encountered. Registration is required only once. Applicants should consider the time needed to register with *www.grants.gov*, and should begin the registration process well in advance of the application due date if they have never registered. Applicants should allow themselves adequate time to submit the proposal through *www.grants.gov*, as the deadline for submission generally cannot be extended and there is significant potential for human or computer error during the electronic submission process. After registering, it may take several days or longer from the initial log-on before a new Grants.gov system user can submit an application. Only authorized individual(s) will be able to submit the application, and the system may need time to process a submitted proposal. Applicants should save and print the proof of submission they receive from Grants.gov, which may take up to two days to receive.

Executive Order 12866

This notice has been determined to be ''not significant'' for purposes of Executive Order 12866, ''Regulatory Planning and Review.''

Administrative Procedure Act and Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, for this notice relating to public property, loans, grants benefits or contracts (5 U.S.C. 553(a)), a Regulatory Flexibility Analysis is not required and has not been prepared for this notice.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Paperwork Reduction Act

This notice does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. Notwithstanding any other provisions 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 Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* unless that collection of information displays a currently valid OMB control number. The use of the following family of forms has been approved by OMB under the following control numbers: (1) SF–424 Family: 0348–0041, 0348–0044, 4040–0003, and 4040–0004; (2) SF–424 Research and Related Family: 4040–0001; SF–424 Individual Family: 4040–0005; (3) SF–424 Mandatory Family: 4040–0002; and (4) SF–424 Short Organizational Family: 4040–0003. The use of Form SF–LLL is approved by OMB under the control numbers 0348–0046.

Catalog of Federal Domestic Assistance

This notice affects all of the grant and cooperative agreement programs funded by the DOC. The Catalog of Federal Domestic Assistance can be accessed on the Internet at: *http://www.cfda.gov.*

List of Subjects

Accounting, Administrative practice and procedures, Grants administration, Grant programs—economic development, Grant programs—oceans, atmosphere and fisheries management, Grant programs—minority businesses, Grant programs—technology, Grant programs—telecommunications, Grant programs—international, Reporting and recordkeeping requirements.

Dated: December 4, 2012.

Barry E. Berkowitz,

Senior Procurement Executive and Director of Acquisition Management.

[FR Doc. 2012–30228 Filed 12–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a

decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[10/25/2012 through 12/10/2012]

Firm name	Firm address	Date accepted for investigation	Product(s)
Forster Tool & Manufacturering Co., Inc	1135 Industrial Drive, Bensenville, IL 60106.	10/30/2012	Manufacturer of small machined industrial and commercial pins/controls and dental tips/tools/accessories.
Beecher and Myers Co., Inc	3753 Carlisle Road, Dover, PA 17315	10/26/2012	Manufacturer of custom-cut wooden materials as well as provides edge banding, CNC routing, and light assembly services to several industries.
Met-L-Flo, Inc	720 Heartland Drive Unit S, Sugar Grove, IL 60554.	11/16/2012	Manufacturer of plastic components for several industries including automotive and appliances.
Transformer Manufacturers, Inc	7051 West Wilson Avenue, Norridge, IL 60706.	11/21/2012	Manufacturer of transformers for the telecommunications, industrial control, and audio electronics industries.
Inwood Office Furniture, Inc. d/b/a Inwood Office Invironments.	1108 East 15th Street, Jasper, IN 47546	11/21/2012	Manufacturer of wood office and school furniture.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: December 11, 2012.

Miriam Kearse,

Eligibility Examiner.

[FR Doc. 2012–30300 Filed 12–14–12; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Certain Oil Country Tubular Goods From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 8, 2012, the Department of (''the Department'') published its preliminary results of the antidumping duty administrative review of the antidumping duty order on oil country tubular goods (''OCTG'') from the People's Republic of China (''PRC'').[1] The period of review (''POR'') is May 19, 2010, through April 30, 2011.[2] The Department determined that Jiangsu Chengde Steel Tube Share Co., Ltd. (''Jiangsu Chengde''), Taizhou Chengde Steel Tube Co., Ltd. (''Taizhou Chengde''), and Yangzhou Chengde Steel Tube Co., Ltd. (''Yangzhou Chengde'') (collectively ''the Chengde Group'')[3] made sales of subject merchandise in the United States at prices below normal value (''NV'') during the POR. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we made changes to our margin calculations for the Chengde Group. The final weighted-average dumping margins for this review are listed in the ''Final Results Margins'' section below.

DATES: *Effective Date:* December 17, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4474 and (202) 482–0414, respectively.

Background

On June 8, 2012, the Department published its preliminary results in the antidumping duty administrative review of OCTG from the PRC.[4] On September 12, 2012, the Department released draft liquidation and cash deposit customs instructions to interested parties inviting comments by September 17, 2012, and rebuttal comments by September 20, 2012. American Tubular Products, LLC (''ATP'') submitted comments on September 17, 2012 and U.S. Steel Corporation (''U.S. Steel'') submitted rebuttal comments on September 20, 2012.

Also on September 20, 2012, the Department extended the deadline for the final results of review to December 5, 2012.[5] In addition, as explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days. The revised deadline for the final results of this review is now Friday, December 7, 2012.[6]

[1] *See Certain Oil Country Tubular Goods From the People's Republic of China: Preliminary Results of the First Antidumping Duty Administrative Review, Rescission in Part and Intent To Rescind in Part,* 77 FR 34013 (June 8, 2012) (''*OCTG Prelim*'')

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 24460 (May 2, 2011).

[3] *See OCTG Prelim,* 77 FR at 34015 (June 8, 2012) (where we collapsed these companies into a single entity). No party commented on this determination in the case or rebuttal briefs.

[4] *See OCTG Prelim.*

[5] *See* Memorandum ''Certain Oil Country Tubular Goods from the People's Republic of China: Extension of Deadline for Final Results of Antidumping Duty Administrative Review'' dated September 20, 2012.

[6] *See* Memorandum to the Record from Paul Piquado, AS for Import Administration, regarding

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, ''Oil Country Tubular Goods from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the First Administrative Review (''Issues and Decision Memorandum''),'' dated concurrently with, and hereby adopted by, this notice. A list of the issues that parties raised and to which the Department responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Period of Review

The POR is May 19, 2010, through April 30, 2011.

Scope of the Order

The merchandise covered by the order consists of certain OCTG. The merchandise covered by the order is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.31.10, 7304.29.31.20, 7304.29.31.30, 7304.29.31.40, 7304.29.31.50, 7304.29.31.60, 7304.29.31.80, 7304.29.41.10, 7304.29.41.20, 7304.29.41.30, 7304.29.41.40, 7304.29.41.50, 7304.29.41.60, 7304.29.41.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.61.15, 7304.29.61.30, 7304.29.61.45, 7304.29.61.60, 7304.29.61.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.29.10.30, 7306.29.10.90, 7306.29.20.00, 7306.29.31.00, 7306.29.41.00, 7306.29.60.10, 7306.29.60.50, 7306.29.81.10, and 7306.29.81.50.

The OCTG coupling stock covered by the order may also enter under the following HTSUS item numbers: 7304.39.00.24, 7304.39.00.28, 7304.39.00.32, 7304.39.00.36, 7304.39.00.40, 7304.39.00.44, 7304.39.00.48, 7304.39.00.52, 7304.39.00.56, 7304.39.00.62, 7304.39.00.68, 7304.39.00.72, 7304.39.00.76, 7304.39.00.80, 7304.59.60.00,, 7304.59.80.15, 7304.59.80.20, 7304.59.80.25, 7304.59.80.30, 7304.59.80.35, 7304.59.80.40, 7304.59.80.45, 7304.59.80.50, 7304.59.80.55, 7304.59.80.60, 7304.59.80.65, 7304.59.80.70, and 7304.59.80.80. Although the HTSUS subheadings are provided for convenience and customs purposes only, the written product description, available in *Certain Oil Country Tubular Foods From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 75 FR 28551 (May 21, 2010), remains dispositive.

Rescission of Review in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the initiation notice of the requested review. For 52 of the 53 companies for which the Department initiated an administrative review, U.S. Steel was the only party that requested the review. On September 23, 2011, U.S. Steel timely withdrew its review requests for all 52 companies for which U.S. Steel was the only party that had requested an administrative review.

Therefor, in *OCTG Prelim,* the Department rescinded this review in accordance with 19 CFR 351.213(d)(1) for those companies named in the *Initiation Notice* for this administrative review that received separate rate status in the *Final Determination,* other than Jiangsu Chengde, which requested a review of itself.[7]

For the final results, the Department is rescinding the review with respect to companies on which this review was initiated but had not received a separate rate in the *Final Determination.* As described above, U.S. Steel withdrew its review request covering these companies. The Department did not rescind this review at the time of the preliminary results for those companies that had not established their eligibility for a separate rate in the *Final Determination* and were considered part of the PRC-wide entity which could potentially be under review for the final results of this administrative review.[8] The PRC-wide entity did not come under review for these final results. Therefore, the Department is rescinding this review with respect to these companies in the final results.[9]

Changes Since the Preliminary Results

Based on an analysis of the comments received, the Department has made the following changes in the margin calculation.

- The Department is valuing steel billets using SVs for both alloy and nonalloy steel.[10]
- The Department is valuing thread protectors as a material input only.[11]

Final Results Margin

The Department determined the weighted-average dumping margins for the period May 19, 2010, through April 30, 2011, to be:

Exporter	Weighted-Average dumping margin (percentage)
Jiangsu Chengde, Yangzhou Chengde, Taizhou Chengde (collectively, The Chengde Group	172.54

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For any individually examined respondents whose weighted-average dumping margin is above *de minimis,* we calculated importer-specific *ad valorem*

''Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane,'' dated October 31, 2012.

[7] *See* Appendix II for a list of these companies.

[8] *See OCTG Prelim,* 77 FR at 34014–15.

[9] *See* Appendix III for a list of these companies.

[10] *See* Comment 1 of the accompanying Issues and Decision Memorandum.

[11] *See* Comment 7 of the accompanying Issues and Decision Memorandum.

duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).[12] We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is above *de minimis* (*i.e.,* 0.50 percent). Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the ''Act''): (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 99.14 percent;[13] and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

[12] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[13] For an explanation on the derivation of the PRC-wide rate, *see Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates From the People's Republic of China,* 70 FR 24502, 24505 (May 10, 2005).

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

The Department will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b). The Department is issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 5, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Issues for the Final Results

Comment 1: Valuation of Steel Billets
Comment 2: Whether To Grant Chengde a By-Product Offset
Comment 3: Valuation of Brokerage and Handling
Comment 4: Surrogate Financial Ratios
Comment 5: Assessment
Comment 6: Valuation of Labor
Comment 7: Double Counting of Thread Protectors
Comment 8: Valuation of Ocean Freight
Comment 9: Valuation of Inland Freight

Appendix II

Companies With Separate Rates From the *Final Determination* for Which the Review Request Was Withdrawn

1. Anhui Tianda Oil Pipe Co., Ltd.
2. Benxi Northern Steel Pipes Co., Ltd.
3. Faray Petroleum Steel Pipe Co., Ltd.
4. Freet Petroleum Equipment Co., Ltd. of Shengli Oil Field, The Thermal Recovery Equipment, Zibo Branch
5. Hengyang Steel Tube Group Int'l Trading Inc
6. Jiangyin City Changjiang Steel Pipe Co., Ltd.
7. Shandong Dongbao Steel Pipe Co., Ltd.
8. Shandong Molong Petroleum Machinery Co., Ltd.
9. Shengli Oil Field Freet Petroleum Equipment Co., Ltd.
10. Shengli Oil Field Freet Petroleum Steel Pipe Co., Ltd.
11. Shengli Oil Field Highland Petroleum Equipment Co., Ltd.
12. Tianjin Pipe International Economic & Trading Corp.
13. Tianjin Tiangang Special Petroleum Pipe Manufacturer Co., Ltd.
14. Wuxi Baoda Petroleum Special Pipe Manufacture Co., Ltd.
15. Wuxi Seamless Oil Pipe Co., Ltd.
16. Wuxi Zhenda Special Steel Tube Manufacturing Co., Ltd.
17. Xigang Seamless Steel Tube Co., Ltd. and
18. Yangzhou Lontrin Steel Tube Co., Ltd.

Appendix III

Companies Without Separate Rates From the *Final Determination* for Which the Review Request Was Withdrawn

1. Baoshan Iron & Steel Co., Inc.
2. Baosteel Group
3. Cangzhou Huaye Metal Products Co., Ltd.
4. Cangzhou Qiancheng Steel Pipe Co.
5. Freet Petroleum Equipment Group Co., Ltd.
6. Guangzhou Juyi Steel Pipes Co., Ltd.
7. Hebei Machinery Import & Export Co., Ltd.
8. Hebei Zhongyuan Steel Pipe Manufacturing Co., Ltd.
9. Hefei Zijin Steel Tube Manufacturing Co., Ltd.
10. Hengyang Valin MPM Tube Co., Ltd.
11. Hengyang Valin Steel Tube Co., Ltd.
12. Huai'an Zhenda Steel Tube Manufacturing Co., Ltd.
13. Huludao Steel Pipe Industrial Co., Ltd.
14. Huludao City Steel Pipe Industrial Co., Ltd.
15. Jiangsu Changbao Precision Tube Co., Ltd.
16. Jiangsu Changbao Steel Tube Co., Ltd.
17. Jiangsu Yulong Steel Pipe Co., Ltd.
18. Jiangyin Chuangzin Oil Pipe
19. Jiangyin City Seamless Steel Tube Factory
20. Jinan Meide Casting Co., Ltd.
21. Northern Tool Equipment Co., Ltd.
22. Shandong Molong Group Co.
23. Shengli Oil Field Freet Import & Export Co., Ltd.
24. Thermal Recovery Equipment Manufacturer of Shengli Oil Field Freet Petroleum Equipment Co. Ltd.,
25. Tianjin Pipe Group Co., Ltd.
26. Tianjin Shuangjie Pipe Manufacturing Co., Ltd.
27. Wuxi Fastube Industry Co.
28. Wuxi Huayou Special Steel Co., Ltd.
29. Wuxi Seamless Special Pipe Co., Ltd.
30. Xi'An Meixinte Industrial & Trading Co., Ltd.
31. Yantai Yuanhua Steel Tubes Co., Ltd.

32. ZhangJiaGang ZhongYuan Pipe-Making Co.
33. Zhejiang Jianli Enterprise Co., Ltd.

[FR Doc. 2012–30221 Filed 12–14–12; 8:45 am]

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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 Pub. L. 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 January 7, 2013. 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: 12–053. *Applicant:* University of Colorado Boulder, 1800 Grant St., Suite 500, Denver, CO 80203. *Instrument:* HF2LI Lock-In System. *Manufacturer:* Zurich Instruments AG, Switzerland. *Intended Use:* The instrument will be used to measure detected near-field signals scattered off an Atomic Force Microscope (AFM) tip in a scattering-Scanning Near-field Optical Microscope (s-SNOM). The instrument will detect the magnitude and phase of the light scattered by an AFM tip to measure the electromagnetic near-field of optical antennas, plasmonics in metals and semiconductors (including graphene), photonic crystals, and other nanoscale spectroscopy applications. The instrument has the ability to fully digitize the measured signal and analyze it at 50 MHz, as well as the ability to demodulate many frequencies at once, which is essential to the measurement technique. Demodulation at 50 MHz is necessary because the AFM tip oscillates at 350–300 kHz, and higher harmonics (5th or 6th) of this oscillation must be measured to isolate the near-field signal. *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:* November 2, 2012.

Docket Number: 12–054. *Applicant:* Purdue University, 525 Northwestern Ave., West Lafayette, IN 47907–2036. *Instrument:* DD Neutron Generator. *Manufacturer:* NSD Fusion, Germany. *Intended Use:* The instrument will be used to determine the behavior of produced scintillation light and ionization electrons of low energy nuclear recoils of Xenon, as well as to compare the combination of energy released in these two channels to energy released in electronic recoils of the same energy. The scintillation and ionization signals are studied in a detector vessel that lies underneath 5 meters of water, thus the instrument needs to be water tight. To study the scintillation light and ionization behavior of liquid xenon to neutrons from a mono-energetic neutron source with energies close to 2.5 MeV, each neutron interaction must be resolved separately, and thus arrive at most once every millisecond. The instrument has been proven to show less than a few hundred counts per second when operated at low voltage, and thus meets this requirement. *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:* November 2, 2012.

Docket Number: 12–057. *Applicant:* Massachusetts Institute of Technology, 190 Albany St., NW21–121, Cambridge, MA 02139. *Instrument:* Fast Ferrite Tuner. *Manufacturer:* AFT Microwave GmbH, Germany. *Intended Use:* The instrument is part of a magnetic field-aligned Ion Cyclotron RF antenna, which is used to automatically follow the load variation in real time and make the antenna system load tolerant. The instrument's unique specifications are its frequency range of 50–80 MHz and 5 MW circulating power. *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:* November 15, 2012.

Dated: December 11, 2012.

Gregory W. Campbell,

Director of Subsidies Enforcement, Import Administration.

[FR Doc. 2012–30342 Filed 12–14–12; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Proposed Collection, Comment Request: Form TO, Annual Notice Filing for Counterparties to Unreported Trade Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. The Commission recently adopted a final rule and interim final rule, as required by the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), governing commodity options. That rulemaking includes a requirement that counterparties to unreported trade options must file an annual notice with the Commission on new Form TO. This notice solicits comments on the reporting requirement that would be imposed by Form TO.

DATES: Comments must be submitted on or before February 15, 2013.

ADDRESSES: You may submit comments, regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden. Please refer to ''Form TO, 'Annual Notice Filing for Counterparties to Unreported Trade Options''' in any correspondence. Comments may be submitted by any of the following methods:

- *Mail:* Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for CFTC, 725 17th Street, Washington, DC 20503.
- The Agency's Web site, at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Sauntia S. Warfield, Assistant Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.*

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to www.cftc.gov. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, (202) 418–5041, *dheitman@cftc.gov*, Division of Market Oversight, or David Aron, Counsel, (202) 418–6621, *daron@cftc.gov*, Office of the General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. 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 control number. To comply with this requirement, the CFTC is publishing the notice of the proposed collection of information listed below.

Abstract: In accordance with section 721 of the Dodd-Frank Act, on April 27, 2012, the Commission published a final and interim final rule governing commodity options (''Commodity Options Rules'').[2] The final rule portion of that rulemaking adopted the Commission's proposal to generally permit market participants to trade commodity options, which are statutorily defined as swaps,[3] subject to the same rules applicable to every other swap. The interim final rule portion of the rulemaking includes a trade option exemption for physically delivered commodity options purchased by commercial users of the commodities underlying the options (''Trade Option Interim Final Rule'' or ''Trade Option IFR''), subject to certain conditions. Those conditions, which include both recordkeeping and reporting obligations, are primarily intended to preserve a level of market visibility for the Commission while reducing the regulatory compliance burden for market participants.

1. Recordkeeping Pursuant to Part 45[4]

The conditions set out in the Trade Option IFR include recordkeeping requirements for any trade options activity, *i.e.,* the recordkeeping requirements of 17 CFR 45.2.[5] Such records must be maintained by all trade option participants pursuant to § 45.2 and made available to the Commission as specified therein.[6] Section 45.2 applies different recordkeeping requirements, depending on the nature of the counterparty. For example, if a trade option counterparty is a swap dealer (''SD'') or major swap participant (''MSP''), it would be subject to the comprehensive recordkeeping requirements of § 45.2(a). If a counterparty is neither an SD nor an MSP, it would be subject to the less stringent recordkeeping requirements of § 45.2(b). The recordkeeping requirement is intended to ensure that trade options market participants are able to provide pertinent information regarding their trade options activity to the Commission, if requested.

2. Reporting Pursuant to Part 45

In addition to part 45 recordkeeping (which applies in some form to all trade options and trade option participants), the interim final rule requires certain trade options to be reported pursuant to part 45's reporting provisions.[7] Under the interim final rule, the determination as to whether a trade option is required to be reported pursuant to part 45 is based on the parties to the trade option and whether or not they have previously reported swaps pursuant to part 45. Specifically, if any trade option involves at least one counterparty (whether as buyer or seller) that has (1) become obligated to comply with the reporting requirements of part 45, (2) as a reporting party, (3) during the twelve month period preceding the date on which the trade option is entered into, (4) in connection with any non-trade option swap trading activity, then such

[1] 17 CFR 145.9.

[2] 77 FR 25320, April 27, 2012.

[3] *See* 7 U.S.C. 1a(47)(A)(i). Note that the swap definition excludes options on futures (which must be traded on a designated contract market (''DCM'') pursuant to part 33 of the Commission's regulations) (*see* Commodity Exchange Act (''CEA'') section 1a(47)(B)(i), 7 U.S.C. 1a(47)(B)(i)), but it includes options on physical commodities (whether or not traded on a DCM) (*see* CEA section 1a(47)(A)(i), 7 U.S.C. 1a(47)(A)(i)). Other options excluded from the statutory definition of swap are options on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that are subject to the Securities Act of 1933 and the Securities Exchange Act of 1934 (*see* CEA section 1a(47)(B)(iii), 7 U.S.C. 1a(47)(B)(iii)) and foreign currency options entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (*see* CEA section 1a(47)(B)(iv), 7 U.S.C. 1a(47)(B)(iv)). Note also that the Commission's regulations define a commodity option transaction or commodity option as ''any transaction or agreement in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an 'option,' 'privilege,' 'indemnity,' 'bid,' 'offer,' 'call,' 'put,' 'advance guaranty' or 'decline guaranty'.'' 17 CFR 1.3(hh). For purposes of this release, the Commission uses the term ''commodity options'' to apply solely to commodity options not excluded from the swap definition set forth in CEA section 1a(47)(A), 7 U.S.C. 1a(47)(A). The Commission recently published, in conjunction with the Securities and Exchange Commission (''SEC'') final rules to further define, among other things, the term ''swap.'' *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement; Final Rule, 77 FR 48207, August 13, 2012 (''Product Definitions Final Rules''). The Product Definitions Final Rules address the determination of whether a commodity option or a transaction with optionality is subject to the swap definition in the first instance. If a commodity option or a transaction with optionality is excluded from the scope of the swap definition (for example, if it is an excluded forward contract—*see id.* at 48227), the commodity options rules, including the Form TO reporting requirement, are not applicable.

[4] The Commission recently adopted final swap data recordkeeping and reporting rules as new part 45 of the Commission's regulations. *See* Swap Data Recordkeeping and Reporting Requirements 77 FR 2136, Jan. 13, 2012. The information in this notice regarding part 45 recordkeeping and reporting is provided as background, in order to describe Form TO in context. However, this notice applies only to Form TO. The PRA implications of the part 45 recordkeeping and reporting requirements were analyzed as part of the part 45 rulemaking process and discussed in the final swap data recordkeeping and reporting rules.

[5] 17 CFR 45.2, *id.* at 2198.

[6] 17 CFR 45.2(h) provides that:

[a]ll records required to be kept pursuant to this section [17 CFR 45.2] by any registrant or its affiliates or by any non-SD/MSP counterparty subject to the jurisdiction of the Commission shall be open to inspection upon request by any representative of the Commission, the United States Department of Justice, or the [SEC], or by any representative of a prudential regulator as authorized by the Commission. Copies of all such records shall be provided, at the expense of the entity or person required to keep the record, to any representative of the Commission upon request. Copies of records required to be kept by any registrant shall be provided either by electronic means, in hard copy, or both, as requested by the Commission, with the sole exception that copies of records originally created and exclusively maintained in paper form may be provided in hard copy only. Copies of records required to be kept by any non-SD/MSP counterparty subject to the jurisdiction of the Commission that is not a Commission registrant shall be provided in the form, whether electronic or paper, in which the records are kept.

[7] *See* 17 CFR 45.3–45.5, 77 FR at 2199–2204.

trade option must also be reported pursuant to the reporting requirements of part 45. If only one counterparty to a trade option has previously complied with the part 45 reporting provisions, as described above, then that counterparty shall be the part 45 reporting entity for the trade option. If both counterparties have previously complied with the part 45 reporting provisions, as described above, then the part 45 rules for determining the reporting party will apply.[8]

By applying the part 45 reporting requirements to trade options in this manner, the Commission will obtain greater transparency and improved oversight of the swaps markets, both of which are primary statutory objectives of Title VII of the Dodd-Frank Act.

The Commission believes, however, that greater transparency regarding the trade options market must be balanced against the burdens of frequent and near-instantaneous reporting required under part 45 of the Commission's regulations on counterparties who are not otherwise obligated to report because they do not have other reportable swap activity. Accordingly, if neither counterparty to a trade option already is complying with the reporting requirements of part 45 as a reporting party in connection with its non-trade option swap trading activities as described above,[9] then such trade option is not required to be reported pursuant to the reporting requirements of part 45.[10]

3. Annual Notice Filing Alternative to Part 45 Reporting: Form TO

To the extent that neither counterparty to a trade option has previously submitted reports to a swap data repository (''SDR'') as a result of its swap trading activities as described above, the Commission recognizes that requiring these entities to report trade options to an SDR under part 45 of the Commission's regulations solely with respect to their trade options activity would be costly and time consuming. As an alternative, the Trade Option IFR requires any counterparty to an otherwise unreported trade option to submit an annual filing to the Commission for the purpose of providing notice that it has entered into one or more unreported trade options in the prior calendar year. Unlike with trade options subject to the part 45 reporting requirement, wherein only one counterparty to the trade option reports the transaction to an SDR, the notice filing requirement applies to both counterparties to an unreported trade option. Because the purpose of the notice filing requirement is to identify to the Commission those market participants engaging in unreported trade options, the notice filing requirement applies whether or not such counterparty has also been a non-reporting counterparty to a reported trade option in the twelve months preceding the date on which the unreported trade option was entered into. Market participants will satisfy the annual notice filing requirement by completing and submitting a new Commission form, Form TO, by March 1 following the end of any calendar year during which the market participant entered into one or more unreported trade options.

Form TO requires an unreported trade option counterparty to: (1) Provide name and contact information, (2) identify the categories of commodities (agricultural, metals, energy, or other) underlying one or more unreported trade options which it entered into during the prior calendar year, and (3) for each commodity category, estimate the approximate aggregate value of the underlying physical commodities that it either delivered or received in connection with the exercise of unreported trade options during the prior calendar year. For the purposes of item (3), a reporting counterparty should not include the value of commodities that were the subject of trade options that remained open at the end of the calendar year or the value of any trade options that expired unexercised during the prior calendar year.

Pursuant to the interim final rule, Form TO is a mandatory annual filing requirement. The form must be submitted to the Commission no later than March 1 for the prior calendar year. For example, if a market participant enters into one or more unreported trade options between January 1, 2013 and December 31, 2013 (the first calendar year for which a Form TO will be due to the Commission is 2013), the market participant must submit a completed Form TO to the Commission on or before March 1, 2014. Form TO is set out in the Trade Option IFR as Appendix A to part 32 of the Commission's regulations.[11] A copy of Form TO is also appended to this notice. Form TO will be available electronically on the Commission's Web site at least ninety days before the first compliance date for filing the form, March 1, 2014. The Form TO filing requirement is intended to provide the Commission a minimally intrusive level of visibility into the unreported trade options market, to guide the Commission's efforts to collect additional information through its authority to obtain copies of books or records required to be kept pursuant to the Act[12] should market circumstances dictate, and to enable the Commission to determine whether these counterparties should be subject to more frequent and comprehensive reporting obligations in the future.

The Trade Option IFR notice specifically requested comments on trade option reporting and/or notice filing requirements.[13] Those comments may be found on the Commission's Web site, *www.cftc.gov,* at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1196.* All comments received in response to the Trade Option IFR notice regarding Form TO will be considered, along with the comments received in response to this notice, in determining the Commission's final action on Form TO.

If the Commission obtains information required to be kept through this collection, it would protect proprietary information in accordance with the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, § 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.''[14] The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

Burden Statement: The respondent burden for this collection is estimated to be 2 hours per response. These estimates include the time to: (1) Review the commodity categories that were the subject of unreported trade options during the prior calendar year (including a review of counterparties to such transactions to determine which trade options were otherwise unreported); (2) estimate the value of commodities actually delivered or

[8] *See* 77 FR 25327, April 27, 2012, and 17 CFR 45.8.

[9] That is, neither counterparty to the trade option has previously reported, as the reporting party, non-trade option swap trading activity during the twelve months preceding the date on which the trade option is entered into.

[10] By taking this approach, the Commission ensures that no market participant is compelled to comply with part 45's reporting requirements based solely on its trade options activity.

[11] *See* 77 FR 25320 at 25340–43.

[12] *See* 17 CFR 1.31(a)(2) and 17 CFR 45.2(h).

[13] *See* 77 FR 25320 at 25328.

[14] 7 U.S.C. 12(a)(1).

received pursuant to trade options in each category; and (3) prepare and file Form TO electronically through the Commission's web-based Form TO. The Commission estimates the average burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN HOURS AND BURDEN HOUR COSTS

17 CFR	Annual number of respondents	Frequency of response per respondent	Hours per response and cost	Total annual responses	Total hours cost
Part 32, Appendix A, Form TO.	100	Annually	2 hours at $200 per response.[15]	100 (one form per otherwise unreported trade option participant).	$20,000 (100 responses times 2 hours per response, based on $100/hour.)

Respondents/Affected Entities: 100.

Estimated average number of responses: 100 (one form per year).

Estimated total average annual burden on respondents: 2 hours.

Frequency of collection: Annually.

Average total cost: $20,000.

There are no capital costs or operating and maintenance costs associated with this collection. The Commission believes that, as part of customary and usual business practices, all respondents already create and store basic information on what they purchased or received and how much it cost.

The Commission invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

Appendix

CFTC FORM TO

Annual Notice Filing for Counterparties to Unreported Trade Options[16]

NOTICE: Failure to file a report required by the Commodity Exchange Act (''CEA'' or the ''Act'')[17] and the regulations thereunder,[18] or the filing of a report with the Commodity Futures Trading Commission (''CFTC'' or ''Commission'') that includes a false, misleading or fraudulent statement or omits material facts that are required to be reported therein or are necessary to make the report not misleading, may (a) constitute a violation of section 6(c)(2) of the Act (7 USC 9, 15), section 9(a)(3) of the Act (7 USC 13(a)(3)), and/or section 1001 of Title 18, Crimes and Criminal Procedure (18 USC 1001) and (b) result in punishment by fine or imprisonment, or both.

PRIVACY ACT NOTICE

The Commission's authority for soliciting this information is granted in sections 4c(b) and 8 of the CEA and related regulations (*see, e.g.,* 17 CFR § 32.3(b)). The information solicited from entities and individuals engaged in activities covered by the CEA is

[15] The Commission estimates that entities will spend $100 per hour. The $100 per hour estimate was used as the average hourly wage rate in the PRA section of the Internal Business Conduct Standards for Swap Dealers and Major Swap Participants final rule (*See* 77 FR 20128, 20194) and the wage rate for CCOs under the DCO final rules (*See* 76 FR 69344, 69428). As the Commission explained in the Internal Business Conduct Standards final rule, the estimate of $100 per hour was based on recent Bureau of Labor Statistics findings, including the mean hourly wage of an employee under occupation code 23–1011, ''Lawyers,'' that is employed by the ''Securities and Commodity Contracts Intermediation and Brokerage Industry,'' which is $85.20. The mean hourly wage of an employee under occupation code 11–3031, ''Financial Manager,'' in the same industry is $80.90. Additionally, SIFMA's ''Report on Management & Professional Earnings in the Securities Industry—2011'' estimates the average wage of a compliance attorney at $96.42 and a compliance specialist in the U.S. at $74.85 per hour. As in those rules, the Commission is using a $100 per hour wage rate in calculating the cost burdens imposed by this collection of information and requests comment on the accuracy of its estimate.

[16] A trade option is generally a commodity option purchased by a commercial party that, upon exercise, results in the sale of a physical commodity for immediate (spot) or deferred (forward) shipment or delivery. See CFTC regulation 32.3(a) (17 CFR 32.3(a)) for more details. An *unreported* trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission's regulations (17 CFR 32.3(b)(1); 17 CFR part 45).

[17] 7 U.S.C. section 1, *et seq.*

[18] Unless otherwise noted, the rules and regulations referenced in this notice are found in chapter 1 of title 17 of the Code of Federal Regulations; 17 CFR Chapter 1 *et seq.*

required to be provided to the CFTC, and failure to comply may result in the imposition of criminal or administrative sanctions (*see, e.g.,* 7 U.S.C. §§ 9 and 13a–1, and/or 18 U.S.C. 1001). The information requested is most commonly used in the Commission's market and trade practice surveillance activities to provide information concerning the size and composition of the commodity derivatives markets. The requested information may be used by the Commission in the conduct of investigations and litigation and, in limited circumstances, may be made public on an aggregate basis in accordance with provisions of the CEA and other applicable laws. It may also be disclosed to other government agencies to meet responsibilities assigned to them by law. The information will be maintained in, and any additional disclosures will be made in accordance with, the CFTC System of Records Notices, available on *www.cftc.gov.* [19]

GENERAL INSTRUCTIONS

Who Must File a Form TO—17 CFR § 32.3(b)(2) requires every counterparty to an unreported trade option to submit an annual filing to the Commission for the purpose of providing notice that it has entered into one or more unreported trade options in the prior calendar year. As noted above, an unreported trade option is a trade option that is not required to be reported to a swap data repository by either counterparty pursuant to CFTC regulation 32.3(b)(1) and part 45 of the Commission's regulations.

When to file—Form TO is an annual filing requirement due to the Commission no later than March 1 for the prior calendar year. For example, if a market participant enters into one or more unreported trade options between January 1, 2013 and December 31, 2013, the market participant must submit a completed Form TO to the Commission on or before March 1, 2014.

Where to file—Generally, Form TO should be submitted via the CFTC's web based Form TO submission process at *http://www.cftc.gov/*, or as otherwise instructed by the Commission or its designee. If submission through the web-based Form TO is impossible, the reporting counterparty shall contact the Commission at [*techsupport@cftc.gov*] or 202–418–5000 for further instructions.

What to File—All reporting counterparties filing a Form TO must complete all questions.

Signature—Each Form TO submitted to the Commission must be signed or otherwise authenticated by either (1) the reporting counterparty submitting the form or (2) an individual that is duly authorized by the reporting counterparty to provide the information and representations contained in the form.

CFTC FORM TO

Name and Contact Information for Reporting Counterparty:

1. Reporting Counterparty

Name and Address (including City, State, Country, Zip/Postal Code):

Reporting Counterparty Web site (if any):

Reporting Counterparty Unique Identifier (if any):

☐ Legal Entity Identifier "LEI" (if any)	
☐ National Futures Association ID Number (if any)	
☐ Other Party Identifier (*Please Specify*)	

2. Reporting Counterparty Contact Person [20]

Name and Job Title and/or Relationship with Reporting Counterparty:

Phone Number and Email Address:

Commodity Category Indication:

3. In the prior calendar year, the Reporting Counterparty entered into one or more unreported trade options in the following commodity categories:

Agricultural [21]	☐ YES	☐ NO.
Metals [22]	☐ YES	☐ NO.
Energy [23]	☐ YES	☐ NO.
Other (*Please Specify*)	☐ YES	☐ NO.

Approximate Size of Unreported Trade Options Exercised in the Prior Calendar Year:

4. Please indicate, by commodity category, the approximate total value (quantity received/delivered multiplied by price paid/received) of physical commodities that the reporting counterparty purchased and/or delivered in connection with the exercise of unreported trade options in the prior calendar year: [24]

[19] Note that, under the Paperwork Reduction Act, 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 control number from the Office of Management and Budget.

[20] This should be an individual able to answer specific questions about the reporting counterparty's unreported trade options activity if contacted by Commission staff.

[21] Agricultural commodity is defined in the Commission's regulations at 17 CFR 1.3(zz).

[22] Including, but not limited to, gold, silver, platinum, palladium, copper, aluminum, and rare earth metals.

[23] Including, but not limited to, petroleum products, natural gas, and electricity.

[24] For the purposes of answering this question, a reporting counterparty should not include the value of commodities that were the subject of trade options that remained open at the end of the prior calendar year or any trade options that expired unexercised during the prior calendar year.

Agricultural	☐ None	☐ Under $10M	☐ $10M to $100M	☐ Over $100M
Metals	☐ None	☐ Under $10M	☐ $10M to $100M	☐ Over $100M
Energy	☐ None	☐ Under $10M	☐ $10M to $100M	☐ Over $100M
Other	☐ None	☐ Under $10M	☐ $10M to $100M	☐ Over $100M

Signature/Authentication, Name, and Date

☐ By checking this box and submitting this Form TO (or by clicking ''submit,'' ''send,'' or any other analogous transmission command if transmitting electronically), I certify that I am duly authorized by the reporting counterparty identified below to provide the information and representations submitted on this Form TO, and that the information and representations are true and correct.

Reporting Counterparty Authorized Representative (Name and Position):

(Name)

(Position)

Submitted on behalf of:

(Reporting Counterparty)

Date of Submission:

Dated: December 11, 2012.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–30227 Filed 12–14–12; 8:45 am]

BILLING CODE 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: ER12–21–004; ER12–1521–001; ER12–1522–001; ER12–1626–001; ER10–2605–004.

Applicants: Agua Caliente Solar, LLC, Alta Wind VII, LLC, Alta Wind IX, LLC, Topaz Solar Farms LLC, Yuma Cogeneration Associates.

Description: Notification of Change in Status of the MidAmerican Southwest MBR Sellers.

Filed Date: 12/7/12.

Accession Number: 20121207–5120.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER12–2617–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: SA 2431 Glacial Ridge Wind-GRE Deficiency Filing to be effective 9/13/2012.

Filed Date: 12/7/12.

Accession Number: 20121207–5027.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–360–001.

Applicants: Grand Ridge Energy LLC.

Description: Supplemental Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 12/7/12.

Accession Number: 20121207–5070.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–361–001.

Applicants: Grand Ridge Energy II LLC.

Description: Supplemental Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 12/7/12.

Accession Number: 20121207–5072.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–362–001.

Applicants: Grand Ridge Energy III LLC.

Description: Supplemental Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 12/7/12.

Accession Number: 20121207–5073.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–363–001.

Applicants: Grand Ridge Energy IV LLC.

Description: Supplemental Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 12/7/12.

Accession Number: 20121207–5074.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–374–001.

Applicants: Grand Ridge Energy V LLC.

Description: Grand Ridge Energy V LLC submits tariff filing per 35.17(b): Supplemental Filing of Amended Co-Tenancy, and Shared Facilities Agreement to be effective 11/14/2012.

Filed Date: 12/7/12.

Accession Number: 20121207–5075.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–524–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3445; Queue No. X1–073 to be effective 11/14/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5107.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–525–000.

Applicants: Pacific Gas and Electric Company.

Description: 2nd Amendment to Gates Solar Station LGIA WDT SA No. 87 to be effective 12/4/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5129.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–526–000.

Applicants: ITC Midwest LLC.

Description: Filing of Executed Agreement in Compliance with ER12–2070 with Modification to be effective 8/20/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5143.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–527–000.

Applicants: Westar Energy, Inc.

Description: Kansas Electric Power Cooperative, Inc., Balancing Area Services Agreement to be effective 10/1/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5161.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–528–000.

Applicants: Southwest Power Pool, Inc.

Description: Revisions to Section 10—Force Majeure and Indemnification to be effective 2/5/2013.

Filed Date: 12/7/12.

Accession Number: 20121207–5065.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–529–000

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Revisions to the PJM OATT Att DD re Avoidable Cost Rates to be effective 2/5/2013.

Filed Date: 12/7/12.

Accession Number: 20121207–5076.

Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–530–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Ajo Improvement Company Interconnection Agreement; Service Agreement No. 326 to be effective 12/28/2012.

Filed Date: 12/7/12.
Accession Number: 20121207–5123.
Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–531–000.
Applicants: Florida Power & Light Company.
Description: Florida Power & Light Company submits tariff filing per 35.13(a)(2)(iii: FPL and Seminole Electric Cooperative, Inc. Revisions to SA 162- A.35 Farnsworth to be effective 1/1/2013.
Filed Date: 12/7/12.
Accession Number: 20121207–5131.
Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–532–000.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits tariff filing per 35.13(a)(2)(iii: Modifications to WDAT Generator Interconnection Procedures to be effective 12/8/2012.
Filed Date: 12/7/12.
Accession Number: 20121207–5145.
Comments Due: 5 p.m. ET 12/28/12.

Take notice that the Commission received the following PURPA 210(m)(3) filings:
Docket Numbers: QM13–1–000.
Applicants: Wisconsin Public Service Corporation, Upper Peninsula Power Company.
Description: Wisconsin Public Service Corporation submits the name and contact information of one additional potentially affected QF, Oneida Energy Inc.
Filed Date: 12/6/12.
Accession Number: 20121206–5165.
Comments Due: 5 p.m. ET 1/3/13.

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: December 7, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30283 Filed 12–14–12; 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: ER11–4534–003.
Applicants: Public Service Company of New Mexico.
Description: Public Service Company of New Mexico submits tariff filing per 35: Filing of Revised PSA to be effective 12/7/2012.
Filed Date: 12/10/12.
Accession Number: 20121210–5000.
Comments Due: 5 p.m. ET 12/31/12.

Docket Numbers: ER13–181–000.
Applicants: AEP Texas Central Company.
Description: TCC-South Texas EC IA Supplement to be effective N/A.
Filed Date: 12/7/12.
Accession Number: 20121207–5196.
Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–533–000.
Applicants: Wisconsin Public Service Corporation.
Description: WPSC Amendments to Tariff W–1A and Rate Schedule 87 to be effective 12/31/9998.
Filed Date: 12/7/12.
Accession Number: 20121207–5163.
Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–534–000.
Applicants: Mammoth One, LLC.
Description: Mammoth One, LLC submits tariff filing per 35.12: Petition of Mammoth One, LLC For Approval of Initial Market-Based Rate Tariff to be effective 2/1/2013.
Filed Date: 12/7/12.
Accession Number: 20121207–5219.
Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–535–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2) (iii: Revisions to the PJM Tariff re 2012 Stakeholder Proposed MOPR Revisions to be effective 2/5/2013.
Filed Date: 12/7/12.
Accession Number: 20121207–5228.
Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–536–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2) (iii: 12–7–12 MPMA Filing to be effective 10/1/2013.
Filed Date: 12/7/12.
Accession Number: 20121207–5232.
Comments Due: 5 p.m. ET 12/28/12.

Docket Numbers: ER13–537–000.
Applicants: MET Southwest Trading LLC.
Description: MET Southwest Trading LLC submits tariff filing per 35.12: MET Southwest Trading MBR Tariff to be effective 1/31/2013.
Filed Date: 12/10/12.
Accession Number: 20121210–5005.
Comments Due: 5 p.m. ET 12/31/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30303 Filed 12–14–12; 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 rate filings:

Docket Numbers: ER12–2258–000; ER12–2258–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Answer to Deficiency Letter of Midwest Independent Transmission System Operator, Inc.
Filed Date: 11/30/12.
Accession Number: 20121130–5253.
Comments Due: 5 p.m. ET 12/21/12.

Docket Numbers: ER13–513–000.
Applicants: Electricity NH, LLC.
Description: Electricity NH, LLC submits tariff filing per 35.1: Electricity New Hampshire FERC Tariff (revision 2) to be effective 12/5/2012.
Filed Date: 12/5/12.

Accession Number: 20121205–5001.
Comments Due: 5 p.m. ET 12/26/12.

Docket Numbers: ER13–514–000.
Applicants: Appalachian Power Company.
Description: 20121205 Attachment K Revision to be effective 1/4/2013.
Filed Date: 12/5/12.
Accession Number: 20121205–5062.
Comments Due: 5 p.m. ET 12/26/12.

Docket Numbers: ER13–515–000.
Applicants: Southwest Power Pool, Inc.
Description: Revisions to Attachment J, Section IV—Approved Balanced Portfolios to be effective 1/29/2013.
Filed Date: 12/5/12.
Accession Number: 20121205–5064.
Comments Due: 5 p.m. ET 12/26/12.

Docket Numbers: ER13–516–000.
Applicants: PJM Interconnection, L.L.C.
Description: First Revised Original Service Agreement No. 3403; Queue No. U3–004 to be effective 11/15/2012.
Filed Date: 12/5/12.
Accession Number: 20121205–5065.
Comments Due: 5 p.m. ET 12/26/12.

Docket Numbers: ER13–517–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of Service Agreement No. 3056 in Docket No. ER12–4526–000 to be effective 11/5/2012.
Filed Date: 12/5/12.
Accession Number: 20121205–5140.
Comments Due: 5 p.m. ET 12/26/12.

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: December 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30281 Filed 12–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP12–213–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits Operational Flow Order update.
Filed Date: 12/7/12.
Accession Number: 20121207–5056.
Comments Due: 5 p.m. ET 12/19/12.

Docket Numbers: RP13–377–000.
Applicants: Alliance Pipeline L.P.
Description: December 11–20, 2012 Auction to be effective 12/11/2012.
Filed Date: 12/7/12.
Accession Number: 20121207–5077.
Comments Due: 5 p.m. ET 12/19/12.

Docket Numbers: RP13–378–000.
Applicants: Viking Gas Transmission Company.
Description: 2012 Housekeeping to be effective 1/22/2013.
Filed Date: 12/7/12.
Accession Number: 20121207–5136.
Comments Due: 5 p.m. ET 12/19/12.

Docket Numbers: RP13–379–000.
Applicants: Viking Gas Transmission Company.
Description: Cancellation of Volume No. 1A to be effective 1/22/2013.
Filed Date: 12/7/12.
Accession Number: 20121207–5159.
Comments Due: 5 p.m. ET 12/19/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–1104–002.
Applicants: Honeoye Storage Corporation.
Description: NAESB Order 587V Amended Filing Dec 7 Effective Dec 1 2012 to be effective 12/1/2012.
Filed Date: 12/7/12.
Accession Number: 20121207–5186.
Comments Due: 5 p.m. ET 12/19/12.

Docket Numbers: RP13–26–001.
Applicants: NGO Transmission, Inc.
Description: NGO Transmission—RP13–26 Compliance Filing to be effective 12/1/2012.
Filed Date: 12/7/12.
Accession Number: 20121207–5147.
Comments Due: 5 p.m. ET 12/19/12.

Docket Numbers: RP13–35–001.
Applicants: Iroquois Gas Transmission System, L.P.
Description: 12/07/12 FERC Order 587–V NAESB 2.0 Conditions to be effective 12/1/2012.
Filed Date: 12/7/12.
Accession Number: 20121207–5071.
Comments Due: 5 p.m. ET 12/19/12.

Docket Numbers: RP13–65–002.
Applicants: Destin Pipeline Company, L.L.C.
Description: NAESB Version 2.0 Compliance Filing 2 to be effective 12/1/2012.
Filed Date: 12/7/12.
Accession Number: 20121207–5173.
Comments Due: 5 p.m. ET 12/19/12.

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: December 10, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30285 Filed 12–14–12; 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: RP13–375–000.
Applicants: CenterPoint Energy Gas Transmission Comp.
Description: CEGT LLC—NRNCA Update Filing to be effective 1/6/2013.
Filed Date: 12/6/12.
Accession Number: 20121206–5035.
Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: RP13–376–000.
Applicants: Trailblazer Pipeline Company LLC.

Description: Parent Company Name Change to Tallgrass to be effective 12/7/2012.
Filed Date: 12/6/12.
Accession Number: 20121206–5043.
Comments Due: 5 p.m. ET 12/18/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–1068–001.
Applicants: Tres Palacios Gas Storage LLC.
Description: Tres Palacios Gas Storage LLC—Compliance with Order Accepting 587–V Filing to be effective 12/1/2012.
Filed Date: 12/6/12.
Accession Number: 20121206–5036.
Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: RP12–1128–001.
Applicants: TWP Pipeline LLC.
Description: Compliance NAESB Filing Updated to be effective 12/1/2012.
Filed Date: 12/6/12.
Accession Number: 20121206–5124.
Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: RP12–15–004.
Applicants: Gas Transmission Northwest LLC.
Description: Compliance to RP12–15–000 Pressure Commitments to be effective 11/11/2011.
Filed Date: 12/6/12.
Accession Number: 20121206–5128.
Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: RP12–15–005.
Applicants: Gas Transmission Northwest LLC.
Description: Compliance to RP12–15–003 Reservation Charge Credits to be effective 1/12/2012.
Filed Date: 12/6/12.
Accession Number: 20121206–5139.
Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: RP13–365–001.
Applicants: TC Offshore LLC.
Description: RP13–365–000 Amendment to be effective 12/3/2012.
Filed Date: 12/6/12.
Accession Number: 20121206–5034.
Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: RP13–47–001.
Applicants: WBI Energy Transmission, Inc.
Description: Compliance with Requirements of Order No. 587–V to be effective 12/1/2012.
Filed Date: 12/6/12.
Accession Number: 20121206–5056.
Comments Due: 5 p.m. ET 12/18/12.

Docket Numbers: RP13–115–001.
Applicants: ANR Storage Company.
Description: RP13–115–000 NAESB Compliance to be effective 12/1/2012.
Filed Date: 12/7/12.
Accession Number: 20121207–5004.
Comments Due: 5 p.m. ET 12/19/12.

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 December 7, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30284 Filed 12–14–12; 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: ER13–342–001.
Applicants: CPV Shore, LLC.
Description: CPV Shore, LLC submits tariff filing per 35.17(b): Supplement to Market-Based Rate Application to be effective 1/10/2013.
Filed Date: 12/4/12.
Accession Number: 20121204–5126.
Comments Due: 5 p.m. ET 12/26/12.

Docket Numbers: ER13–343–001.
Applicants: CPV Maryland, LLC.
Description: CPV Maryland, LLC submits tariff filing per 35.17(b): Supplement to Market-Based Rate Application to be effective 1/10/2013.
Filed Date: 12/4/12.
Accession Number: 20121204–5125.
Comments Due: 5 p.m. ET 12/26/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–252–002.
Applicants: Elk Hills Power, LLC.
Description: Elk Hills Power, LLC submits Form 556 Application for Certification as a qualifying cogeneration facility.
Filed Date: 12/4/12.
Accession Number: 20121204–5163.
Comments Due: 5 p.m. ET 1/2/13.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD13–2–000.
Applicants: North American Electric Reliability Corporation.
Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard VAR–002–2b.
Filed Date: 11/21/12.
Accession Number: 20121121–5096.
Comments Due: 5 p.m. ET 1/8/13.

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 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: December 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30280 Filed 12–14–12; 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 in Existing Proceedings

Docket Numbers: RP12–1066–001.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy Pipeline, LLC submits tariff filing per 154.203: RP12–1066 Compliance Filing to be effective 12/1/2012.
Filed Date: 12/10/12.
Accession Number: 20121210–5079.
Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP12–1067–001.

Applicants: Leaf River Energy Center LLC.

Description: Leaf River Energy Center LLC submits tariff filing per 154.203: Leaf River Energy Center LLC—Compliance with Order Accepting 587–V Filing to be effective 12/1/2012.

Filed Date: 12/10/12.

Accession Number: 20121210–5172.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP12–1079–001.

Applicants: Central New York Oil and Gas, L.L.C.

Description: Central New York Oil and Gas, L.L.C. submits tariff filing per 154.203: Central New York Oil and Gas Co.—Compliance with Order Accepting 587–V Filing to be effective 12/1/2012.

Filed Date: 12/10/12.

Accession Number: 20121210–5044.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–133–001.

Applicants: Rendezvous Pipeline Company, LLC.

Description: Rendezvous Pipeline Company, LLC submits tariff filing per 154.203: Supplement NAESB Compliance Filing to be effective 12/1/2012.

Filed Date: 12/10/12.

Accession Number: 20121210–5041.

Comments Due: 5 p.m. ET 12/24/12.

Docket Numbers: RP13–365–002.

Applicants: TC Offshore LLC.

Description: TC Offshore LLC submits tariff filing per 154.205(b): RP13–365–001 Amendment to be effective 12/3/2012.

Filed Date: 12/10/12.

Accession Number: 20121210–5078.

Comments Due: 5 p.m. ET 12/24/12.

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: December 11, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30278 Filed 12–14–12; 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 rate filings:

Docket Numbers: ER10–1514–001; ER11–2741–003.

Applicants: CPV Keenan II Renewable Energy Company, CPV Batesville, LLC.

Description: Notice of Change in Facts of CPV Keenan II Renewable Energy Company, LLC and CPV Batesville, LLC.

Filed Date: 12/6/12.

Accession Number: 20121206–5069.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER10–3069–003; ER10–3070–003.

Applicants: Alcoa Power Generating Inc.

Description: Alcoa Power Marketing LLC, et al. submits Supplement to the June 29, 2012 and August 23, 2012 Updated Market Power Analysis.

Filed Date: 12/4/12.

Accession Number: 20121204–5167.

Comments Due: 5 p.m. ET 12/26/12.

Docket Numbers: ER12–1740–001.

Applicants: Rippey Wind Energy LLC.

Description: Notice of Non-Material Change in Status of Rippey Wind Energy LLC.

Filed Date: 12/6/12.

Accession Number: 20121206–5073.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER12–2698–001.

Applicants: Northern Maine Independent System Administrator, Inc.

Description: Northern Maine Independent System Administrator, Inc. submits tariff filing per 35.17(b): Response to Deficiency Letter to be effective 11/26/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5057.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–199–001.

Applicants: Mt. Poso Cogeneration Company, LLC.

Description: Mt. Poso Cogeneration Company, LLC submits tariff filing per 35.17(b): Revise Seller Regions, Add Docket Number and Title Page to be effective 10/29/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5086.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–515–001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.17(b): Errata Filing in Docket No. ER13–515—Attachment J, Section IV to be effective 2/4/2013.

Filed Date: 12/6/12.

Accession Number: 20121206–5044.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–518–000.

Applicants: Dominion Retail, Inc.

Description: New Baseline Refile to be effective 12/6/2012.

Filed Date: 12/5/12.

Accession Number: 20121205–5169.

Comments Due: 5 p.m. ET 12/26/12.

Docket Numbers: ER13–519–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Revisions to PJM OA Sch 12 removing JD Renewable & Bridge Energy as PJM Members to be effective 12/31/9998.

Filed Date: 12/6/12.

Accession Number: 20121206–5045.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–520–000.

Applicants: Pinyon Pines Wind I, LLC.

Description: Pinyon Pines Wind I, LLC submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 12/5/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5054.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–521–000.

Applicants: Pinyon Pines Wind II, LLC.

Description: Pinyon Pines Wind II, LLC submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 12/5/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5055.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–522–000.

Applicants: Northern Indiana Public Service Company.

Description: Northern Indiana Public Service Company submits tariff filing per 35.13(a)(2)(iii: CIAC Agreement Under Wabash Valley Interconnection Agreement to be effective 12/7/2012.

Filed Date: 12/6/12.

Accession Number: 20121206–5103.

Comments Due: 5 p.m. ET 12/27/12.

Docket Numbers: ER13–523–000.

Applicants: Trans Bay Cable LLC.

Description: Trans Bay Cable LLC submits tariff filing per 35.13(a)(2)(iii: Annual TRBAA Update to be effective 1/1/2013.

Filed Date: 12/6/12.

Accession Number: 20121206–5106.

Comments Due: 5 p.m. ET 12/27/12.

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: December 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–30282 Filed 12–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–494–000]

Gas Transmission Northwest LLC; Notice of Availability of the Environmental Assessment for the Proposed Carty Lateral Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Carty Lateral Project, proposed by Gas Transmission Northwest LLC (GTN) in the above-referenced docket. GTN requests authorization to construct pipeline facilities in Morrow County, Oregon to provide up to 175,000 dekatherms per day of new natural gas delivery capacity to the planned Carty Generating Station.

The EA assesses the potential environmental effects of the construction and operation of the Carty Lateral Project in accordance with the requirements of the National Environmental Policy Act (NEPA). GTN's proposed Carty Lateral Project involves the construction of approximately 24.3 miles of 20-inch-diameter pipeline, one new meter station, and other appurtenant facilities. The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Fish and Wildlife Service and the Morrow County Planning Department participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that the Commission has the opportunity to consider your comments prior to making its decision on this project, it is important that we receive your comments in Washington, DC on or before January 16, 2013.

For your convenience, there are three methods you can use to file your comments to the Commission. In all instances, please reference the project docket number (CP12–494–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for submitting brief, text-only comments on a project;

(2) You can also file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). [1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP12–494). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: December 10, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30265 Filed 12–14–12; 8:45 am]

BILLING CODE 6717–01–P

[1] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–534–000]

Mammoth One, 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 Mammoth One, LLC's application for market-based rate authority, with an accompanying rate schedule, 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 December 31, 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(s) 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: December 10, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30266 Filed 12–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–537–000]

MET Southwest Trading 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 MET Southwest Trading LLC's application for market-based rate authority, with an accompanying rate schedule, 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 December 31, 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(s) 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: December 10, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30267 Filed 12–14–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP13–237–000]

Texas Eastern Transmission, LP; Notice of Technical Conference

The Commission's November 29, 2012 Order in the above-captioned proceeding [1] directed that a technical conference be held to address issues raised by Texas Eastern Transmission, LP's proposed revisions to its Applicable Shrinkage Adjustment percentages and adjustments.

Take notice that a technical conference will be held on Tuesday, January 15, 2013 at 9:30 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or 202–502–8659 (TTY), or send a fax to 202–208–2106 with the required accommodations.

All interested persons and staff are permitted to attend. For further information please contact David Maranville at (202) 502–6351 or email *David.Maranville@ferc.gov.*

Dated: December 10, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30264 Filed 12–14–12; 8:45 am]

BILLING CODE 6717–01–P

[1] *Texas Eastern Transmission, LP,* 141 FERC ¶61,172 (2012).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP13–238–000; RP12–39–000; RP12–39–001]

Algonquin Gas Transmission; Notice of Technical Conference

Take notice that the Commission will convene a technical conference on Wednesday, January 23, 2013, from 10:00 a.m. to 5:00 p.m. (EDT) in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street NE., Washington DC 20426.

Pursuant to the Commission's Order Accepting and Suspending, Subject to Refund, Tariff Record Subject to Conditions and Establishing Technical Conference, 141 FERC ¶ 61,160 (Issued November 28, 2012), the technical conference will address the issues raised in Algonquin Gas Transmission's (Algonquin) Fuel Reimbursement proceedings in Docket Nos. RP13–238–000, RP12–39–000, and RP12–39–001. In addition, at the technical conference, parties will be able to comment on the Data Response Algonquin is required to submit by January 4, 2013.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons are permitted to attend. For further information please contact Lisa Long at (202) 502–8691 or by email at *lisa.long@ferc.gov.*

Dated: December 10, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–30263 Filed 12–14–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPA–2007–0584, FRL–9762–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, identified as Renewal EPA IRC 0328.16 and OMB Control No. 2050–0021, is scheduled to expire on June 30, 2013. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 15, 2013.

ADDRESSES: Submit your comments, indentified by Docket ID No. EPA–HQ-OPA–2007–0584, to EPA, by one of the following methods:

(1) *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

(2) *Email: Docket.RCRA@epa.gov,* Attention Docket ID No, EPA–HQ–OPA–2007–0584

(3) *Fax:* 202–566–9744, Attention Docket ID No. EPA–HQ–OPA–2007–0584

(4) *Mail:* EPA Docket Center, (EPA/DC), Docket ID No. EPA–HQ–OPA–2007–0584, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460

(5) *Hand Delivery:* EPA Docket Center, (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OPA–2007–0584. 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–OPA–2007–0584. 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: George W. Denning, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: (202) 564–2404; fax number: (202) 564–2625; email address: *denning.george@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OPA–2007–0584, which is available for online viewing at *www.regulations.gov*, or in person viewing at the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number to make an appointment to view the docket is (202) 566–0276.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including

whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No: EPA–HQ–OPA–2007–0584

Affected entities: Entities potentially affected by this action are the owners or operators of facilities that are required to have a Spill Prevention, Control, and Countermeasure (SPCC) Plan under the Oil Pollution Prevention regulation (40 CFR Part 112). The applicability, definitions, and general requirements for all facilities and all types of oil are located in part 112.1 of the regulations and apply to any owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil into navigable waters or adjoining shorelines in quantities that may be harmful. (See 40 CFR 112.1(a) through (d) for further information about the applicability of the oil pollution prevention regulations.)

The private industry sectors subject to this action include, but are not limited, to: (1) Oil and Gas Extraction (NAICS 211); (2) Farms (NAICS 111, 112); (3) Electric Utility Plants (NAICS 2211); (4) Petroleum Refining and Related Industries (NAICS 324); (5) Chemical Manufacturing (NAICS 331, 332); (9) Other Manufacturing (NAICS 31–33); (10) Real Estate Rental and Leasing (NAICS 531, 533); (11) Retail Trade (NAICS 441–446, 448,451–454); (12) Contract Construction (NAICS 23); (13) Wholesale Trade (NAICS 42); (14) Other Commercial (NAICS 492, 541, 551, 561–562); (15) Transportation (NAICS 481–488); (16) Arts, Entertainment, and Recreation (NAICS 711–713); (17) Other Services (Except Public Administration) (NAICS 811–813); (18) Education (NAICS 611); (19) Petroleum Bulk Stations and Terminals (NAICS 4247); (19) Fuel Oil Dealers (NAICS 45431); (20) Hospitals & Other Health Care (NAICS 621–624); (21) Accommodation and Food Services (NAICS 721,722); (22) Fuel Oil Dealers (NAICS 45431); (23) Gasoline Stations (NAICS 4471); (24) Information Finance and Insurance (NAICS 51, 52); (25) Mining (NAICS 212, 213); (26) Warehousing and Storage (NAICS 493); (27) Pipelines (NAICS 4861, 48691); (28) Government (NAICS 92); (29) Military Installations (NAICS 928110); and (30) Religious Organizations (NAICS 813110).

Title: Spill Prevention, Control, and Countermeasure (SPCC) Plans.

ICR number: EPA ICR Number 0328.16; OMB Control Number 2050–0021.

ICR status: This ICR is currently scheduled to expire on June 30, 2013. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The authority for EPA's oil pollution prevention requirements is derived from section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR 112. An SPCC Plan will help an owner or operator identify the necessary procedures, equipment and resources to respond to prevent an oil spill and to respond to an oil spill in a timely manner. If implemented effectively, the SPCC Plan is expected to prevent oil spills and reduce the impact and severity of oil spills. Although the owner or operator is the primary data user, EPA may also require the owner or operator to submit data to the Agency in certain situations to ensure facilities comply with the SPCC regulation and to help allocate response resources. State and local governments may use the data, which are not generally available elsewhere and can assist local emergency preparedness planning efforts. EPA does not require an owner or operator to submit SPCC Plans, but may request the SPCC Plan during a facility inspection or an oil spill incident for review. The SPCC regulation requires the owner or operator maintain a complete copy of the Plan at the facility if the facility is normally attended at least fours hours per day or at the nearest field office if the facility is not so attended. The rule also requires that the Plan be available to the Regional Administrator for on-site review during normal working hours (40 CFR Part 112.3(e)).

SPCC Plan Preparation. Under section 112.3(a) or (b), the owner or operator or onshore or offshore facility subject to this section must prepare in writing and implement an SPCC Plan in accordance with section 112.7 and any other applicable sections in the regulation. Part 112.7 requires that the Plan be prepared in accordance with good engineering practices. The section also requires the Plan have the full approval of management at a level of authority to commit the necessary resources to fully implement the Plan. Specific provisions in this section, among others, require the owner or operator to predict the direction, rate of flow and total quantity of oil which could be discharged from the facility as result of each type of major equipment failure (§ 112.7(b)); provide for appropriate containment and/or diversionary structures or equipment to prevent a discharge (§ 112.7(c)); provide for PE certification or a qualified facility certification (§ 112.7(d)); and conduct inspections

and tests and maintain records (§ 112.7(e)).

Plan Certification. Under section 112.3(d), a SPCC Plan must, except as provided by 40 CFR Part 112.6 Qualified Facilities Plan Requirements, be reviewed and certified by a licensed Professional Engineer (PE) for it to be effective to satisfy the requirements. Under section 112.6, the owner or operator of a qualified facility may self certify the Plan if the facility meets the eligibility criteria in section 112.3(g).

SPCC Plan Maintenance. Under section 112.5, the owner or operator must complete a review and evaluation of the SPCC Plan at least once every five years from the date the facility becomes subject to part 112, or if the facility was in operation on or before August 16, 2002, five years from the date the last review. As a result of this review and evaluation, the owner or operator must amend the Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge of oil.

Recordkeeping. Under section 112.7(e), an owner or operator must conduct inspections, tests, and maintain records. The inspections and tests must be conducted in accordance with written procedures the facility or the certifying engineer developed for the facility. The written procedures and a record of the inspections and tests must be signed by the appropriate supervisor or inspector and kept with the SPCC Plan for a period of three years. Records of inspections and tests may be kept under usual and customary business practices.

Number of Regulated Facilities. At the time OMB approved the current ICR (June 15, 2010), EPA estimated that there were approximately 640,000 SPCC regulated facilities in 2010. The largest sectors in 2010 were oil and gas production with 215,000 affected facilities and farms with 149,000 affected facilities. As part of the regulatory impact analysis for the 2008 and 2009 SPCC amendments, EPA analyzed the growth rates for each industrial sector covered by the regulations. For this ICR, EPA applied those growth rates for the next ICR period. For some sectors, the growth rate for the number of facilities was negative: for example, the farm sector experienced a reduction in affected facilities. For other sectors such as oil and gas production sector, the growth rate for the number of affected facilities increased. For the growth rates for all sectors, EPA estimates there would be approximately 657,000 SPCC regulated facilities in 2014 up from 640,000 in 2010; approximately 670,000 SPCC regulated facilities in 2015; and approximately 683,000 facilities in 2016.

Burden Statement: The average annual reporting and recordkeeping burden for this collection of information on a newly regulated facility for which a SPCC Plan is required (i.e., first-year costs for plan development) is estimated to be approximately 58 hours per year. The average annual reporting and recordkeeping burden on a regulated facility for which the owner or operator is maintaining an SPCC Plan is estimated at approximately 11 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR supporting statement provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 663,000.

Frequency of response: Less than once per year.

Estimated total annual burden hours: 8,700,000 hours.

Estimated total annual costs: $987,000,000, which includes $183,000,000 annualized capital and operation and maintenance (O&M) costs.

Are there changes in the estimates from the last approval?

EPA estimates no substantive change in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This conclusion is based on EPA's current estimate of facilities that have written and are maintaining an SPCC Plan in compliance with 40 CFR Part 112. EPA amended the SPCC regulation to exempt milk and milk product containers since the last ICR renewal that results in a small reduction in the number regulated facilities and savings in terms of total labor hours and total cost burden. The agency also extended the compliance date for farms, but that regulatory action does not affect the number of facilities, labor hours and cost burden.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: December 11, 2012.

Dana S. Tulis,

Acting Director, Office of Emergency Management.

[FR Doc. 2012–30359 Filed 12–14–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–1986]

Open Internet Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission announces the next meeting date, time, and agenda of the Open Internet Advisory Committee (Committee). The Committee was established to track and evaluate the effects of the Commission's Open Internet rules, and to provide any recommendations it deems appropriate to the Commission regarding policies and practices related to preserving the open Internet. The Committee will observe market developments regarding the freedom and openness of the Internet and will focus in particular on issues addressed in the Commission's Open Internet rules, such as transparency, reasonable network management practices, differences in treatment of fixed and mobile broadband services, specialized services, and technical standards.

DATES: The next meeting of the Committee will take place on Thursday, January 17, 2013, 10:00 a.m. to 12:00 p.m. PST, at Paul Brest Hall-East,

Stanford University, Munger Graduate Residence, Building 4, 555 Salvatierra Walk, Stanford, CA 94305.

FOR FURTHER INFORMATION CONTACT: Tejas Narechania, Office of General Counsel, (202) 418–1701, or email *Tejas.Narechania@fcc.gov;* or Deborah Broderson, Consumer and Governmental Affairs Bureau, (202) 418–0652, or email at *Deborah.Broderson@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 12–1986, released December 6, 2012, announcing the agenda, date and time of the Committee's next meeting.

At its January 17, 2013 meeting, it is expected that the Committee will consider issues related to the subject areas of its four working groups—Mobile Broadband, Economic Impacts of Open Internet Frameworks, Specialized Services, and Transparency—as well as other open Internet related issues. A limited amount of time will be available on the agenda for comments from the public. Alternatively, members of the public may send written comments to: Tejas Narechania, Designated Federal Officer of the Committee, or Deborah Broderson, Deputy Designated Federal Officer, at the address provided above.

The meeting is open to the public and the site is fully accessible to people using wheelchairs or other mobility aids. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include your contact information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill. The meeting of the Committee will also be broadcast live with open captioning over the Internet at *http://www.fcc.gov/events/open-internet-advisory-committee.*

Federal Communications Commission.

Kris Anne Monteith,

Acting Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–30232 Filed 12–14–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Designated Reserve Ratio for 2013

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of Designated Reserve Ratio for 2013.

Pursuant to the Federal Deposit Insurance Act, the Board of Directors of the Federal Deposit Insurance Corporation designates that the Designated Reserve Ratio (DRR) for the Deposit Insurance Fund shall remain at 2 percent for 2013.[1] The Board is publishing this notice as required by section 7(b)(3)(A)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)(3)(A)(i)).

FOR FURTHER INFORMATION CONTACT: Munsell St. Clair, Chief, Banking and Regulatory Policy Section, Division of Insurance and Research, (202) 898–8967; Alan Deaton, Acting Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898–3828; or, Christopher Bellotto, Counsel, Legal Division, (202) 898–3801.

By order of the Board of Directors. Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 11th day of December, 2012.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–30253 Filed 12–14–12; 8:45 am]

BILLING CODE 6714–01–P

[1] Section 327.4(g) of the FDIC's regulations sets forth the DRR. There is no need to amend this provision, because the DRR for 2013 is the same as the current DRR.

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 January 11, 2013.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *SKBHC Holdings LLC,* and *Starbuck Bancshares, Inc.,* both in Seattle, Washington; to acquire 100 percent of the voting shares of PremierWest Bancorp and thereby indirectly acquire voting shares of PremierWest Bank, both in Medford, Oregon.

Board of Governors of the Federal Reserve System, December 12, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–30302 Filed 12–14–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0060; Docket 2012–0076; Sequence 20]

Federal Acquisition Regulation; Submission for OMB Review; Accident Prevention Plans and Recordkeeping

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension of an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved

information collection requirement concerning Accident Prevention Plans and Recordkeeping. A notice was published in the **Federal Register** at 77 FR 56645 on September 13, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 16, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping'' under the heading ''Enter Keyword or ID'' and selecting ''Search''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0060, Accident Prevention Plans and Recordkeeping.

Instructions: Please submit comments only and cite Information Collection 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Curtis E. Glover, Sr., Procurement Analyst, Contract Policy Division, GSA, telephone (202) 501–1448 or email at c*urtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The FAR clause at 52.236–13, Accident Prevention, requires Federal construction contractors to keep records of accidents incident to work performed under the contract that result in death, traumatic injury, occupational disease or damage to property, materials, supplies or equipment. Records of personal inquiries are required by the Department of Labor's Occupational Safety and Health Administration regulations. The records maintained by the contractor are used to evaluate compliance and may be used in workmen's compensation cases. The FAR requires records of damage to property, materials, supplies or equipment to provide background information when claims are brought against the Government.

If the contract involves work of a long duration, or hazardous nature, the contracting officer shall insert the clause with its alternate that requires the contractor to submit a written proposed plan for implementing the clause. The plan shall include an analysis of the significant hazards to life, limb, and property inherent in performing the contract and a plan for controlling the hazards. The Accident Prevention Plan is analyzed by the contracting officer along with the agency safety representatives to determine if the proposed plan will meet the requirements of safety regulations and applicable statutes.

B. Annual Reporting Burden

The estimated reporting burden has been adjusted since published in the **Federal Register** at 74 FR 41133, on August 14, 2009. The adjustment is based on an evaluation of Federal Procurement Data System award information for the services applicable to FAR Clause 52.213–36, and consultation with subject matter experts within the Government that procure such services.

Respondents: 350.
Responses per Respondent: 1.
Annual Responses: 350.
Hours per Response: 24.
Total Burden Hours: 8,400.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0060, Accident Prevention Plans and Recordkeeping, in all correspondence.

Dated: December 8, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–30235 Filed 12–14–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0115; Docket 2012–0076; Sequence 70]

Information Collection; Notification of Ownership Changes

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning notification of ownership changes.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before February 15, 2013.

ADDRESSES: Submit comments identified by Information Collection 9000–0115, Notification of Ownership Changes by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0115, Notification of Ownership Changes''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0115, Notification of Ownership Changes'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0115, Notification of Ownership Changes.

Instructions: Please submit comments only and cite Information Collection 9000–0115, Notification of Ownership Changes, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. *Instructions:* Please submit comments only and cite Information Collection 9000–0115, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–3221 or email *edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Allowable costs of assets are limited in the event of change in ownership of a contractor. Contractors are required to provide the Government adequate and timely notice of this event per the FAR clause at 52.215–19, Notification of Ownership Changes.

B. Annual Reporting Burden

Respondents: 100.
Responses per Respondent: 1.
Total Responses: 100.
Hours per Response: 1.25.
Total Burden Hours: 125.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0115, Notification of Ownership Changes, in all correspondence.

Dated: December 8, 2012.

William Clark,

Acting Director, Federal Acquisition Policy, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–30236 Filed 12–14–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation; Meeting of the Advisory Council on Alzheimer's Research, Care, and Services

AGENCY: Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the public meeting of the Advisory Council on Alzheimer's Research, Care, and Services (Advisory Council). Notice of these meetings is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)). The Advisory Council on Alzheimer's Research, Care, and Services provides advice on how to prevent or reduce the burden of Alzheimer's disease and related dementias on people with the disease and their caregivers. Representatives of the three federal subgroups (Research, Clinical Care, Long-Term Services and Supports) will provide updates on the implementation of the National Plan to Address Alzheimer's Disease. The Advisory Council will hear a presentation on work underway by the Department of Veterans Affairs to support Veterans with Alzheimer's disease and their caregivers. The subcommittee chairs will present recommendations for adoption by the Advisory Council as formal recommendations to the Secretary of HHS and Congress.

DATES: January 14 from 9am to 5pm EDT.

ADDRESSES: The meeting will be held at the U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 800, Washington, DC 20201.

Comments: Time is allocated on the agenda to hear public comments. In lieu of oral comments, formal written comments may be submitted for the record to Helen Lamont, Ph.D., OASPE, 200 Independence Avenue SW., Room 424E, Washington, DC 20201. Comments may also be sent to *napa@hhs.gov.* Those submitting written comments should identify themselves and any relevant organizational affiliations.

FOR FURTHER INFORMATION CONTACT: Helen Lamont, Ph.D. (202) 690–7996, helen.lamont@hhs.gov. **Note:** Seating may be limited. Those wishing to attend the meeting must send an email to *napa@hhs.gov* and put ''January14 meeting attendance'' in the Subject line by Friday, January 4, 2013, so that their names may be put on a list of expected attendees and forwarded to the security officers at the Department of Health and Human Services. Any interested member of the public who is a non-U.S. citizen should include this information at the time of registration to ensure that the appropriate security procedure to gain entry to the building is carried out. Although the meeting is open to the public, procedures governing security and the entrance to Federal buildings may change without notice. If you wish to make a public comment, you must note that within your email.

SUPPLEMENTARY INFORMATION: Topics of the Meeting: Representatives of the three federal subgroups (Research, Clinical Care, Long-Term Services and Supports) will provide updates on the implementation of the National Plan to Address Alzheimer's Disease. The Advisory Council will hear a presentation on work underway by the Department of Veterans Affairs to support Veterans with Alzheimer's disease and their caregivers. The subcommittee chairs will present recommendations for adoption by the Advisory Council as formal recommendations to the Secretary of HHS and Congress.

Procedure and Agenda: This meeting is open to the public.

Authority: 42 U.S.C. 11225; Section 2(e)(3) of the National Alzheimer's Project Act. The panel is governed by provisions of Public Law 92–463, as amended (5 U.S.C. Appendix 2), which sets forth standards for the formation and use of advisory committees.

Dated: December 7, 2012.

Donald Moulds,

Acting Assistant Secretary for Planning and Evaluation.

[FR Doc. 2012–30345 Filed 12–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2012–0013]

Notice of Intent To Prepare an Environmental Impact Statement, Public Scoping Meeting, and Request for Comments; 2015–2025 Facilities Master Plan for Edward R. Roybal Campus in Atlanta, GA

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of intent; meeting announcement and request for comment.

SUMMARY: The Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS) announces its intent to prepare an Environmental Impact Statement (EIS) for the proposed 2015–2025 Facilities Master Plan for HHS/CDC's Edward R. Roybal Campus located at 1600 Clifton Road NE., in Atlanta, Georgia. This announcement follows the requirements of the National Environmental Policy Act of 1969 (NEPA) as implemented by the Council on Environmental Quality (CEQ) Regulations (40 CFR Part 1500–1508); and, the Department of Health and Human Services (HHS) General Administration Manual Part 30 Environmental Procedures, dated February 25, 2000.

DATES: A Public Scoping Meeting will be held on Thursday, January 17, 2013 in Atlanta, Georgia. The meeting will begin at 7 p.m. and end no later than 9 p.m. Written scoping comments must be received on or before Friday, February 1, 2013.

Deadline for Requests for Special Accommodations: Persons wishing to participate in the public scoping meeting who need special accommodations should contact George Chandler (*gec2@cdc.gov* or (404) 639–5153) by 5 p.m. Thursday, January 10, 2013.

ADDRESSES: The Public Scoping Meeting will be held at the CDC Edward R. Roybal Campus, Tom Harkin Global Communications Center (Building 19), Auditorium A, 1600 Clifton Road NE., Atlanta, GA 30333. You should be aware that the meeting location is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see Roybal Campus Security Guidelines under **SUPPLEMENTARY INFORMATION**.

You may submit comments identified by Docket No. CDC–2012–0013, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail:* George F. Chandler, Senior Advisor, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–22, Atlanta, Georgia 30333.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: George F. Chandler, Senior Advisor, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Mailstop A–22, Atlanta, Georgia 30333; telephone (404) 639–5153.

SUPPLEMENTARY INFORMATION: HHS/CDC intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts resulting from the proposed Roybal Campus 2015–2025 Facilities Master Plan. The Master Plan will guide the future physical development of the HHS/CDC Roybal Campus in Atlanta, GA, for the years 2015 to 2025. *The proposed Master Plan does not constitute authorization or funding for any specific construction project.*

Background

HHS/CDC is dedicated to protecting health and promoting quality of life through the prevention and control of disease, injury, and disability. HHS/CDC, headquartered on Clifton Road in Atlanta, Georgia since 1958, is recognized as the lead Federal agency for protecting the health and safety of people. HHS/CDC provides credible information to enhance health decisions, and promotes health through strong partnerships. HHS/CDC serves as the national focus for developing and applying disease prevention and control, environmental health, and health promotion and education activities designed to improve the health of the people of the United States.

Because the 2000–2009 Master Plan has been successfully implemented, HHS/CDC is planning to prepare a new Roybal Campus Facilities Master Plan for 2015–2025. The new Master Plan will cover a 10-year planning period and will examine potential growth in agency mission, laboratory and laboratory support space, office space and personnel on the Roybal Campus. The Master Plan will also examine alternative ways of supporting potential mission change or growth at the Roybal Campus, including new construction of laboratory and office buildings, as well as better use of existing space to house potential growth. The Master Plan will evaluate opportunities for future development of the site, and consider the limits and capacity of both the Roybal Campus proper and the surrounding community. The potential impacts of future development on the natural and built environment will be evaluated.

In accordance with the National Environmental Policy Act of 1969 (NEPA) as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Part 1500–1508), and the HHS environmental procedures, HHS/CDC will prepare an EIS for the proposed 2015–2025 Facilities Master Plan. Under NEPA, Federal agencies are required to evaluate the environmental effects of their proposed actions and a range of feasible alternatives to the proposed action before making a decision. Areas of concern include, but are not limited to: traffic and transportation; air quality; community services; natural resources; community and employee quality of life; and utilities (water and power).

Scoping Process

In accordance with NEPA, a Public Scoping process will be conducted to identify the range of major issues to be addressed relative to the proposed 2015–2025 Facilities Master Plan. ''Scoping'' is the early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to selecting and implementing one of several potential Roybal Master Plan alternatives. During the scoping process, HHS/CDC will actively seek input from interested people, organizations, and Federal, state, and regional agencies to identify environmental concerns to be addressed in the EIS. The purpose of this Notice is to inform interested parties regarding HHS/CDC's plan to prepare the EIS for the 2015–2025 Facilities Master Plan, to provide information on the nature of the Proposed Action and to initiate the scoping process. The Scoping Meeting will consist of an ''Open House'' from 7 p.m. to approximately 7:45 p.m., where HHS/CDC will make available a general site plan and publically available information on the current conditions of the Campus. HHS/CDC will also provide available data on possible future development

alternatives. Scoping comment cards will be provided at the Open House portion of the meeting for those who need to leave early but who wish to make a comment for the record. At approximately 8 p.m., HHS/CDC will give a brief overview of the current conditions and the planning and EIS processes. Individuals staying for this portion of the Scoping Meeting may make verbal statements or use a Scoping comment card. A stenographer will record this portion of the Scoping Meeting. An American Sign Language Interpreter will be available at both portions of the Scoping Meeting. The agenda is subject to change without notice. A transcript of the meeting and all comments received at the meeting will be posted to the public docket at *www.regulations.gov*.

Roybal Campus Security Guidelines

The Edward R. Roybal Campus is the headquarters of the U.S. Centers for Disease Control and Prevention and is located at 1600 Clifton Road NE., Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Roybal Campus through the entrance on Clifton Road; the guard force will direct visitors to the designated parking area. Visitors must present government issued photo identification (e.g., a valid Federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document. All persons entering the building must pass through a metal detector. Visitors will be issued a visitor's ID badge at the entrance to Building 19 and will be escorted in groups of 5–10 persons to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: December 11, 2012.

Tanja Popovic,

Deputy Associate Director for Science, Centers for Disease Control and Prevention.

[FR Doc. 2012–30276 Filed 12–14–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Understanding the Dynamics of Disconnection from Employment and Assistance.

OMB No.: New Collection.

Description: The Office of Planning, Research and Evaluation, Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a data collection activity to improve understanding of low-income individuals and families who are disconnected from employment and from public assistance and particularly those not receiving cash assistance through the Temporary Assistance for Needy Families (TANF) program. ACF is proposing to use a discussion guide to collect qualitative information. The guide will be used to interview respondents in order to learn about their experiences with disconnection. Topics will include recent employment and reasons for not working; use of public benefit programs and reasons for using or not using specific benefits; their financial circumstances and material well-being including the stability and sources of income, housing and living arrangements; their coping strategies for addressing their circumstances; and their views on potential pathways to improve their financial and material well-being.

Information will be collected in two sites with relatively high concentrations of low-income families: Los Angeles, California and Southeast Michigan. Respondents will be sampled from two existing longitudinal surveys in those sites: The Best Start Los Angeles Pilot Community Evaluation, currently led by the Urban Institute's Health Policy Center and the Center for Healthier Children, Families and Communities at the University of California Los Angeles (UCLA), and the Michigan Recession and Recovery Study OIRTO, conducted by the National Poverty Center of the University of Michigan.

Respondents: Low-income women who have resident children and who are neither employed nor receiving TANF or Supplemental Security Income (SSI) for themselves. Women who are currently employed or receiving TANF may be included in the study if they experienced at least six months of unemployment in the past two years, had a child Lid were unmarried during the period of unemployment, and were not receiving TANF at the time.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Advertisement Script (LA)	300	1	0.1	30
Telephone Recruitment script and Screener (LA)	100	1	0.25	25
Follow-up Telephone Script to Schedule Interview (LA)	36	1	0.05	2
Consent Form for Interviews (LA)	36	1	0.2	7
Receipt of Payment Form (LA)	36	1	0.03	1
Consent Form for Linking Data (LA)	36	1	0.08	3
Telephone Recruitment Script and Screener (MI)	35	1	0.25	9
Consent Form for Interviews (MI)	30	1	0.2	6
Conversation Guide (LA and MI)	66	90	1.5	99

Estimated Total Annual burden hours: 182.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *OPREinfocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it

within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Steven M. Hanmer,

OPRE Reports Clearance Officer.

[FR Doc. 2012–30155 Filed 12–14–12; 8:45 am]

BILLING CODE 4184–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1203]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information To Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information to accompany humanitarian device exemption (HDE) applications and the collection of information regarding the annual distribution number (ADN).

DATES: Submit either electronic or written comments on the collection of information by February 15, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Information To Accompany Humanitarian Device Exemption Applications and Annual Distribution Number Reporting Requirements (formerly: Humanitarian Device Exemption Holders, Institutional Review Boards, Clinical Investigators and FDA Staff Humanitarian Device Exemption Regulation: Questions and Answers)—(OMB Control Number 0910–0661)—Revision

Under section 520(m) (21 U.S.C. 360j(m)) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act), the FDA is authorized to exempt a humanitarian use device (HUD) from the effectiveness requirements in sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e) provided that the device: (1) Is used to treat or diagnose a disease or condition that affects fewer than 4,000 individuals in the United States; (2) would not be available to a person with such a disease or condition unless the exemption is granted, and there is no comparable device, other than another HUD approved under this exemption, available to treat or diagnose the disease or condition; (3) the device will not expose patients to an unreasonable or significant risk of illness or injury; and (4) the probable benefit to health from using the device outweighs the risk of injury or illness from its use, taking into account the probable risks and benefits of currently available devices or alternative forms of treatment.

HUDs approved under an HDE cannot be sold for an amount that exceeds the costs of research and development, fabrication, and distribution of the device (*i.e.,* for profit), except in narrow circumstances. Section 613 of the Food and Drug Administration Safety and Innovation Act (FDASIA) (Public Law 112–144), signed into law on July 9, 2012, amended section 520(m) of the FD&C Act. Under section 520(m)(6)(A)(i) of the FD&C Act, as amended by FDASIA, a HUD approved under an HDE is eligible to be sold for profit if the device meets the following criteria:

- The device is intended for the treatment or diagnosis of a disease or condition that occurs in pediatric patients or in a pediatric subpopulation, and such device is labeled for use in pediatric patients or in a pediatric subpopulation in which the disease or condition occurs; or
- The device is intended for the treatment or diagnosis of a disease or condition that does not occur in pediatric patients or that occurs in pediatric patients in such numbers that the development of the device for such patients is impossible, highly impracticable, or unsafe.

Section 520(m)(6)(A)(ii) of the FD&C Act, as amended by FDASIA, provides that the Secretary of Health and Human Services (the Secretary) will assign an ADN for devices that meet the eligibility criteria to be permitted to be sold for profit. The ADN is defined as the number of devices ''reasonably needed to treat, diagnose, or cure a population of 4,000 individuals in the United States,'' and therefore shall be based on the following information in a HDE application: the number of devices reasonably necessary to treat such individuals.

Section 520(m)(6)(A)(iii) of the FD&C Act

(*http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/FDCActChapterVDrugsandDevices/default.htm*) provides that an HDE holder immediately notify the Agency if the number of devices distributed during any calendar year exceeds the ADN. Section 520(m)(6)(C) of the FD&C Act provides that an HDE holder may petition to modify the ADN if additional information arises.

On August 5, 2008, FDA issued a guidance entitled ''Guidance for HDE Holders, Institutional Review Boards (IRBs), Clinical Investigators, and Food and Drug Administration Staff—Humanitarian Device Exemption (HDE) Regulation: Questions and Answers'' (*http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm110203.pdf*). The guidance was developed and issued prior to the enactment of FDASIA, and certain sections of this guidance may no longer be current as a result of FDASIA. The Center for Devices and Radiological Health and the Center for Biologics Evaluation and Research are currently working on a draft HDE guidance, that when finalized, will represent the FDA's current thinking on this topic.

FDA is requesting OMB approval for the collection of information required under the statutory mandate of sections 515A (21 U.S.C. 360e–1) and 520(m) of the FD&C Act as amended.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/section of FD&C Act (as amended) or FDASIA	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pediatric Subpopulation and Patient Information—515A(a)(2) of the FD&C Act	6	1	6	100	600
Exemption from Profit Prohibition Information—520(m)(6)(A)(i) and (ii) of the FD&C Act	3	1	3	50	150
Request for Determination of Eligibility Criteria—613(b) of FDASIA	2	1	2	10	20
ADN Notification—520(m)(6)(A)(iii) of the FD&C Act	1	1	1	100	100
ADN Modification—520(m)(6)(C) of the FD&C Act	5	1	5	100	500
Total					1,370

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based these estimates on the number of original HDE applications received in the period between October 1, 2008, and September 30, 2011. During that time, FDA's Center for Devices and Radiological Health received 19 original HDE applications, or about 6 per year. FDA estimates that for each year we will receive six HDE applications and that three of these applications will be indicated for pediatric use. The request for determination of eligibility criteria is new under section 613(b) of FDASIA. We estimate that we will receive approximately two such requests per year. Historically, no companies have exceeded the ADN; and under FDASIA the ADN has expanded to a minimum of 4,000. Therefore, FDA estimates that very few or no HDE holders will notify the Agency that the number of devices distributed in the year has exceeded the ADN. FDA estimates that five HDE holders will petition to have the ADN modified due to additional information on the number of individuals affected by the disease or condition.

The draft guidance refers also to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 803 have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subparts A, B, and C, have been approved under OMB control number 0910–0231; the collection of information in 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; the collections of information in 21 CFR part 814, subpart H, have been approved under OMB control number 0910–0332; and the collection of information requirements in 21 CFR 10.30 have been approved under OMB control number 0910–0183.

Dated: December 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30275 Filed 12–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–D–0298; Formerly Docket No. 2004D–0499]

Compliance Policy Guide; Radiofrequency Identification Feasibility Studies and Pilot Programs for Drugs; Notice To Extend Expiration Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of expiration date.

SUMMARY: The Food and Drug Administration (FDA) is extending the expiration date of compliance policy guide (CPG) Sec. 400.210 entitled ''Radiofrequency Identification (RFID) Feasibility Studies and Pilot Programs for Drugs'' to December 31, 2014.

FOR FURTHER INFORMATION CONTACT: Connie Jung, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 4268, Silver Spring, MD 20993–0002, 301–796–3130.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 17, 2004 (69 FR 67360), FDA announced the

availability of CPG Sec. 400.210 entitled ''Radiofrequency Identification (RFID) Feasibility Studies and Pilot Programs for Drugs.'' Previous extensions of the expiration date of the CPG were published in 2007, 2008, and 2010 (72 FR 65750, November 23, 2007; 73 FR 78371, December 22, 2008; 75 FR 80827, December 23, 2010). FDA has identified RFID as a promising technology to be used in the various efforts to combat counterfeit drugs. The CPG describes how the Agency intends to exercise its enforcement discretion regarding certain regulatory requirements that might otherwise be applicable to studies involving RFID technology for drugs. The goal of the CPG is to facilitate performance of RFID studies and to allow industry to gain experience with the use of RFID technology and its effect on the long-term safety and integrity of the U.S. drug supply.

On September 27, 2007, the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85) (FDAAA) was signed into law. Section 913 of FDAAA addressed pharmaceutical safety and created section 505D of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355e). Section 505D(b) of the FD&C Act requires the development of standards for the identification, validation, authentication, and tracking and tracing of prescription drugs. Section 505D(b)(3) of the FD&C Act states that these new standards must address promising technologies, which may include RFID technology.

In implementing section 505D of the FD&C Act, FDA is currently addressing issues, such as promising technologies, that also are relevant for the CPG. In addition, FDA is considering further the experience of stakeholders and the Agency under the CPG. As we consider all of these issues, the CPG will remain in effect until December 31, 2014.

Dated: December 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30297 Filed 12–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0369]

Draft and Revised Draft Guidances for Industry Describing Product-Specific Bioequivalence Recommendations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of additional draft and revised draft product-specific bioequivalence (BE) recommendations. The recommendations provide product-specific guidance on the design of BE studies to support abbreviated new drug applications (ANDAs). In the **Federal Register** of June 11, 2010, FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site. The BE recommendations identified in this notice were developed using the process described in that guidance.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comments on these draft and revised draft guidances before it begins work on the final versions of the guidances, submit either electronic or written comments on the draft and revised draft product-specific BE recommendations listed in this notice by February 15, 2013.

ADDRESSES: Submit written requests for single copies of the individual BE guidances to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance recommendations.

Submit electronic comments on the draft product-specific BE recommendations to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kris André, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9326.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry entitled ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm.* As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. Under that process, draft recommendations are posted on FDA's Web site and announced periodically in the **Federal Register**. The public is encouraged to submit comments on those recommendations within 60 days of their announcement in the **Federal Register**. FDA considers any comments received and either publishes final recommendations or publishes revised draft recommendations for comment. Recommendations were last announced in the **Federal Register** of September 14, 2012 (77 FR 56851). This notice announces draft product-specific recommendations, either new or revised, that are being posted on FDA's Web site concurrently with publication of this notice.

II. Drug Products for Which New Draft Product-Specific BE Recommendations Are Available

FDA is announcing new draft product-specific BE recommendations for drug products containing the following active ingredients:

A
- Abiraterone acetate
- Albendazole
- Amlodipine besylate, hydrochlorothiazide, and olmesartan medoxomil

C
- Clindamycin phosphate; tretinoin
- Clorazepate dipotassium

F
- Ferumoxytol

G
- Gabapentin

P
- Piroxicam

S
- Sodium Phosphate, dibasic, anhydrous; sodium phosphate, monobasic, monohydrate

U
Ulipristal acetate
W
Warfarin sodium

III. Drug Products for Which Revised Draft Product-Specific BE Recommendations Are Available

FDA is announcing revised draft product-specific BE recommendations for drug products containing the following active ingredients:

D
Desmopressin acetate
Diflunisal
Dipyridamole
H
Hydrochlorothiazide; lisinopril
Hydrochlorothiazide; losartan potassium
L
Liothyronine sodium
P
Phenoxybenzamine hydrochloride
Q
Quinine sulfate
R
Risedronate sodium
T
Tacrolimus
Thalidomide
Tinidazole

For a complete history of previously published **Federal Register** notices related to product-specific BE recommendations, please go to *http://www.regulations.gov* and enter docket number FDA–2007–D–0369.

These draft and revised draft guidances are being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). These guidances represent the Agency's current thinking on product-specific design of BE studies to support ANDAs. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments on any of the specific BE recommendations posted on FDA's Web site to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. The guidances, notices, and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: December 11, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30308 Filed 12–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1145]

Draft Guidance for Industry on Enrichment Strategies for Clinical Trials to Support Approval of Human Drugs and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Enrichment Strategies for Clinical Trials to Support Approval of Human Drugs and Biological Products.'' The purpose of this document is to provide guidance to industry on enrichment strategies that can be used in clinical trials intended to support effectiveness and safety claims in new drug applications (NDAs) and biologics license applications (BLAs). This document defines several types of enrichment strategies, provides examples of various potential clinical trial designs, and discusses potential regulatory considerations when using enrichment strategies in clinical trials.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by February 15, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448 (1–800–835–4709 or 301–827–1800), or the Division of Small Manufacturers, International and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002, or fax your request to 301–847–8149. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert Temple, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 4212, Silver Spring, MD 20993–0003, 301–796–2270; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210; or Robert L. Becker, Center for Device and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5674, Silver Spring, MD 20993–0003, 301–796–5450.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Enrichment Strategies for Clinical Trials to Support Approval of Human Drugs and Biological Products.'' This document provides guidance to industry on enrichment strategies that can be used in clinical trials intended to support effectiveness and safety claims in new drug applications (NDAs) and biologics license applications (BLAs). Similar approaches could be used in clinical trials in earlier phases of drug development. As part of the reauthorization of the Prescription Drug User Fee Act (PDUFA IV), FDA committed to certain performance goals (see letters from the Secretary of Health and Human Services to the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate and the Chairman of the Committee on Energy and Commerce of the House of Representatives, as set forth in the

Congressional Record).[1] This draft guidance addresses one of these goals with the creation of a guidance document that addresses enriched trial designs. The guidance defines and discusses three enrichment strategies: Decreasing heterogeneity, predictive enrichment, and prognostic enrichment. The guidance also discusses general clinical trial design considerations, provides examples of potential clinical trial designs, and discusses regulatory considerations when using enrichment strategies.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on clinical trial designs employing enrichment strategies to support approval of human drugs and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*, *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm, or http://www.regulations.gov*.

Dated: November 20, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30274 Filed 12–14–12; 8:45 am]

BILLING CODE 4160–01–P

[1] See ''Section A: PDUFA Reauthorization Performance Goals and Procedures Fiscal Years 2008 Through 2012'' (*http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm119243.htm).*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–1002]

Guidance for Industry: Questions and Answers Regarding Food Facility Registration (Fifth Edition)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Fifth Edition).'' The guidance provides updated information pertaining to registration of human and animal food facilities under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the FDA Food Safety Modernization Act (FSMA) on January 4, 2011.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit electronic comments on the guidance to *http://www.regulations.gov.* Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the guidance to the Office of Compliance, Division of Field Programs and Guidance, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Amy Barringer, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1988.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Questions and Answers Regarding Food Facility Registration (Fifth Edition),'' which replaces the fourth edition of a guidance entitled ''Questions and Answers Regarding Registration of Food Facilities (Edition 4)'' issued in August 2004. The guidance provides updated information pertaining to the registration of food facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States.

On October 10, 2003, FDA issued an interim final rule (68 FR 58894) to implement amendments to the FD&C Act made by the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (the Bioterrorism Act) (Public Law 107–188). Section 415 of the FD&C Act (21 U.S.C. 350d) requires domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States to register with FDA by December 12, 2003. This guidance was developed to answer frequently asked questions relating to the registration requirements of section 415.

Section 102 of FSMA (Pub. L. 111–353), enacted on January 4, 2011, amended section 415 of the FD&C Act, in relevant part, to require facilities engaged in manufacturing, processing, packing, or holding food for consumption in the United States to submit additional registration information to FDA. This revised edition of the guidance includes new information relating to the FSMA amendments to section 415.

The first edition of this document was issued as level 2 guidance under § 10.115 (21 CFR 10.115) and was made available on FDA's Web site on December 4, 2003. The second, third, and fourth editions of this document were issued as level 1 guidance documents under § 10.115 and were made available on FDA's Web site on January 12, 2004, February 17, 2004, and August 2004, respectively. This revision (fifth edition) is being issued as a level 1 guidance and includes questions and answers relating to the FSMA amendments to section 415 of the FD&C Act. In addition, the guidance provides non-substantive revisions to clarify, delete, and renumber the questions and answers in edition 4.

This guidance is being issued consistent with FDA's good guidance practices regulation § 10.115 as a level 1 guidance. The Agency will accept comments at any time, but it is implementing this guidance immediately, in accordance with § 10.115(g)(2) because the Agency has determined that prior public participation is not feasible or appropriate.

The guidance represents the Agency's current thinking on food facility registration. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations and section 415 of the FD&C Act. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in §§ 1.230 through 1.235 and section 415 of the FD&C Act have been approved under OMB control number 0910–0502.

III. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov.* Always access an FDA document using the FDA Web site listed previously to find the most current version of the guidance.

Dated: December 12, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–30328 Filed 12–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1167]

Ag-Mark, Incorporated, et al.; Proposal To Withdraw Approval of New Animal Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity to request a hearing on the Agency's proposal to withdraw approval of 19 new animal drug applications (NADAs) and 1 abbreviated new animal drug application (ANADA) from multiple sponsors. The basis for the proposal is that the sponsors have repeatedly failed to file required periodic reports for these applications.

DATES: Submit written requests for a hearing by January 16, 2013; submit data and information in support of the hearing request by February 15, 2013.

ADDRESSES: Requests for a hearing, supporting data, and other comments are to be identified with Docket No. FDA–2012–N–1167 and submitted to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vernon Toelle, Center for Veterinary Medicine (HFV–234), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9238, email: *vernon.toelle@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new animal drugs are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 514.80 (21 CFR 514.80). The holders of the approved applications listed in table 1 of this document have failed to submit the required annual reports and have not responded to the Agency's repeated requests for submission of the reports including, in all cases, a request by certified mail.

TABLE 1—APPROVED NADAS AND ANADAS FOR WHICH REQUIRED REPORTS HAVE NOT BEEN MADE

NADA/ANADA No.	Trade name (drug)	Sponsor	Citation in 21 CFR
009–252	FUMIDIL B (bicyclohexylammonium fumagillin)	Mid-Continent Agrimarketing, Inc., 8833 Quivira Rd., Overland Park, KS 66214.	520.182
034–601	SYNCHRO–MATE (flurogestone acetate)	G. D. Searle LLC, 4901 Searle Pkwy., Skokie, IL 60077.	529.1003
039–284	Swisher Super Broiler 300–108 (amprolium, ethopabate, bacitracin zinc, and roxarsone).	Swisher Feed Division, William Davies Co., Inc., P.O. Box 578, Danville, IL 61832.	558.58
040–920	Chick Grower-Developer Fortified (amprolium)	Honeggers and Co., Inc., 201 W. Locust St., Fairbury, IL 61739.	Not codified
094–223	Canine Worm Caps (n-butyl chloride)	K. C. Pharmacal, Inc., 8345 Melrose Dr., Lenexa, KS 66214.	520.260
098–429	Medic-Meal-T Premix (tylosin phosphate)	J. C. Feed Mills, 1050 Sheffield, P.O. Box 224, Waterloo, IA 50704.	558.625
098–639	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).	Bioproducts, Inc., 320 Springside Dr., Suite 300, Fairlawn, OH 44333–2435.	558.630
106–507	TYLAN 10 (tylosin phosphate)	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.	558.625
110–044	PRO–TONE Plus Pak GF T–1 (tylosin phosphate)	Peavey Co., 730 Second Ave. South, Minneapolis, MN 55402.	558.625
117–688	Dichlorophene & Toluene Capsules	Texas Vitamin Co., P.O. Box 18417, 10695 Aledo St., Dallas, TX 57218.	520.580
120–614	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).	Webel Feeds, Inc., R.R. 3, Pittsfield, IL 62363	558.630
120–671	Pet-Worm-Caps (dichlorophene and toluene)	K. C. Pharmacal, Inc., 8345 Melrose Dr., Lenexa, KS 66214.	520.580
121–147	Nutra-Mix TYLAN (tylosin phosphate)	Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464	558.625
122–522	TYLAN Sulfa-G (tylosin phosphate and sulfamethazine).	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.	558.630

TABLE 1—APPROVED NADAS AND ANADAS FOR WHICH REQUIRED REPORTS HAVE NOT BEEN MADE—Continued

NADA/ANADA No.	Trade name (drug)	Sponsor	Citation in 21 CFR
124–391	Nutra-Mix TYLAN-Sulfa Premixes (tylosin phosphate and sulfamethazine).	Ag-Mark, Inc., P.O. Box 127, Teachey, NC 28464	558.630
127–195	TYLAN 10 (tylosin phosphate)	I.M.S. Inc., 13619 Industrial Rd., Omaha, NE 68137	558.625
129–415	Custom Ban Wormer 9.6 BANMINTH (pyrantel tartrate).	Custom Feed Blenders Corp., 540 Hawkeye Ave., Fort Dodge, IA 50501.	558.485
130–092	ALFAVET (alfaprostol)	Vetem, S.p.A., Viale E. Bezzi 24, 20146 Milano, Italy	522.46
141–101	PREEMPT (competitive exclusion culture)	Bioscience Division of Milk Specialties Co., 1902 Tennyson Lane, Madison, WI 53704.	529.469
200–187	Isoflurane, USP	Marsam Pharmaceuticals, Inc., Bldg. 31, 24 Olney Ave., Cherry Hill, NJ 08034.	529.1186

Therefore, notice is given to the holders of the approved applications listed in table 1 of this document and to all other interested persons that the Director of the Center for Veterinary Medicine proposes to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360b(e)) withdrawing approval of the applications, and all amendments and supplements thereto, on the ground that the applicants have failed to submit the reports required under § 514.80(b)(2).

In accordance with section 512 of the FD&C Act and parts 12 and 514 (21 CFR parts 12 and 514), the applicants are hereby provided an opportunity for a hearing to show why the applications listed in table 1 of this document should not be withdrawn (and the corresponding regulations revoked) and an opportunity to raise, for administrative determination, all issues relating to the legal status of the new animal drug products covered by these applications.

An applicant who decides to seek a hearing shall file the following: (1) A written notice of participation and request for a hearing (see DATES), and (2) the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing (see DATES). Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 514.200 and in part 12.

The failure of an applicant to file a timely written notice of participation and request for a hearing, as required by § 514.200 and part 12, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and constitutes a waiver of any contentions concerning the legal status of the new animal drug products. FDA will then withdraw approval of the applications and the new animal drug products may not thereafter lawfully be marketed, and FDA may begin appropriate regulatory action to remove the products from the market. Any new animal drug product marketed without an approved NADA is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 514.80. If the submission is not complete or if a request for a hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs (the Commissioner) will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure by law, the submissions may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, or on the Internet at *http://www.regulations.gov.*

This notice is issued under section 512 of the FD&C Act and under authority delegated to the Director, Center for Veterinary Medicine, by the Commissioner.

Dated: December 10, 2012.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2012–30089 Filed 12–14–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Council of Councils.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Council of Councils.

Open: January 22, 2013, 8:30 a.m. to 12:45 p.m.

Agenda: Program Reports and Presentations; Concept Clearance and Business of the Council.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: January 22, 2013, 12:45 p.m. to 2:00 p.m.

Agenda: Review of Grant Applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Open: January 22, 2013, 2:00 p.m. to 5:00 p.m.

Agenda: Update on Working Group on the Use of Chimpanzees in NIH-Supported Research and Update on National Center for Advancing Translational Sciences.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robin I. Kawazoe, Executive Secretary, Division of Program Coordination, Planning, and Strategic Initiatives, Office of the Director, NIH, Building 1, Room 260, Bethesda, MD 20892, *kawazoer@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Information is also available on the Council of Council's home page at *http://dpcpsi.nih.gov/council/* where an agenda and proposals to be discussed will be posted before the meeting date

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: December 10, 2012.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30333 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Advancing Translational Sciences; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Cures Acceleration Network Review Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Cures Acceleration Network Review Board.

Date: January 23, 2013.

Time: 8:30 a.m. to 2:45 p.m.

Agenda: Report of the Institute Director.

Place: National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Danilo A Tagle, Ph.D., Associate Director for Special Programs, National Center for Advancing Translational Sciences, 1 Democracy Plaza, Room 992, Bethesda, MD 20892, 301–594–8064, *Danilo.Tagle@nih.gov.*

Dated: December 11, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30329 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the AIDS Research Advisory Committee, NIAID.

The meetings will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: February 4, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892 –7601, 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: June 3, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 16, 2013.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, Conference Rooms E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: *December 10, 2012.*

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30330 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: January 29, 2013.

Open: 8:30 a.m. to 12:00 p.m.
Agenda: Report to the Director, NIDCR.
Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.
Closed: 1:00 p.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, 6th Floor, Conference Room 10, 31 Center Drive, Bethesda, MD 20892.
Contact Person: Alicia J. Dombroski, Ph.D., Director, Division of Extramural Activities, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Information is also available on the Institute's/Center's home page: *http://www.nidcr.nih.gov/about,* where an agenda and any additional information for the meeting will be posted when available.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 11, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30337 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group Radiation Therapeutics and Biology Study Section.
Date: January 14–15, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.
Contact Person: Bo Hong, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–996–6208, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Immune Mechanism.
Date: January 14, 2013.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Healthcare Delivery and Methodologies.
Date: January 16, 2013.
Time: 12:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Melinda Jenkins, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, 301–437–7872, *jenkinsml2@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 11, 2012.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30334 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 Reverse Site Visit M2 (2013/05).
Date: January 27–28, 2013.
Time: 6:00 p.m. to 8:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; P41 Site Visit M1.
Date: February 20–22, 2013.
Time: 6:00 p.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Duke Inn, 3001 Cameron Blvd., Durham, NC 27705.
Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: December 11, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30336 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skeletal Biology and Development.

Date: January 15, 2013.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Studies of Cardiovascular Diseases.

Date: January 16, 2013.

Time: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Dietary Chemoprevention.

Date: January 17, 2013.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Oral Microbiology and Salivary Glands.

Date: January 18, 2013

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 12, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30352 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; NIDCR Secondary Data Analysis R03 Review.

Date: January 16, 2013.

Time: 10:30 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications,

Place: NIDCR, 6701 Democracy Blvd., Bethesda, MD 20892.

Contact Person: Jayalakshmi Raman, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, One Democracy Plaza, Room 670, Bethesda, MD 20892–4878, 301–594–2904, *ramanj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 10, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30332 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: January 10, 2013.

Time: 11:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Suite 4076, 5635 Fishers Lane, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 11, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30335 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Planning and Implementation Grants and Cooperative Agreements (R34, R01, U01).

Date: January 7, 2013.

Time: 8:30 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities/NIAID, National Institutes of Health, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2634, *james.snyder@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: December 10, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30331 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Cell Dependent and Independent Mechanism Longevity I.

Date: February 27, 2013.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bita Nakhai, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel Cognitive Decline in Aging Monkeys.

Date: March 19, 2013.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Parsadanian, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *PARSADANIANA@NIA.NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: December 12, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–30353 Filed 12–14–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0059]

Chemical Facility Anti-Terrorism Standards (CFATS)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-day notice and request for comments; Extension of Information Collection Request: 1670–0014.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until February 15, 2013. This process is conducted in accordance with 5 CFR § 1320.8.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/ISCD CFATS Program Manager, 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20528–0610. Written comments should reach the contact person listed no later than February 15, 2013. Comments must be identified by ''DHS–2012–0059''and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Special Instructions: Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and submitted by mail to the DHS/NPPD/IP/ISCD CFATS Program Manager, 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20528–0610. Comments must be identified by docket number DHS–2012–0059.

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007, Public Law 109–295, provides DHS with the authority to regulate the security of high-risk chemical facilities. On April 9, 2007, the Department issued an Interim Final Rule (IFR), implementing this statutory mandate at 72 FR 17688. Section 550 of the Homeland Security Appropriations Act of 2007 requires a risk-based approach to security.

CFATS is the Department's regulations under Section 550 governing security at high-risk chemical facilities. *See* 6 CFR Part 27. CFATS represents a national-level effort to minimize terrorism risk to such facilities. Its design and implementation balance maintaining economic vitality with securing facilities and their surrounding communities. In collaboration with the private sector and other stakeholders, the Department designed the regulations to take advantage of protective measures already in place and to allow facilities to employ a wide range of tailored measures to satisfy the regulations' Risk-

Based Performance Standards (RBPS). The instruments within this collection will be used to manage the CFATS program.

OMB is particularly interested in comments that:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: Chemical Facility Anti-Terrorism Standards.

OMB Number: 1670–0014.

Instrument: Request for Redetermination.

Frequency: On occasion/Other.

Affected Public: Business or other for-profit.

Number of Respondents: 625 respondents (estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 156.25 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $13,437.

Instrument: Request for an Extension.

Frequency: On occasion/Other.

Affected Public: Business or other for-profit.

Number of Respondents: 185 respondents (estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 46.25 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $3,977.

Instrument: Notification of a New Top Screen.

Frequency: On occasion/Other.

Affected Public: Business or other for-profit.

Number of Respondents: 1250 respondents (estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 468.75 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $40,312.

Instrument: Request for a Technical Consultation.

Frequency: On occasion/Other.

Affected Public: Business or other for-profit.

Number of Respondents: 185 respondents (estimate).

Estimated Time per Respondent: 0.25 hours.

Total Burden Hours: 69.37 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $5,966.

Scott Libby,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2012–30314 Filed 12–14–12; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0058]

Chemical Security Assessment Tool (CSAT)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day notice and request for comments; Revision of Information Collection Request: 1670–0007.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD), will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub.L. 104–13, 44 U.S.C. Chapter 35).

DATES: Comments are encouraged and will be accepted until February 15, 2013 This process is conducted in accordance with 5 CFR 1320.8.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/ISCD Chemical Facility Anti-Terrorism Standards Program Manager, 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20528–0610. Written comments should reach the contact person listed no later than February 15, 2013. Comments must be identified by ''DHS–2012–0057''and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Special Instructions: Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and submitted by mail to the DHS/NPPD/IP/ISCD Chemical Facility Anti-Terrorism Standards Program Manager at the Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20528–0610. Comments must be identified by docket number DHS–2012–0058.

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007, Public Law 109–295 (2006), provides DHS with the authority to regulate the security of high-risk chemical facilities. On April 9, 2007, the Department issued an Interim Final Rule (IFR), implementing this statutory mandate at 72 FR 17688. Section 550 of the Homeland Security Appropriations Act of 2007 requires a risk-based approach to security.

The Chemical Facility Anti-Terrorism Standards (CFATS) are the Department's regulations under Section 550 governing security at high-risk chemical facilities. *See* 6 CFR part 27. CFATS represents a national-level effort to minimize terrorism risk to such facilities. Its design and implementation balance maintaining economic vitality with securing facilities and their surrounding

communities. The regulations were designed, in collaboration with the private sector and other stakeholders, to take advantage of protective measures already in place and to allow facilities to employ a wide range of tailored measures to satisfy the regulations' Risk-Based Performance Standards (RBPS).

The Department collects the core regulatory data through the portions of the Chemical Security Assessment Tool (CSAT) covered under this collection. For more information about CFATS and CSAT, you may access *www.dhs.gov/chemicalsecurity*. The current information collection for these portions of CSAT will expire on March 31, 2013.

The Department's Methodology in Estimating the Burden for the Top-Screen

Number of Respondents

The current information collection estimated that 4,167 respondents would submit a Top-Screen annually. That estimate, which is taken from the 2007 CFATS Regulatory Assessment,[1] was derived by averaging the estimated number of respondents that would complete a Top-Screen in Calendar Year (CY) 2008–2010. In the 2007 CFATS Regulatory Assessment, the Department estimated that during CY 2013–2015, 2,500 respondents would submit Top-Screens annually. In actuality, between January 2009 and December 2011, 6,781 Top-Screens were submitted by 6,041 facilities (i.e., respondents). This resulted in the Department receiving, on average, 2,260 respondent submissions annually during CY 2009–2011. This information is displayed in Table 1 below:

TABLE 1—TOP-SCREEN SUBMISSION AVERAGES

	Year 1	Year 2	Year 3	Total	Average annual
Estimated number of Top-Screen respondents in the information collection that expires on 03/31/13	7,500	2,500	2,500	12,500	4,167
Total Number of Actual Top-Screens	2,704	2,445	1,632	6,781	2,260

As the historical annual average of 2,260 submissions is close to the average annual number of respondents estimated in the 2007 CFATS Regulatory Evaluation for CY 2013–2015 (i.e., 2,500), the Department will use the 2007 CFATS Regulatory Evaluation to estimate the number of respondents for the purposes of this notice.

Estimated Time per Respondent

In the current information collection, the estimated time per respondent to prepare and submit a Top-Screen is 30.3 hours. This estimate assumed that the majority of the burden associated with the Top-Screen was outside of DHS's ability to quantitatively measure. However, by using the data collected between January 2009 and December 2011, the Department was able to measure the duration a user, on behalf of a facility, was logged into the Top-Screen application. The Department determined that 98 percent of users who submitted Top-Screens were logged into the Top-Screen application for no more than 2.25 hours. While facilities likely spent additional time preparing for the completion of the Top-Screen when not logged into the Top-Screen application, based upon the Department's experience and routine interactions with regulated chemical facilities, the Department does not believe that a facility spent 15 hours prepping to submit a Top-Screen for every hour spent actually using the Top-Screen application. Thus, the Department no longer believes that 30.3 hours of effort is a reasonable burden estimate.

Rather, based upon the Department's interactions with regulated chemical facilities, the Department believes that for every hour a facility is logged into CSAT, it spends an average of two hours in preparation. Therefore, for the purposes of this notice, the Department's estimated time per respondent to submit a Top-Screen is 6.75 hours. To account for the anticipated resubmission by facilities, the Department further estimates that 50 percent of the respondents will submit two Top-Screens.

The Department also collects supporting documentation from approximately half of the respondents. Based upon the Department's day-to-day informal discussions with regulated chemical facilities, the Department believes that a reasonable burden for the gathering and provision of supporting documentation is 0.25 hours.

Annual Burden Hours

The annual burden hours for the Top-Screen is [6.75 hours × 2,500 respondents × 1.5 responses per respondent], which equals 25,312.50 hours. The annual burden hours to submit supporting documentation is 312 hours [0.25 hours × 1,250 respondents × one response per respondent].

Therefore, the Department estimates that the total annual burden hours for the Top-Screen is 25,624.5 hours [25,312.5 hours + 312 hours]. The rounded estimate is 25,600 hours.

Total Burden Cost (Capital/Startup)

The Department provides access to CSAT free of charge, and the Department assumes that each respondent already has access to the Internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there are no capital/startup costs.

Total Recordkeeping Burden

A chemical facility that has submitted a Top-Screen may or may not be determined by the Department to present a high level of security risk. Only covered facilities that present a high level of security risk are required to keep records mandated by CFATS.

For chemical facilities that ultimately are determined not to present a high level of security risk, the Department estimates any CFATS recordkeeping burden to be de minimis.

For chemical facilities that are determined to present a high level of security risk, the Top-Screen recordkeeping burden is accounted for within the recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan,'' discussed later in this notice. The recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan'' accounts for all records high-risk chemical facilities are required to maintain under CFATS because the

[1] See Section 3 and Table 6 of the 2007 CFATS Regulatory Assessment, *http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116.*

Department assumes that high-risk chemical facilities maintain their Top-Screen records and any other required records in the same manners, formats, and locations as they maintain their SSP/ASP records.

Total Annual Burden Cost (Operating/Maintaining)

The 2007 CFATS Regulatory Evaluation assumes that Site Security Officers are responsible for submitting Top-Screens. For the purpose of this notice, the Department maintains this assumption.

Therefore, to estimate the total annual burden, the Department multiplied the annual burden of 25,624.5 hours by the wage rate of Site Security Officers and adjusted for the actual and estimated Employment Cost Index (ECI) published by the Bureau of Labor Statistics (BLS). For the purpose of this notice, the Department adjusted wage rate of Site Security Officers from $80.00 per hour to $86.00 per hour. Therefore, the total annual burden cost for the Top-Screen is $2,203,707 [25,624.5 total annual burden hours × $86 per hour]. The rounded estimate is $2,203,700.

The Department's Methodology in Estimating the Burden for the Security Vulnerability Assessment (SVA) & Alternative Security Program (ASP) Submitted in Lieu of the Security Vulnerability Assessment

Number of Respondents

The current information collection estimated that 825 respondents would complete an SVA/ASP annually in CY 2008–2010. The number of respondents was derived by a two-step process. The first step estimated the expected number of SVAs/ASPs by multiplying the estimated number of Top-Screens in each CY by the percentage of Top-Screens that resulted in a determination by the Department that an SVA or ASP in lieu of an SVA must be submitted by a facility. When the current information collection was approved in March of 2010, that rate was 19.8 percent. The estimated number of SVAs or ASPs in lieu of SVAs must be submitted by facilities was then averaged. See the table below for estimated totals.

TABLE 2—SVA/ASP SUBMISSION ESTIMATES BASED ON TOP-SCREEN SUBMISSIONS

	Year 1	Year 2	Year 3	Total	Average annual
Estimated number of Top-Screen Respondents in information collection that expires on 03/31/13	7,500	2,500	2,500	12,500	4,167
Estimated number of SVA/ASP Respondents in information collection that expires on 03/31/13	1,485	495	495	2,475	825

In actuality, 2,834 respondents submitted ASV/ASPs to the Department for the first time between January 2009 and December 2011.

TABLE 3—SVA/ASP SUBMISSION TOTALS, INCLUDING NEW SVA/ASP SUBMISSIONS

	Year 1	Year 2	Year 3	Total
Estimated number of SVA/ASP Respondents for information collection that expires on 03/31/13	1,485	495	495	2,475
Actual Number of New SVAs Submitted	2,287	315	232	2,834

Based upon a comparison of the actual results and the Department's estimates, the Department is satisfied that the methodology to estimate the number of respondents is reasonable. Therefore, for the purpose of this notice, the Department duplicated that analysis.

Historical data from the Department in CY 2009–2011 revealed that the percentage of Top-Screens that subsequently resulted in a determination that an SVA or ASP in lieu of an SVA must be submitted by a facility was 29.6 percent. The estimated number of SVAs or ASPs in lieu of SVAs that must be submitted by facilities was determined by CY and then averaged. Therefore, for the purposes of this notice, the number of SVA/ASP respondents is 740 [2500 Top-Screen Respondents × 0.296. See table below.

TABLE 4—TOP-SCREEN AND SVA/ASP RESPONDENT ESTIMATES

	Year 1	Year 2	Year 3	Total	Average annual
Estimated number of Top-Screen Respondents in this notice	2,500	2,500	2,500	7,500	2,500
Current Estimated number of SVA/ASP Respondents in this notice	740	740	740	2,220	740

Estimated Time per Respondent

The current information collection estimated the time per respondent for preparing and submitting an SVA/ASP to be 250 hours. Previously, when making that estimate, the Department assumed that the majority of the burden associated with the SVAs/ASPs is outside the ability of the Department to quantitatively measure. However, in CY 2009–2011, the Department was able to measure the duration a user, on behalf of a facility, was logged into the SVA/ASP application. Based upon actual historical data, the Department

determined that 98 percent of users who submitted SVAs were logged into the SVA/ASP application for no more than 13 hours.

While facilities likely spent additional time preparing to complete the SVA/ASP while not logged into the SVA/ASP application, based upon the Department's experience and routine interactions with regulated chemical facilities, the Department does not believe that a facility spent 20 hours prepping to submit an SVA/ASP for every hour spent actually using the SVA/ASP application. Thus, the Department no longer believes that 250 hours of effort is a reasonable burden estimate.

Rather, based upon the Department's interactions with regulated chemical facilities, we believe that for every hour a facility is logged into CSAT, it spends an average of two hours in preparation. Therefore, for the purpose of this notice, the Department's estimated time per respondent to submit an SVA/ASP is 39 hours. The rounded estimate is 40 hours.

To account for the anticipated resubmission by facilities, DHS estimates that 50 percent of the respondents will submit an additional SVA/ASP.

The Department also collects supporting documentation from approximately half of the respondents. Based upon the Department's day-to-day informal discussions with regulated chemical facilities, the Department believes that a reasonable burden for gathering and provision of supporting documentation is 0.25 hours per facility.

Annual Burden Hours

The annual burden hours for an SVA/ASP is 43,290 hours [740 respondents × 39 hours × 1.5 response per respondent].

The annual burden estimate to obtain supporting documentation is 92.5 hours [0.25 hours × 370 respondents × 1 response per respondent].

Therefore, the Department estimates that the total annual burden in hours for the SVA/ASP is 43,382.5 hours [43,290 hours + 92.5 hours]. The rounded estimate is 43,400 hours.

Total Burden Cost (Capital/Startup)

The Department provides access to CSAT free of charge, and the Department assumes that each respondent already has access to the Internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there are no capital/startup costs.

Total Recordkeeping Burden

A chemical facility that has submitted an SVA/ASP may or may not be determined by the Department to present a high level of security risk. Only covered facilities that present a high level of security risk have a recordkeeping requirement.

For chemical facilities that ultimately are determined not to present a high level of security risk, the Department estimates any CFATS recordkeeping burden to be de minimis.

For chemical facilities that are determined to present a high level of security risk, the SVA recordkeeping burden is accounted for within the recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan,'' discussed later in this notice. The recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan'' accounts for all records high-risk chemical facilities are required to maintain under CFATS because the Department assumes that high-risk chemical facilities maintain their Top-Screen records and any other required records in the same manners, formats, and locations as they maintain their SSP/ASP records.

Total Annual Burden Cost (Operating/Maintaining)

The 2007 CFATS Regulatory Evaluation assumes that Site Security Officers will be responsible for submitting Top-Screens. For the purpose of this notice, the Department maintains this assumption.

The total annual burden cost for the SVA/ASP is $3,730,852 [43,382 total annual burden hours × $86 (average hourly wage rate for Site Security Officers)]. The rounded estimate is $3,730,900.

The Department's Methodology in Estimating the Burden for Site Security Plan (SSP) and Alternative Security Program (ASP) Submitted in Lieu of the Site Security Plan

Number of Respondents

The current information collection estimated that 825 respondents would complete an SSP/ASP annually in CY 2008–2010. At the time the current information collection was approved in March of 2010, the Department did not have adequate actual data from which to estimate the number of respondents. Thus, for simplicity, the Department opted to use the same estimated number of respondents for the SVA/ASP as the estimated number used for the SSP/ASP.

Between January 2009 and December 2011, 4,199 respondents submitted an SSP/ASP.

TABLE 5—SSP/ASP SUBMISSION ESTIMATES, INCLUDING NEW SSP/ASP SUBMISSIONS

	Year 1	Year 2	Year 3	Total
Estimated number of SSP/ASP Respondents in the information collection that expires on 03/31/13	1,485	495	495	2,475
Actual Number of New SSPs/ASPs Submitted	907	3,056	236	4,199

In CY 2009–2011, 2,321 facilities were required to complete an SSP/ASP from the 3,528 facilities that submitted an SVA/ASP. Therefore, the percentage of SVA/ASPs that resulted in a determination by the Department that an SSP or ASP in lieu of an SSP must be submitted by a facility was 65.7 percent. Therefore, for the purposes of this notice, the number of SSP/ASP respondents is 486 [740 SVA/ASP respondents × 0.657]. See table below.

TABLE 6—SVA/ASP RESPONDENT AND SSP/ASP RESPONDENT ESTIMATES

	Year 1	Year 2	Year 3	Total	Average annual
Estimated number of SVA/ASP Respondents in this notice	740	740	740	2,220	740
Estimated number of SSP/ASP Respondents in this notice	486	486	486	1,458	486

Estimated Time per Respondent

The current information collection estimated the estimated time per respondent for preparing and submitting a SSP/ASP to be 200 hours. Previously, when making that estimate, the Department assumed that the majority of the burden associated with the SSPs/ASPs is outside of CSAT's ability to quantitatively measure. However, in CY 2009–2011, the Department was able to measure the duration a user was logged into the SVA/ASP application on behalf of a facility. The Department determined that 98 percent of users who submitted the evaluated SSPs were logged into the system for no more than 45 hours.

Facilities likely spent additional time preparing to complete the SSP/ASP while not logged into the SSP/ASP application, based upon the Department's experience and routine interactions with regulated chemical facilities, the Department believes that 200 hours of effort is a reasonable burden estimate (i.e., that the facility spends 4.5 hours outside of CSAT for every hour it spends logged into CSAT). Therefore, for the purpose of this notice, the Department will maintain the estimated time per respondent estimate of 200 hours. To account for the anticipated resubmission by facilities, DHS estimates that 50 percent of the respondents will submit an additional SSP/ASP.

The Department also collects supporting documentation from approximately half of the respondents. Based upon the Department's day-to-day informal discussions with regulated chemical facilities, the Department believes that a reasonable burden for the gathering and provision of supporting documentation is 0.25 hours per facility.

Annual Burden Hours

The annual burden hours for SSP/ASP submission is 145,800 hours [200 hours × 486 SSP/ASP respondents × 1.5 response per respondent].

The annual burden hours for obtaining supporting documentation is 60.75 hours [0.25 hours × (0.5 × 486 SSP/ASP respondents) × (one response per respondent)].

Therefore, the Department estimates that the total annual burden hours for SSP/ASP submission is 145,860.75 hours [145,800 hours + 60.75 hours]. The rounded estimate is 145,900 hours.

Total Burden Cost (Capital/Startup)

The Department provides access to CSAT free of charge, and the Department assumes each respondent already has access to the Internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there are no capital/startup costs.

Total Recordkeeping Burden

The recordkeeping burden estimate for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan'' accounts for the recordkeeping burden high-risk chemical facilities are required to maintain under CFATS, including SSP and ASP records because the Department assumes that high-risk chemical facilities maintain their records and any other required records in the same manners, formats, and locations as they maintain their SSP/ASP records. Therefore, the Department believes it is reasonable to estimate the recordkeeping burden for all CFATS covered facilities under the recordkeeping burden for the ''Site Security Plan (SSP) and Alternative Security Program (ASP) submitted in lieu of the Site Security Plan.''

Records maintained under CFATS, including SSP/ASP records and other records listed at 6 CFR 27.255, may be kept in electronic or paper formats as long as they are reasonably protected. For the purpose of this notice, the Department assumes that all covered facilities will purchase a locked filing cabinet to maintain records at a cost of $350 each. In addition, covered facilities that use paper records will also incur the cost of additional paper and printer ink/toner. The Department assumes an additional box of paper ($50) and additional printer ink/toner supplies ($200). Thus, the physical cost related to record keeping for each SSP/ASP respondent is $600 (i.e., $350 for the filing cabinet plus $250 for paper and toner) for the first year and $250 per year for the second and third year. Thus, the annual average cost for physical cost related to paper-based recordkeeping is $336 per SSP/ASP.

TABLE 7—SSP/ASP PAPER-BASED RECORDKEEPING COSTS

	Locked filing cabinet cost	Paper and ink/toner cost	Year 1 cost	Year 2 cost	Year 3 cost	Average annual cost
SSP/ASP	$350	$250	$600	$250	$250	$336

The Department assumes that clerical staff will spend 48 hours per year (four hours per month) maintaining records, such as filing, binding, etc. The 2007 CFATS Regulatory Evaluation estimated the wage rate of clerical staff by leveraging the ECI published by the BLS. Specifically, for the purpose of this notice the Department adjusted the wage rate of clerical staff from $40 per hour to $43 per hour. Thus, the Department estimates the labor related to paper-based recordkeeping burden is $2,064 per SSP/ASP [48 hours × $43].

Alternatively, although it is not required, businesses may keep their records electronically. Under this scenario, DHS assumes that a small number of respondents (i.e., 5 percent) will purchase a computer loaded with basic spreadsheet software. For the purpose of this notice, the Department assumes that 5 percent of covered facilities will purchase a computer and printer to maintain records at a total cost of $1,000. Thus, the annual average cost for physical costs related to electronic-based recordkeeping is $333 per SSP/ASP.

The Department assumes that there will be a larger time commitment for updating records and inputting data into a spreadsheet. Hence, DHS estimates six hours per month to maintain electronic records. Thus, the Department estimates the labor related to electronic-based recordkeeping burden is $3,096 [72 hours × $43 (average hourly wage rate for clerical staff)].

Therefore, for the purposes of this notice, the Department estimates that the annual recordkeeping burden is $1,205,256 [($366 + $2,064) × (0.95 × 486 SSP/ASP respondents) + [($333 + $3,096) × (0.05 × 486 SSP/ASP respondents)]. The rounded estimate is $1,205,300.

Total Annual Burden Cost (Operating/Maintaining)

The total annual burden cost for the SSP/ASP is $9,674,171 [98,475.75 hours multiplied by $86 (average hourly wage rate for Site Security Officers) + $1,205,256 (total annual recordkeeping burden)]. The rounded estimate is $9,675,200.

The Department's Methodology in Estimating the Burden for the Helpdesk

Number of Respondents

The Department evaluated the historical data to determine if the current information collection estimate of 25,000 respondents continued to be an appropriate estimate for Helpdesk. In CY 2009–2011, the Helpdesk accepted 27,135 calls and 10,858 emails.

TABLE 8—HELPDESK RESPONDENT TOTALS

	Year 1	Year 2	Year 3	Total	Average annual
Estimated number of Respondents in the IC that expires on 03/31/13	25,000	25,000	25,000	75,000	25,000
Actual number of Respondents (phone calls and emails)	14,167	15,002	8,814	37,983	12,661

The average annual number of respondents for this time period was 12,661 respondents (calls and emails). Therefore, for the purpose of this notice, the Department has reduced the estimated number of respondents from 25,000 to 15,000, based on actual historical data.

Estimated Time per Respondent

The Department evaluated the historical data to determine if the estimated time per respondent of 0.25 hours (15 minutes) continued to be an appropriate estimate. In CY 2009–2011, the actual average Helpdesk call averaged less than nine minutes.

TABLE 9—HELPDESK CALL TIME AVERAGES

	CY 2009	CY 2010	CY 2011
Actual Average Call Time (minutes)	8:18	8:47	8:29

The Department does not have any information about the average amount of time it took respondents to type and send the 10,858 emails between January 2009 and December 2011.

Therefore, for the purpose of this notice, the Department has reduced the estimated time per respondent from 0.25 hours (i.e., 15 minutes) to 0.17 hours (i.e., 10 minutes).

Annual Burden Hours

The annual burden hours for the Helpdesk will be 2,550 hours [0.17 hours × 15,000 respondents].

Total Burden Cost (Capital/Startup)

Contacting the CFATS Helpdesk is free, and the Department assumes that each respondent already has a phone and/or access to the Internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there are no capital/startup costs.

Total Recordkeeping Burden

There is no recordkeeping burden when contacting the CSAT Helpdesk.

Total Annual Burden Cost (Operating/Maintaining)

The total burden for the Helpdesk is $219,300 [2,550 annual burden hours × $86 (average hourly rate for Site Security Officers)].

The Department's Methodology in Estimating the Burden for the User Registration

Number of Respondents

The current information collection estimated 4,167 respondents would complete the user registration process annually. That estimate assumed there would be at least one respondent for each Top-Screen submission. In actuality, between January 2009 and December 2011, 1,866 individuals (i.e. respondents) completed the online User Registration application.[2] This represents an average annual number of 622 respondents.

Therefore, based upon actual historical data the Department will revise its assumption and assume that the number of respondents for User Registration will be one-fourth of the number of respondents for the Top-Screen. Hence, for the purpose of this notice, the Department estimates that the number of respondents is 625.

Estimated Time per Respondent

In the current information collection, the estimated time per respondent is one hour. Previously, the Department assumed that one hour was an adequate amount of time for the respondent to (1) complete the online CSAT User Registration process, and subsequently (2) collect and submit the necessary signatures on the user access agreement. In CY 2009–2011, the Department was able to measure the duration a user, on behalf of a facility, was logged into the CSAT User Registration application. The Department determined that 98 percent of all individuals completed the online CSAT User Registration application within 52 minutes.

Each CSAT user role for each facility required a user access agreement, and a signature was collected for each user role for each facility (e.g., a single person who will be a submitter for two facilities will sign two agreements twice, or a single person who fulfills more than one role for a facility such as an Authorizer and Submitter will sign one agreement twice). This resulted in 19,810 signatures. The Department estimates that collection and submission for each signature averaged five minutes, resulting in an actual burden to collect signatures of 53 minutes [(19.810 signatures × 5 minutes)/1,866 (Number of Actual Respondents)].

Therefore, based on actual historical data, the Department has adjusted the estimated time per respondent from one hour to two hours.

Annual Burden Hours

The annual burden estimate for User Registration is 1,250 hours [2 hours × 625 respondents].

[2] 1,866 respondents created CSAT facility profiles for 2,243 facilities and created 3,274 CSAT user roles. A single user may register more than one user and more than one chemical facility at a time.

Total Burden Cost (Capital/Startup)

The Department assumes that each respondent already has a fax capability and access to the Internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there no capital/startup costs.

Total Recordkeeping Burden

There is no recordkeeping burden for submitting a User Registration application.

Total Annual Burden Cost (Operating/Maintaining)

The total burden for User Registration is $107,500 [1,250 annual burden hours × $86 (average hourly rate for Site Security Officers)].

The Department's Methodology in Estimating the Burden for the Request for Information To Improve Program

This is a new instrument in this collection. This instrument will allow the Department to request input on an occasional basis about specific documents (e.g., CSAT User Manuals) that will improve the program or its operations.

Number of Respondents

Based on historical data available in CSAT, the Department estimates that the number of respondents will be equal to 25 percent of the number of SSP/ASP. Therefore, the number of respondents is 122 [0.25 × 486 (SSP/ASP respondents)].

Estimated Time per Respondent

The Department estimates that the average time to review and provide comments on a specific document is one hour.

Annual Burden Hours

The annual burden estimate is 122 hours [one hour × 122 respondents × one response per respondent].

Total Burden Cost (Capital/Startup)

The Department assumes that each respondent already has an email capability and access to the Internet for basic business needs. Therefore, for the purposes of this notice, the Department estimates that there are no capital/startup costs.

Total Recordkeeping Burden

There is no recordkeeping burden when responding to a request for information to improve the CFATS program.

Total Annual Burden Cost (Operating/Maintaining)

The total annual burden cost is $10,492 [122 total annual burden hours × $86 (average hourly wage rate for Site Security Officers)]. The rounded estimate is $10,500. OMB is particularly interested in comments that:

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 submissions of responses).

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: Chemical Security Assessment Tool.

OMB Number: 1670–0007.

Instrument: CSAT Top-Screen.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 2,500 respondents (estimate).

Estimated Time per Respondent: 6.75 hours.

Total Burden Hours: 25,600 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $2,203,700.

Instrument: Security Vulnerability Assessment and Alternative Security Program submitted in lieu of the Security Vulnerability Assessment.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 740 respondents (estimate).

Estimated Time per Respondent: 40 hours.

Total Burden Hours: 43,400 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $3,730,900.

Instrument: Site Security Plan and Alternative Security Program submitted in lieu of the Site Security Plan.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 486 respondents (estimate).

Estimated Time per Respondent: 200 hours.

Total Burden Hours: 145,900 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $1,205,300.

Total Burden Cost (operating/maintaining): $9,675,200.

Instrument: CFATS Helpdesk.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 15,000 respondents (estimate).

Estimated Time per Respondent: 0.17 hours.

Total Burden Hours: 2,250 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $219,300.

Instrument: CSAT User Registration.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 625 respondents (estimate).

Estimated Time per Respondent: 2 hours.

Total Burden Hours: 1,250 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $107,500.

Instrument: Request for Information to Improve Program.

Frequency: ''On occasion'' and ''Other''.

Affected Public: Business or other for-profit.

Number of Respondents: 329 respondents (estimate).

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 122 hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $10,500.

Dated: December 11, 2012.

Scott Libby,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

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BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2012–0057]

Chemical Facility Anti-Terrorism Standards (CFATS) Chemical-Terrorism Vulnerability Information (CVI)

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day notice and request for comments; Extension of Information Collection Request: 1670–0015.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance Division (ISCD) will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until February 15, 2013. This process is conducted in accordance with 5 CFR 1320.8.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/ISCD CFATS Program Manager, 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20528–0610. Written comments should reach the contact person listed no later than February 15, 2013. Comments must be identified by ''DHS–2012–0057''and may be submitted by *one* of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.*

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Special Instructions: Comments that include trade secrets, confidential commercial or financial information, Chemical-terrorism Vulnerability Information (CVI), Sensitive Security Information (SSI), or Protected Critical Infrastructure Information (PCII) should not be submitted to the public regulatory docket. Please submit such comments separately from other comments in response to this notice. Comments containing trade secrets, confidential commercial or financial information, CVI, SSI, or PCII should be appropriately marked and submitted by mail to the DHS/NPPD/IP/ISCD CFATS Program Manager at the Department of Homeland Security, 245 Murray Lane SW., Mail Stop 0610, Arlington, VA 20528–0610. Comments must be identified by docket number DHS–2012–0057.

SUPPLEMENTARY INFORMATION: Section 550 of the Homeland Security Appropriations Act of 2007, Public Law 109–295, provides DHS with the authority to regulate the security of high-risk chemical facilities. On April 9, 2007, the Department issued an Interim Final Rule (IFR), implementing this statutory mandate at 72 FR 17688. Section 550 of the Homeland Security Appropriations Act of 2007 requires a risk-based approach to security.

CFATS is the Department's regulations under Section 550 governing security at high-risk chemical facilities. *See* 6 CFR Part 27. CFATS represents a national-level effort to minimize terrorism risk to such facilities. Its design and implementation balance maintaining economic vitality with securing facilities and their surrounding communities. In collaboration with the private sector and other stakeholders, the Department designed the regulations to take advantage of protective measures already in place and to allow facilities to employ a wide range of tailored measures to satisfy the regulations' Risk-Based Performance Standards.

In 6 CFR 27.400, CFATS also establishes the requirements that covered persons must follow to safeguard certain documents and other information developed under the regulations. This information is identified as ''Chemical-terrorism Vulnerability Information'' (CVI) and by law receives protection from public disclosure and misuse. The instruments within this collection will be used to manage the CVI program in support of CFATS.

Solicitation of Comments

OMB is particularly interested in comments that:

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 submissions of responses.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: CFATS Chemical-terrorism Vulnerability Information.

OMB Number: 1670–0015.

Instrument: Chemical-terrorism Vulnerability Information Authorization.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 30,000 respondents (rounded estimate).

Estimated Time per Respondent: 1 hour.

Total Burden Hours: 30,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $2,580,000.

Instrument: Determination of CVI.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 300 respondents (rounded estimate).

Estimated Time per Respondent: 0.25 hour.

Total Burden Hours: 75 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $6,450.

Instrument: Determination of a ''Need to Know'' by a Public Official.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 14,200 respondents (rounded estimate).

Estimated Time per Respondent: 0.25 hour.

Total Burden Hours: 3,550 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $305,300.

Instrument: Disclosure of CVI Information.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 300 respondents (rounded estimate).

Estimated Time per Respondent: 0.25 hour.

Total Burden Hours: 75 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $6,450.

Instrument: Notification of Emergency or Exigent Circumstances.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 300 respondents (rounded estimate).

Estimated Time per Respondent: 0.25 hour.

Total Burden Hours: 75 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $6,450.

Instrument: Tracking Log for CVI Received.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 30,000 respondents (rounded estimate).

Estimated Time per Respondent: 0.0833 hours (5 minutes).

Total Burden Hours: 30,000 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $2,580.000.

Dated: December 11, 2012.

Scott Libby,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2012–30316 Filed 12–14–12; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–1047]

Information Collection Request to Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0089, National Recreational Boating Survey. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before February 15, 2013.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–1047] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN PAPERWORK REDUCTION ACT MANAGER, 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 Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2012–1047], and must be received by February 15, 2013. 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–2012–1047], 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 your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov*, and type ''USCG–2012–1047'' in the ''Keyword'' box. If you submit your comments by mail or delivery, submit them in an unbound format, no larger than 8–1/2 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period 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–2012–1047'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: National Recreational Boating Survey.

OMB Control Number: 1625–0089.

Summary: The Coast Guard National Recreational Boating Survey collects data on recreational boating participation and exposure to hazards. The goal is for the Boating Safety division to draw a general statistical profile of the U.S. recreational boating population. Of particular importance will be statistics on the type of boats used, activities associated with them, boat operators' knowledge of safety measures, and duration of a typical boating day (referred to as ''exposure''). Exposure data will be used to derive a reliable measure of the risk associated with recreational boating that can be used in all jurisdictions.

Need: The Federal Boat Safety Act of 1971 determines the framework of the Coast Guard Recreational Boating Safety Program. This Program, as set forth in 46 U.S.C., Chapter 131, requires the Coast Guard to ''encourage greater State participation and uniformity in boating safety efforts, and particularly to permit the States to assume a greater share of boating safety education, assistance, and enforcement activities.'' See 46 U.S.C. 13102. The Coast Guard's Boating Safety division achieves these goals by providing timely and relevant information on subject activities that occur in each respective jurisdiction. The boating information provided by the Coast Guard enables each State agency to tailor and implement safety initiatives addressing specific needs of boaters in local jurisdictions. The primary objective of this collection is to provide the Coast Guard with the required information in a format suitable to effectively manage the program.

Forms: None.

Respondents: Recreational boating participants and owners of recreational vessels.

Frequency: Every two years.

Burden Estimate: This is a biennial requirement. The estimated burden has increased from 10,880 hours to 13,050 hours a year.

Dated: December 10, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–30279 Filed 12–14–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0040]

Agency Information Collection Activities: Application for Employment Authorization, Form I–765; Form I–765 Work Sheet, Form I–765WS; Revision of a Currently Approved Collection

ACTION: 60-Day notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub.L.104–13, 44 U.S.C. 3501 *et seq.*), DHS is requesting public comment on a proposed revision to an approved information collection. On August 15, 2012, the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), submitted an information collection request, utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance. OMB approved the information collection request. This notice is to obtain public comment on the revision and extension of that approved collection.

DATES: Comments are encouraged and will be accepted for sixty days until February 15, 2013.

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 1615–0040 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–2005–0035.

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 that 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.*

Issues for Comment Focus

DHS, USCIS invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved 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, and the estimated burden (i.e. the time, effort, and resources used by the respondents to respond).

For Forms I–765 and I–765WS, USCIS is especially interested in the public's experience, input, and estimates on the burden in terms of time and money incurred by applicants for the following aspects of this information collection:

- The time burden incurred by preparers (persons who assist the respondent with the preparation of the form) who are not paid by the respondent.
- For preparers who are paid, the time and expense to the respondent to find and secure such preparers for assistance.
- The amount that paid preparers charge for their services.
- The time required to obtain supporting documents for Forms I–765 and I–765WS.
- The monetary costs incurred to secure supporting documents from sources such as a landlord, church, utility, public agency (housing, social services, law enforcement, local/state governments), school, medical care provider, advocacy group, law firm, or military service.
- The average time required and cost incurred to secure secondary evidence such as an affidavit or a statement.
- The percentage of total applicants who require English translations of their supporting documents.
- The percentage of supporting documents for each individual applicant that require translation into English.
- The time required to find, hire or otherwise obtain translations of supporting documents for immigration benefit requests.
- The average out of pocket monetary cost if any to obtain translations of supporting documents when required.

In addition, to truly be helpful to the improvement of this form and the program that oversees the services associated with this information collection; written comments and suggestions concerning this collection of information are requested to provide clear and specific suggestions on the data elements captured through these forms and the evidence required to be submitted with a focus on one or more of the following four points:

(1) 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) 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) How to enhance the quality, utility, and clarity of the information to be collected; and

(4) How to reduce or 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:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Employment Authorization; Form I–765 Work Sheet.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–765 and Form I–765WS, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. The information collected on this form is used by USCIS to determine eligibility for the issuance of the employment authorization document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,420,000 responses related to Form I–765 at 3.42 hours per response; 1,043,992 responses related to Biometrics at 1.17 hours; 706,057 responses related to Form I–765WS at .50 hours; and 1,420,000 responses related to Passport-Style Photographs at .50 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7,140,900 annual burden 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 20529–2140, Telephone number 202–272–8377.

Dated: December 11, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–30340 Filed 12–14–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2012–N182; 20124–1113–0000–C2]

Final Recovery Plan, First Revision; Mexican Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of our final recovery plan, first revision, for the Mexican Spotted Owl, which is listed as threatened under the Endangered Species Act of 1973, as amended (Act). This species occurs in the States of Arizona, Colorado, New Mexico, Texas, and Utah, and south through the Sierra Madre Occidental and Sierra Madre Oriental in Mexico. The recovery plan includes specific recovery objectives and criteria to be met in order to enable us to remove this species from the list of endangered and threatened wildlife and plants.

ADDRESSES: If you wish to view the recovery plan, you may obtain a copy by any one of the following methods:

Internet: http://endangered.fws.gov/recovery/index.html#plans (type ''Mexican spotted owl'' in the document title search field);

U.S. mail: Arizona Ecological Services Office, U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Phoenix, AZ 85021–4951; or *Telephone:* 602–242–0210.

FOR FURTHER INFORMATION CONTACT: Steve Spangle, Field Supervisor, at the above address and phone number, or by email at *incomingazcorr@fws.gov.*

SUPPLEMENTARY INFORMATION: We announce the availability of our final recovery plan, first revision, for the Mexican Spotted Owl (*Strix occidentalis lucida*). The revised recovery plan was prepared by a team of experts from both the United States and Mexico; team members were appointed by the Director of the Fish and Wildlife Service's Southwest Region. We made the draft plan available via a **Federal Register** notice published on June 24, 2011 (76 FR 37141); this notice opened a comment period that ran through August 23, 2011, and requested comments from local, State, and Federal agencies; Tribes; and the public. We considered information we received from these entities, as well as that obtained from three independent peer reviewers, in finalizing this revised recovery plan.

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Act (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

Species' History

We listed the Mexican spotted owl as a threatened species under the Act on March 16, 1993 (58 FR 14248). We designated critical habitat on August 31, 2004 (69 FR 53182). We originally completed a recovery plan for the Mexican spotted owl on October 16, 1995. However, updates on status information and experience in implementing the original recovery plan led to our determination that revision was warranted.

The Mexican spotted owl nests and roosts in forested areas exhibiting multilayered, unevenly aged tree structure, and in steep, rocky canyonlands. Forested habitats used by the owl vary throughout the species' range and by activity (nesting, roosting, foraging, dispersal/migration). However, the forest types believed most important to Mexican spotted owls are mixed conifer, pine-oak, and riparian habitats.

At the time of the species' listing, chief threats to the owl's population in the United States were commercial-based timber harvest; however, at this time, the risk of stand-replacing wildfire has come into prominence. The revised recovery plan recommends protection of currently occupied home ranges, plus development of replacement nesting/roosting habitat over time. The plan recognizes the need to manage these forest landscapes to minimize the effects of large, stand-replacing wildfires, believed to be the greatest current threat to the species.

Recovery Plan Goals

The objective of an agency recovery plan is to provide a framework for the recovery of a species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria and actions necessary for us to be able to remove it from the Federal List of Endangered and Threatened Wildlife and Plants (List). Recovery plans help guide our recovery efforts by describing actions we consider necessary for the species' conservation, and by estimating time and costs for implementing needed recovery measures. To achieve its goals, this recovery plan identifies the following objectives:

- Support the population of the Mexican spotted owl for the foreseeable future.
- Maintain habitat conditions necessary to provide roosting and nesting habitat for the Mexican spotted owl through time.

The revised recovery plan contains recovery criteria based on maintaining and/or increasing population numbers and habitat quality and quantity. The revised recovery plan focuses on protecting populations, managing threats, maintaining habitat, monitoring progress, and building partnerships to facilitate recovery.

As the subspecies meets recovery criteria, we will review the subspecies' status and consider removal from the List.

Authority

We developed our recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: September 5, 2012.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2012–30348 Filed 12–14–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Tonkawa Tribe of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 127.65 acres of land in trust for the Tonkawa Tribe of Oklahoma on December 6, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land in trust. On December 6, 2012, the Assistant Secretary—Indian Affairs decided to accept approximately 127.65 acres of land into trust for the Tonkawa Tribe of Oklahoma under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465, described as:

The 127.65 acres are located approximately 6 miles from the tribal headquarters in Kay County, Oklahoma, and described as follows:

A tract of land in the Northwest Quarter of Section 31, Township 26 North, Range 1 West of the Indian Meridian, Kay County, State of Oklahoma and more particularly described as follows:

Beginning at the Northwest corner of said Northwest Quarter of Section 31, Township 26 North, Range 1 West; thence North 89 deg. 02 min. 51 sec. East along the North line of said Section 31, for A distance of 800 feet; thence South 0 deg. 57 min.09 sec. East 430 feet; thence North 89 deg. 02 min. 51 sec. East, 1423.15 (Measured) feet to a point on the West right of way line of Interstate Highway 35; thence South 14 deg. 10 min. 32 sec. East, 687.71 feet along said West right of way line; thence South 14 deg. 10 min. 32 sec. East, 687.71 feet along said West right of

way line; thence South 0 deg. 46 min. 24 sec. East, 1540.52 along said West right of way line to the intersection with the South line of the Northwest Quarter of said Section 31; thence South 89 deg. 03 min. 54. sec. West along the South line of said Northwest Quarter of said Section 31, 2385.25 (Measured) feet to the Southwest corner of said Northwest Quarter of Section 31; thence, North 0 deg. 44 min. 38 sec. West along the West line of said Northwest Quarter of Section 31, 2639.27 (Measured) feet to the true point of beginning.

Dated: December 6, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–29972 Filed 12–13–12; 11:15 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO300000.L14300000.xx0000]

Notice of Amended Proposed Withdrawal; Partial Termination of Segregative Effect; Arizona, California, Colorado, Nevada, New Mexico, and Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary of the Interior for Policy, Management and Budget has approved an amendment to a previously filed application to withdraw public lands in Arizona, California, Colorado, Nevada, New Mexico, and Utah from settlement, sale, location, and entry under the public land laws, including the United States mining laws, on behalf of the Bureau of Land Management (BLM), to protect and preserve Solar Energy Zones (SEZ) for future solar energy development. This Notice amends the prior proposal notice of which was published in the **Federal Register** on April 21, 2011 (76 FR 22414), to increase the proposed withdrawal term from 5 to 20 years, decrease the acreage proposed for withdrawal, and provide revised legal descriptions for the 17 remaining SEZs presented in the Final Programmatic Environmental Impact Statement for Solar Energy Development in Six Southwestern States (Programmatic EIS). This Notice also terminates the segregative effect as to lands no longer included in the application. The purpose of the proposed withdrawal has also changed so that the lands would now be protected for future solar energy development.

DATES: Comments must be received by March 18, 2013.

ADDRESSES: Written comments should be sent to the BLM Director, 1849 C Street NW. (WO–350), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ray Brady, BLM, by telephone at 202–912–7312, or by email at *rbrady@blm.gov;* or one of the BLM state offices listed below.

SUPPLEMENTARY INFORMATION: The applicant is the BLM at the address above, and its amended application requests the Assistant Secretary of the Interior for Policy, Management and Budget to withdraw, subject to valid existing rights, approximately 303,900 acres of public lands located in the States of Arizona, California, Colorado, Nevada, New Mexico, and Utah from settlement, sale, location, and entry under the public land laws, including the United States mining laws, but not the mineral leasing, geothermal leasing, or the mineral material laws. Copies of maps depicting the revised land descriptions are available at the Programmatic EIS Web site (*http://solareis.anl.gov*) and are also available from the BLM offices listed below:

Arizona State Office, One North Central Avenue, Suite 800, Phoenix, Arizona 85004; California State Office, 2800 Cottage Way, Suite W–1623, Sacramento, California 95825; Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215; Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502; New Mexico State Office, 301 Dinosaur Trail, Santa Fe, New Mexico 87508; Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

The proposed SEZs depicted on the maps are described as follows:

ARIZONA—AZ 035131

Gila and Salt River Meridian

Brenda SEZ

T. 5 N., R. 15 W.,
- Sec. 31, lots 1 to 4, inclusive, E½NW¼, and E½SW¼.

T. 4 N., R. 16 W.,
- Sec. 1, lots 3 and 4, S½NW¼, and SW¼;
- Secs. 2, 3, and 4;
- Sec. 9, NE¼, NE¼NW¼, and NE¼SE¼;
- Sec. 10, N½, N½S½, and SW¼SW¼;
- Sec. 11, NW¼.

The areas described aggregate approximately 3,343 acres.

Gillespie SEZ

T. 2 S., R. 6 W.,
- Sec. 6, SW¼, W½SE¼, and SE¼SE¼, unsurveyed;
- Sec. 7, N½, NE¼SW¼, N½SE¼, and SE¼SE¼, unsurveyed;
- Sec. 8, SE¼NW¼, W½NW¼, SW¼, S½SE¼, and NW¼SE¼, unsurveyed;
- Sec. 9, SW¼SW¼, unsurveyed;
- Sec. 15, NW¼SW¼, N½SW¼SW¼, SE¼SW¼, and S½SW¼SE¼, unsurveyed;
- Sec. 16, S½NE¼, S½NW¼NE¼, NW¼, and N½NE¼SE¼, unsurveyed;
- Sec. 17, N½NE¼, N½SE¼NE¼, NE¼NW¼, and N½NW¼NW¼, unsurveyed;
- Sec. 22, S½NE¼NE¼, NW¼NE¼, N½SW¼NE¼, SE¼NE¼, and N½NE¼NW¼, unsurveyed;
- Sec. 23, SW¼NW¼, N½SW¼, SE¼SW¼, S½NE¼SE¼, NW¼SE¼, and S½SE¼, unsurveyed;
- Sec. 24, S½NW¼SW¼ and S½SW¼, unsurveyed.

T. 2 S., R. 7 W.,
- Sec. 1, SE¼SW¼, NE¼SE¼, and S½SE¼;
- Sec. 12, N½NE¼, SE¼NE¼, and NE¼NW¼.

The areas described aggregate approximately 2,607 acres.

CALIFORNIA—CA 050951

San Bernardino Meridian

Riverside East SEZ

T. 4 S., R. 15 E.,
- Sec. 25, NE¼NE¼, W½NE¼, W½, W½SE¼, and SE¼SE¼, excluding fee easement CARI 07041;
- Sec. 26, N½, S½SW¼SW¼, SW¼SE¼SW¼, NE¼SE¼, NE¼NW¼SE¼, and NE¼SE¼SE¼, excluding fee easements CALA 053581 and CARI 07041;
- Sec. 27, N½NE¼, N½SE¼ NE¼, N½NE¼NW¼, SE¼NE¼SW¼, E½SE¼SW¼, S½SE¼, and S½NW¼SE¼, excluding the Chuckwalla Desert Wildlife Management Area (DWMA) and fee easements CALA 053581 and CARI 07041;
- Sec. 34, E½ and E½E½W½, excluding the Chuckwalla DWMA;
- Sec. 35, lot 2, SW¼NE¼NE¼, S½NW¼NE¼, S½NE¼, SE¼SE¼NE¼, W½, N½SE¼, and SW¼SE¼, excluding fee easements CALA 053581, CARI 07041, and CALA 057221.

T. 5 S., R. 15 E.,
- Sec. 3, lot 1 in the NE¼, E½ lot 2 in the NE¼, and E½SE¼, excluding the Chuckwalla DWMA;
- Sec. 10, E½NE¼ and NE¼SE¼, excluding the Chuckwalla DWMA;
- Sec. 13, S½;
- Sec. 14, S½;
- Sec. 15, E½SE¼, excluding the Chuckwalla DWMA;
- Sec. 22, E½NE¼, N½S½, SW¼SW¼, N½SE¼SW¼, and SW¼SE¼SW¼, excluding the Chuckwalla DWMA;
- Sec. 23, N½ and SE¼;
- Sec. 24, N½, SW¼, NE¼SE¼, and S½SE¼;
- Sec. 25, those portions of N½N½ and NW¼SW¼NW¼, northerly of right-of-way boundary CACA 18888;
- Sec. 27, NW¼NW¼, northerly of the northern ROW boundary CARI 07303, excluding the Chuckwalla DWMA;

T. 4 S., R. 16 E.,
- Sec. 31, S½ of lot 3 in the SW¼, excluding fee easement CALA 053581;

T. 5 S., R 16 E.,
Secs. 1 and 2;
Sec. 3, lot 1 in the NE¼, lot 2 in the NE¼, lot 1 in the NW¼, lot 2 in the NW¼, and SE¼, excluding fee easement CALA 053581;
Sec. 4, lot 1 in the NE¼ and lot 2 in the NE¼, excluding fee easement CALA 053581;
Sec. 6, lot 1 in the NE¼, lot 2 in the NE¼, lot 1 in the NW¼, and lot 2 in the NW¼, excluding fee easement CALA 053581;
Sec. 8, S½NW¼SW¼ and SW¼SW¼;
Secs. 10, 11, and 13, excluding fee easement CALA 053581;
Sec. 14, E½;
Sec. 15, S½;
Sec. 17, S½NE¼, NW¼NW¼, and S½NW¼;
Sec. 18, lot 1 in the SW¼, lot 2 in the SW¼, and SE¼;
Secs. 19 and 20;
Sec. 21, N½;
Sec. 22;
Sec. 23, NE¼, N½NW¼, SE¼NW¼, and S½;
Sec. 24;
Sec. 25, W½;
Sec. 26;
Sec. 27, northerly of the northern right-of-way boundary CARI 05498;
Sec. 28, N½N½N½;
Sec. 29, N½N½N½;
Sec. 30, lot 1 in the NW¼, N½ of lot 2 in the NW¼, and N½NE¼;
Sec. 34, those portions of N½N½NE¼, and NE¼NE¼NW¼, lying northerly of the northern right-of-way boundary CARI 05498;
Sec. 35, N½N½N½.

T. 5 S., R. 17 E.,
Secs. 1 and 2, excluding the Palen McCoy Wilderness Area CACA 35105;
Sec. 3, excluding fee easement CALA 053588;
Sec. 5, lot 1 in the NW¼, lot 2 in the NW¼, and SW¼;
Sec. 6;
Sec. 7, excluding fee easement CALA 053581;
Sec. 8, W½ and SE¼;
Sec. 9, SW¼, W½SE¼, SW¼NE¼SE¼, W½SE¼SE¼, and SE¼SE¼SE¼;
Sec. 10, E½E½E½, excluding fee easement CALA 053581;
Sec. 11, excluding the Palen McCoy Wilderness Area CACA 35105;
Sec. 14, excluding the Palen McCoy Wilderness Area CACA 35105, and excluding fee easement CALA 053588;
Sec. 15, NE¼NE¼NE¼, SW¼NW¼SW¼, W½SW¼SW¼, SE¼SW¼SW¼, and S½SE¼SW¼, excluding fee easement CALA 053588;
Secs. 17 and 18, excluding fee easement CALA 053581;
Sec. 19, lot 1 in the NW¼, lot 2 in the NW¼, lot 1 in the SW¼, lot 2 in the SW¼, and NE¼;
Sec. 20, W½NW¼, SE¼NW¼, and S½;
Sec. 21;
Sec. 22, excluding fee easement CALA 053588;
Sec. 23, excluding the Palen McCoy Wilderness Area CACA 35105, and fee easement CALA 053588;
Sec. 26, SW¼NW¼ and SW¼;
Sec. 27, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 28;
Sec. 29, NE¼ and S½;
Secs. 31 to 34, inclusive;
Sec. 35, N½NW¼ and SW¼NW¼.

T. 6 S., R. 17 E.,
Sec. 1, lot 1 in the NW¼, lot 2 in the NW¼, and S½;
Sec. 2;
Sec. 3, E½ lot 1 in the NE¼, lot 2 in the NE¼, W½ lot 1 in the NW¼, lot 2 in the NW¼, W½SW¼, and E½SE¼;
Sec. 4, that portion lying north of the northern right-of-way of CARI 05498;
Sec. 5, lot 2 in the NE¼ and lot 2 in the NW¼;
Sec. 6 and secs. 9 to 12, inclusive, those portions north of the northerly right-of-way of CARI 05498;

T. 6 S., R. 18 E.,
Secs. 1 to 4, inclusive, excluding the Palen McCoy Wilderness area CACA 35105;
Sec. 7, lot 1 in the SW¼, lot 2 in the SW¼, and SE¼;
Sec. 9;
Sec. 10, N½, NE¼SW¼, and N½SE¼;
Secs. 11, 12, and 13;
Sec. 14, N½, N½SW¼, and SE¼;
Secs. 17 and 18, those portions lying north of the northerly right-of-way line of CARI 05498;
Sec. 23, N½NE¼, NE¼NW¼, and that portion of the N½SE¼, lying north of the northerly right-of-way line of CARI 05498;
Sec. 24, that portion of the S½ lying north of the northerly right-of-way line of CARI 05498.

T. 6 S., R. 19 E.,
Secs. 3 to 6, inclusive, excluding the Palen McCoy Wilderness area CACA 35105;
Secs. 7, 8, and 9;
Secs. 10 to 13, inclusive, excluding the Palen McCoy Wilderness area CACA 35105;
Secs. 14, 15, 17, and 18;
Sec. 19, N½ lot 1 in the NW¼, N½ lot 2 in the NW¼, S½ lot 1 in the SW¼, S½ lot 2 in the SW¼, NW¼NE¼, and SE¼;
Secs. 20 to 24, inclusive;
Sec. 25, W½;
Secs. 26 and 27;
Secs. 28, 29, 34, and 35, lying north of the northerly right-of-way line of CALA 0107395.

T. 6 S., R. 20 E.,
Sec. 3, partially unsurveyed;
Secs. 5, 7, and 8, excluding the Palen McCoy Wilderness area CACA 35105;
Secs. 9, 10, and 15;
Sec. 16, NE¼NW¼ and S½NW¼;
Sec. 17, N½ and SE¼;
Sec. 18;
Sec. 19, lot 1 in the SW¼, lot 2 in the SW¼, and W½E½;
Sec. 20, W½, NE¼SE¼, and S½SE¼;
Sec. 21, NE¼, N½NW¼, SW¼NW¼, and SE¼;
Sec. 22, N½ and SE¼, partly unsurveyed;
Sec. 23, S½;
Sec. 24, S½;
Sec. 25, N½ and SE¼;
Sec. 26;
Sec. 27, N½NW¼, SW¼ NW¼, and S½;
Sec. 28, NE¼, NE¼SW¼, S½SW¼, and SE¼;
Secs. 29 and 30;
Sec. 31, N½ lot 1 in the NW¼, and N½N½NE¼;
Sec. 32, N½N½N½;
Sec. 33, N½N½N½;
Sec. 34, N½N½N½;
Sec. 35, NW¼NE¼, N½NW¼, and S½.

T. 7 S., R. 20 E.,
Sec. 1, lot 1 in the NE¼, lot 2 in the NE¼, lot 1 in the NW¼, lot 2 in the NW¼, and SW¼;
Sec. 2, lot 1 in the NE¼, lot 2 in the NE¼, lot 1 in the NW¼, lot 2 in the NW¼, and SE¼;
Sec. 11, NE¼NE¼, S½NE¼, and S½;
Secs. 12, 13, 24, and 25.

T. 4 S., R. 21 E.,
Sec. 2, SW¼, partly unsurveyed;
Secs. 3 and 4;
Sec. 5, E½ lot 1 in the NE¼, lots 5 to 12, inclusive, and SE¼;
Sec. 8, E½;
Secs. 9 to 15, inclusive, partly unsurveyed, and secs. 21 to 35, inclusive.

T. 5 S., R. 21 E.,
Secs. 1 to 14, inclusive;
Sec. 15, S½;
Secs. 17 to 23, inclusive, partly unsurveyed;
Sec. 24, S½;
Secs. 25 to 30, inclusive, and secs. 32 to 35, inclusive, partly unsurveyed.

T. 6 S., R. 21 E.,
Secs. 4, 5, 8, and 9;
Sec. 15, lots 1 and 2, SW¼, and W½SE¼;
Secs. 19 and 22;
Sec. 23, lots 2, 3, 5, and 6, and W½W½;
Sec. 26, lot 1;
Sec. 27;
Sec. 29, N½ and SW¼;
Sec. 30;
Sec. 31, lots 5, 6, 9 to 12, inclusive, 17, and 18, S½NE¼, and SE¼;
Sec. 32, NW¼;
Tracts 37 to 47, inclusive, 49 to 56, inclusive, 58, 59, 61, 62, 68, 69, 71, 73 to 78 A, inclusive, and 78 B to 80, inclusive.

T. 7 S., R. 21 E.,
Sec. 2, lots 3 to 6, inclusive, S½N½, E½SW¼, and NW¼SE¼;
Sec. 3;
Sec. 4, lots 3 and 4, S½NE¼, and S½;
Sec. 5, S½S½;
Sec. 6, SE¼;
Sec. 7;
Sec. 8, SW¼;
Sec. 9, NE¼ and S½;
Sec. 10;
Sec. 11, N½ and SW¼;
Sec. 12, NW¼ and N½SW¼;
Sec. 13;
Sec. 14, S½NE¼, W½, and SE¼;
Sec. 15, W½ and SE¼;
Sec. 17, NE¼, SE¼NW¼, and S½;
Sec. 18;
Secs. 19, 20, and 21, excluding the Mule Mountain Area of Critical Environmental Concern (ACEC);
Sec. 22, N½ and SW¼;
Secs. 23 and 24;
Sec. 25, S½NW¼ and N½SW¼;
Sec. 26, E½;
Secs. 27 to 34, inclusive, excluding the Mule Mountain ACEC;

Sec. 35.
T. 4 S., R 22 E.,
Sec. 7, unsurveyed;
Sec. 8, excluding the Big Maria Mountain Wilderness Area CACA 35061, unsurveyed;
Secs. 17 to 20, inclusive, and secs. 29 to 33, inclusive, unsurveyed.
T. 5 S., R. 22 E.,
Secs. 2 to 6, inclusive;
Sec. 7, lot 1 in the NW¼, lot 2 in the NW¼, and E½;
Secs. 8 to 14, inclusive;
Sec. 15, E½;
Sec. 17;
Sec. 18, lot 1 in the NW¼, lot 2 in the NW¼, lot 1 in the SW¼, lot 2 in the SW¼, and NE¼;
Secs. 19 and 20;
Sec. 21, S½;
Secs. 22, 23, and 24;
Sec. 25, W½NE¼, NW¼, N½SW¼, excluding Midland Road as designated on record of survey map on file in Book 11 pages 49 and 50 of record of survey, Records of Riverside County California;
Sec. 26, N½;
Sec. 27, N½ and SW¼;
Sec. 28, S½;
Sec. 29, N½ and SW¼;
Sec. 30;
Sec. 31, E½;
Sec. 32;
Sec. 33, SW¼.
T. 6 S., R. 22 E.,
Sec. 3, lot 1 in the NW¼ and lot 2 in the NW¼;
Secs. 4 to 7, inclusive;
Sec. 8, lots 1 to 6, inclusive, N½NE¼, and NW¼;
Sec. 9, NE¼, N½NW¼, SE¼NW¼, and E½SE¼;
Sec. 10, NW¼NW¼;
Sec. 17, lot 1;
Sec. 18, lots 1 to 6, inclusive.
T. 7 S., R. 22 E.,
Sec. 18, lot 4,
Tract 62;
Tract 63, lot 1;
Tracts 64, 113, and 115.

The areas described aggregate approximately 159,457 acres.

Imperial East SEZ

T. 16 S., R. 17 E.,
Secs. 21 to 28, inclusive, those portions lying south of the southerly right-of-way of Interstate 8 and east of Lake Cahuilla No. 5 ACEC;
Sec. 33, except that portion lying in Lake Cahuilla No. 5 ACEC;
Secs. 34 and 35.
T. 16 S., R. 18 E.,
Secs. 29 and 30, those portions lying south of the southerly right-of-way of Interstate 8;
Sec. 31, lot 3, NE¼, NE¼NW¼, SE¼SW¼, and S½SE¼;
Sec. 32, that portion of the N½N½ lying south of the southerly right-of-way of Interstate 8, S½NW¼SW¼, and S½S½;
Sec. 33, that portion of the N½ lying south of the southerly right-of-way of Interstate 8 and N½SE¼;
Sec. 34, those portions of the N½SW¼ and the NW¼SE¼ lying south of the southerly right-of-way of Interstate 8.

The areas described aggregate approximately 5,722 acres.

COLORADO—CO 073899

New Mexico Principal Meridian

Antonito Southeast SEZ

T. 32 N., R. 9 E.,
Sec. 3, lot 4, SW¼NW¼, W½SW¼, SE¼SW¼, SW¼SE¼, and E½SE¼;
Secs. 4, 9, 10, and 11;
Sec. 12, W½ and SE¼;
Secs. 13, 14, 15, and Secs 21 to 24, inclusive.
T. 32 N., R. 10 E.,
Sec. 7, lot 4, SE¼SW¼, and S½SE¼;
Sec. 8, S½S½;
Sec. 9, SW¼SW¼;
Secs. 17 to 20, inclusive;
Sec. 21, lots 1 to 4, inclusive, W½NE¼, and NW¼.

The areas described aggregate approximately 10,318 acres.

Fourmile East SEZ

T. 37 N., R. 12 E.,
Sec. 2, lots 3 and 4, and S½NW¼;
Sec. 3, lots 3 and 4, and S½N½.
T. 38 N., R. 12 E.,
Sec. 13, SW¼ and W½SE¼;
Sec. 23;
Sec. 24, W½ and W½SE¼;
Sec. 25, W½NE¼ and W½;
Sec. 26;
Sec. 35, NW¼.

The areas described aggregate approximately 2,882 acres.

Los Mogotes East SEZ

T. 34 N., R. 8 E.,
Secs. 1 and 12;
Sec. 13, NE¼NE¼, W½NE¼, W½, and NW¼SE¼;
Sec. 24, W½ and W½SE¼;
Sec. 25, W½ and W½E½.

The areas described aggregate approximately 2,640 acres.

DeTilla Gulch SEZ

T. 45 N., R. 9 E.,
Sec. 29, that portion of the S½ lying one-quarter mile or more southeasterly and parallel to the centerline of Highway 285;
Sec. 30, that portion of the SE¼SE¼ lying one-quarter mile or more southeasterly and parallel to the centerline of Highway 285;
Sec. 31, those portions of the NE¼ and the SE¼NW¼ lying one-quarter mile or more southeasterly and parallel to the centerline of Highway 285; and those portions of the NE¼SW¼ and the N½SE¼ lying one-quarter mile or more north of and parallel to the centerline of the Old Spanish National Historic Trail as mapped by the National Park Service;
Sec. 32, N½, and that portion of the N½SW¼, lying one-quarter mile or more north of and parallel to the centerline of the Old Spanish National Historic Trail as mapped by the National Park Service;
Sec. 33, N½NE¼ and NW¼.

The areas described aggregate approximately 1,064 acres.

NEVADA—NV 087208

Mount Diablo Meridian

Amargosa Valley SEZ

T. 13 S., R. 47 E.,
Sec. 35, NE¼NE¼, S½NE¼, W½NW¼, SE¼NW¼, and S½;
Sec. 36, that portion lying southerly and westerly of the centerline of U.S. Highway No. 95.
T. 14 S., R. 47 E.,
Sec. 8, E½, unsurveyed;
Sec. 9, unsurveyed;
Secs. 10, 11, 13, and 14, those portions lying southerly and westerly of the centerline of U.S. Highway No. 95, unsurveyed;
Secs. 15 and 16, unsurveyed;
Sec. 21, E½, unsurveyed;
Secs. 22 and 23, unsurveyed;
Sec. 24, that portion lying southerly and westerly of the centerline of U.S. Highway No. 95, unsurveyed;
Sec. 25, W½NE¼, and W½, unsurveyed;
Secs. 26 and 27, unsurveyed;
Sec. 34, E½, unsurveyed;
Sec. 35, unsurveyed;
Sec. 36, W½, unsurveyed.
T. 15 S., R. 47 E.,
Sec. 1, W½W½, unsurveyed;
Sec. 2, unsurveyed;
Sec. 12, NW¼NW¼, unsurveyed.

The areas described aggregate approximately 9,690 acres.

Dry Lake SEZ

T. 17 S., R. 63 E.,
Sec. 33, lots 9, 10, 13, and 14, and NE¼SE¼;
Sec. 34, lots 1 to 4, inclusive, NE¼, S½NW¼, and N½S½;
Secs. 35 and 36.
T. 18 S., R. 63 E.,
Secs. 1 and 2;
Sec. 3, lots 1, 2, 3, 5, 7 to 10, inclusive, 13, and 14, S½NE¼, and NE¼SE¼;
Sec. 4, lot 5;
Sec. 10, lot 1;
Sec. 11, lots 1, 3, 4, 5, and 9, NE¼, NE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 12; that portion lying northerly and westerly of the centerline of the southbound lane of I–15;
Sec. 13, those portions lying northerly and westerly of the centerline of the southbound lane of I–15 and northerly and easterly of the centerline of U.S. Highway No. 93;
Sec. 14, lot 1.
T. 17 S., R. 64 E.,
Sec. 31, lots 5 to 8, inclusive, SW¼NE¼, E½W½, and that portion of the SE¼ lying northerly and westerly of the centerline of the southbound lane of I–15;
Sec. 32, that portion of the SW¼ lying northerly and westerly of the centerline of the southbound lane of I–15.
T. 18 S., R. 64 E.,
Secs. 6 and 7, those portions lying northerly and westerly of the centerline of the southbound lane of I–15, respectively.

The areas described aggregate approximately 6,160 acres.

Dry Lake Valley North SEZ

T. 1 N., R. 64 E.,
Sec. 35, S½;
Sec. 36, S½.
T. 1 S., R. 64 E.,
Secs. 1, 12, and 13;
Sec. 21, E½ and E½W½;
Sec. 22 to 27, inclusive;
Sec. 28, E½;
Sec. 33, E½E½ and NW¼NE¼;
Secs. 34, 35, and 36.
T. 2 S., R. 64 E.,
Secs. 1, 2, and 3;
Sec. 4, lot 1 and SE¼NE¼;
Sec. 10, N½, N½SW¼, SE¼SW¼, and SE¼;
Secs. 11 to 14, inclusive;
Sec. 15, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 23, NE¼, N½NW¼, SE¼NW¼, N½SE¼, and SE¼SE¼;
Sec. 24;
Sec. 25, N½NE¼.
T. 1 N., R. 65 E.,
Sec. 31, S½;
Sec. 32, W½SW¼.
T. 1 S., R. 65 E.,
Sec. 6, lots 3, 4, and 7 to 13, inclusive;
Secs. 7, 8, 17 to 20, inclusive, 29, 30, and 31;
Sec. 32, N½, SW¼, and W½SE¼.
T. 2 S., R. 65 E.,
Sec. 5, lots 2, 3, and 4, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Secs. 6 and 7;
Sec. 8, W½E½ and W½;
Sec. 17, W½NE¼, SE¼NE¼, W½, and SE¼;
Secs. 18 and 19;
Sec. 20, W½NE¼ and W½;
Sec. 29, NW¼, N½SW¼, and SE¼SW¼;
Sec. 30, lot 1, NE¼, E½NW¼, and NE¼SE¼.

The areas described aggregate approximately 28,726 acres.

Gold Point SEZ

T. 6 S., R. 41 E.,
Sec. 13, S½;
Sec. 14, E½SE¼;
Sec. 23, E½E½ and NW¼SE¼;
Sec. 24;
Sec. 25, N½, NE¼SW¼, and N½SE¼;
Sec. 26, NE¼NE¼.
T. 6 S., R. 41½ E.,
Sec. 13, N½SW¼ and SW¼SW¼, unsurveyed;
Sec. 14, S½, unsurveyed;
Sec. 15, S½, unsurveyed;
Sec. 16, S½, unsurveyed;
Secs. 21 and 22, unsurveyed;
Sec. 23, N½NE¼, SW¼NE¼, W½, and NW¼SE¼, unsurveyed;
Sec. 26, NW¼NW¼, unsurveyed;
Sec. 27 N½, SW¼, N½SE¼, and SW¼SE¼, unsurveyed;
Sec. 28, unsurveyed.

The areas described aggregate approximately 4,810 acres.

Millers SEZ

T. 3 N., R. 39 E.,
Sec. 1;
Sec. 2, lot 1, S½NE¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 11, N½N½ and SW¼NW¼;
Sec. 12, N½NW¼.
T. 4 N., R. 39 E.,
Sec. 36, NE¼NE¼, S½NE¼, NE¼SW¼, S½SW¼, and SE¼.
T. 3 N., R. 40 E.,
Sec. 4, lots 3 and 4, S½NW¼, and NW¼SW¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 6.
T. 4 N., R. 40 E.,
Sec. 10, S½S½;
Sec. 11, S½;
Sec. 12, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 13, W½E½ and W½;
Secs. 14, 15, and 16;
Sec. 17, S½N½ and S½;
Sec. 18, SE¼;
Sec. 19, E½, E½NW¼, and NE¼SW¼;
Secs. 20 to 23, inclusive;
Sec. 24, W½E½ and W½;
Sec. 25, NW¼ and W½SW¼;
Secs. 26 to 29, inclusive;
Sec. 30, lot 4, E½, and E½SW¼;
Secs. 31 and 32;
Sec. 33, N½, SW¼, and N½SE¼;
Sec. 34;
Sec. 35, N½, SW¼, and W½SE¼.

The areas described aggregate approximately 16,560 acres.

NEW MEXICO—NM 114441

New Mexico Principal Meridian

Afton SEZ

T. 25 S., R. 1 E.,
Secs. 7, 8, 14, 15, 17, and 18;
Sec. 19, lots 1 to 4, inclusive, NE¼NE¼, W½E½, E½W½, and SE¼SE¼;
Sec. 20, NE¼, N½NW¼, SE¼NW¼, NE¼SW¼, S½SW¼, N½SE¼, SW¼SE¼, and W½SE¼SE¼;
Sec. 21, N½, N½S½, SE¼SW¼, and S½SE¼;
Secs. 22 to 30, inclusive, and secs. 33, 34, and 35.
T. 24 S., R. 1 W.,
Sec. 19 and secs. 28 to 35, inclusive.
T. 25 S., R. 1 W.,
Secs. 1, 3 to 6 inclusive, and 8 to 15, inclusive.
T. 24 S., R. 2 W.,
Secs. 23 to 26, inclusive, and sec. 35.
T. 25 S., R. 2 W.,
Sec. 1.

The areas described aggregate approximately 30,706 acres.

UTAH—087557

Salt Lake Meridian

Escalante Valley SEZ

T. 33 S., R. 14 W.,
Sec. 8, NE¼, E½NW¼, SW¼NW¼, and S½;
Sec. 9, E½NE¼, S½SW¼, and SE¼;
Sec. 10;
Sec. 11, W½ and W½SE¼, those portions lying west of Railroad Right-of-Way Grant UTSL 0032533;
Sec. 14, E½, that portion lying west of Railroad Right-of-Way Grant UTSL 0032533;
Secs. 15, 17, 19, and 30;
Sec. 31, excluding the dry intermittent lake bed in lots 3 and 4.
T. 34 S., R. 14 W.,
Sec. 6, lot 4.
T. 33 S., R. 15 W.,
Sec. 24, NW¼;
Sec. 25.

The areas described aggregate approximately 6,837 acres.

Milford Flats South SEZ

T. 30 S., R. 10 W.,
Sec. 18, lots 1 and 2, and E½NW¼.
T. 30 S., R. 11 W.,
Sec. 7, lots 3 and 4, and E½SE¼;
Sec. 8, SW¼ and W½SE¼;
Sec. 10, NE¼, E½NW¼, and S½;
Sec. 12, W½;
Sec. 13, N½, N½SW¼, and NW¼SE¼;
Secs. 14 and 15, excluding the Minersville Canal;
Secs. 17 and 18;
Sec. 19, lots 1 and 2, NE¼, and E½NW¼;
Sec. 20, excluding the Minersville Canal;
Sec. 21, N½, N½S½, and SW¼SW¼, excluding the Minersville Canal;
Sec. 22, N½NE¼ and NW¼, excluding the Minersville Canal;
Sec. 29, N½NW¼, excluding the Minersville Canal;
Sec. 30, N½NE¼.

The areas described aggregate approximately 6,320 acres.

Wah Wah Valley SEZ

T. 27 S., R. 14 W.,
Sec. 8, E½ and SE¼SW¼;
Sec. 9, N½, N½SW¼, SE¼SW¼, and SE¼;
Sec. 10;
Sec. 11, lots 1 and 2, SW¼NE¼, S½NW¼, SW¼, and W½SE¼, excluding the WahWah Wash;
Sec. 13, lot 1;
Sec. 14, excluding the WahWah Wash;
Sec. 15;
Sec. 17, NW¼NE¼;
Sec. 21, lots 1 and 6, and E½NE¼;
Sec. 22;
Sec. 23, excluding the WahWah Wash;
Sec. 26, N½ and N½S½, excluding the WahWah Wash;
Sec. 27, N½ and N½S½;
Sec. 28, NE¼ and N½SE¼.

The areas described aggregate approximately 6,058 acres.

The total areas described aggregate approximately 303,900 acres of public lands in the following counties: La Paz and Maricopa, Arizona; Imperial and Riverside, California; Conejos, Saguache, and Alamosa, Colorado; Nye, Lincoln, Clark, and Esmeralda, Nevada; Dona Ana, New Mexico; Iron and Beaver, Utah.

The Assistant Secretary of the Interior for Policy, Management and Budget has approved the BLM's proposed amendment. Therefore, this document constitutes a withdrawal proposal of the Secretary of the Interior (43 CFR 2310.1–3(e)).

The purpose of the proposed amendment is to protect and preserve 17 proposed SEZs for a 20-year period for future solar energy development.

The use of a right-of-way, interagency or cooperative agreement, or surface management by the BLM under 43 CFR 3715 or 43 CFR 3809 regulations will not adequately constrain nondiscretionary uses, which could result in loss of adequate protection and preservation of the subject lands for future solar energy development.

There are no suitable alternative sites for the withdrawal.

No water rights would be needed to fulfill the purpose of the requested withdrawal.

Records relating to the amended application may be examined by contacting Shannon C. Stewart at the above address or by calling 202–912–7219.

The amended application for the proposed withdrawal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the amended proposed withdrawal may present their views in writing to the BLM Director at the address noted above.

All comments received will be considered before any final action is taken on the proposed withdrawal.

The lands described in this notice are segregated until June 29, 2013, pursuant to 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e) (76 FR 38416 (2011)) and the **Federal Register** notice published on June 30, 2011 (76 FR 38416). The remaining lands described in the April 21, 2011, Notice of Amended Proposed Withdrawal, as published in the **Federal Register** (76 FR 22414), are no longer applicable to the purpose for which the withdrawal was proposed and are hereby cancelled from the application. The lands cancelled from the application include about 373,852 acres in 7 areas and also near the remaining SEZs. Pursuant to 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e), the segregative effect established by the **Federal Register** notice published on June 30, 2011 (76 FR 38416) is hereby terminated as to those remaining lands.

Comments including names and street addresses of respondents will be available for public review at the BLM Washington Office at the address noted above, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Mike Pool,

Acting Director, Bureau of Land Management.

[FR Doc. 2012–30295 Filed 12–14–12; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–CACO–11835; PPNECACOS0, PPMPSD1Z.YM0000]

Notice of January 14, 2013, Meeting for Cape Cod National Seashore Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: This notice sets forth the date of the Two Hundred Eighty-Seventh Meeting of the Cape Cod National Seashore Advisory Commission.

DATES: The public meeting of the Cape Cod National Seashore Advisory Commission will be held on Monday, January 14, 2013, at 1:00 p.m. (EASTERN).

ADDRESSES: The Commission members will meet in the meeting room at Headquarters, 99 Marconi Site Road, Wellfleet, Massachusetts 02667.

AGENDA: The January 14, 2013, Commission meeting will consist of the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
(November 14, 2012)
3. Reports of Officers
4. Reports of Subcommittees
5. Superintendent's Report
   Update on Dune Shacks
   Improved Properties/Town Bylaws—Land Protection Planning
   Herring River Wetland Restoration
   Wind Turbines/Cell Towers
   Shorebird Management Planning
   Highlands Center Update
   Alternate Transportation Funding
   Ocean Stewardship Topics—Shoreline Change
   Herring Cove Beach/Revetment
   Climate Friendly Parks
6. Old Business
   Emergency Evacuation and the Pilgrim Nuclear Plant
7. New Business
8. Date and Agenda for Next Meeting
9. Public Comment and
10. Adjournment

FOR FURTHER INFORMATION CONTACT: Further information concerning the meeting may be obtained from the Superintendent, George E. Price, Jr., Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667, at (508) 771–2144.

SUPPLEMENTARY INFORMATION: The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent prior to the meeting. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: December 10, 2012.

George E. Price, Jr.,

Superintendent, Cape Cod National Seashore.

[FR Doc. 2012–30317 Filed 12–14–12; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–486 and 731–TA–1195–1196 (Final)]

Utility Scale Wind Towers From China and Vietnam; Commission Determination To Deny a Request To Hold a Portion of a Hearing in Camera

AGENCY: U.S. International Trade Commission.

ACTION: Commission Determination Not to Close Any Part of the Hearing to the Public.

SUMMARY: The Commission has determined to deny a request to conduct a portion of its hearing in the above-captioned investigations scheduled for December 13, 2012 *in camera. See* Commission rules 207.24(d), 201.13(m)

and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)).

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3041. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that respondents CS Wind Tech. Co., Ltd., CS Wind Vietnam Co., Ltd., Chengxi Shipyard Co., Ltd., Titan Wind Energy (Suzhou) Co., Ltd., Shanghai Taisheng Wind Power Equipment Co., Ltd., the China Chamber of Commerce for Import & Export of Machinery & Electronic Products and Siemens Energy, Inc. have not justified the need for resorting to the extraordinary measure of an *in camera* hearing. The Commission reaffirms its belief that whenever possible its business should be conducted in public. Accordingly, the Commission has determined that the public interest would be best served by a hearing that is entirely open to the public.

Authority: This notice is provided pursuant to Commission Rule 201.35(b) (19 CFR 201.35(b)).

Issued: December 11, 2012.
By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–30234 Filed 12–14–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0059]

RIN 1218–AC51

Preventing Backover Injuries and Fatalities

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of stakeholder meetings.

SUMMARY: OSHA invites interested parties to participate in informal stakeholder meetings on preventing backover injuries and fatalities. OSHA plans to use information gathered at these meetings to evaluate backover risks across various industries, whether or how backovers may be prevented by new technology or other methods, and how effective those measures are.

DATES: Dates and locations for the stakeholder meetings are:

1. January 8, 2013 at 9:00 a.m. and January 9, 2013 at 9:00 a.m. in Washington, DC.

2. February 5, 2013 at 9:00 a.m., 2:00 p.m., and 7:00 p.m. in Arlington, TX.

ADDRESSES: The meeting locations are:

1. Frances Perkins Building, Department of Labor, Room C–5515 1A & 1B for January 8 and Room C–5521 for January 9, 200 Constitution Avenue NW., Washington, DC.

2. University of Texas at Arlington, OSHA Education Center, Bluebonnet Ballroom in the University Center, 300 W. First St., Arlington, Texas.

I. Registration

Submit your notice of intent to participate in one of the scheduled meetings by one of the following:

• *Electronic.* Register at *https://www2.ergweb.com/projects/conferences/osha/register-osha-backover.htm* Web site (follow the instructions online).

• *Facsimile.* Fax your request to: (781) 674–2906, and label it ''Attention: OSHA Backover Stakeholder Meeting Registration.''

• *Regular mail, express delivery, hand (courier) delivery, and messenger service.* Send your request to: Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, MA 02421; Attention: OSHA Backover Stakeholder Meeting Registration.

• *Phone.* Telephone registration number is (781) 674–7374.

II. Meetings

Specific information on the schedule and location of each meeting can be found on the Backover Web site of OSHA's contractor Eastern Research Group at *https://www2.ergweb.com/projects/conferences/osha/register-osha-backover.htm.*

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

• *Press inquiries.* Contact Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999.

• *General and technical information.* Contact Meghan Smith, OSHA Directorate of Construction, Room N–3467, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 693–2020.

• *Copies of this* **Federal Register** *notice.* Electronic copies are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available on the OSHA web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

BLS reported that 79 workers were killed in 2011 when backing vehicles or mobile equipment, especially those with an obstructed view to the rear, crushed them against an object and/or struck or rolled over them. A search of OSHA's Integrated Management Information System database identified 358 fatal backover incidents from 2005 to 2010. Of these deaths, 216 occurred in general industry, shipyard employment, maritime and agriculture industries, and 142 occurred in construction. OSHA has also presented information on backover hazards on its Web page: *http://www.osha.gov/doc/topics/backover/index.html.* While some backover fatalities are caused by forklifts, the Agency is focusing on vehicles with obstructed views to the rear. Because forklifts do not, in general, have an obstructed view to the rear, the Agency is not attempting to collect more information on forklifts and similar equipment in the stakeholder meetings.

OSHA published a Request for Information (RFI) on backover hazards in the **Federal Register** on March 29, 2012 (77 FR 18973). The RFI was published jointly with a notice on hazards in Reinforced Concrete in Construction. OSHA received comments from 32 individuals and organizations, and these are available on *www.regulations.gov* under docket OSHA–2010–0059.

Many commercial or construction vehicles have audible alarms that sound when the vehicle is put into reverse and backs up. OSHA has three construction safety standards that require backup alarms or spotters when backing a vehicle with an obstructed view to the rear: 29 CFR § 1926.601(b)(4) covers motor vehicles; § 1926.602(a)(9)(ii) covers material handling equipment; § 1926.952(a)(3) covers equipment used in power generation and transmission construction. For general industry, § 1910.269(p)(1)(ii) provides similar requirements for vehicular equipment operated at off-highway jobsites.

New technologies have been developed to address backing hazards, including: Cameras and proximity sensing technology, such as radar and sonar, and new types of audible alarms that focus the alarm's sound or are combined with lights. In addition, internal traffic plans that control the flow of traffic and limit backing can help prevent backovers. The Agency is considering whether these technologies or other approaches, including training for drivers and spotters, can better address the risks of backing equipment

which have an obstructed view to the rear.

State Regulations: Virginia and Washington

Washington and Virginia have their own state occupational safety and health programs and have issued regulations designed to prevent backover incidents. In Virginia, vehicles with an obstructed view to the rear, whether used in construction or general industry, must have a backup alarm audible above the surrounding noise level. The driver must also have the assistance of a camera, work with a spotter, or ''visually determine that no employee is in the path of the vehicle'' prior to backing (16VAC25–97–30).

The State of Washington's regulation is limited in scope to dump trucks. Washington's rule requires ''an operable mechanical device that provides the driver a full view behind the dump truck [to be] used, such as a video camera,'' or spotters when using dump trucks when people will be walking behind them (WAC 296–155–610(2)(f)).

II. Stakeholder Meetings

Stakeholder meetings are meant to provide an opportunity for affected employers and employees, as well as safety professionals and equipment makers, to inform OSHA of the best means to address the risks of backovers. The Agency is interested in collecting information for all industries on:

- The risks of backovers;
- Current measures taken to address backover hazards;
- The effectiveness of those measures;
- Information about the number of vehicles or employees affected; and
- The costs of protective measures.

III. Public Participation

Each stakeholder meeting will have 15–20 active participants with room for 20–30 observers. Meetings are expected to last about two hours. Stakeholders may register as ''participants'' or ''observers.'' Participants will actively participate in discussions and present their views and experience, while observers typically will not have an opportunity to speak unless time permits at the end of the meeting. Stakeholders may only register as participants in one of the two sessions. Each meeting will have the same questions or agenda. If too few stakeholders register for a particular session, the Agency will eliminate that session and combine it with another and inform registrants of the change. The meetings will be conducted as group discussions, with individual stakeholders describing what occurs in their business or industry with regard to backover hazards. To facilitate as much group interaction as possible, formal presentations will not be permitted.

OSHA staff will be present to take part in the discussions. Logistics for the meetings are being managed by Eastern Research Group (ERG). Participants and observers must register to attend by contacting ERG via one of the methods described at the beginning of this notice. Participants and observers will be registered on a first-come, first-serve basis. If there is room at the meeting, stakeholders or the general public can attend as observers if they have not pre-registered. Any changes to the schedule of meetings will be noted at the ERG Web site.

OSHA will have a facilitator at the stakeholder meetings to help guide the discussion and record notes on flip charts. ERG provides a summary of comments at the meeting which OSHA will place on the backover Web page at *http://www.osha.gov/doc/topics/backover/index.html.* In order to encourage a free exchange of views, information, and ideas, these notes will not identify the individuals who make comments. ERG makes an audio recording of each session to ensure that the summary notes are accurate, but these recordings will not be transcribed or published. Although members of the press may attend stakeholder meetings, the Agency asks them not to quote speakers by name or affiliation in any published reports, as the intent of the meeting is informational only. An example of stakeholder summary comments can be found here: *http://www.osha.gov/recordkeeping/pdf/Modernization_DC_5-25-10.pdf.*

IV. Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 1–2012 (77 FR 3912).

Signed at Washington, DC, on December 12, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–30315 Filed 12–14–12; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on AP–1000; Notice of Meeting

The ACRS Subcommittee on AP–1000 will hold a meeting on January 18, 2013, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 18, 2013–8:30 a.m. Until 11:30 a.m.

The Subcommittee will be briefed on the staff's review of the Levy Nuclear Plant Combined License Application seismic reevaluation using the updated Central and Eastern United States Seismic Source Characterization Model. The Subcommittee will hear presentations by and hold discussions with representatives of Progress Energy Florida and the NRC staff regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Peter Wen (Telephone 301–415–2832 or Email: *Peter.Wen@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to

present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 6, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–30319 Filed 12–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS)

Meeting of the ACRS, Subcommittee on U.S. Evolutionary Power Reactor; Notice of Meeting

The ACRS Subcommittee on U.S. Evolutionary Power Reactor (U.S. EPR) will hold a meeting on January 17, 2013, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is propriety pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

Thursday, January 17, 2013–8:30 a.m. Until 4:30 p.m.

The Subcommittee will review and discuss the Safety Evaluation Report (SER) with Open Items associated with the staff's review of Chapters 3 and 14 of the Calvert Cliffs Unit 3 Combined Licensing Application (COLA). The Subcommittee will hear presentations by and hold discussions with the NRC staff, UniStar Energy Nuclear, Inc. (UniStar), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Kathy Weaver (Telephone 301–415–6236 or Email: *Kathy.Weaver@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 4, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–30338 Filed 12–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on January 18, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, January 18, 2013–1:00 p.m. Until 5 p.m.

The Subcommittee will review and discuss the staff's development of a notation vote paper addressing the Near Term Task Force (NTTF) Recommendation 1: Enhanced Regulatory Framework. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Antonio Dias (Telephone 301–415–6805 or Email: *Antonio.Dias@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such

rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 10, 2012.

Hipolito Gonzalez,

Acting Chief, Technical Support Branch, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–30320 Filed 12–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Future Plant Designs; Notice of Meeting

The ACRS Subcommittee on Future Plant Designs will hold a meeting on January 17, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information that is propriety pursuant to 5 U.S.C. 552(c)(4). The agenda for the subject meeting shall be as follows:

Thursday, January 17, 2013–8:30 a.m. Until 3:00 p.m.

The Subcommittee will review and discuss advancements on the Next Generation Nuclear Plant (NGNP) fuel and source term research and development of risk-informed performance based licensing activities. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Maitri Banerjee (Telephone 301–415–6973 or Email: *Maitri.Banerjee@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North Building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 10, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–30339 Filed 12–14–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on January 16, 2013, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The meeting will be open to public attendance, with the exception of a portion that may be closed to protect information provided in confidence by a foreign source pursuant to 5 U.S.C. 552b(c)(4). The agenda for the subject meeting shall be as follows:

The agenda for the subject meeting shall be as follows:

Wednesday, January 16, 2013–8:30 a.m. Until 12 p.m.

The Subcommittee will review and discuss the staff's approach for component fabrication and inspection for the large Nuclear Steam Supply System (NSSS). The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher Brown (Telephone 301–415–7111 or Email: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: December 5, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–30318 Filed 12–14–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68402; File No. SR–Phlx–2012–137]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rebates and Fees for Adding and Removing Liquidity

December 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that, on December 3, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to file Section I of the Exchange's Pricing Schedule entitled ''Rebates and Fees for Adding and Removing Liquidity in Select Symbols'' in order to preserve amendments to the Pricing Schedule that became effective after the suspension of certain fees on April 30, 2012.

The Exchange has designated the proposed amendment to be operative on December 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed two immediately effective rule changes, SR–Phlx–2012–27 and SR–Phlx–2012–54,[3] to amend certain fees and rebates in Section I, which filings were temporarily suspended by the Commission as of April 30, 2012 (''Suspension Order'').[4] In order to continue the effectiveness of certain fees and rebates that were contained in SR–Phlx–2012–27, but not the subject of the Suspension Order, the Exchange filed a rule change on April 30, 2012.[5] On November 9, 2012, the Commission approved SR–Phlx–2012–27 and SR–Phlx–2012–54, as modified by Amendment No. 1, on a one-year pilot basis, with such fees being operative on December 3, 2012 (''Approval Order'').[6]

The Approval Order reinstated the fees that were proposed by the Exchange in SR–Phlx–2012–27.[7] Since the date of the suspension, the Exchange filed multiple amendments to Section I of the Pricing Schedule which became effective after the Suspension Order.[8] The Exchange proposes to preserve the amendments to Section I of the Pricing Schedule that became effective after the Suspension Order in order to continue the effectiveness of the current fees and rebates which were not the subject of the Approval Order. The fees for executions of Complex Orders by Directed Participants and Market Makers, which were the subject of the Approval Order, will be addressed in a separate filing proposed to be operative on December 3, 2012 and are not included in this filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it is concerned solely with the administration of the Exchange. This filing serves to preserve the current pricing that has been filed with the Commission notwithstanding the Approval Order that was issued by the Commission. The Exchange believes this proposal is a technical and non-substantive rule change with the sole purpose of preserving the current fees and rebates in Section I. The fees that were the subject of the Approval Order, which related to fees for executions of Complex Orders by Directed Participants and Market Makers, will be addressed in a separate filing. This proposal maintains the status quo, which would be otherwise altered by the Approval Order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 66551 (March 9, 2012), 77 FR 15400 (March 15, 2012) (SR–Phlx–2012–27) and 66883 (April 30, 2012), 77 FR 26591 (May 4, 2012) (SR–Phlx–2012–54).

[4] By order dated April 30, 2012, the Commission suspended SR–Phlx–2012–27 and SR–Phlx–2012–54. *See* Securities Exchange Release No. 66884 (April 30, 2012), 77 FR 26595 (May 4, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[5] *See* Securities Exchange Act Release No. 66968 (May 11, 2012), 77 FR 29425 (May 17, 2012) (SR–Phlx–2012–57).

[6] *See* Securities Exchange Act Release No. 68202 (November 9, 2012), 77 FR 68856 (November 16, 2012) (SR–Phlx–2012–27 and SR–Phlx–2012–54).

[7] Specifically, SR–Phlx–2012–27 proposed to: (1) Increase the Customer Complex Order Rebate for Adding Liquidity from $0.30 to $0.32 per contract, (2) create a new Complex Order Rebate for Removing Liquidity and specifically pay a Customer a $0.06 Complex Order Rebate for Removing Liquidity, and (3) increase the Complex Order Fees for Removing Liquidity for Firms, Broker-Dealers and Professionals from $0.35 per contract to $0.38 per contract.

[8] *See* Securities Exchange Act Release Nos. 66985 (May 14, 2012), 77 FR 29726 (May 18, 2012) (SR–Phlx–2012–61); 67047 (May 23, 2012), 77 FR 32165 (May 31, 2012) (SR–Phlx–2012–70); 67189 (June 12, 2012), 77 FR 36310 (June 18, 2012) (SR–Phlx–2012–77); 67439 (July 13, 2012), 77 FR 42541 (July 19, 2012) (SR–Phlx–2012–90); 67633 (August 9, 2012), 77 FR 49040 (August 15, 2012) (SR–Phlx–2012–104); 67830 (September 11, 2012), 77 FR 57169 (September 17, 2012) (SR–Phlx–2012–112); and SR–Phlx–2012–125) (not yet published).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

19(b)(3)(A)(iii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–137 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–137. 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–Phlx–2012–137 and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30271 Filed 12–14–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68398; File No. SR–ISE–2012–93]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Position and Exercise Limits in EEM Options

December 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 28, 2012, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 rules to increase position and exercise limits for options on the iShares MSCI Emerging Markets Index Fund (''EEM''). The text of the proposed rule change is available on the Exchange's Web site *www.ise.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE proposes to amend Supplementary Material .01 to ISE Rule 412 and Supplementary Material .01 of ISE Rule 414 to increase position and exercise limits, respectively, for EEM options. This filing is based on a filing previously submitted by the Chicago Board Options Exchange (''CBOE''), which the Commission recently approved.[3]

Position limits for exchange-traded fund (''ETFs'') options, such as EEM options, are determined pursuant to Rule 412 and vary according to the number of outstanding shares and trading volume during the most recent six-month trading period of an underlying stock or ETF. The largest in capitalization and most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. The current position limit for EEM options is 250,000 contracts. The purpose of the proposed rule change is to amend Rules 412 and 414 to increase the position and exercise limits for EEM options to 500,000 contracts. There is precedent for establishing position limits for options on actively-traded ETFs and these position limit levels are set forth in Rule 412, Supplementary Material .01.[4]

[3] *See* Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

[4] Rule 412, Supplementary Material .01, lists exceptions to standard position limits which are: put or call option contracts overlying the PowerShares QQQ Trust (''QQQQ''), for which the

In support of this proposed rule change, and as noted by the CBOE in its filing, the below trading statistics compare EEM to IWM and SPY. As shown in the table, the average daily volume in 2011 for EEM was 65 million shares compared to 64.1 million shares for IWM and 213 million shares for SPY. The total shares outstanding for EEM are 922.9 million compared to 192.6 million shares for IWM and 716.1 million shares for SPY. Further, the fund market cap for EEM is $41.1 billion compared to $15.5 billion for IWM and $98.3 billion for SPY.

ETF	2011 ADV (mil. shares)	2011 ADV (option contracts)	Shares outstanding (mil.)	Fund market cap ($bil)
EEM	65	280,000	922.9	41.1
IWM	64.1	662,500	192.6	15.5
SPY	213	2,892,000	716.1	98.3

In further support of this proposal, the Exchange represents that EEM still qualifies for the initial listing criteria set forth in Rule 502(h) for ETFs holding non-U.S. component securities.[5] EEM tracks the performance of the MSCI Emerging Markets Index, which has approximately 800 component securities.[6] ''The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets. The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.'' [7] The Exchange represents that more than 50% of the weight of the securities held by EEM are now subject to a comprehensive surveillance agreement (''CSA'').[8] Additionally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.[9] Finally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any two countries that are not subject to CSAs do not represent 33% or more of the weight of the MSCI Emerging Markets Index.[10]

The Exchange believes that the liquidity in the underlying ETF and the liquidity in EEM options support its request to increase the position and exercise limits for EEM options. As to the underlying ETF, through October 17, 2012, the year-to-date average daily trading volume for EEM across all exchanges was 49.3 million shares. As to EEM options, the year-to-date average daily trading volume for EEM options across all exchanges was 250,304 contracts. The Exchange believes that increasing position limits for EEM options will lead to a more liquid and competitive market environment for EEM options that will benefit customers interested in this product.

Under the Exchange's proposal, the options reporting requirement for EEM would continue unabated. Thus, the Exchange would still require that each Member that maintains a position in EEM options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. Exchange Market Makers would continue to be exempt from this reporting requirement, as Market Maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts would remain at this level for EEM options.[11]

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at ISE, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[12]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[13] Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that Members file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a Member or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on EEM. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a Member must maintain for a large position held by it or by its customer.[14]

position limit is currently 900,000 contracts on the same side of the market; options overlying the Standard and Poor's Depository Receipts® Trust (''SPY''), which currently does not have any position limits; options overlying the iShares® Russell 2000® Index Fund (''IWM''), for which the position limit is currently 500,000 contracts on the same side of the market; and options overlying the Diamonds Trust (''DIA''), for which the position limit is currently 300,000 contracts on the same side of the market.

[5] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Rule 502(h) and Rule 503(h).

[6] *See http://us.ishares.com/product_info/fund/overview/EEM.htm* and *http://www.msci.com/products/indices/licensing/msci_emerging_markets/*. Identification of the specific securities in EEM and their individual concentrations can be accessed at: *http://us.ishares.com/product_info/fund/holdings/EEM.htm*.

[7] *See http://www.msci.com/products/indices/tools/index.html#EM.*

[8] *See* ISE Rule 502(h)(B)(1).

[9] *See* ISE Rule 502(h)(B)(2).

[10] *See* ISE Rule 502(h)(B)(3).

[11] *See* ISE Rule 415(a).

[12] These procedures have been effective for the surveillance of EEM options trading and will continue to be employed.

[13] 17 CFR 240.13d–1.

[14] *See* ISE Rule 1202.

In addition, the Commission's net capital rule, Rule 15c3–1 [15] under the Securities Exchange Act of 1934 (the ''Act''), imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the Act in general, and furthers the objectives of Section 6(b)(5) of the Act [16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the proposed rule change will benefit large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of EEM options and the considerable liquidity of the market for EEM options diminish the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against. The Exchange also believes that the proposed rule change will benefit a greater number of market participants who are ISE Members and members of other exchanges. This is because EEM is a multiply-listed options class and currently there is not a uniform and consistent position and exercise limits regime across all of the exchanges that list EEM options. The proposed filing will benefit market participants because it will ensure consistency and uniformity among the competing options exchanges as to the position and exercise limits for a multiply listed options class.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to a CBOE filing. ISE believes this proposed rule change is necessary to permit fair competition among the options exchanges and to establish uniform position limits for a multiply-listed options class.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it can increase the position and exercise limits for EEM options immediately, which will result in consistency and uniformity among the competing options exchanges as to the position and exercise limits for EEM options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[19] The Commission notes the proposal is substantively identical to a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.[20] For these reasons, the Commission designates the proposed rule change as operative upon filing.

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–ISE–2012–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–ISE–2012–93.* 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.,

[15] 17 CFR 240.15c3–1.

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has fulfilled this requirement.

[19] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] *See* Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–ISE–2012–93* and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30268 Filed 12–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68400; File No. SR–NASDAQ–2012–136]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for SOX, OSX and HGX

December 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on November 30, 2012. The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to increase fees for options overlying the PHLX Semiconductor Sector℠ (SOX℠), PHLX Housing Sector™ (HGX℠) and PHLX Oil Service Sector℠ (OSX℠).

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on December 3, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to amend certain fees in Chapter XV, Section 2. Specifically, the Exchange proposes to increase the Fees for Adding and Removing Liquidity in SOX, HGX and OSX. These products are only listed on NOM and NASDAQ OMX PHLX LLC (''Phlx'').[3] Phlx recently filed an immediately effective rule change to amend its fees for Singly Listed Options, which include SOX, HGX and OSX, effective December 3, 2012.[4] NASDAQ proposes to make corresponding changes to fees for SOX, HGX and OSX effective as of December 3, 2012.

The Exchange currently assesses Customers a Fee for Adding Liquidity and a Fee for Removing Liquidity in SOX, HGX and OSX of $0.35 per contract. This fee will remain unchanged. The Exchange assesses Professionals, Firms and Non-NOM Market Makers a Fee for Adding Liquidity and a Fee for Removing Liquidity in SOX, HGX and OSX of $0.45 per contract. The Exchange is proposing to increase these fees to $0.60 per contract. Finally, the Exchange currently assesses NOM Market Makers a $0.35 per contract Fee for Adding Liquidity and a Fee for Removing Liquidity in SOX, HGX and OSX. The Exchange proposes to increase this fee to $0.40 per contract. The Exchange is not proposing to amend other pricing in Chapter XV, Section 2.

2. Statutory Basis

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that increasing the Fees for Adding and Removing Liquidity in SOX, HGX and OSX is reasonable because the Exchange proposes to assess the same fees which were recently increased by Phlx for SOX, HGX and OSX.[7] Also, the proposed fees are within the range of similar fees assessed at other exchanges.[8] The Exchange has previously distinguished other index products from the Non-Penny Pilot Options fees and rebates.[9] The Exchange

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Phlx's Pricing Schedule at Section III.

[4] *See* SR–Phlx–2012–135 (not yet published).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] Despite the fact that SOX, HGX and OSX are Multiply Listed (listed on Phlx and NOM), Phlx assesses its market participants the fees for Singly Listed Options to transact index options in SOX, HGX and OSX. *See* Securities Exchange Act Release No. 66668 (March 28, 2012), 77 FR 20090 (April 3, 2012) (SR–Phlx–2012–35). *See also* Section III of Phlx's Pricing Schedule. Accordingly, Phlx recently filed an immediately effective rule change to amend its fees as of December 3, 2012 to assess the following fees to transact index options in SOX, HGX and OSX: Customers $0.35 per contract, Professionals $0.60 per contract, Firms $0.60 per contract, Market Makers $0.40 per contract, and Broker-Dealers $0.60 per contract. Non-NOM Market Makers are registered market makers on another options market that append the market maker designation to orders routed to NOM. This is the equivalent of a Broker-Dealer on Phlx. While Phlx does not assess both a Fee for Adding Liquidity and Fee for Removing Liquidity, it assesses each side of the transaction the options transaction charge.

[8] Chicago Board Options Exchange, Incorporated (''CBOE'') assesses an $0.80 per contract fee to Customers, Broker-Dealers, Non-Trading Permit Holder Market Makers and Professional and Voluntary Professional market participants for SPX Range Options (SRO) transactions, a proprietary index, in addition to a surcharge fee. SPX refers to options on the Standard & Poor's 500 Index. *See* CBOE's Fees Schedule. In addition, NOM assesses Non-Penny Pilot Fees for Removing Liquidity ranging from $0.82 to $0.89 per contract depending on the market participant. *See* Chapter XV, Section 2 of NOM's Rules. Phlx also assesses a Broker-Dealer an electronic options transaction charge (non-Penny Pilot) of $0.60 per contract for transactions in Multiply Listed Options. *See* Section II of the Exchange's Pricing Schedule. While Phlx does not assess both a Fee for Adding Liquidity and Fee for Removing Liquidity, it assesses each side of the transaction the options transaction charge.

[9] *See* Securities Exchange Act Release No. 67837 (September 12, 2012), 77 FR 57614, 77 FR 57614

Continued

would continue to assess lower Fees for Removing Liquidity in SOX, HGX and OSX as compared to the Fees for Removing Liquidity in Non-Penny Pilot Options, which should continue to encourage NOM Participants to transact these newly listed index options. The Fees for Adding Liquidity for transactions in SOX, HGX and OSX are higher than the Fees for Adding Liquidity in Non-Penny Pilot Options, but as previously noted, the fees correspond to fees assessed by Phlx. The Exchange believes that these fees are reasonable because these fees correspond to comparable fees in place at Phlx for executions in SOX, HGX, and OSX.[10]

The Exchange believes that increasing the Fees for Adding and Removing Liquidity in SOX, HGX and OSX is equitable and not unfairly discriminatory because the pricing will be comparable among similar categories of market participants, namely Professionals, Firms and Non-NOM Market Makers would continue to be assessed the same fee of $0.60 per contract. Customers and NOM Market Makers would be assessed lower fees as compared to other market participants, as is the case today. Customer order flow is assessed the lowest fee because incentivizing members to continue to offer Customer trading opportunities in options overlying SOX, HGX and OSX benefits all market participants through increased liquidity. The Exchange notes that NOM Market Makers are assessed lower fees as compared to other market participants, except Customers, because they have burdensome quoting obligations [11] to the market which do not apply to Customers, Professionals, Firms and Non-NOM Market Makers. The proposed differentiation as between Customers and NOM Market Makers as compared to Professionals, Firms and Non-NOM Market Makers recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange also believes that it is equitable and not unfairly discriminatory to increase the NOM Market Maker Fees for Adding and Removing Liquidity in options overlying SOX, HGX and OSX by $0.05 per contract as compared to the $0.15 per contract increase to Professionals, Firms and Non-NOM Market Makers because as explained above NOM Market Makers have certain obligations to the market that do not apply to other market participants. The Exchange desires to continue to assess NOM Market Makers and Customers lower fees as compared to other market participants because these participants contribute to the marketplace as described above. The Customer Fees for Adding and Removing Liquidity in options overlying SOX, HGX and OSX would remain unchanged at $0.35 per contract. The Exchange believes that it is reasonable to assess Customers and NOM Market Makers lower fees as compared to other market participants because these market participants contribute to the market in terms of liquidity and trading environment as compared to other market participants. Also, the proposed lower fees are comparable to pricing on NOM and other options exchanges.[12]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its fees for SOX, HGX and OSX remain competitive with fees at other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–136 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–136. 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

(September 18, 2012) (SR–NASDAQ–2012–102) (an immediately effective rule change which adopted rebates and fees relating to options on Facebook, Inc. (''FB''), Google, Inc. (''GOOG'') and Groupon, Inc. (''GRPN'') separate from other Non-Penny Pilot fees).

[10] *See* Phlx's Pricing Schedule at Section III.

[11] *See* Exchange Rules Section VII, Market Participants, Sections 5, Obligations of Market Makers, and Section 6, Market Maker Quotations.

[12] The Exchange assesses a lower Penny Pilot Options Fee for Removing Liquidity for Customers ($0.45 per contract versus $0.47 per contract for other market participants) and assesses no Non-Penny Pilot Options Fee for Adding Liquidity for Customers as compared to other market participants. The Exchange assesses a lower Non-Penny Pilot Options Fee for Adding Liquidity for NOM Market Makers as compared to other market participants ($0.25 per contract versus $0.45 per contract for other market participants). Finally, the Exchange assesses lower Non-Penny Pilot Options Fees for Removing Liquidity for Customers and NOM Market Makers as compared to other market participants ($0.82 per contract versus $0.87 per contract for other market participants). *See* Chapter XV, Section 2 pricing. Phlx does not assess Customers options transaction charges for Penny or Non-Penny Pilot options transactions. Also, Specialists and Market Makers are assessed lower electronic options transaction charges in Penny and Non-Penny Pilot Options as compared to Professionals, Broker-Dealers and Firms. *See* Section II of the Exchange's Pricing Schedule.

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, 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 NASDAQ's principal office. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–136, and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30269 Filed 12–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68403; File No. SR–OCC–2012–23]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Accommodate Certain Physically-Settled Options on U.S. Treasury Securities

December 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on November 30, 2012, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by OCC. 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

OCC proposes to accommodate certain physical-settled options on the U.S. Treasury securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to accommodate the clearing of physically-settled options on certain U.S. Treasury notes and U.S. Treasury bonds (''Treasury Options'') proposed to be traded by NASDAQ OMX PHLX, LLC (''PHLX''). OCC's current By-Laws and Rules (collectively, the ''Rules'') accommodate options on Treasury securities, but the options on Treasury securities contemplated by the Rules are no longer traded and are different from the Treasury Options that PHLX intends to trade in certain respects. Accordingly, OCC proposes to amend the Rules, as described below, to accommodate such Treasury Options as well as to streamline Chapter XIV of its rulebook by re-numbering certain rules and deleting unused and ''reserved'' rules.

The PHLX Treasury Options are limited to European-style options on Treasury notes and bonds with a unit of trading of $10,000. OCC therefore proposes to remove provisions and references within Chapter XIV of the Rules to American-style options on Treasury securities, Treasury bills as an eligible underlying interest for options on Treasury securities, and ''mini options'' on Treasury securities. In addition, OCC proposes to remove from the Rules the defined term ''adjusted exercise price,'' which related only to options on Treasury bills and consequently is no longer needed, and update other definitions within the Rules to reflect the limiting of the underlying interests for Treasury Options to Treasury bonds and notes. Furthermore, OCC does not plan to permit escrow deposits to be made in connection with the clearing of Treasury Options and proposes to remove related provisions in Section 2 of Article XIII.

OCC generally will apply current expiration date exercise procedures to Treasury Options, and will require delivery settlement for exercised and assigned Treasury Options to be effected on a broker-to-broker basis through the Fixed Income Clearing Corporation (''FICC''). Clearing members interested in Treasury Options have advised that it would be operationally more efficient for them if delivery settlement were effected in this manner. As not all OCC clearing members are participants of the Government Securities Division (''GSD'') of FICC, the proposed rules would permit clearing members to designate, with proper advance notice to OCC, a representative that is a GSD participant who would be responsible for inputting trade information into FICC's systems for delivery settlement purposes. The proposed rules make it clear, however, OCC would have no obligation to such designated representative and contain the agreement of the designating clearing member to be bound by, and to hold OCC harmless against any claims based on, the designated representative's actions or delays in acting or failures to act.

On the expiration date for a Treasury Option, OCC will produce an exercise and assignment report identifying the delivering and receiving clearing members and other relevant delivery information. Clearing members that are obligated to purchase or sell Treasury securities as a result of the exercise or assignment of positions in Treasury Options will be required to submit the terms of such trades to FICC's real time trade matching system. If the trade information submitted by the delivering and receiving clearing member matches within FICC's system, FICC becomes obligated to guarantee settlement of the trade pursuant to FICC's rules, at the point in time at which FICC makes available to the delivering and receiving clearing members a report indicating the trade has been compared and OCC's obligation to guarantee delivery settlement will be terminated. Delivery settlement through FICC includes delivery of the underlying securities against payment of the aggregate purchase price increased by the amount of accrued interest. If a trade does not match, the delivering and receiving OCC clearing members will be required to notify OCC within such time as OCC may specify of such failure on the first business day after the expiration date. If no such notification is made within the deadline, pursuant to proposed Rule 1403(d), OCC's obligation to guarantee settlement will be extinguished as of

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by OCC.

such deadline, regardless of whether or not settlement was actually completed.

In the event OCC is given timely notification of a failure to match on the first business day after the expiration date, the clearing members would be required to attempt to resolve the failure such that settlement could occur through FICC by a deadline specified by OCC on the second business day following the expiration date. If the failure is not resolved and the trade has not matched by the deadline on the second business day after the expiration date, the delivering and receiving OCC clearing members will be required to notify OCC within such time as OCC may specify of such failure. If no such notification is made within the deadline, pursuant to proposed Rule 1404(a), OCC's obligation to guarantee settlement will be extinguished as of such deadline, regardless of whether or not settlement was actually completed.

If OCC receives timely notification, pursuant to proposed Rule 1404(a), that the second submission attempt at FICC failed to result in a match, OCC will assess and pay damages, if any, incurred by the Delivering or Receiving Clearing Member, as applicable, in connection with the failure to match. OCC will also be authorized to debit the amount of such damages from the account of the Delivering or Receiving Clearing Members, as applicable.

Under proposed Rule 1404, in the event the non-defaulting clearing member buys or sells the underlying Treasury security, the non-defaulting clearing member will be required to promptly notify OCC of the price paid or received, as applicable, and OCC will take this information into account in assessing damages. However, OCC will not be bound to accept these prices in assessing damages, and will be able to make an independent determination of damages. Proposed Rule 1404 provides that OCC's determination of damages would be at OCC's sole discretion, final and binding on all parties. Such ''failure to match'' procedures will limit OCC's liability in the event of a default by one of its clearing members. Proposed Rules 1401, 1402, 1403 and 1404 reflect the settlement process described above.

OCC will collect and hold margin from clearing members with Treasury Option delivery or receipt obligations until the exercise settlement date, unless OCC receives notification of a failure to match, in which case OCC will continue to hold margin until either the trade is deemed settled or damages have been assessed and paid to the non-defaulting clearing member.

Proposed Rule 1405 would clarify that OCC may pursue disciplinary action against clearing members who fail to discharge the delivery, payment, and notification obligations as set forth in proposed Rules 1403 and 1404.

In addition to the above changes relating to the terms of and settlement process for Treasury Options, OCC proposes revisions to Section 5 of Article XIII of the By-Laws regarding the handling of shortages of Treasury Securities. These revisions would provide OCC with broader discretion in determining whether a shortage exists and simplify the procedures to be used in this situation.

The proposed changes to OCC's By-Laws and Rules are consistent with the purposes and requirements of Section 17A of the Securities Exchange Act of 1934, as amended (the ''Act''), because they are designed to promote the prompt and accurate clearance and settlement of securities transactions and the protection of investors and the public interest. They accomplish this purpose by, among other things, updating OCC's existing rule provisions to accommodate Treasury Options, as proposed for trading by PHLX, and implementing a settlement process designed to minimize the risks of settlement failures for investors. In addition, the proposed changes facilitate the establishment of linked and coordinated facilities for clearance and settlement of transactions in securities options by utilizing the existing infrastructure of two clearing agencies to create an operationally efficient exercise settlement process for Treasury Options, proposed for trading by PHLX. The proposed rule change is not inconsistent with any rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe the proposed rule change would impose any burden on competition.

(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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or

send an email to *rule-comments@sec.gov.* Please include File Number SR–OCC–2012–23 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–OCC–2012–23. 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 Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_12_23.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying

information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2012–23 and should be submitted on or before January 7, 2013.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[4]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30272 Filed 12–14–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68408; File No. SR–NYSEArca–2012–117]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving a Proposed Rule Change To List and Trade Shares of the Pring Turner Business Cycle ETF Under NYSE Arca Equities Rule 8.600

December 11, 2012.

On October 17, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Shares (''Shares'') of the Pring Turner Business Cycle ETF (''Fund''). The proposed rule change was published for comment in the **Federal Register** on October 31, 2012.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

I. Description of the Proposal

The Exchange proposes to list and trade Shares pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange.

The Shares will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The investment adviser to the Fund is AdvisorShares Investments, LLC (''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 is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon serves as the administrator, custodian, transfer agent and fund accounting agent for the Fund. The Exchange states that neither the Adviser nor the Sub-Advisor is affiliated with a broker-dealer.[5]

Investment Objective. 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.

Fund Holdings. 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'');[6] 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.

According to the Registration Statement, the equity securities in which the Fund may invest include common and preferred stock, Master Limited Partnerships, rights, 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.[7] 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, International Depository Receipts, ''ordinary shares,'' and ''New York shares'' issued and traded in the United States. 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. 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.

From time to time, the Sub-Adviser may invest a portion of the Fund's portfolio in unleveraged inverse ETFs to

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 68108 (October 25, 2012), 77 FR 65920 (''Notice'').

[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 Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code. 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 Exchange represents that in the event (a) the 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. *See* Notice, *supra* note 3, 77 FR at 65921.

[6] 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.

[7] The Fund generally will invest in sponsored ADRs but it may invest up to 10% of total assets in unsponsored ADRs.

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.[8] 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. The Fund may invest in variable and floating rate securities. 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.

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.

In the ordinary course of business, the Fund 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. The Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy. 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. 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.[9]

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.

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.

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.[10]

II. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[11] and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[14] which sets forth Congress's finding that it is in the public interest and appropriate for the

[8] In this context, the Exchange describes a debt security as 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.

[9] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[10] 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 and/or the Notice.

[11] 15 U.S.C. 78f.

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78k–1(a)(1)(C)(iii).

protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[15] 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, as defined in NYSE Arca Equities Rule 8.600(c)(2), held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the business day.[16] The NAV of the Fund will be determined at the close of regular trading (ordinarily 4:00 p.m. Eastern Time) every day the New York Stock Exchange is open. 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. The intra-day, closing and settlement prices of many of the portfolio investments (*e.g.,* exchange-traded equity securities and ETPs) also are readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes 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.[17] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[18] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must 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 portfolio.[19] 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. 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 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. The Exchange may obtain information via the ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange represents that neither the Adviser nor the Sub-Advisor is affiliated with a broker-dealer.[20]

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will be subject to NYSE Arca Equities Rule 8.600, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, 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.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which

[15] According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from CTA or other data feeds. *See* Notice, *supra* note 3, 77 FR at 65925 n.27.

[16] 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.

[17] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[18] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading in Shares 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.

[19] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[20] *See supra* text accompanying note 5. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its 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.

imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) 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 (f) trading information.

(5) For initial and/or continued listing, the Fund must be in compliance with Rule 10A–3 under the Act,[21] as provided by NYSE Arca Equities Rule 5.3.

(6) 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 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 its investment objective and will not be used to enhance leverage.

(7) 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 agreements.

(8) Investments in non-investment grade securities will be limited to 15% of the Fund's assets.

(9) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Fund, including those set forth above and in the Notice.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[22] and the rules and regulations thereunder applicable to a national securities exchange.

[21] 17 CFR 240.10A–3.

[22] 15 U.S.C. 78f(b)(5).

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–NYSEArca–2012–117) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30325 Filed 12–14–12; 8:45 am]

BILLING CODE 8011–01–P

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68407; File No. SR–NYSEMKT–2012–74]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Proposing To Amend the NYSE Amex Options Fee Schedule for Professional Customers and Broker-Dealers To Modify Existing Volume-Based Tiers and the Associated Rate per Contract for Certain Electronic Executions

December 11, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 29, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Amex Options Fee Schedule (''Fee Schedule'') for Professional Customers and Broker-Dealers to modify existing volume-based tiers and the associated rate per contract for certain electronic executions. 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule for Professional Customers and Broker-Dealers to modify existing volume-based tiers and the associated rate per contract for certain electronic executions.

Presently, electronic executions for Professional Customers and Broker-Dealers that take liquidity are charged according to the following schedule:

Average daily volume (''ADV'') tiers for professional customers and broker-dealers taking liquidity	Rate per contract
0 to 50,000	$.28
50,001 to 100,000	.26
Over 100,000	.23

A Professional Customer or Broker-Dealer is treated as a ''taker'' of liquidity any time they send a marketable order to the Exchange and it immediately trades against a posted bid or offer in the Exchange's Consolidated Order Book. When a Professional Customer or Broker Dealer is resting a bid or offer in the Exchange's Consolidated Order Book, it is treated as a ''maker'' of liquidity and any volumes arising from making liquidity do not count toward these volume tiers for the month.[4]

[4] *See* endnote 16 of the Fee Schedule. Volumes arising from making liquidity are eligible for the lower per contract rate(s) if sufficient taking liquidity ADV is executed. ADV is calculated by using the total of taking liquidity volume divided by the number of days in the month when the Exchange was open for business. Volumes arising from the execution of either Complex Orders or Qualified Contingent Cross (''QCC'') orders do not count towards the calculation of ADV for purposes of these volume tiers. Complex Order volumes from electronic executions are eligible for the reduced rates that a participant may achieve based on their take volumes. QCC orders continue to be billed at the $.20 per contract rate applicable to Non-Customers. *Id.*

The Exchange proposes to change the tiers and the associated rate per contract as shown below:

ADV tiers for professional customers and broker-dealers taking liquidity	Proposed rate per contract	Former rate per contract
0 to 16,999	$.32	$.28.
17,000 to 49,999	$.28	$.28.
Over 49,999	$.23	$.28 for 50,000 Contracts. $.26 for 50,001 to 100,000 Contracts. $.23 for over 100,000 Contracts.

Thus, only Professional Customers and Broker-Dealers that have an average daily volume of 16,999 contracts or less (the lowest proposed tier) will pay a higher rate per contract under the proposed change; Professional Customers and Broker-Dealers with a higher ADV will pay either the same rate or a lower rate than they do today.

Since adopting tiered pricing for Professional Customer and Broker-Dealer electronic transactions, the Exchange has not garnered as much electronic Professional Customer and Broker-Dealer electronic take volume as expected. To attract more of this business, the Exchange proposes to reduce the levels of take volumes necessary to achieve certain lower per contract rates on all Professional Customer and Broker-Dealer electronic volumes but to raise fees for Professional Customers and Broker-Dealers that execute relatively lower volumes on the Exchange. By reducing the tiers and reducing the rate at relatively higher levels of volume, the Exchange expects to attract more Professional Customer and Broker-Dealer taking volume to the Exchange. The Exchange further notes that the proposed fees fall within the range of fees charged in the industry for Professional Customer and Broker Dealer electronic transaction charges.[5]

The proposed change will be operative on December 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[6] of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4)[7] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and is not unfairly discriminatory.

The Exchange believes that the proposed changes to the volume-based tiers and the associated rates per contract for electronically executed orders of Professional Customers and Broker-Dealers that take liquidity are reasonable, equitable and not unfairly discriminatory. The Exchange believes the fees are reasonable because they are within the range of comparable fees on at least two other exchanges.[8] Moreover, the fee increase at the proposed lowest volume tier is reasonable because these Professional Customers and Broker-Dealers are bringing less volume to the Exchange and the higher fees will offset the loss in revenue associated with reducing fees at lower volume thresholds. The Exchange notes that with only a modest increase in trading activity, Professional Customers and Broker-Dealers will be able to maintain the same rate as they are currently paying. A more significant increase in trading activity will result in such participants paying a lower transaction rate than they pay today. The Exchange believes that it is reasonable to adjust the tier thresholds in this manner to encourage greater participation and thereby foster more transparency and price discovery for the benefit of all market participants.

The Exchange notes that while other participants may pay less for electronic transactions that take liquidity, such participants also pay substantially more for the ability to trade on the Exchange. For example, Market Makers have much higher fixed monthly costs as compared to Professional Customers and Broker-Dealers. A Market Maker seeking to stream quotes in the entire universe of names traded on the Exchange would have to pay $33,000 per month in Amex Trading Permit (''ATP'') fees and Premium Product Fees. In addition, a Market Maker acting as a Specialist, e-Specialist, or Directed Order Market Maker will incur monthly Rights Fees that range from $75 per option to $1,500 per option. Professional Customers and Broker-Dealers, which access the Exchange via an order routing firm, pay only $500 per month in ATP fees (assuming the cost is passed back to them), and for that low monthly cost are able to send orders in all issues traded on the Exchange. Broker-Dealers that are ATP Holders and access the Exchange directly incur the monthly ATP fee of $500 and in turn have the ability to send orders in all issues traded on the Exchange. Given these facts, coupled with the aforementioned range in Professional Customer fees on other exchanges, the Exchange believes that the proposed change is reasonable, equitable, and not unfairly discriminatory.

The Exchange believes the proposed change to increase fees to $.32 per contract for the lowest volume Professional Customer and Broker-Dealer participants is equitable and not unfairly discriminatory because the change will apply to all Professional Customers and Broker-Dealers equally and the increase will offset the costs to the Exchange associated with offering more favorable rates at lower trading thresholds. Furthermore, Professional Customers and Broker-Dealers are free to change the manner in which they access the Exchange. A Professional Customer may, by sending fewer than 390 orders per day across the industry, begin participating as a Customer and avoid incurring any transaction fees. Broker-Dealers and Professional Customers may apply to become Market Makers to transact on a proprietary basis as Market Makers or become ATP Holders to transact on the Exchange as a Firm. In light of the ability to access the Exchange in a variety of ways, each of which is priced differently, Professional Customers, Broker-Dealers, and other participants may access the Exchange in a manner that makes the most economic sense for them.

The Exchange believes that the proposed change to modify the existing

[5] *See* ISE fee schedule as of November 6, 2012, under which that exchange charges Professional Customer and Broker-Dealer ''take'' fees of $.33 per contract in Select Symbols, and the Nasdaq Options Market fee schedule as of November 1, 2012, under which that exchange charges Professional Customers and Broker-Dealers $.49 [sic] to take liquidity in Penny Pilot symbols and $.89 per contract to take liquidity in non-Penny Pilot symbols.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] *See supra* note 5.

volume-based tiers for Professional Customers and Broker-Dealers that transact electronically is equitable and not unfairly discriminatory because the change will apply to all participants in those categories equally and such participants are free to change the manner in which they access the Exchange. The proposed change also will reward Professional Customers and Broker-Dealers that bring relatively higher volumes of trading activity to the Exchange. Moreover, as noted previously, these participants have lower aggregate fees when compared to, for example, the ATP fees incurred by a NYSE Amex Market Maker to quote the entire universe of names traded on the Exchange. Further, the establishment of the tiers will enable Professional Customers and Broker-Dealers that transact in sufficient volumes to obtain a lower per contract rate on all of their electronic volumes in a given month. This is equitable and not unfairly discriminatory given that a higher volume of marketable orders, which these volume tiers will encourage, is beneficial to other Exchange participants due to the increased opportunity to trade.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they determine that such venues offer more favorable trading conditions and rates.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes a due, fee, or other charge imposed by NYSE MKT.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–74 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–74. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2012–74, and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30324 Filed 12–14–12; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68404; File No. SR–FINRA–2012–041]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend the Customer and Industry Codes of Arbitration Procedure Relating to Subpoenas and to Arbitrator Authority To Direct the Appearance of Associated Person Witnesses and the Production of Documents Without Subpoenas

December 11, 2012.

I. Introduction

On August 24, 2012, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Customer and Industry Codes of Arbitration Procedure (collectively, the ''Codes'') (1) to provide that when FINRA member firms and/or employees or associated persons of FINRA members who are parties to an arbitration (collectively, ''Member Parties'') seek the appearance of witnesses by, or the production of documents from, FINRA members (and individuals associated with the member) who are not parties to the arbitration (collectively, ''Non-Party Members''), FINRA arbitrators shall (unless circumstances dictate otherwise) issue orders for the appearance of witnesses or the production of documents, instead of issuing subpoenas; (2) to add procedures for any non-party (Non-Party Member or otherwise) receiving a subpoena to object to the subpoena; (3) to provide that if an arbitrator issues a subpoena to a Non-Party Member at the request of a Member Party, the Member Party making the request is (unless the panel

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

directs otherwise) responsible for paying the reasonable costs of the appearance of witnesses by or the production of documents from the Non-Party Member; (4) to add procedures for any party to an arbitration to file a motion requesting arbitrators issue an order for the appearance of any employee or associated person of a FINRA member (collectively, ''Associated Persons'') or the production of documents from such Associated Persons or members; (5) to add procedures for any party to an arbitration receiving a motion for an order and draft order to object to the order; (6) to add procedures for how the party to the arbitration that requested the order must serve the order (if issued); (7) to add procedures for any Non-Party Member receiving an order to object to the order; and (8) to add procedures for how parties to an arbitration must share documents received in response to an order issued to a Non-Party Member.

The proposed rule change was published for comment in the **Federal Register** on September 13, 2012.[3] The Commission received three comment letters on the proposed rule change from: the Securities Arbitration Clinic at St. John's University School of Law [4]; the Investor Rights Clinic at Pace Law School [5]; and the Public Investors Arbitration Bar Association (''PIABA'').[6] The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

This order approves the proposed rule change.

II. Description of the Proposed Rule Change

A. Subpoena Rules

Currently, the Codes authorize arbitrators to issue subpoenas for the production of documents or the appearance of witnesses.[7] Rules 12512 and 13512 of the Codes (the ''Subpoena Rules'') set forth procedures for any party (Member Party or non-member) to an arbitration to make a motion for a subpoena. Specifically, the requesting party must file a written motion with FINRA's Director of Arbitration (''Director'') (with an additional copy for the arbitrator) requesting that an arbitrator issue a subpoena to another party to the arbitration or to a non-party. The motion must include a draft subpoena and the requesting party must serve the motion and draft subpoena on each other party to the arbitration at the same time and in the same manner as on the Director. The requesting party, however, may not serve the motion or draft subpoena on a non-party.[8]

The Subpoena Rules also detail how a party to an arbitration receiving a motion and draft subpoena may object to the scope or propriety of the subpoena; how the requesting party may reply to another party's objection; and how the arbitrator rules on the issuance and scope of the subpoena.[9] If the arbitrator issues a subpoena, however, the party that requested the subpoena must serve the subpoena at the same time and in the same manner on all other parties to the arbitration and, if applicable, on any non-party receiving the subpoena.[10] Finally, the Subpoena Rules describe how parties to an arbitration must share any documents they receive in response to a subpoena service on a non-party.[11]

The Subpoena Rules do not currently address, however, who bears the costs of production under a subpoena issued to either a party to an arbitration or a non-party. In the Notice, FINRA states that in practice arbitrators resolve disputes between parties to an arbitration, as well as between parties and non-parties, relating to costs associated with complying with a subpoena. In addition, the Subpoena Rules do not currently provide a means for non-parties to object to subpoenas served upon them. FINRA states that in practice, however, FINRA permits non-parties to file objections to subpoenas. And, according to FINRA, in practice the objections may include a request for the arbitrators to determine who pays the costs of production.

FINRA filed this proposed rule change, in part, to codify these existing practices. FINRA proposes new Rules 12512(e) and 13512(e) to the Codes to provide a mechanism for non-parties to object to a subpoena that an arbitrator issues to them. Under the new provisions, if a non-party receiving a subpoena objects to the scope or propriety of the subpoena, the non-party may, within ten (10) calendar days of service of the subpoena, file written objections with the Director. The Director shall forward a copy of the written objections to the arbitrator and all the parties to the arbitration (including the requesting party). The party that requested the subpoena may respond to the objections within ten (10) calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for issuing the subpoena shall rule promptly on the objections. FINRA stated in its Notice that the proposed amendments would codify FINRA's current practice relating to objections.

In addition, the proposed rule change would add new Rules 12512(g) and 13512(g) to the Codes to address costs when a Member Party requests a subpoena directed to a Non-Party Member. Specifically, if the arbitrators issue a subpoena to a Non-Party Member, the Member Party that requested the subpoena shall pay the reasonable appearance and/or production costs related to the Non-Party Member's compliance with subpoena, unless the panel directs otherwise. If a dispute arises regarding who should pay the appearance and/or production costs and whether a stated amount is reasonable, the proposed rule change would allow arbitrators to determine the reasonable costs and to assess responsibility for paying them. FINRA believes that the amendments would codify the current practice relating to how FINRA handles such disputes. FINRA also believes that the responsibility of a party to an arbitration to reimburse a non-party for its appearance and/or production costs should be the same regardless of whether the non-party is responding to a subpoena or an order requested by the party; to this end, new Rules 12512(g) and 13512(g) would also eliminate the current disparity between how the Subpoena Rules and the Order Rules (defined below), which expressly address who bears the costs of production relating to compliance with an order, treat such costs.[12]

B. Order Rules

Rules 12513 and 13513 of the Codes (the ''Order Rules'') also currently

[3] *See* Exchange Act Release No. 67803 (Sept. 7, 2012), 77 FR 56694 (Sept. 13, 2012), (''Notice''). The comment period closed on October 4, 2012.

[4] *See* Letter from Shane Malone and others, Securities Arbitration Clinic, St. John's University School of Law, dated September 25, 2012 (the ''St. John's Letter'').

[5] *See* Letter from Jill I. Gross and others, Investor Rights Clinic, Pace Law School, dated October 4, 2012 (the ''Pace Letter'').

[6] *See* Letter from Ryan K. Bakhtiari, PIABA, dated October 4, 2012 (the ''PIABA Letter''). *See also infra* note 21.

[7] *See* FINRA Rules 12512(a) and 13512(a).

[8] *See* FINRA Rules 12512(b) and 13512(b).

[9] *See* FINRA Rules 12512(c) and 13512(c).

[10] *See* FINRA Rules 12512(d) and 13512(d).

[11] *See* FINRA Rules 12512(e) and 13512(e).

[12] *See* FINRA Rules 12513(b) and 13513(b) (stating that unless the panel directs otherwise, the party to the arbitration requesting the order for the appearance of witnesses by or the production of documents from non-parties under this rule shall (unless the panel directs otherwise) pay the reasonable costs related to the appearance of witnesses or the production of documents done in response to such order).

authorize arbitrators to order the appearance of any Associated Persons or the production of documents in the possession or control of an Associated Person or a FINRA member (including both parties to an arbitration and non-parties) without using the subpoena process.[13] In fact, as stated in the Notice, FINRA believes that parties to an arbitration would be better served by requesting an arbitrator order instead of a subpoena because orders offer a more efficient mechanism for obtaining the appearance of witnesses and production of documents from FINRA members and/or their Associated Persons (including both parties to an arbitration and non-parties). For instance, FINRA states in the Notice that while the Codes provide an enforcement mechanism for both subpoenas and arbitrator orders,[14] typically, once an arbitrator issues a subpoena in a dispute, non-compliance is handled away from the arbitration forum through the courts. Conversely, FINRA staff and the arbitrators who are familiar with the case handle requests for arbitrator orders. Consequently, FINRA believes that arbitrator orders are cost effective for forum users because parties to the arbitration and non-parties would avoid the costs and risks associated with court proceedings. Moreover, FINRA does not believe that using arbitration orders instead of subpoenas in arbitration proceedings would adversely impact the ability of parties to an arbitration to obtain documents and witnesses at the forum.

To this end, FINRA proposed adding new Rules 12512(a)(2) and 13512(a)(2) to the Subpoena Rules to provide that unless circumstances dictate the need for a subpoena,[15] arbitrators shall not issue subpoenas to Non-Party Members at the request of Member Parties. Specifically, the proposal states that if the arbitrators determine that the request for the appearance of witnesses or the production of documents should be granted, then the arbitrators should order the appearance of such persons or the production of documents from such Non-Party Member under the Order Rules.

With the proposed rules, FINRA also intends to standardize its procedures relating to the use of orders and subpoenas in arbitration by adding to the Order Rules procedures substantially similar to those in the Subpoena Rules. In particular, the proposed rule would add Rules 12513(b) and 13513(b), setting forth procedures for any party to an arbitration to make a motion for an order for the appearance of Associated Persons (including both parties to the arbitration and non-parties) or the production of documents in the possession or control of such Associated Persons of FINRA members (including both parties to the arbitration and non-parties). Specifically, the requesting party must file a written motion with the Director (with an additional copy for the arbitrator) requesting that an arbitrator issue the order. The motion must include a draft order and the requesting party must serve the motion and draft order on each other party to the arbitration at the same time and in the same manner as on the Director. The requesting party, however, may not serve the motion or draft order on a Non-Party Member. These proposed procedures are substantially similar to those procedures used by a party to an arbitration to make a motion for a subpoena.[16]

The proposed rule would add other provisions substantially similar to certain Subpoena Rules. Specifically, new Rules 12513(c) and 13513(c) would provide a mechanism for a party to an arbitration receiving a motion and draft order to object to the scope or propriety of the order, as well as a mechanism for the requesting party to reply to another party's objection. Under the new provisions, if party receiving a motion and draft order objects to the scope or propriety of the order, the party shall, within ten (10) calendar days of service of the motion, file written objections with the Director (with an additional copy for the arbitrator) and serve copies on all other parties to the arbitration at the same time and in the same manner as on the Director. The party that requested the order may respond to the objections within ten (10) calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for deciding discovery-related motions shall rule promptly on the issuance and scope of the order. Again, this proposal is substantially similar to the related provisions in the Subpoena Rules detailing how a party to an arbitration receiving a motion and draft subpoena may object to the scope or propriety of the subpoena; how the requesting party may reply to another party's objection; and how the arbitrator rules on the issuance and scope of the subpoena.[17]

In addition, under proposed new Rules 12513(d) and 12513(d), if an arbitrator ultimately issues the requested order, the requesting party must serve the order at the same time and in the same manner on all other parties to the arbitration and, if applicable, on any Non-Party Member receiving the order. These proposed new rules also parallel the related rules in the Subpoena Rules.[18]

Moreover, the proposed rules would add new Rules 12513(e) and 13513(e) to provide a mechanism for Non-Party Members to object to an order that an arbitrator issues to them. Under the new provisions, if a Non-Party Member receiving an order objects to the scope or propriety of the order, the Non-Party Member may, within ten (10) calendar days of service of the order, file written objections with the Director. The Director shall forward a copy of the written objections to the arbitrator and all the parties to the arbitration (including the requesting party). The party that requested the order may respond to the objections within ten (10) calendar days of receipt of the objections. After considering all objections, the arbitrator responsible for issuing the order shall rule promptly on the objections. These proposed new rules are substantially similar to the new rules that that proposal also proposes adding to the Subpoena Rules. This would codify FINRA's current practice relating to objections.

Finally, the proposed rule change would add new Rules 12513(f) and 13513(f), describing how parties to an arbitration must share any documents they receive in response to an order served on a non-party (*i.e.,* Non-Party Members). Specifically, under the new rules any party to an arbitration receiving documents in response to an order served on a Non-Party Member shall provide notice to all other parties within five (5) days of receipt of the documents. Thereafter, any party to the arbitration may request copies of such documents, which must be provided within ten (10) calendar days of receipt of such request. Again, these proposed new rules parallel the existing related provisions in the Subpoena Rules.[19]

[13] *See* FINRA Rules 12513(a) and 13513(a).

[14] IM–12000 states that it may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2010 for a member or a person associated with a member to fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the Code (*see* Customer Code of Arbitration Procedure Part I—Interpretative Material, Definitions, Organization and Authority).

[15] For example, an arbitrator might issue a subpoena if a firm failed to produce documents pursuant to an arbitrator order, or if a former associated person of a FINRA member has left the industry and the arbitrator believes that an arbitrator order would not be effective.

[16] *See* FINRA Rules 12512(b) and 13512(b).

[17] *See supra* note 9.

[18] *See supra* note 10.

[19] *See supra* note 11.

III. Discussion of Comment Letters

The Commission received three comment letters on the proposed rule change in response to the Notice.[20] All three comment letters supported the proposed rule change. The St. John's Letter supported the proposed rule change noting that St. John's believes that encouraging the use of orders instead of subpoenas would minimize the involvement of courts in the arbitration process and, consequently, maximize efficiency of the arbitration process. In addition, St. John's believes that by codifying existing processes for non-parties to file objections to a subpoena, and clarifying the process for determining responsibility for fees related to the appearance of witnesses by and production of documents from non-parties, the proposal would create greater certainty for arbitration participants.

The Pace Letter supported the proposed rule change, also noting that encouraging the issuance of orders instead of subpoenas would minimize the involvement of litigation in arbitration and consequently reduce associated costs and delays. The Pace Letter also noted that the proposal would create a unified enforceable process that enhances efficiency for resolving disputes.

The PIABA Letter also supported the proposed rule change because it would encourage the use of orders rather than subpoenas for compelling the appearance of witnesses by and production of documents from non-parties. In addition, PIABA favors codifying previously undocumented processes and making consistent arbitration procedures governing the use of orders and subpoenas.[21]

IV. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and the comments received. Based on its review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association. In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[22] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

More specifically, the Commission believes that the proposed amendments would encourage the use of orders instead of subpoenas in arbitration, codify certain existing processes, and standardize other procedures relating to subpoenas and arbitrator orders. In particular, the Commission believes that the use of orders in the first instance instead of subpoenas, with respect to compelling the appearance of witnesses and production of documents, could lower discovery costs. The Commission also believes that by codifying existing processes and eliminating the disparity between the Subpoena Rules and the Order Rules, the proposed rule will eliminate potential confusion over the applicability of certain provisions of the Codes and, consequently, enhance the efficiency of the arbitration process for its users.

The Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.[23]

For the reasons stated above, the Commission finds that the rule change is consistent with the Act and the rules and regulations thereunder.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–FINRA–2012–041) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin O'Neill,

Deputy Secretary.

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[20] *See supra* notes 4, 5 and 6.

[21] In a telephone conversation on October 22, 2012, among Margo Hassan, Ken Adrichik and Linda Fienberg of FINRA, Ryan Bakhtiari of PIABA, and Leila Bham of the Commission, PIABA confirmed that the entirety of the last paragraph of the PIABA Letter should be disregarded and considered deleted. This last paragraph had expressed concern over FINRA rules regarding allocation of costs in connection with the use of subpoenas and orders in FINRA arbitration. As a result, the PIABA Letter is considered in its entirety to be supportive of the proposed rule change.

[22] 15 U.S.C. 78o-3(b)(6).

[23] *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68406; File No. SR–Phlx–2012–138]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Strategies

December 11, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee caps applicable to certain strategies on Multiply Listed Options in Section II, entitled ''Equity Options Fees.''[3] The Exchange also proposes to apply the fee caps to transactions on certain reversal[4] and conversion[5] strategies.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Section II Equity Options fees include options overlying equities, ETFs, ETNs and indexes which are Multiply Listed.

[4] Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration.

[5] Conversions are established by combining a long position in the underlying stock with a long put and a short call position that share the same strike and expiration.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the fee caps relating to dividend,[6] merger[7] and short stock interest[8] strategies in Section II of the Pricing Schedule.[9] The Exchange also proposes to apply the fee caps to reversal and conversion strategies in Section II of the Pricing Schedule and modify the application of reversal and conversion strategies in other parts of the Pricing Schedule. The Exchange believes the amendments would continue to incentivize market participants to trade on the Exchange by capping floor option transaction charges related to various strategies.

Today, Specialist,[10] Market Maker,[11] Professional,[12] Firm and Broker-Dealer floor option transaction charges are capped at $1,000 for dividend, merger and short stock interest strategies executed on the same trading day in the same options class when such members are trading in their own proprietary accounts. In addition, floor option transaction charges for dividend, merger and short stock interest strategies combined are further capped at the greater of $10,000 per member or $25,000 per member organization when such members are trading in their own proprietary account.

The Exchange proposes to increase the cap for dividend, merger and short stock interest strategies from $1,000 to $1,250 provided the strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account. Further, the Exchange proposes to adopt a cap for floor options transaction charges for reversal and conversion strategies of $750, provided the reversal and conversion strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account, similar to dividend, merger and short stock interest strategies. The Exchange also proposes to increase the cap for floor equity options transaction charges for dividend, merger and short stock interest strategies combined from the greater of $10,000 per member or $25,000 per member organization per month to simply $35,000 per member organization per month provided that such members are trading in their own proprietary account.[13] The Exchange proposes to apply this cap of $35,000 per member organization per month to reversal and conversion strategies as well and term the cap as the ''Monthly Strategy Cap.''[14]

The Exchange proposes to define reversal and conversion strategies within Section II of the Pricing Schedule as follows: ''Reversals and conversions are transactions that employ calls and puts of the same strike price and the underlying stock. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.''

Further, the Exchange proposes to include Firm reversal and conversion transactions in the Monthly Firm Fee Cap[15] and note this in Section II of the Pricing Schedule. Because of the inclusion of the Firm reversal and conversion transactions in the Monthly Firm Fee Cap, the Exchange also proposes to exclude Firm reversal and conversion transactions from the Monthly Strategy Cap. The reversal and conversion strategy cap of $750 would apply to Firms, as proposed herein, as it applies to other market participants. The Exchange also proposes to note this exception to the Monthly Strategy Cap in Section II of the Pricing Schedule.

The Exchange proposes to exclude reversal and conversion strategy transactions from the $0.07 per side Service Fee which is applicable once a Specialist and Market Maker has reached the Monthly Market Maker Cap.[16] The Exchange proposes to note in Section II of the Pricing Schedule that the $0.07 per side Service Fee ''* * *will apply to every contract side of the QCC Order and Floor QCC Order after a Specialist or Market Maker has reached the Monthly Market Maker Cap, except for reversal and conversion strategies executed via QCC.'' Similarly, the Exchange proposes to exclude reversal and conversion strategy transactions from the $0.01 per side Service Fee which is applicable once a Firm has reached the Monthly Firm Fee Cap.[17] The Exchange proposes to note in Section II of the Pricing Schedule that the $0.01 per side Service Fee ''* * *will apply once a Firm has reached the Monthly Firm Fee Cap, except for reversal and conversion strategies executed via QCC.''

For purposes of clarity, the Exchange proposes to add the word ''floor'' when describing the fee caps to indicate that the cap is only applicable to transactions which originated from the Exchange floor. This is not a change to the Pricing Schedule but rather a clarification. In addition, the Exchange proposes to amend the applicability of the fees caps by further specifying that in order to qualify for a fee cap, the buy

[6] A dividend strategy is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed the first business day prior to the date on which the underlying stock goes ex-dividend.

[7] A merger strategy is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, executed the first business day prior to the date on which shareholders of record are required to elect their respective form of consideration, i.e., cash or stock.

[8] A short stock interest strategy is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.

[9] While the fee caps are noted in Section II of the Pricing Schedule, the caps apply to all Multiply Listed Options in Sections I and II.

[10] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[11] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)).

[12] The term ''Professional'' is a person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[13] The requirement that such members trade in their own proprietary account would not be amended by this proposal.

[14] Reversal and conversion strategies executed on the floor will be assessed the floor options transaction charge of $0.25 per contract. Floor QCC Orders are defined in 1064(e). *See* Section II of the Pricing Schedule.

[15] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm floor option transaction charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account.

[16] Specialists and Market Makers are subject to a ''Monthly Market Maker Cap'' of $550,000 for: (i) Equity option transaction fees; (ii) QCC Transaction Fees (as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e)); and (iii) fees related to an order or quote that is contra to a PIXL Order or specifically responding to a PIXL auction. For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of $0.07 per side will apply once a Specialist and Market Maker has reached the Monthly Market Maker Cap.

[17] Firms are subject to a maximum fee of $75,000 (''Monthly Firm Fee Cap''). Firm floor option transaction charges and QCC Transaction Fees, as defined in this section above, in the aggregate, for one billing month will not exceed the Monthly Firm Fee Cap per member organization when such members are trading in their own proprietary account. For QCC Orders as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e), a Service Fee of $0.01 per side will apply once a Firm has reached the Monthly Firm Fee Cap.

and sell side of a transaction must originate on the Exchange floor. Today, the Exchange does not restrict the buy and sell sides to floor transactions. This proposal would require that the cap apply to floor options transactions charges if both the buy and sell sides originated on the Exchange floor to receive the benefit of the fee cap. The Exchange is proposing to add this language to Section II of the Pricing Schedule.

For purposes of clarity, the Exchange also proposes to make a technical correction to Section II of the Pricing Schedule to remove a reference the term ''Reversal and Conversion Cap'' and replace it with ''reversal and conversion strategy.'' The Exchange also proposes to substitute the word ''or'' instead of ''and'' to further clarify text related to the Monthly Market Maker Cap. The Exchange previously eliminated a former Reversal and Conversion Cap and inadvertently did not also eliminate a reference to this defined terminology from a prior rule filing. The Exchange proposes to remove the defined term at this time and utilize the term ''reversal and conversion strategy.'' The Exchange also proposes to make a technical amendment to substitute the term ''equity options transaction fees'' with ''options transaction charges'' so that the terminology is consistent throughout Section II of the Pricing Schedule. Finally, the Exchange proposes to add the term ''Multiply Listed Options'' in Section II for clarity to indicate the strategies apply to all Multiply Listed Options.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [18] in general, and furthers the objectives of Section 6(b)(4) of the Act [19] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members and other persons using its facilities.

The Exchange's proposal to increase the fee cap on floor option transaction charges for dividend, merger and short stock interest strategies from $1,000 to $1,250 per month, provided the strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary account, is reasonable because the Exchange seeks to incentivize members to transact a greater number of strategies on the Exchange to benefit from the fee cap. Also, this proposal is similar in nature to caps on other exchanges, namely NYSE Arca, Inc. (''NYSE Arca''),[20] NYSE Amex, Inc. (''NYSE Amex'') [21] and the Chicago Board Options Exchange, Incorporated (''CBOE'') [22] for strategies. The Exchange also believes that the increased fee cap is equitable and not unfairly discriminatory because the Exchange is offering all members, except for Customers,[23] the same opportunity to cap their floor option transaction charges in Multiply Listed Options.

The Exchange believes that its proposal to adopt a $750 per month fee cap on floor options transaction charges for reversal and conversion strategies, provided the reversal and conversion strategy is executed on the same trading day in the same options class when such members are trading in their own proprietary accounts, is reasonable because the Exchange seeks to incentivize members to transact a greater number of strategies on the Exchange to benefit from the fee cap. Also, this proposal is similar to reversal and conversion fee caps on other exchanges, namely NYSE Arca,[24] NYSE Amex [25] and CBOE.[26] The Exchange also believes that the adoption of the fee cap is equitable and not unfairly discriminatory because the Exchange would offer all members, except for Customers,[27] the same opportunity to cap floor option transaction charges in Multiply Listed Options.

The Exchange believes its proposal to amend and increase fee caps for floor options transaction charges for dividend, merger and short stock interest strategies and adopt the cap for reversal and conversion strategies of $35,000 per member organization per month, provided that such members are trading in their own proprietary accounts, is reasonable because the Exchange seeks to incentivize members to transact a greater number of strategies on the Exchange to benefit from the fee cap. The Exchange also believes its proposal to increase the Monthly Strategy Cap is equitable and not unfairly discriminatory because the Exchange would offer all members, except for Customers,[28] the opportunity to cap their floor equity options transaction fees for dividend, merger and short stock interest strategies. With respect to reversal and conversion strategies, the Exchange believes that its proposal to increase the Monthly Strategy Cap is equitable and not unfairly discriminatory because the Exchange would offer all members, except for Customers and Firms,[29] the opportunity to cap their floor equity options transaction charges for dividend, merger and short stock interest strategies.

The Exchange's proposal to exclude Firm floor options transaction charges related to reversal and conversion strategies from the Monthly Strategy Cap is reasonable because these fees would be capped as part of the Monthly Firm Fee Cap, which applies only to Firms. The Exchange believes that the exclusion of Firm floor options transaction charges related to reversal and conversion strategies from the Monthly Strategy Cap is equitable and not unfairly discriminatory because Firms, unlike other market participants, have the ability to cap transaction fees up to $75,000 per month. The Exchange would include floor option transaction charges related to reversal and conversion strategies in the Monthly Strategy Cap for Professionals, and Broker Dealers because these market participants are not subject to the Monthly Firm Fee Cap or other similar Cap. While Specialists and Market Makers are subject to a Monthly Market Maker Cap on both electronic and floor options transaction charges, reversal and conversion transactions are excluded from the Monthly Market Maker Cap.[30] For the reasons described above, the Exchange believes including reversal and conversion strategies in the Monthly Firm Fee Cap is reasonable, equitable and not unfairly discriminatory because the cap provides an incentive for Firms to transact floor transactions on the Exchange, which brings increased liquidity and order flow to the floor for the benefit of all market participants.[31]

The Exchange believes that its proposal to amend the applicability of the fee caps to orders originating from the Exchange floor is reasonable because

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(4).

[20] *See* NYSE Arca General Options and Trading Permit (OTP) Fees.

[21] *See* NYSE Amex Options Fee Schedule.

[22] *See* CBOE's Fees Schedule.

[23] Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

[24] *See* NYSE Arca General Options and Trading Permit (OTP) Fees.

[25] *See* NYSE Amex Options Fee Schedule.

[26] *See* CBOE's Fees Schedule.

[27] Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

[28] Customers are not assessed options transaction charges in Section II of the Pricing Schedule.

[29] Firms transaction fees are capped at $75,000 per month as noted in Section II of the Pricing Schedule.

[30] The reversal and conversion strategy executions are excluded from the Monthly Market Maker Cap. *See* Section II of the Pricing Schedule.

[31] Firms are eligible to cap floor options transactions charges and QCC Transaction Fees as part of the Monthly Firm Fee Cap. QCC Transaction Fees apply to QCC Orders as defined in Exchange Rule 1080(o) and Floor QCC Orders as defined in 1064(e). *See* Section II of the Pricing Schedule.

members pay floor brokers to execute trades on the Exchange floor. The Exchange believes that offering fee caps to members executing floor transactions would defray brokerage costs associated with executing strategy transactions and continue to incentivize members to utilize the floor for certain executions.[32] The Exchange believes that its proposal to amend the applicability of the fee caps to orders originating from the Exchange floor is equitable and not unfairly discriminatory because today, the fee caps are only applicable for floor transactions. The Exchange believes that a requirement that both the buy and sell sides of the order originate from the floor to qualify for the fee cap would constitute equal treatment of members.

The Exchange believes that excluding the reversal and conversion strategy transactions from both the $0.07 per side Service Fee applicable to the Monthly Market Maker Cap and the $0.01 per side Service Fee applicable to the Monthly Firm Fee Cap is reasonable because the Exchange is not offering members a QCC rebate for floor transactions executed via QCC.[33] The Exchange specifically excludes dividend, merger, short stock interest or reversal or conversion strategy executions from the QCC rebate and therefore does not desire to assess the Service Fees for these types of transactions.[34] The Exchange believes that excluding the reversal and conversion strategy transactions from both the $0.07 per side Service Fee applicable to the Monthly Market Maker Cap and the $0.01 per side Service Fee applicable to the Monthly Firm Fee Cap is equitable and not unfairly discriminatory because the Exchange would not assess the Service Fees described herein on any member executing reversal and conversion strategies on QCC.

The Exchange believes that removing an outdated reference and making clarifying changes to the Pricing Schedule, such as adding the reference to floor and amending ''equity options transaction fees'' to ''options transaction charges,'' adding the term ''Multiply Listed Options'' to the discussion of strategies and substituting the word ''and'' with ''or'' in the Monthly Market Maker Cap are reasonable, equitable and not unfairly discriminatory amendments because these technical amendments would clarify the Pricing Schedule and make it terms consistent throughout.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the proposed fees would continue to encourage members to transact strategies on the exchange because the proposed fee caps are competitive with fee caps at other options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[35] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR-Phlx-2012–138 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–138. 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–Phlx–2012–138 and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[32] The Exchange's proposal would only apply the fee cap to options transaction charges where buy and sell sides originate from the Exchange floor. *See* proposed rule text in Section II of the Pricing Schedule.

[33] QCC Transaction Fees for a Specialist, Market Maker, Professional, Firm and Broker-Dealer are $0.20 per contract. QCC Transaction Fees apply to QCC Orders, as defined in Exchange Rule 1080(o), and Floor QCC Orders, as defined in 1064(e). A rebate, as specified in Section II of the Pricing Schedule is paid pursuant to the QCC Rebate Schedule on all qualifying executed QCC Orders, as defined in Exchange Rule 1080(o) and Floor QCC Orders, as defined in 1064(e), except where the transaction is either: (i) Customer-to-Customer; or (ii) a dividend, merger or short stock interest strategy or reversal or conversion strategy executions (as defined in Section II). The proposed rule text relating to reversal and conversion strategies is included in this explanation.

[34] Dividend, merger and short stock interest strategies do not qualify as QCC Transactions pursuant to Rule 1080(o)(3) because of the necessity of the stock component.

[35] 15 U.S.C. 78s(b)(3)(A)(ii).

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68405; File No. SR–NYSEArca–2012–137]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

December 11, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on December 3, 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule and to Make the Fee Change Operative on December 1, 2012. 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (i) reorganize transaction fees, (ii) raise the take rate for certain electronic executions in Penny Pilot issues, (iii) revise the Customer monthly posting credit tiers, (iv) replace the Market Maker monthly posting credit tiers with one Super Tier, (v) lower the base credit applied to posted electronic Market Maker executions in SPY, (vi) revise the fees for Electronic Complex Order executions, and (vii) include days when the Exchange closes early in the calculations for qualifications for monthly posting credits. The Exchange proposes to make the fee change operative on December 1, 2012.

Transaction Fees

Currently, the Exchange groups transaction fees for manual executions and electronic executions in Penny Pilot issues together on the Fee Schedule and transaction fees for electronic executions in non-Penny Pilot issues together on the Fee Schedule. The Exchange proposes to reorganize the presentation of transaction fees on the Fee Schedule so that manual execution fees are grouped together and electronic executions in Penny Pilot issues and non-Penny Pilot issues are grouped together. The Exchange believes that this is a clearer way to present these transaction fees. In addition, the Exchange proposes to separate the take liquidity rate for electronic executions in Penny Pilots issues into two subcategories: Against a Customer and against a non-Customer.

For NYSE Arca Market Maker and Firm and Broker Dealer orders, the Exchange proposes to increase the take liquidity rate for executions in Penny Pilot issues against a Customer from $0.45 per contract to $0.47 per contract. The Exchange does not propose to change any of the other current transaction fees in these categories.[4]

Customer Monthly Posing Credit Tiers

Currently, the Exchange provides a credit for OTP Holders and OTP Firms that meet certain customer monthly posting tiers for executions in Penny Pilot issues. These credits are generally based on meeting certain combined thresholds in contracts from Customer posted orders in Penny Pilot issues and Electronic Complex Orders.[5] The Exchange proposes not to count Electronic Complex Orders toward the Customer monthly posting credit tiers. The Exchange does not propose to amend any other credits or other requirements for these Customer monthly posting credit tiers.

Market Maker Monthly Posting Credit Tiers

The Exchange currently offers three Market Maker monthly posting credit tiers based on contracts from posted orders in Penny Pilot issues:

Tier	Qualification basis (Average electronic executions per day)		Credit applied to posted electronic market maker executions in penny pilot issues (except SPY)	Credit applied to posted electronic market maker executions in SPY
Base			($0.32)	($0.34)
Tier 1	30,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues.		($0.34)	($0.36)

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange proposes to amend endnote 5 accordingly to reflect the proposed reorganization of transaction fees and to replace the term ''Standard Executions'' with descriptions of ''manual'' and ''electronic'' executions. The Exchange notes that it has filed a separate proposed rule change that modifies endnote 5. The text of endnote 5 in the Exhibit 5 assumes that the previously filed proposed rule change is operative. *See* File No. SR–NYSEArca–2012–134.

[5] Customer Monthly Posting Tier 4 also can be met if the OTP Holder or OTP Firm has average electronic executions per day of 65,000 contracts combined from Customer posted orders in Penny Pilot issues and Electronic Complex Orders, including all account types and issues, plus 0.3% of U.S. Equity Market Share posted and executed on NYSE Arca Equity Market, including transaction volume from the OTP Holder's or OTP Firm's affiliates.

Tier				
Tier 2	80,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues.	150,000 Contracts Combined from Market Maker Posted Orders and Customer Electronic Posted Orders in Penny Pilot Issues (Includes transaction volume from the Market Maker's affiliates).	($0.38)	($0.40)
Tier 3	150,000 Contracts from Market Maker Posted Orders in Penny Pilot Issues.		($0.40)	($0.42)

The Exchange proposes to replace these three tiers with one Super Tier that would require average electronic executions per day of 80,000 contracts from Market Maker posted orders in all issues or 200,000 liquidity adding and liquidity removing contracts combined from all orders in Penny Pilot issues, all account types, with at least 100,000 contracts from posted orders in Penny Pilot issues, including transaction volume from the Market Maker's affiliates. If a Market Maker meets either of the new Super Tier thresholds, the Market Maker would receive a credit of $0.37 applied to posted electronic Market Maker executions in Penny Pilot issues (except SPY) and a credit of $0.39 applied to posted electronic Market Maker executions in SPY. In addition, the base credit applied to posted electronic Market Maker executions in SPY would be reduced from $0.34 to $0.32.

Electronic Complex Order Executions

Currently, the Exchange charges $0.06 per contract side for Electronic Complex Order executions. Complex orders in non-Penny Pilot issues executed against individual orders in the Consolidated Book are subject to the standard execution rate (''Standard Execution Rate'') per contract. Complex orders in Penny Pilot issues executed against individual orders in the Consolidated Book are subject to the take liquidity rate (''Take Liquidity Rate'') per contract for that issue.

The Exchange proposes to modify the transaction fees for Electronic Complex Order executions based on order type: whether it is a Customer or non-Customer Electronic Complex Order and whether such order is in a Penny Pilot Issue or a non-Penny Pilot Issue. For a Customer Electronic Complex Order against a non-Customer Electronic Complex Order in Penny Pilot issues, the Customer would receive a $0.39 credit per contract and the non-Customer would pay a $0.50 fee per contract. In non-Penny Pilot issues, the Customer would receive a $0.75 credit per contract and the non-Customer would pay a $0.85 fee per contract. For a Customer Electronic Complex Order against a Customer Electronic Complex Order in all issues, there would be no transaction fee. For a non-Customer Electronic Complex Order against a non-Customer Electronic Complex Order, the non-Customer would pay a $0.50 fee per contract in Penny Pilot issues and a $0.85 fee per contract in non-Penny Pilot issues.

Early Closing Days

Currently, the Exchange does not include days when the Exchange closes early in the calculations for qualifications for the Customer monthly posting credit tiers and the Market Maker monthly posting credit tiers, as set forth in endnote 8. The Exchange closes early on a small number of trading days each year, generally one to three days each year—July 3, the Friday following Thanksgiving, and December 24—depending on the day of the week on which those days fall. For example, if in a given year July 3 and December 24 both fell on weekends, there would be only one scheduled early closing day for that year. In addition, when any holiday observed by the Exchange falls on a Saturday, the Exchange is not open on the preceding Friday and when any holiday observed by the Exchange falls on a Sunday, the Exchange is not open on the succeeding Monday. Accordingly, if in a given year July 4 fell on a Saturday, the Exchange would be closed on Friday, July 3, rather than have an early closing day. When an early closing day occurs, the Exchange is required to manually back out such day when calculating the credits described above in the affected months. The Exchange proposes to amend endnote 8 to include days when the Exchange closes early in the calculations for qualifications for monthly posting credits, which would affect the Customer monthly posting credit tiers and the proposed Market Maker monthly posting credit Super Tier.

The Exchange notes that the proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that OTP Holders and OTP Firms would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(4) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that reorganizing its transaction fees is reasonable because the Exchange believes that grouping the transaction fees by order type is a clearer way to

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

present these transaction fees in the Fee Schedule. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it is designed to better organize the Fee Schedule, which will benefit all market participants equally.

The Exchange believes that raising the take liquidity rate for NYSE Market Maker, Firm and Broker Dealer electronic executions in Penny Pilot issues that take liquidity against a Customer is reasonable because resting Customer orders are considered less sophisticated order flow than resting non-Customer orders, which in turn attract non-Customers to take liquidity in such Customer orders rather than non-Customer orders. The Exchange believes that the proposed change is reasonable because it will encourage NYSE Arca Market Makers, Firms, and Broker Dealers to take resting non-Customer orders. The Exchange believes that it is reasonable to charge less for Lead Market Maker (''LMM'') electronic executions in Penny Pilot issues that take liquidity against a Customer because LMMs have higher quoting obligations and often have order flow arrangements with Customers that they must maintain, therefore it is reasonable to charge a lower fee to LMMs in order to encourage LMMs to take posted Customer liquidity. In addition, the Exchange believes that it is equitable and not unfairly discriminatory to charge less for LMM electronic executions in Penny Pilot issues that take liquidity against a Customer because only LMMs are required to pay a monthly Rights fee per issue, which increases based on the average national daily customer contracts, and the Rights fee for Penny Pilot issues are usually higher because such issues are the most active. The Exchange believes that it is reasonable to charge less for Customer electronic executions in Penny Pilot issues that take liquidity against a Customer because it would continue to encourage Customer order flow, which is beneficial to all market participants. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because NYSE Market Makers, Firms, and Broker Dealers can use Arca Book to see if there is a Customer resting order at the top of the Consolidated Book, and avoid taking liquidity against such order. In addition, the Exchange believes it is equitable and not unfairly discriminatory to charge a lower fee to LMMs because they make significant contributions to market quality by providing higher volumes of liquidity. The Exchange believes that it is equitable and not unfairly discriminatory to charge a lower fee to Customers, because they are less sophisticated than non-Customers and the proposed change will continue to attract a high level of Customer order flow, which benefits both Customers and non-Customers.

The Exchange believes that not counting Electronic Complex Orders toward Customer monthly posting credit tiers is reasonable because it is designed to attract higher levels of Customer posted orders in Penny Pilot issues. In addition, the Exchange believes that the proposed change is reasonable because it is not changing any of the credits offered. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because the credit tiers are open to all OTP Holders and OTP Firms on an equal basis and would continue to provide credits that are reasonably related to the value to the Exchange's market quality associated with higher volumes in Customer posted orders in Penny Pilot issues.

The Exchange believes that replacing the Market Maker monthly posting credit tiers with one Super Tier is reasonable because it simplifies the monthly posting credit tiers and encourages Market Makers to post greater volumes in all issues, including non-Penny Pilot issues. In addition, the proposed change is reasonable because it would incent OTP Holders and OTP Firms that have a Market Making presence in addition to a proprietary or agency order flow presence to provide greater order flow in Penny Pilot issues. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it would provide more than one way for Market Makers to achieve the proposed credits—either by providing high levels of Market Maker posted orders in all issues or high levels of orders in Penny Pilot issues by the Market Maker and its affiliates. In addition, the proposed credits are reasonably related to the value to the Exchange's market quality associated with higher volumes in Market Maker posted orders and orders in Penny Pilot issues.

The Exchange believes that lowering the base credit applied to posted electronic Market Maker executions in SPY is reasonable because the current higher credit did not attracted [sic] the anticipated additional volume in SPY, and it is the same credit previously offered by the Exchange. The Exchange also believes that lowering the base credit applied to posted electronic market maker executions in SPY is equitable and not unfairly discriminatory because it would impact all Market Makers equally and is offset by providing an additional credit for posted electronic Market Maker executions in SPY that meet the Super Tier threshold.

The Exchange believes that revising the fees for Electronic Complex Order executions is reasonable because the Exchange believes that it would encourage increased Customer flow in Electronic Complex Orders whereas the Exchange believes that the current flat rate does not incent additional trading. In addition, the proposed fees and credits are competitive with fees and credits on at least one other exchange.[9] The Exchange also believes that the non-Customer fees for Electronic Complex Orders are reasonable because they are consistent with the take liquidity rates for non-Customers that execute against individual orders in Penny Pilot and non-Penny Pilot issues. The Exchange believes that the proposed change is equitable and not unfairly discriminatory because it is designed to attract Customer Electronic Complex Order flow, which ultimately benefits all market participants. In addition, the Exchange believes that the non-Customer fees for Electronic Complex Order executions are equitable and not unfairly discriminatory because all non-Customers will be assessed the same fee.

The Exchange believes that including days when the Exchange closes early in the calculations for qualifications for monthly posting credits is reasonable because it is not expected to have a material impact on OTP Holders, OTP Firms, or Market Makers. The Exchange generally closes early on only one to three days a year, which generally affects a maximum of three billing months (July, November, and December) and may only impact one or two billing months if July 3 or December 24 occur on weekends or observed holidays when the Exchange is otherwise closed. The change would have no impact on the credit calculations for the other months. In addition, the proposed change is reasonable because it would streamline credit calculations because the Exchange and OTP Holders, OTP Firms, and Market Makers that track their performance during the month would no longer be required to back out transactions from early closing days. The Exchange believes the proposed change is equitable and not unfairly discriminatory because all similarly situated OTP Holders, OTP Firms, and Market Makers would be subject to the

[9] *See* International Securities Exchange Schedule of Fees as of November 6, 2012, available at *http://www.ise.com/assets/documents/OptionsExchange/legal/fee/fee_schedule.pdf.*

same fee structure. In addition, trading activity is generally lower on early closing days, so the Tier 4 Customer monthly posting credit, which is based on a threshold percentage of trading activity, would adjust automatically. Credit tiers based on a fixed threshold, including the Tier 1, 2, and 3 Customer monthly posting credit and the Super Tier Market Maker monthly posting credit, would be minimally impacted and OTP Holders, OTP Firms, and Market Makers would still benefit from the streamlined process for calculating trading activity during the month.

The Exchange believes that the proposed changes bring better organization to the Fee Schedule and are designed to incent all market participants, thereby removing impediments to and perfecting the mechanism of a free and open market system. In addition, for the reasons stated above, the proposed changes are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [10] of the Act and subparagraph (f)(2) of Rule 19b-4 [11] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–137 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-2012–137. 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–NYSEArca–2012–137, and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30321 Filed 12–14–12; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b-4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68401; File No. SR–CME–2012–42]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Order Approving Proposed Rule Change Regarding the Valuation of Securities on Deposit

December 11, 2012.

I. Introduction

On October 10, 2012, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–CME–2012–42 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The proposed rule change was published for comment in the **Federal Register** on October 30, 2012.[3] The Commission received no comment letters regarding this proposal. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

CME is proposing to issue an Advisory Notice that announces certain changes to the way CME will value securities on deposit. Under the proposed changes, CME will begin using the current market value, plus accrued interest, to value securities on deposit. CME currently excludes accrued interest from the value of securities on deposit. Therefore, with this adjustment, accrued interest will now be included in the market value of the security. The purpose of the adjustment is to harmonize valuations with existing industry conventions. CME initially

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 34–68093 (October 24, 2012), 77 FR 65730 (October 30, 2012).

planned to implement these changes beginning on December 3, 2012;[4] however, CME has delayed the implementation date and will notify its Clearing Members of the new implementation date in a subsequent notice to its members.[5]

III. Discussion

Section 19(b)(2)(C) of the Act[6] directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency are designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

The Commission believes that these changes are consistent with the requirements of Section 17A(b)(3)(F) of the Act[8] and the rules and regulations thereunder applicable to CME. These changes would use the current market value, plus accrued interest, for securities on deposit at CME, which will better align CME's practices with the marketplace and expectations of its participants. The changes will therefore promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act[9] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–CME–2012–42) be, and hereby is, approved.[11]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30270 Filed 12–14–12; 8:45 am]

BILLING CODE 8011–01–P

[4] *See supra* note 3.

[5] Telephone conversation among Tim Elliott, Executive Director and Associate General Counsel, CME; Gena Lai, Senior Special Counsel, SEC; Justin Byrne, Attorney-Adviser, SEC; December 4, 2012.

[6] 15 U.S.C. 78s(b)(2)(C).

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78q–1.

[10] 15 U.S.C. 78s(b)(2).

[11] 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).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68399; File No. SR–NYSEARCA–2012–134]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule To Allow Manual Orders Entered Into the Exchange's Electronic Order Capture System or Entered Into an Order Entry Device and Contemporaneously Recorded Into the EOC System To Qualify for the Manual Transaction Fee

December 11, 2012.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 29, 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 amend the NYSE Arca Options Fee Schedule (''Fee Schedule'') to allow manual orders that are entered into the Exchange's Electronic Order Capture (''EOC'') System or entered into an order entry device approved by the Exchange and contemporaneously recorded into the EOC System to qualify for the manual transaction fee. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to allow manual orders that are entered into the Exchange's EOC System[4] or entered into an order entry device approved by the Exchange and contemporaneously recorded into the EOC System to qualify for the manual transaction fee. The Exchange proposes to make the fee change operative on December 1, 2012.

In December 2011, the Exchange amended endnote 5 of the Fee Schedule to reflect that a manual order that executes in part against an electronic order or quote resting on the Consolidated Book prior to executing against interest in the trading crowd would be assessed the applicable manual transaction fee for the entire order.[5] However, if a manual order executes completely against an electronic order or quote, and therefore does not execute against interest in the trading crowd, then the order would be charged the applicable electronic transaction fee. The Exchange also specified that in order to be eligible for the manual transaction fee, all orders must be entered into the Exchange's EOC System. Therefore, currently, Floor Brokers that enter orders into an order entry device rather than only into the

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The EOC System is the Exchange's electronic audit trail and order tracking system that provides an accurate time-sequenced record of all orders and transactions on the Exchange. EOC records the receipt of an order and documents the life of the order through the process of execution, partial execution, or cancellation. *See* NYSE Arca Options Rule 6.1(b)(39).

[5] *See* Securities Exchange Act Release No. 65922 (December 9, 2011), 76 FR 78066 (December 15, 2011) (SR–NYSEArca–2011–91).

EOC System are not eligible to take advantage of the lower transaction fees for manual orders, even though orders entered into such devices are recorded in the EOC System. For example, a Floor Broker manual order in a Non Penny Pilot Issue is currently charged a standard execution fee of $0.25 per contract. However, if such Floor Broker manual order is entered in an order entry device in order to interact with orders in the Consolidated Book, then the Floor Broker is charged the electronic execution rate of $0.85 per contract for taking liquidity. The Exchange proposes to make explicit in endnote 5 that, in order to be eligible for the manual transaction fee, all orders must be entered into the Exchange's EOC System. In addition, the Exchange proposes to expand such eligibility requirement to include manual orders entered into an order entry device approved by the Exchange and contemporaneously recorded in the Exchange's EOC System. The approved order entry devices would provide an audit trail and order tracking system for executed orders which would allow such orders to be matched upon recordation into the EOC System. The approved order entry devices would be announced via Regulatory Bulletin.

Currently, electronic orders and quotes resting on the Consolidated Book have priority over equal-priced bids or offers in the trading crowd.[6] In this regard, a Floor Broker, after negotiating a price with the trading crowd, may be required to trade against resting interest on the Consolidated Book (''clear the Book'') before trading against interest in the trading crowd. Pursuant to NYSE Arca Rule 6.67, Options Trading Permit (''OTP'') Holders and OTP Firms use the EOC for the systematization and manual execution of orders executed by open outcry.

To avoid Trade-Throughs, which are prohibited by NYSE Arca Rule 6.94, Floor Brokers often direct their support staff to enter orders into an order entry device while they are executing an order in the trading crowd in order to clear the Consolidated Book and away markets. Floor Brokers are not required to use an order entry device; however, the Exchange recognizes that Floor Brokers use order entry devices to accommodate their business decisions regarding best practices because such devices capture unique order information and OTP identification and are able to pass such information to the Exchange for recordation into the EOC System. The Exchange believes that Floor Brokers that enter orders on order entry devices and contemporaneously record such orders into the EOC System achieve the same execution goals for manual orders as those entered only through the EOC System, and therefore, should be subject to the same manual pricing structure.

The Exchange notes that the proposed changes are not otherwise intended to address any other issues and the Exchange is not aware of any problems that OTP Holders and OTP Firms would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange also believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[9] in particular, because it is designed to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that incorporating the manual transaction fee eligibility requirement into the Fee Schedule and expanding the requirement to include manual orders entered into an order entry device approved by the Exchange and contemporaneously recorded in the Exchange's EOC System is reasonable because the Fee Schedule would more clearly describe the types of manual orders that qualify for the manual transaction fee. In addition, the Exchange believes that expanding the requirement to include manual orders entered into order entry devices and recorded in the EOC System is reasonable because Floor Brokers that use order entry devices are executing trading interest in the Consolidated Book on an efficient basis and should be able to benefit from the reduced manual transaction fee. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because Floor Brokers that enter orders through order entry devices achieve the same execution goals as orders entered only through the EOC System, and, therefore, should be subject to the same fee structure. Furthermore, any order entered through an order entry device would have an audit trail and order tracking, and would be recorded into the EOC System. In addition, Floor Brokers use order entry devices to avoid Trade-Throughs on the Exchange, which thereby benefits the Exchange and all market participants, and therefore, it is equitable and not unfairly discriminatory to extend the manual transaction fee to Floor Brokers that use such devices to enter manual orders.

By clarifying the eligibility requirement for the manual transaction fee, the proposed rule change eliminates confusion, thereby removing an impediment to and perfecting the mechanism of a free and open market system. The clarification of this eligibility requirement will also make it easier for the Exchange to administer the manual transaction fee and ensure that it is appropriately assessed when it is applicable.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due,

[6] *See* NYSE Arca Options Rule 6.75(a) and (b).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2012–134 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–2012–134. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549–1090, 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 NYSE's principal office and on its Internet Web site at *www.nyse.com.* 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–2012–134, and should be submitted on or before January 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–30290 Filed 12–14–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13404 and #13405]

New Hampshire Disaster #NH–00024

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Hampshire (FEMA–4095–DR), dated 11/28/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/08/2012.

Effective Date: 11/28/2012.

Physical Loan Application Deadline Date: 01/28/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/28/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/28/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Belknap, Carroll, Coos, Grafton, Sullivan.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 134048 and for economic injury is 134058.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–30149 Filed 12–14–12; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 8121]

60-Day Notice of Proposed Information Collection: Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor Under Age 16

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 *February 15, 2013.*

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: PPTFormsOfficer@state.gov.*
- *Mail:* PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037.
- *Fax:* (202) 663–2410.
- *Hand Delivery or Courier:* PPT Forms Officer, U.S. Department of State,

2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037.

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 PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue NW., Room 3030, Washington, DC 20037, who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/PMO/PC).
- *Form Number:* DS–5525.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 327,600 respondents per year.
- *Estimated Number of Responses:* 327,600 responses per year.
- *Average Time per Response:* 30 minutes .
- *Total Estimated Burden Time:* 163,800 hours per year.
- *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 on the DS–5525, ''Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16'', is used in conjunction with the DS–11, ''Application for a U.S. Passport''. The DS–5525 can serve as the statement describing exigent or special family circumstances, which is required if written consent of the non-applying parent or guardian cannot be obtained when the passport application is executed for a minor under age 16. The statement must explain the reason for the request.

The legal authority permitting this information assists the Department of State to administer the regulations in 22 CFR 51.27 requiring that both parents and/or any guardian consent to the issuance of a passport to a minor under age 16, except where one parent has sole custody. This regulation was mandated by Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations authorization Act, Fiscal Year 2000 and 2001 (enacted by Public Law 106–113, Div. B, Section 1000(a)(7)), and helps to prevent international child abduction.

Methodology

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the DS–5525, ''Statement of Exigent/Special Family Circumstances for Issuance of a U.S. Passport to a Minor under Age 16''. Passport applicants can either download the DS–5525 from the Internet or obtain the form from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's DS–11, ''Application for a U.S. Passport''.

Dated: November 28, 2012.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–30346 Filed 12–14–12; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Trade Surplus in Certain Sugar and Syrup Goods and Sugar-Containing Products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with relevant provisions of the Harmonized Tariff Schedule of the United States (HTS), the Office of the United States Trade Representative (USTR) is providing notice of its determination of the trade surplus in certain sugar and syrup goods and sugar-containing products of Chile, Morocco, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua, Peru, Colombia, and Panama. As described below, the level of a country's trade surplus in these goods relates to the quantity of sugar and syrup goods and sugar-containing products for which the United States grants preferential tariff treatment under (i) the United States-Chile Free Trade Agreement (Chile FTA); (ii) the United States-Morocco Free Trade Agreement (Morocco FTA); (iii) the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR); (iv) the United States-Peru Trade Promotion Agreement (Peru TPA); (v) the United States-Colombia Trade Promotion Agreement (Colombia TPA), and (vi) the United States-Panama Trade Promotion Agreement (Panama TPA).

DATES: *Effective Date:* January 1, 2013.

ADDRESSES: Inquiries may be mailed or delivered to Ann Heilman-Dahl, Director of Agricultural Affairs, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Ann Heilman-Dahl, Office of Agricultural Affairs, telephone: (202) 395–6127 or facsimile: (202) 395–4579.

SUPPLEMENTARY INFORMATION:

Chile: Pursuant to section 201 of the United States-Chile Free Trade Agreement Implementation Act (Pub. L. 108–77; 19 U.S.C. 3805 note), Presidential Proclamation No. 7746 of December 30, 2003 (68 FR 75789) implemented the Chile FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Chile FTA.

Note 12(a) to subchapter XI of HTS chapter 99 provides that USTR is

required to publish annually in the **Federal Register** a determination of the amount of Chile's trade surplus, by volume, with all sources for goods in Harmonized System (HS) subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.20, 1702.30, 1702.40, 1702.60, 1702.90, 1806.10, 2101.12, 2101.20, and 2106.90, except that Chile's imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Chile FTA are not included in the calculation of Chile's trade surplus.

Note 12(b) to subchapter XI of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.05 in an amount equal to the lesser of Chile's trade surplus or the specific quantity set out in that note for that calendar year.

U.S. Note 12(c) to subchapter XI of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Chile entered under subheading 9911.17.10 through 9911.17.85 in an amount equal to the amount by which Chile's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During calendar year (CY) 2011, the most recent year for which data is available, Chile's imports of sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 528,124 metric tons according to data published by the *Ministro de Agricultura de Chile.* Based on this data, USTR determines that Chile's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XI of HTS chapter 99, goods of Chile are not eligible to enter the United States duty-free under subheading 9911.17.05 or at preferential tariff rates under subheading 9911.17.10 through 9911.17.85 in CY 2013.

Morocco: Pursuant to section 201 of the United States-Morocco Free Trade Agreement Implementation Act (Pub. L. 108–302; 19 U.S.C. 3805 note), Presidential Proclamation No. 7971 of December 22, 2005 (70 FR 76651) implemented in Morocco FTA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Morocco FTA.

Note 12(a) to subchapter XII of HTS chapter 99 provides that USTR is required to publish annually in the **Federal Register** determination of the amount of Morocco's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that Morocco's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the Morocco FTA are not included in the calculation of Morocco's trade surplus.

Note 12(b) to subchapter XII of HTS chapter 99 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.05 in an amount equal to the lesser of Morocco's trade surplus or the specific quantity set out in that note for that calendar year.

Note 12(c) to subchapter XII of HTS chapter 99 provides preferential tariff treatment for certain sugar and syrup goods and sugar-containing products of Morocco entered under subheading 9912.17.10 through 9912.17.85 in an amount equal to the amount by which Morocco's trade surplus exceeds the specific quantity set out in that note for that calendar year.

During CY 2011, the most recent year for which data is available, Morocco's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 880,867 metric tons according to data published by its customs authority, the *Office des Changes.* Based on this data, USTR determines that Morocco's trade surplus is negative. Therefore, in accordance with U.S. Note 12(b) and U.S. Note 12(c) to subchapter XII of HTS chapter 99, goods of Morocco are not eligible to enter the United States duty-free under subheading 9912.17.05 or at preferential tariff rates under subheading 9912.17.10 through 9912.17.85 in CY 2013.

CAFTA–DR: Pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Pub. L. 109–53; 19 U.S.C. 4031), Presidential Proclamation No. 7987 of February 28, 2006 (71 FR 10827), Presidential Proclamation No. 7991 of March 24, 2006 (71 FR 16009), Presidential Proclamation No. 7996 of March 31, 2006 (71 FR 16971), Presidential Proclamation No. 8034 of June 30, 2006 (71 FR 38509), Presidential Proclamation No. 8111 of February 28, 2007 (72 FR 10025), Presidential Proclamation No. 8331 of December 23, 2008 (73 FR 79585), and Presidential Proclamation No. 8536 of June 12, 2010 (75 FR 34311) implemented the CAFTA–DR on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the CAFTA–DR.

Note 25(b)(i) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of each CAFTA–DR country's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that each CAFTA–DR country's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.91, and 1701.99 and its imports of goods classified under HS subheadings 1702.40 and 1702.60 that qualify for preferential tariff treatment under the CAFTA–DR are not included in the calculation of that country's trade surplus.

U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar and syrup goods and sugar-containing products of each CAFTA–DR country entered under subheading 9822.05.20 in an amount equal to the lesser of that country's trade surplus or the specific quantity set out in that note for that country and that calendar year.

During CY 2011, the most recent year for which data is available, *Costa Rica's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 17,670 metric tons according to data published by the Costa Rican Customs Department, Ministry of Finance. Based on this data, USTR determines that Costa Rica's trade surplus is 17,670 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Costa Rica for CY 2013 is 12,540 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Costa Rica that may be entered duty-free under subheading 9822.05.20 in CY 2013 is 12,540 metric tons (i.e., the amount that is the lesser of Costa Rica's trade surplus and the specific quantity set out in that note for Costa Rica for CY 2013).

During CY 2011, the most recent year for which data is available, the *Dominican Republic's* imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 3,066 metric tons according to data published by the National Statistics Office of the Dominican Republic. Based on this data, USTR determines that the Dominican Republic's trade surplus is 3,066 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for the Dominican Republic for CY 2013 is 11,400 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of the Dominican Republic that may be entered duty-free under subheading 9822.05.20 in CY 2013 is 3,066 metric tons (i.e., the

amount that is the lesser of the Dominican Republic's trade surplus and the specific quantity set out in that note for the Dominican Republic for CY 2013).

During CY 2011, the most recent year for which data is available, *El Salvador's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 198,359 metric tons according to data published by the *Ministro de Economia de El Salvador.* Based on this data, USTR determines that El Salvador's trade surplus is 198,359 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for El Salvador for CY 2013 is 31,000 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of El Salvador that may be entered duty-free under subheading 9822.05.20 in CY 2013 is 31,000 metric tons (i.e., the amount that is the lesser of El Salvador's trade surplus and the specific quantity set out in that note for El Salvador for CY 2013).

During CY 2011, the most recent year for which data is available, *Guatemala's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 1,311,620 metric tons according to data published by the Asociacio´n de Azucareros de Guatemala. Based on this data, USTR determines that Guatemala's trade surplus is 1,311,620 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Guatemala for CY 2013 is 42,000 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Guatemala that may be entered duty-free under subheading 9822.05.20 in CY 2013 is 42,000 metric tons (i.e., the amount that is the lesser of Guatemala's trade surplus and the specific quantity set out in that note for Guatemala for CY 2013).

During CY 2011, the most recent year for which data is available, *Honduras'* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 52,492 metric tons according to data published by the Honduran Executive Directorate of Revenue (DEI). Based on this data, USTR determines that Honduras' trade surplus is 52,492 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Honduras for CY 2013 is 9,120 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Honduras that may be entered duty-free under subheading 9822.05.20 in CY 2013 is 9,120 metric tons (i.e., the amount that is the lesser of Honduras' trade surplus and the specific quantity set out in that note for Honduras for CY 2013).

During CY 2011, the most recent year for which data is available, *Nicaragua's* exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 206,806 metric tons according to data published by the Ministry of Development, Industry and Trade (MIFIC). Based on this data, USTR determines that Nicaragua's trade surplus is 206,806 metric tons. The specific quantity set out in U.S. Note 25(b)(ii) to subchapter XXII of HTS chapter 98 for Nicaragua for CY 2013 is 25,080 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Nicaragua that may be entered duty-free under subheading 9822.05.20 in CY 2013 is 25,080 metric tons (i.e., the amount that is the lesser of Nicaragua's trade surplus and the specific quantity set out in that note for Nicaragua for CY 2013).

Peru: Pursuant to section 201 of the United States-Peru Trade Promotion Agreement Implementation Act (Pub. L. 110–138; 19 U.S.C. 3805 note), Presidential Proclamation No. 8341 of January 16, 2009 (74 FR 4105) implemented the Peru TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Peru TPA.

Note 28(c) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Peru's trade surplus, by volume, with all sources for goods in HS subheadings 1701.11, 1701.12, 1701.91, 1701.99, 1702.40, and 1702.60, except that Peru's imports of U.S. goods classified under HS subheadings 1702.40 and 1702.60 that are originating goods under the Peru TPA and Peru's exports to the United States of goods classified under HS subheadings 1701.11, 1701.12, 1701.91, and 1701.99 are not included in the calculation of Peru's trade surplus.

Note 28(d) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Peru entered under subheading 9822.06.10 in an amount equal to the lesser of Peru's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2011, the most recent year for which data is available, Peru's imports of the sugar goods described above exceeded its exports of those goods by 212,217 metric tons according to data published by the *Superintendencia Nacional de Administracion Tributaria.* Based on this data, USTR determines that Peru's trade surplus is negative. Therefore, in accordance with U.S. Note 28(d) to subchapter XXII of HTS chapter 98, goods of Peru are not eligible to enter the United States duty-free under subheading 9822.06.10 in CY 2013.

Colombia: Pursuant to section 201 of the United States-Colombia Trade Promotion Agreement Implementation Act (Pub. L. 112–42; 19 U.S.C. 3805 note), Presidential Proclamation No. 8818 of May 14, 2012 (77 FR 29519) implemented the Colombia TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Colombia TPA.

Note 32(b) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Colombia's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Colombia's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Colombia TPA and Colombia's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Colombia's trade surplus.

Note 32(c)(i) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Colombia entered under subheading 9822.08.01 in an amount equal to the lesser of Colombia's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2011, the most recent year for which data is available, Colombia's exports of the sugar and syrup goods and sugar-containing products described above exceeded its imports of those goods by 621,365 metric tons according to data published by USDA Global Trade Atlas. Based on this data, USTR determines that Colombia's trade surplus is 621,365 metric tons. The specific quantity set out in U.S. Note 32(c)(i) to subchapter XXII of HTS chapter 98 for CY 2013 is 50,750 metric tons. Therefore, in accordance with that note, the aggregate quantity of goods of Colombia that may be entered duty-free under subheading 9822.08.01 in CY 2013 is 50,750 metric tons (i.e., the amount that is the lesser of Colombia's trade surplus and the specific quantity set out in that note for Colombia for CY 2013).

Panama: Pursuant to section 201 of the United States-Panama Trade Promotion Agreement Implementation

Act (Pub. L. 112–43; 19 U.S.C. 3805 note), Presidential Proclamation No. 8894 of October 29, 2012 (77 FR 66505) implemented the Panama TPA on behalf of the United States and modified the HTS to reflect the tariff treatment provided for in the Panama TPA.

Note 35(a) to subchapter XXII of HTS chapter 98 provides that USTR is required to publish annually in the **Federal Register** a determination of the amount of Panama's trade surplus, by volume, with all sources for goods in HS subheadings 1701.12, 1701.13, 1701.14, 1701.91, 1701.99, 1702.40 and 1702.60, except that Panama's imports of U.S. goods classified under subheadings 1702.40 and 1702.60 that are originating goods under the Panama TPA and Panama's exports to the United States of goods classified under subheadings 1701.12, 1701.13, 1701.14, 1701.91 and 1701.99 are not included in the calculation of Panama's trade surplus.

Note 35(c) to subchapter XXII of HTS chapter 98 provides duty-free treatment for certain sugar goods of Panama entered under subheading 9822.09.17 in an amount equal to the lesser of Panama's trade surplus or the specific quantity set out in that note for that calendar year.

During CY 2011, the most recent year for which data is available, Panama's imports of the sugar and syrup goods and sugar-containing products described above exceeded its exports of those goods by 531 metric tons according to data published by National Institute of Statistics and Census, Office of the General Comptroller of Panama. Based on this data, USTR determines that Panama's trade surplus is negative. Therefore, in accordance with U.S. Note 35(c) to subchapter XXII of HTS chapter 98, goods of Panama are not eligible to enter the United States duty-free under subheading 9822.09.17.

Islam A. Siddiqui,

Chief Agricultural Negotiator, Office of the U.S. Trade Representative.

[FR Doc. 2012–30249 Filed 12–14–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Guidance on Review and Approval of Public Charter Prospectuses: Extension of Effective Date to January 14, 2013

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Guidance on Review and Approval of Public Charter Prospectuses: Extension of Effective Date to January 14, 2013.

SUMMARY: The Department is publishing the following notice extending the effective date of a prior notice, dated November 13, 2012, on policies affecting the review and approval of public charter filings under 14 CFR part 380.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Attorney, Office of Aviation Enforcement and Proceedings (C–70), 1200 New Jersey Ave. SE., Washington, DC 20590, (202) 366–9349.

Guidance on Review and Approval of Public Charter Prospectuses: Extension of Effective Date to January 14, 2013

On November 13, 2012, the Department of Transportation's Office of International Aviation and the Office of Aviation Enforcement and Proceedings issued a notice providing guidance on the review and approval of public charter prospectuses. 77 FR 69692 (2012). The notice was to have taken effect on December 12, 2012. By this addendum, we are deferring the implementation date until January 14, 2013.

The notice was issued in light of the bankruptcy of Southern Sky Air & Tours, LLC d/b/a Direct Air. Our investigation of Direct Air revealed non-compliance with a number of existing regulatory requirements designed to protect consumers. Based on the Direct Air experience, we determined that by clarifying certain elements of our public charter regulations (14 CFR Part 380) we could promote more effective compliance with those regulations and thereby enhance consumer protection.

We have received a number of comments and questions from members of the public regarding the November notice. While we are firmly committed to enhancing consumer protection and preventing a recurrence of the type of problems encountered in the Direct Air situation, we want to be sure that interested parties with questions or comments about the notice have been afforded a reasonable opportunity to be heard, and that we have had the opportunity to consider their views fully. Therefore, we have decided to defer the effective date of our notice for 30 days, until January 14, 2013. Questions and comments regarding our November notice may be addressed to the Office of Aviation Enforcement and Proceedings (C–70), U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

An electronic version of this document is available at http://www.regulations.gov.

Dated: December 11, 2012.

Paul L. Gretch,

Director, Office of International Aviation.

Samuel Podberesky,

Assistant General Counsel for Aviation Enforcement and Proceedings.

[FR Doc. 2012–30293 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind a Notice of Intent and Draft Environmental Impact Statement: I–10 Corridor Improvement Study; Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind a Notice of Intent and Draft Environmental Impact Statement.

SUMMARY: The FHWA is issuing this notice to advise the public that we are rescinding the Notice of Intent (NOI) and Draft Environmental Impact Statement (EIS) for proposed freeway improvements along Interstate 10 (I–10) from State Route (SR) 51 to the Santan Freeway within Maricopa County, Arizona. A NOI to prepare an EIS for the I–10 Corridor Improvement Study was published in the **Federal Register** on February 4, 2002, with a subsequent correction to the project limits published in the **Federal Register** on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Hansen, Major Projects Manager, Federal Highway Administration, 4000 North Central Avenue, Suite 1500, Phoenix, AZ 85012–3500, Telephone: (602) 382–8964, Email: *alan.hansen@dot.gov*.

The FHWA Arizona Division Office's normal business hours are 8 a.m. to 5 p.m. (Mountain Standard Time).

SUPPLEMENTARY INFORMATION: On February 4, 2002, the FHWA, in cooperation with the Arizona Department of Transportation (ADOT), issued an NOI to prepare an EIS for proposed freeway improvements along I–10 from SR 51 to the Santan Freeway in Maricopa County, Arizona. The I–10 Corridor is in or adjacent to the cities of Phoenix, Tempe, and Chandler, as well as the Town of Guadalupe.

In May 2002, the FWHA issued a revised NOI to correct the project limits. The study area limits for the EIS consisted of approximately 15 miles of I–10 and segments of I–17, SR 143, and US Highway (US) 60. The study area primarily extended south along I–10 from the I–10/SR51/SR202L System

Interchange to the I–10/SR202L Santan Freeway System Interchange. The study area also included the segment of I–17 from the I–10/I–17 System Interchange west to 9th Avenue, SR 143 from Broadway Road north to the south bank of the Salt River, and US 60 from the I–10/US60 System Interchange east to Hardy Drive.

A No-Build Alternative and Build Alternative were being considered in the EIS for the Design Year 2030. The No-Build Alternative served as the baseline for the analysis conducted under the National Environmental Policy Act (NEPA). The proposed Build Alternative involved a combination of freeway widening and the construction of separate express and local lanes along I–10.

The construction of separate express and local lanes on I–10 between Buckeye and Baseline Roads is included in the Regional Transportation Plan (RTP) and Transportation Improvement Plan (TIP) adopted by the Maricopa Association of Governments (MAG) Regional Council. However, MAG is considering modifications to some of the transportation improvements that are presently programmed in the RTP and TIP, including the express and local lanes on I–10 between Buckeye and Baseline Roads. As such, the preparation of the EIS for the I–10 Corridor Improvement Study is being terminated. Any future transportation improvements in the I–10 Corridor will be determined through the funding and project reprioritization by MAG, and any future actions will progress under a separate environmental review process, in accordance with all applicable laws and regulations.

(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.)

Issued on: December 4, 2012.

Karla S. Petty,

FHWA Division Administrator, Phoenix, AZ.

[FR Doc. 2012–29918 Filed 12–14–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6156; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2008–0231; FMCSA–2008–0266; 2010–0114]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 11 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 3, 2013. Comments must be received on or before January 16, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–1999–6156; FMCSA–2000–7006; FMCSA–2000–7363; FMCSA–2002–12294; FMCSA–2004–18885; FMCSA–2008–0231; FMCSA–2008–0266; 2010–0114], 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 or Courier:* 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 number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 11 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 11 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Rick A. Benevides (MA)
Robert W. Brown (PA)
David D. Bungori, Jr. (MD)
Robert J. Clarke (NY)
David R. Cox (OR)
Charles M. Dunn (AL)
Victor B. Hawks (VA)
Gary T. Hicks (NC)
Robert T. Hill (AL)
John C. McLaughlin (SD)
Larry D. Wedekind (TX)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 11 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 54948; 65 FR 159; 65 FR 20246; 65 FR 45817; 65 FR 57230; 65 FR 77066; 66 FR 66969; 67 FR 46018; 67 FR 57267; 67 FR 71610; 69 FR 51346; 69 FR 53493; 69 FR 62742; 69 FR 64810; 69 FR 8260; 71 FR 19604; 71 FR 50970; 71 FR 62147; 71 FR 66217; 72 FR 185; 73 FR 36954; 73–46973; 73 FR 51689; 73 FR 54889; 73 FR 63047; 73 FR 75806; 73 FR 75807; 75 FR 34209; 75 FR 47886; 75 FR 50799; 75 FR 64396; 75 FR 77951). Each of these 11 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 16, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 11 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 29, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–30288 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0338]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 9 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. 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. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce.

DATES: Comments must be received on or before January 16, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2012–0338 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 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.'' FMCSA can renew exemptions at the end of each 2-year period. The 9 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Sava A. Andjelich

Mr. Andjelich, age 45, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my professional opinion and based solely on my findings, Mr. Andjelich appears to have sufficient visual capacity to perform driving tasks involved with commercial vehicles.'' Mr. Andjelich reported that he has driven straight trucks for 2 years, accumulating 60,000 miles, and tractor-trailer combinations for 23 years, accumulating 1.8 million miles. He holds an operator's license from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

William Audinwood

Mr. Audinwood, 63, has had a corneal scar in his left eye due to a traumatic incident since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/100. Following an examination in 2012, his optometrist noted, ''In my opinion, William Audinwood does have sufficient visual fields to operate a commercial vehicle.'' Mr. Audinwood reported that he has driven straight trucks for 36 years, accumulating 720,000 miles. He holds a Class B Commercial Driver's License (CDL) from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Keith E. Breeding

Mr. Breeding, 54, has had an arterial occlusion in his right eye since 2006. The best corrected visual acuity in his right eye is hand motion, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my opinion, Mr. Breeding has sufficient vision to perform the driving tasks required to operate a commercial vehicle, but I assume no responsibility for his ability and the final decision is on your agency.'' Mr. Breeding reported that he has driven straight trucks for 33 years, accumulating 18,150 miles, and tractor-trailer combinations for 26 years, accumulating 1.5 million miles. He holds a Class A CDL from Indiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Manual Chancey

Mr. Chancey, 72, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400, and in his left eye, 20/25. Following an examination in 2012, his optometrist noted, ''His vision is sufficient enough to operate a commercial vehicle.'' Mr. Chancey reported that he has driven tractor-trailer combinations for 25 years, accumulating 2 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David L. Ellis

Mr. Ellis, 31, has complete loss of vision in his right eye since 2007. The visual acuity in his left eye is 20/15. Following an examination in 2012, his ophthalmologist noted, ''He, in my opinion, has sufficient vision to perform the required commercial driving tasks.'' Mr. Ellis reported that he has driven tractor-trailer combinations for 7.5 years, accumulating 375,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jack A. Hemelgarn

Mr. Hemelgarn, 60, has a retinal detachment in his left eye due to a traumatic incident since 2008. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2012, his optometrist noted, ''In my opinion, from a vision stand point, he can safely perform the driving tasks required to operate a commercial motor vehicle.'' Mr. Hemelgarn reported that he has driven buses for 22 years, accumulating 880,000 miles. He holds a Class B CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Bobby L. Rupe

Mr. Rupe, 58, has complete loss of vision in his left eye due to a traumatic incident since 1991. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2012, his optometrist noted, ''In my medical opinion Mr. Rupe has sufficient vision to perform the driving task required to, operate a commercial vehicle.'' Mr. Rupe reported that he has driven tractor-trailer combinations for 34 years, accumulating 3.4 million miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary Wanek

Mr. Wanek, 49, has had a central retinal hole in his left eye since 1982. The best corrected visual acuity in his right eye is 20/20, and in his left eye, 20/200. Following an examination in 2012, his optometrist noted, ''In my medical opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wanek reported that he has driven straight trucks for 25 years, accumulating 175,000 miles. He holds an operator's license from Nebraska. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard A. Wilt

Mr. Wilt, 65, has had a macular scar in his right eye since birth. The best corrected visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2012, his optometrist noted, ''In my medical opinion, with Mr. Wilt's good visual acuity and normal peripheral visual fields, his vision is sufficient to perform the driving tasks required to operate a commercial vehicle.'' Mr. Wilt reported that he has driven straight trucks for 20 years, accumulating 730,000 miles. He holds an operator's license from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

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. The Agency will consider all comments received before the close of business January 16, 2013. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: November 28, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–30294 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0287]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 10, 2013. Comments must be received on or before January 16, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–2010–0287], 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 or Courier:* 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 number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Robert W. Blankenship (CA)
Bryan K. DeBorde (WA)
Michael K. Engemann (MO)
Pete R. Gonzalez (NM)
Perry D. Jensen (WI)
Joseph L. Jones (MD)

Gary L. Nicholas (MI)
James G. Pitchford (OH)
Virgil R. Story (AR)
John A. Thomas, Jr. (NC)
Richard L. Totels (TX)
James B. Woolwine (VA)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (75 FR 69737; 76 FR 1499). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 16, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 28, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–30287 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26066]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 27 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective January 9, 2013. Comments must be received on or before January 16, 2013.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) numbers: Docket No. [FMCSA–2006–26066], 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 or Courier:* 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 number for this notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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 procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 27 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 27 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Dennis M. Boggs (OH)
David L. Cattoor (NV)
Cesar A. Cruz (IL)
Arthur Dolengewicz (NY)
Wayne A. Elkins, II (OH)
Barry J. Ferdinando (NH)
Guadalupe J. Hernandez (IN)
Richard G. Isenhart (WV)
Damir Kocijan (FL)
Robert T. Lantry (MA)
John W. Laskey (NH)
Kenneth Liuzza (LA)
Samson B. Margison (OH)
Michael W. McClain (CO)
Terrence L. McKinney (TX)
Ellis T. McKneely (LA)
Dennis N. McQuiston (WA)
Garth R. Mero (VT)
Ronald C. Morris (NV)
Kenneth E. Parrott (MO)
Steven M. Scholfield (KY)
Randal C. Schmude (WI)
Dennis J. Smith (CO)
David C. Stitt (KS)
Kevin L. Truxell (FL)
Bruce A. Walker (WI)
Lee A. Wiltjer (IL)

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirements 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 provides 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 and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded 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(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 27 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (71 FR 63379; 72 FR 1051; 73 FR 78423; 75 FR 79083). Each of these 27 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the requirement specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption requirements.

These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by January 16, 2013.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 27 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent

with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: November 28, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–30292 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0087]

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 Title 49 U.S.C. 20502(a), this document provides the public notice that by a document dated October 31, 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–2012–0087.

Applicant: Norfolk Southern Corporation, Mr. Brian Sykes, Chief Engineer C&S Engineering, 1200 Peachtree Street NE., Atlanta, Georgia 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 Pittsburgh Line, from Harrisburg, Milepost (MP) PT 104.90 to Pittsburgh, PA, MP PT 353.35. All existing automatic signals on this line will be retired. The discontinuance will include automatic signals: PT 107.5, PT 116.1, PT 121.3, PT 124.1, PT 126.4, PT 128.6, PT 131.5, PT 135.75, PT 137.7, PT 139.8, PT 142.3, 146.8, PT 148.7 PT 151.1, PT 155.7, PT 157.8, PT 162.7, PT 167.2, PT 172.1, PT 174.6, PT 176.9, PT 182.2, PT 184.4, PT 186.7, PT 188.9, PT 193.9, PT 196.2, PT 198.1, PT 200.2, PT 204.9, PT 206.75, PT 209.0, PT 211.1, PT 215.7, PT 218.6, PT 221.3, PT 225.0, PT 228.0, PT 230.0, PT 234.0, PT 238.5, PT 239.4, PT 240.7, PT 241.6, PT 242.7, PT 245.6, PT 246.3, PT 249.5, PT 252.5, PT 254.8, PT 256.8, PT 257.1, PT 259.0, PT 261.1, PT 263.8, PT 268.5, PT271.3, PT 275.3, PT 277.1, PT 280.6, PT 283.1, PT 286.7, PT 292.7, PT 294.5, PT 296.4, PT 298.3, PT 302.5, PT 304.4, PT 307.4, PT 310.2, PT 315.1, PT 318.6, PT 312.7, PT 328.4, PT 330.4, PT 332.6, PT 334.6, PT 343.0, PT 345.2, PT 350.2

The installation of cab signals without wayside signals will include ''block clear'' signals at all control points in event of an onboard cab signal failure en route.

The reasons given for the proposed changes is that the installation of cab signals without wayside signals will improve train operations and will facilitate the installation of Positive Train Control on the Pittsburgh Line.

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 Ave. 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 January 31, 2013 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).

Issued in Washington, DC, on December 10, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30241 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0088]

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 November 13, 2012, the San Diego Trolley Incorporated (SDTI) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 213.57–Curves; elevation and speed limitations. FRA has assigned the petition Docket Number FRA–2012–0088.

SDTI seeks a waiver of compliance from provisions regarding cant deficiency contained at 49 CFR 213.57. Cant deficiency is a technical term describing the imbalance of inner and outer wheel loads when a rail vehicle traverses a curve. With the right combination of speed, curvature, and superelevation (the amount the outer rail is elevated above the inner rail), the loads on both inner and outer wheels will be equal, i.e. balanced. The curving speed corresponding to this balanced state is referred to as balance speed. At higher than the balance speed, the centrifugal force will cause the outer wheel load to increase and the inner wheel load to decrease. The manifestation of this load imbalance is that a lateral throw will be sustained by the passengers when the vehicle is traversing the curve. To counter the imbalance, the superelevation on the curve would have to be increased. The necessary amount of the increase in superelevation is the amount of cant deficiency.

SDTI intends to operate its SD100 and S70 light rail vehicles (LRV) on curves at speeds that will generate a cant deficiency up to, but not more than, 6 inches; but no more than the maximum authorized speed.

In support of its petition, STDI has submitted a report for a cant deficiency dynamic test that is to demonstrate that the LRVs can safely be operated at the requested 6 inches cant deficiency.

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 Ave. 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 January 31, 2013 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 December 10, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30240 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0091]

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 October 26, 2012, the Port Manatee Railroad (PMRR) has petitioned the Federal Railroad Administration (FRA) for an extension of its waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2010–0091.

In their petition, PMRR seeks relief from 49 U.S.C. 21103(a)(4), which in part requires a train employee to receive 48 hours off duty after initiating on-duty periods for 6 consecutive days. Specifically, PMRR seeks an extension of the waiver to allow a train employee to initiate on-duty periods for 6 consecutive days followed by 24 hours off-duty. In support of its request, PMRR explained that it is a small marine terminal switching railroad with only seven train employees, and that switching operations are always performed within the confines of Port Manatee, which consists of slow speed yard tracks. Additionally, PMRR argues that when its covered service employees are off duty they return to their residences, and are never required to deadhead or receive rest at lodging facilities as part of their railroad service.

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 Ave. 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 January 31, 2013 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 December 10, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30248 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2001–10214]

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 15, 2012, the Minnesota Northern Railroad (MNN) has petitioned the Federal Railroad Administration (FRA) for an extension of Waiver Docket Number FRA–2001–10214.

Specifically, MNN seeks to extend a waiver for Caboose MNN 019 from 49 CFR 223.13—Requirements for existing cabooses, which requires safety glazing for existing cabooses.

MNN states that the circumstances at the time of the original waiver have not changed. The caboose is still only used on special occasions as an office car for

officials and private persons for railroad business purposes.

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 January 31, 2013 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 December 10, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30238 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0059]

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 letter dated June 25, 2012, Napa Valley Railroad/Napa Valley Wine Train (NVRR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232—Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices. FRA assigned the petition Docket Number FRA–2012–0059.

NVRR seeks relief with respect to the application of certain provisions of 49 CFR Part 232, specifically, Appendix B Section 232.17(b)(2) for passenger car maintenance requirements. NVRR requests to extend all air brake clean, oil, test, and stencil periods from 1 year or 15 months to a period of 5 years on nine passenger equipment cars identified in its petition. The operation of the equipment is limited to 25 mph and has mileage estimated to not exceed 18,000 miles per year.

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 January 31, 2013 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 December 10, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30244 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0065]

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 May 29, 2012, Peter J. Douglas, on behalf of Union Tank Car Company (UTLX), has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 231–Railroad Safety Appliance Standards; specifically, 49 CFR 231.21(f)(3) that addresses the location of side handholds. FRA assigned the petition Docket Number FRA–2012–0065.

UTLX requests relief for cars where the side horizontal handholds are currently in compliance, as they intend to remove and replace the four horizontal handholds with vertical handholds on each corner of each car. Twelve cars are in the process of being constructed that are affected by the requirements of 49 CFR 231.21(f)(3). UTLX contends that the addition of the ergonomically designed vertical

handhold at each corner of the car would also eliminate the horizontal handhold (''knee knocker'') when boarding the car, and thus eliminate a tripping hazard while egressing. UTLX believes that the installation of the vertical handhold provides a safer means for railroad employees equipped with a radio, remote-control belt pack, and lantern to board the end platform or ride while standing on the sill step, and maintain three-point contact.

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 January 31, 2013 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 December 10, 2012.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–30246 Filed 12–14–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35701]

Norfolk Southern Railway Company—Petition for Declaratory Order

Norfolk Southern Railway Company (NS) filed a petition for a declaratory order on November 28, 2012, pertaining to 18 inverse condemnation lawsuits filed in the Circuit Court of Roanoke County, Va., against NS and Appalachian Power Company (APCO). In its petition, NS requests that the Board find that under 49 U.S.C. 10501(b), the claims of nuisance and inverse condemnation asserted against NS in those suits are preempted by federal law. For the reasons discussed below, a declaratory order proceeding will be instituted to consider the issues raised in the petition.

Background

According to the petition, between 1890 and 1900, NS constructed and began operation on a rail line in Roanoke County, Va., which has been an active line since that time. The plaintiffs in the state lawsuits are homeowners who live in a neighborhood near the NS line. According to NS, operations on its rail line predate the development of the neighborhood. APCO's property is adjacent to the rail line and lies between plaintiffs' properties and NS's rail line.

The petition alleges that, beginning in 2009, APCO began removing trees and erecting electrical transmission towers and lines on its land. Thereafter, plaintiffs filed their state court lawsuits against NS and APCO alleging, in part, that, since APCO removed the trees that had insulated their property from the effects of NS's rail operations, the dust (including coal dust), dirt, smoke, vibrations, and noise from the operation of NS's trains have damaged their property and diminished its value. Plaintiffs' court complaints claim that the operation of NS's rail line now constitutes a nuisance and that NS has violated Article I, section 11 of the Constitution of Virginia, which provides that private property shall not be taken or damaged for public use without just compensation to the property owner. NS does not dispute that its operation of the rail line constitutes a public use, but does contend that plaintiffs' claims are preempted by 49 U.S.C. 10501(b).

Discussion and Conclusions

The Board has discretionary authority under 5 U.S.C. 554(e) and 49 U.S.C. 721 to issue a declaratory order to eliminate a controversy or remove uncertainty. The Interstate Commerce Act, as revised by the ICC Termination Act of 1995, vests in the Board broad jurisdiction over ''transportation by rail carrier,'' 49 U.S.C. 10501(a)(1), which extends to property, facilities, instrumentalities, or equipment of any kind related to that transportation, 49 U.S.C. 10102(9). The preemption provision in the Board's governing statute states that ''the remedies provided under [49 U.S.C. 10101–11908] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law.'' 49 U.S.C. 10501(b). NS argues, and asks the Board to declare, that the claims asserted against it in the state lawsuits are preempted under this provision.

The Board will institute a declaratory order proceeding and establish a procedural schedule for the filing of pleadings. This will ensure that the record is complete on the issue of whether the remedies sought by plaintiffs are preempted by § 10501(b).[1]

The Board will consider this matter under the modified procedure rules at 49 CFR part 1112. NS's detailed petition will serve as its opening statement. Replies will be due 20 days from the date of service of this decision. NS's rebuttal will be due 27 days from the service date of this decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A declaratory order proceeding is instituted.

2. Replies to NS's petition are due by January 2, 2013.

3. NS's rebuttal statement is due by January 9, 2013.

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[1] In its petition, NS seeks leave to conduct ''any appropriate discovery.'' The Board, however, generally does not order discovery in declaratory order proceedings involving largely legal issues, *see Md. Transit Admin.—Pet. for Declaratory Order,* Docket No. FD 34975, slip op. at 8 (STB served Sept. 19, 2008), and NS does not explain, nor is it apparent, why discovery is needed here. For those reasons, and given NS's request for expedited review, the procedural schedule adopted here does not include a period for discovery.

4. A copy of this decision will be served upon the parties and counsel listed in the certificate of service appended to NS's petition as well as upon: Hon. Clifford R. Weckstein, Chief Judge, Roanoke County Circuit Court, P.O. Box 1126, 305 E. Main Street, Salem, VA 24153–1126.

5. This decision is effective on its service date.

Decided: December 12, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–30277 Filed 12–14–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

December 12, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before January 16, 2013 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

Office of International Affairs

OMB Number: 1505–0146.

Type of Review: Revision of a currently approved collection.

Title: Survey of U.S. Ownership of Foreign Securities.

Form: TDF–SHC, TDF–SHCA.

Abstract: The survey will collect information on U.S. holdings of foreign securities. The information will be used in the computation of the U.S. balance of payments accounts and international investments position, as well as in the formulation of U.S. financial and monetary policies. This survey is also part of an international effort coordinated by the IMF to improve worldwide balance of payments statistics. Respondents are primarily the largest banks, securities dealers, and investors.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 63,202.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2012–30291 Filed 12–14–12; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau; Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before February 15, 2013.

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- *U.S. mail:* 1310 G Street NW., Box 12, Washington, DC 20005;
- *Hand delivery/courier in lieu of mail:* 1310 G Street NW., Suite 200E, Washington, DC 20005;
- 202–453–2686 (facsimile); or
- *formcomments@ttb.gov* (email).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, please send no more than five 8.5 x 11 inch pages in order to ensure our equipment is not overburdened.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; or telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following TTB forms and recordkeeping requirements:

Title: Inventory—Manufacturer of Tobacco Products, Processed Tobacco, or Cigarette Papers and Tubes.

OMB Control Number: 1513–0032.

TTB Form Numbers: 5210.9.

Abstract: TTB F 5210.9 is used by manufacturers of tobacco products or processed tobacco to report the beginning and ending inventories of tobacco products and processed tobacco and at other times required by the TTB regulations. The information reported on this form is used by TTB to determine tax liability and compliance

with regulations, and for protection of the revenue.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 193.

Estimated Total Annual Burden Hours: 386.

Title: Report—Manufacturer of Tobacco Products or Cigarette Papers and Tubes; and Report—Manufacturer of Processed Tobacco.

OMB Control Number: 1513–0033.

TTB Form Numbers: 5210.5 and 5250.1.

Abstract: Manufacturers account for their taxable articles on this report. TTB uses this information to ensure that manufactures have properly paid taxes due and have complied with Federal laws and regulations.

Current Actions: We are submitting this information collection as a revision. We are making no changes to TTB F 5210.5. We are revising TTB F 5250.1 to incorporate amendments made in the final rule to the relevant regulations implementing the Children's Health Insurance Program Reauthorization Act of 2009 (see T.D. TTB–104, published in the **Federal Register** of June 21, 2012, at 77 FR 37287). The estimated number of respondents and estimated total annual burden hours remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 193.

Estimated Total Annual Burden Hours: 4,632.

Title: Inventory—Export Warehouse Proprietor.

OMB Control Number: 1513–0035.

TTB Form Number: 5220.3.

Abstract: TTB F 5220.3 is used by export warehouse proprietors to report inventories that are required by law and regulations.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 400.

Title: Alcohol Fuel Plants (AFP) Records, Reports, and Notices.

OMB Number: 1513–0052.

TTB Form Number: 5110.75.

TTB Recordkeeping Number: 5110/10.

Abstract: The data in this information collection is necessary to determine which persons are qualified to produce alcohol for fuel purposes and to identify such persons. The information collection accounts for distilled spirits produced and the spirits' proper disposition, keeps registrations current, and helps TTB evaluate variations from prescribed procedures.

Current Actions: We are submitting this information collection as a revision. The supporting statement reflects changes to regulatory section numbers as recodified in the final rule for the revision of 27 CFR Part 19, Distilled Spirits Plants (see T.D. TTB–92, published in the **Federal Register** on February 16, 2011, at 76 FR 9080).

Type of Review: Revision of a currently approved collection.

Affected Public: Farms, Business or other for-profit.

Estimated Number of Respondents: 1,663.

Estimated Total Annual Burden Hours: 2,784.

Title: Stills—Notices, Registration, and Records.

OMB Number: 1513–0063.

TTB Record Number: 5150/8.

Abstract: This information collection is used to account for stills and distilling apparatus for the regulation of distillation of distilled spirits, and to protect the revenue. We also use it to establish whether a person who intends to use a still or other distilling apparatus has qualified to conduct distilling operations and complied with other pertinent provisions of law and regulations.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden Hours: 42.

Title: Liquor Importer's Records and Reports.

OMB Control Number: 1513–0064.

TTB Record Number: 5170/1.

Abstract: Liquor importers account for taxable articles on this report. TTB uses this information to ensure that proprietors have complied with Federal laws and regulations and to protect against diversion.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 500.

Estimated Total Annual Burden Hours: 251.

Title: Records of Operations—Manufacturer of Tobacco Products or Processed Tobacco.

OMB Control Number: 1513–0068.

TTB Recordkeeping Number: 5210/1.

Abstract: Manufacturers of tobacco products or processed tobacco manufacturers must maintain records that provide accountability over the tobacco products or processed tobacco received and produced. These records ensure that each tobacco product or processed tobacco transaction can be traced, and support the collection of the proper tax.

Current Actions: We are submitting this information collection as a revision. We are revising this collection to incorporate amendments made to the regulations to implement the Children's Health Insurance Program Reauthorization Act of 2009 (see T.D. TTB–104, published in the **Federal Register** of June 21, 2012, at 77 FR 37287). The estimated number of respondents and estimated total annual burden hours remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 193.

Estimated Total Annual Burden Hours: 386.

Title: Tobacco Export Warehouse—Record of Operations.

OMB Control Number: 1513–0070.

TTB Recordkeeping Number: 5220/1.

Abstract: Export warehouses are used to store untaxpaid tobacco products and processed tobacco pending exportation. TTB uses these records to maintain accountability over these commodities for purposes of protecting tax revenue.

Current Actions: We are submitting this information collection as a revision.

We are revising this collection to incorporate amendments made to the regulations to implement the Children's Health Insurance Program Reauthorization Act of 2009 (see T.D. TTB–104, published in the **Federal Register** of June 21, 2012, at 77 FR 37287). The estimated number of respondents and estimated total annual burden hours remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Total Annual Burden Hours: 1 (one).

Title: Applications and Notices—Manufacturers of Nonbeverage Products.

OMB Control Number: 1513–0072.

TTB Record Number: 5530/1.

Abstract: These reports (Letterhead Applications and Notices) are submitted by manufacturers of nonbeverage products who are using distilled spirits upon which drawback will be claimed. These reports are used by TTB to ensure that the regulated individuals will conduct operations in compliance with the law and regulations. The applications and notices serve to protect the revenue by helping TTB personnel determine if spirits on which drawback has been claimed have been diverted to beverage use.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 510.

Estimated Total Annual Burden Hours: 510.

Title: Records of Things of Value to Retailers, and Occasional Letter Reports from Industry Members Regarding Information of Sponsorships, Advertisements, Promotions, etc. under the FAA Act.

OMB Control Number: 1513–0077.

TTB Recordkeeping Number: 5190/1.

Abstract: These records and occasional letter reports are used to show compliance with the provisions of the Federal Alcohol Administration (FAA) Act, which prohibits wholesalers, producers, or importers from giving things of value to retail liquor dealers, and which also prohibits industry members from conducting certain types of sponsorships, advertising, promotions, etc.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business and other for-profit, Individuals, or households.

Estimated Number of Respondents: 12,665.

Estimated Total Annual Burden Hours: 2,112.

Title: Application for Permit to Manufacture Tobacco Products or Processed Tobacco or to Operate an Export Warehouse; Application for Amended Permit to Manufacture Tobacco Products or Processed Tobacco or to Operate an Export Warehouse; Application for Permit to Import Tobacco Products or Processed Tobacco; and Application for Amended Permit to Import Tobacco Products or Processed Tobacco.

OMB Control Number: 1513–0078.

TTB Form Numbers: 5200.6, 5200.16, 5230.4, and 5230.5, respectively.

Abstract: These forms are used by tobacco industry members to obtain and amend permits necessary to engage in business as a manufacturer or importer of tobacco products or processed tobacco, or as an export warehouse proprietor.

Current Actions: We are submitting this information collection, including all four forms, as a revision. We are revising this collection to incorporate amendments made to the regulations to implement the Children's Health Insurance Program Reauthorization Act of 2009 (see T.D. TTB–104, published in the **Federal Register** of June 21, 2012, at 77 FR 37287). The estimated number of respondents and estimated total annual burden hours remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit; State, local, and tribal governments.

Estimated Number of Respondents: 1,518.

Estimated Total Annual Burden Hours: 2,277.

Title: Application for Extension of Time for Payment of Tax.

OMB Control Number: 1513–0093.

TTB Form Number: 5600.38.

Abstract: Taxpayers use this form to apply for an extension of time for the payment of tax, and TTB uses this information to determine if a taxpayer is qualified to extend payment of tax due to circumstances beyond the taxpayer's control.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12.

Estimated Total Annual Burden Hours: 3.

Title: Supporting Data for Nonbeverage Drawback Claims.

OMB Control Number: 1513–0098.

TTB Form Number: 5154.2.

Abstract: The form substantiates nonbeverage drawback claims by documenting the use of taxpaid distilled spirits in the manufacture of nonbeverage products. The form is used to verify that all distilled spirits can be accounted for and that drawback is paid only in the amount and for the purposes authorized by law.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 590.

Estimated Total Annual Burden Hours: 3,422.

Title: Record of Operations—Importer of Tobacco Products or Processed Tobacco.

OMB Number: 1513–0106.

TTB Recordkeeping Number: None.

Abstract: Importers of tobacco products or processed tobacco are required to maintain records of physical receipts and disposition of tobacco products or processed tobacco in order to prepare TTB Form 5220.6 (a monthly report).

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 586.

Estimated Total Annual Burden Hours: 1 (one).

Title: Monthly Report—Importer of Tobacco Products or Processed Tobacco.

OMB Number: 1513–0107.

TTB Form Number: 5220.6.

Abstract: Reports of the importation and disposition of tobacco products and processed tobacco are necessary to determine whether those persons issued the permits required by 26 U.S.C. 5713 should be allowed to continue their operations or renew their permits. This report is also used to determine if tobacco products or processed tobacco are being diverted for illegal purposes and to ensure that holders of basic permits are engaging in the operations stated on their permit.

Current Actions: We are submitting this information collection as a revision. We are revising the instructions at the top of the form to incorporate pertinent regulatory text. The estimated number of respondents and estimated total annual burden hours remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 586.

Estimated Total Annual Burden Hours: 14,064.

Title: Report of Removal, Transfer, or Sale of Processed Tobacco.

OMB Control Number: 1513–0130.

TTB Form Number: 5250.2.

Abstract: Unregulated transfers or sales of processed tobacco to persons who do not hold TTB permits could lead to processed tobacco falling into the hands of persons who would be unknown and unaccountable to TTB, including illegal manufacturers. In order to better regulate processed tobacco and prevent diversion, TTB requires the filing of a report covering all such transfers or sales. This report is used to protect the revenue.

Current Actions: We are submitting this information collection (including the associated form) as a revision. We are revising this collection to incorporate amendments to the regulations to implement the Children's Health Insurance Program Reauthorization Act of 2009 (see T.D. TTB–104, published in the **Federal Register** of June 21, 2012, at 77 FR 37287). The estimated number of respondents and estimated total annual burden hours remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 779.

Estimated Total Annual Burden Hours: 2,337.

Dated: December 12, 2012.

Amy R. Greenberg,

Assistant Director, Regulations and Rulings Division.

[FR Doc. 2012–30350 Filed 12–14–12; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 706–D

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 706–D, United States Additional Estate Tax Return Under Code Section 2057.

DATES: Written comments should be received on or before February 15, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: United States Additional Estate Tax Return Under Code Section 2057.

OMB Number: 1545–1680.

Form Number: 706–D.

Abstract: A qualified heir will use Form 706–D to report and to pay the additional estate tax imposed by Code section 2057. Section 2057 requires an additional tax when certain ''taxable events'' occur with respect to a qualified family-owned business interest received by a qualified heir. IRS will use the information to determine that the additional estate tax has been properly computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 180.

Estimated Time per Respondent: 2 hours, 50 minutes.

Estimated Total Annual Burden Hours: 530.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: December 10, 2012.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–30255 Filed 12–14–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Allowance for Private Purchase of an Outer Burial Receptacle in Lieu of a Government-Furnished Graveliner for a Grave in a VA National Cemetery

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Public Law 104–275 was enacted on October 9, 1996. It allows

the Department of Veterans Affairs (VA) to provide a monetary allowance towards the private purchase of an outer burial receptacle for use in a VA national cemetery. Under VA regulation (38 CFR 38.629), the allowance is equal to the average cost of Government-furnished graveliners less any administrative costs to VA. The law provides a Veteran's survivors with the option of selecting a Government-furnished graveliner for use in a VA national cemetery where such use is authorized.

The purpose of this Notice is to notify interested parties of the average cost of Government-furnished graveliners, administrative costs that relate to processing and paying the allowance and the amount of the allowance payable for qualifying interments that occur during calendar year 2013.

FOR FURTHER INFORMATION CONTACT: Tamula Jones, Budget Operations and Field Support Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. Telephone: 202–461–6688 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(e)(3) and (4) and Public Law 104–275, Section 213, VA may provide a monetary allowance for the private purchase of an outer burial receptacle for use in a VA national cemetery where its use is authorized. The allowance for qualified interments that occur during calendar year 2013 is the average cost of Government-furnished graveliners in fiscal year 2012, less the administrative costs incurred by VA in processing and paying the allowance in lieu of the Government-furnished graveliner.

The average cost of Government-furnished graveliners is determined by taking VA's total cost during a fiscal year for single-depth graveliners that were procured for placement at the time of interment and dividing it by the total number of such graveliners procured by VA during that fiscal year. The calculation excludes both graveliners procured and pre-placed in gravesites as part of cemetery gravesite development projects and all double-depth graveliners. Using this method of computation, the average cost was determined to be $298.00 for fiscal year 2012.

The administrative costs incurred by VA consist of those costs that relate to processing and paying an allowance in lieu of the Government-furnished graveliner. These costs have been determined to be $9.00 for calendar year 2013.

The allowance payable for qualifying interments occurring during calendar year 2013, therefore, is $289.00.

Approved: December 7, 2012.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2012–30307 Filed 12–14–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 242 December 17, 2012

Part II

Federal Trade Commission

16 CFR Part 455

Used Motor Vehicle Trade Regulation Rule; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 455

Used Motor Vehicle Trade Regulation Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice of proposed rulemaking; request for public comments.

SUMMARY: Except as specifically described below, the FTC has completed its regulatory review of its Used Motor Vehicle Trade Regulation Rule (''Used Car Rule'' or ''Rule'') as part of the FTC's systematic review of all current Commission regulations and guides. The Commission has decided to retain the Rule and, in a separate **Federal Register** document, to amend it by changing the Spanish translation of the Buyers Guide. In addition, the Commission also has decided to issue a notice of proposed rulemaking (''NPR'') soliciting comments on proposed changes to the Rule. In this NPR, the Commission addresses the comments received during its review and invites public comment on the following four proposed changes to the Buyers Guide: adding boxes to the back of the Buyers Guide where dealers would have the option to indicate manufacturers' and other third-party warranties; adding a statement to the Buyers Guide encouraging consumers to seek vehicle history information and directing consumers to an FTC Web site for more information about vehicle histories; adding catalytic converters and airbags to the List of Systems on the back of the Buyers Guide; and adding a statement in Spanish to the English Buyers Guide directing consumers who cannot read the Buyers Guide in English to ask for a copy of it in Spanish.

DATES: Written comments relating to the Used Car Rule must be received on or before February 11, 2013.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. For important information concerning the comments you file, please review the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be filed at the following electronic address: *https://ftcpublic.commentworks.com/ftc/usedcarrulenprm* by following the instructions on the web-based form. Comments in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex T), 600 Pennsylvania Avenue NW., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: John C. Hallerud, (312) 960–5634, Attorney, Midwest Region, Federal Trade Commission, 55 West Monroe Street, Suite 1825, Chicago, IL 60603.

SUPPLEMENTARY INFORMATION: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Used Car Rule Regulatory Review, Project No. P087604'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC Web site, at *http://www.ftc.gov/os/publiccomments.shtm.*

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential'' as provided in § 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: *https://ftcpublic.commentworks.com/ftc/usedcarrulenprm* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink *https://ftcpublic.commentworks.com/ftc/usedcarrulenprm.* If this Notice appears at *http://www.regulations.gov/#!home;tab=search,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Used Car Rule Regulatory Review, Project No. P087604'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex T), 600 Pennsylvania Avenue NW. Washington, DC 20580. The FTC requests that any comment filed in paper form be sent by courier or overnight service, if possible, to avoid security related delays.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Comments on the proposed disclosure amendments, which are subject to review under the Paperwork Reduction Act, 44 U.S.C. 3501–3521, additionally should be submitted to the Office of Management and Budget (''OMB''). If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to: (202) 395–5167.

Table of Contents

I. Overview of the Used Car Rule
II. Rulemaking Procedures
III. Summary of Comments

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

IV. Analysis of Comments and Regulatory Alternatives Under Further Review
V. Regulatory Review
VI. Communications to Commissioners and Commissioner Advisors by Outside Parties
VII. Paperwork Reduction Act
VIII. Regulatory Analysis
IX. Regulatory Flexibility Act
X. Invitation To Comment

I. Overview of the Used Car Rule

A. The Rule

In 1975, Congress passed the Magnuson-Moss Warranty-Federal Trade Commission Improvements Act (''Magnuson-Moss Act''), which required the Commission to initiate a rulemaking in connection with used car warranties using both the authority granted by the Magnuson-Moss Act and the rulemaking procedures set forth in § 18 of the FTC Act, 15 U.S.C. 57a.[2] Pursuant to this authority, the Commission issued its final Used Car Rule, which became effective on May 9, 1985, to create a remedy for oral misrepresentations and unfair omissions of material facts by used car dealers concerning warranty coverage, such as untrue and unenforceable promises about dealers' responsibilities and willingness to make repairs after sale. To accomplish that goal, the Rule provides a uniform method for disclosing warranty information on a window sticker called the ''Buyers Guide'' that dealers are required to display on used cars offered for sale to consumers.

The Rule requires used car dealers to disclose on the Buyers Guide whether they are offering a used car for sale with a dealer's warranty and, if so, the basic terms and conditions of the offered warranty, including the duration of coverage, the percentage of total repair costs to be paid by the dealer, and the exact systems covered by the warranty. The Rule also requires dealers to disclose that a used car is offered for sale without a warranty by checking a box marked ''AS IS—NO WARRANTY'' on the Buyers Guide. An ''as is'' sale voids implied warranties that arise under state law, such as an implied warranty of merchantability (which may mean, among other things, that goods are fit for the purposes for which such goods are ordinarily used). The Rule specifies an alternative version of the Buyers Guide for use in states that do not permit ''as is'' sales.

The Rule also requires certain other disclosures, including: a recommendation that consumers ask the dealer if a pre-purchase inspection is permitted; a warning against reliance on spoken promises and a recommendation to have all promises confirmed in writing; and a list of fourteen major systems of an automobile and the major defects that may occur in these systems. The Rule provides that the Buyers Guide disclosures are incorporated by reference into the sales contract and govern in the event of an inconsistency between the Buyers Guide and the sales contract.

The Rule attempts to protect consumers from potential post-purchase problems in several ways. First, the Buyers Guide may prompt consumers to have a car inspected before purchase. Second, the Buyers Guide requires dealers to provide consumers with warranty information so that they can shop for a car with a warranty that protects them in the event that the car subsequently has mechanical problems. Third, the Buyers Guide warns consumers not to rely on spoken promises and to get any assurances about a car from the dealer in writing.

In addition, the Rule requires that dealers use Spanish language versions of the Buyers Guide and make Spanish contract disclosures related to the Buyers Guide when conducting used car sales in Spanish.[3] In practice and as recommended by staff,[4] dealers who conduct substantial numbers of sales in Spanish should display both English and Spanish Buyers Guides to ensure that Spanish-speaking customers receive the required Spanish disclosures.

The Commission last reviewed and amended the Used Car Rule in 1995.[5] Specifically, the Commission amended the Rule by: (1) Adopting several minor grammatical changes to the Spanish language version of the Buyers Guide; (2) permitting dealers to display a Buyers Guide in any location on a used vehicle so long as the Buyers Guide is displayed conspicuously and prominently and with both sides of it readily readable; and (3) allowing dealers to obtain a consumer's signature on the Buyers Guide to acknowledge receipt if accompanied by a disclosure that the buyer is acknowledging receipt at the close of the sale.

As discussed in Section III below, the Commission initiated a review of the Rule in 2008.[6] The Commission is publishing this NPR based upon that Regulatory Review and its consideration of the comments received during the review.

B. Rulemaking History

The Rule promulgated by the Commission in 1984 has a long and complicated rulemaking history. The Rule grew out of an investigation begun by FTC staff in 1973. That investigation eventually led to a staff recommendation for the adoption of a trade regulation rule that would have required mandatory inspections by dealers, disclosure of defects, and mandatory warranties on parts that were found to be without defects.[7] In 1975, in the midst of the staff investigation, the Magnuson-Moss Act became effective, which required the Commission to initiate this rulemaking using certain procedures as set forth in § 18 of the FTC Act, 15 U.S.C. 57a.[8] The Magnuson-Moss Act explicitly prohibits the Commission from mandating warranties.[9]

The Commission published an initial staff report in December 1975 and issued an initial notice of proposed rulemaking in January 1976. The notice contained a proposed rule requiring a window sticker that disclosed warranty terms, warranty disclaimers, prior use of the vehicle, mileage, prior repairs, and dealer identification information. The proposed rule also specified a disclaimer for ''as is'' contracts.[10] The Commission issued a second notice asking for public comment on whether dealers should be required to disclose known defects and whether a vehicle had been inspected for defects. After receiving comments and conducting hearings in six cities, the staff recommended a revised rule that

[2] 15 U.S.C. 2309(b). This provision requires that the Commission ''initiate * * * a rulemaking proceeding dealing with warranties and warranty practices in connection with the sale of used motor vehicles.'' Trade Regulation Rule Concerning Used Motor Vehicles, Statement of Basis and Purpose and Regulatory Analysis (''SBP''), 49 FR 45692, 45703 (Nov. 19, 1984).

[3] 16 CFR 455.5. The Spanish language requirement was part of the Rule as promulgated in 1984. SBP, 49 FR at 45728.

[4] Staff Compliance Guidelines, Used Motor Vehicle Trade Regulation Rule (''Staff Compliance Guidelines''), 53 FR 17658, 17667 (May 17, 1988) (Illustration 3.10). The Staff Compliance Guidelines are available at *http://www.ftc.gov/bcp/guides/usedcar-comply.pdf.*

[5] 60 FR 62195 (Dec. 5, 1995). The history of the Used Car Rule is summarized in the SBP. 49 FR at 45692–95.

[6] 73 FR 42285 (July 21, 2008) (''Regulatory Review Notice'').

[7] SBP, 49 FR at 45692–95.

[8] These procedural requirements include issuing an advance notice of proposed rulemaking, providing an opportunity for an informal hearing, and submitting the advance notice of proposed rulemaking to the Committee on Commerce, Science, and Transportation of the United States Senate and the Committee on Energy and Commerce of the United States House of Representatives. 15 U.S.C. 57a.

[9] 15 U.S.C. 2302(b)(2) (''Nothing in this chapter * * * shall be deemed to authorize the Commission * * * to require that a consumer product or any of its components be warranted.''); SBP, 49 FR at 45718.

[10] SBP, 49 FR at 45693.

required mandatory inspections, disclosure of defects regarding certain mechanical and safety components of used cars, warranty coverage, repair cost estimates, prior use, mileage, availability of service contracts, vehicle identification information, and dealership identification information.[11]

The Commission itself met and heard oral presentations from selected rulemaking participants concerning the proposed rule [12] and, without making a final determination, rejected staff's recommendation for mandatory inspections, and directed staff to analyze an optional inspection approach. The staff then recommended optional inspections, and, in May 1980, the Commission tentatively adopted an optional inspection rule.[13] The Commission also directed staff to delete a requirement that dealers provide an estimated cost of repair for systems marked ''NOT OK'' and a disclosure relating to vehicles that an insurer had declared to be a ''total loss.'' [14]

In August 1981, the Commission adopted a final rule that did not include the optional inspection provision. Instead, the Commission decided to require that dealers disclose on a window sticker warranty information and major defects known to the dealer.

In May 1982, both houses of Congress vetoed the 1981 Rule, under the authority of the FTC Improvements Act of 1980. Several consumer groups then brought suit against the FTC, the U.S. Senate, and the U.S. House of Representatives to block the veto, arguing that the legislative veto was unconstitutional.[15] In 1983, the Supreme Court held that the legislative veto that invalidated the 1981 Rule was unconstitutional.[16]

Prior to the Congressional veto, several parties had sought review of the 1981 Rule in the Second Circuit.[17] This review was stayed following the legislative veto and reinstated after the Supreme Court's reversal of the veto. In 1983, the Commission decided that the Rule would become effective six months after the Second Circuit's entry of a judgment that disposed of the reinstated petitions for review, and, on the same date, also decided to reexamine the 1981 Rule. The parties filed a motion with the Second Circuit seeking leave to make additional submissions and written presentations to the Commission. Pursuant to that motion and the Commission's own decision to reexamine the 1981 Rule, the Commission and the parties agreed to a remand to the Commission from the Second Circuit. The remand order required the Commission to reopen the record, particularly with respect to sections of the 1981 Rule dealing with the disclosure of known defects, and to provide notice and an opportunity to submit comments and rebuttal comments. Other than the remand, the Second Circuit retained jurisdiction over the Rule.

In 1984, the Commission adopted a final rule that superseded the 1981 Rule. The Commission eliminated the known defects provision, among others, in the final 1984 Rule.[18] The 1984 Rule was not challenged further in the Second Circuit or elsewhere. The 1984 Rule became effective in 1985 and applies throughout the United States, except Wisconsin and Maine.[19]

During the Commission's last regulatory review of the Rule in 1995, a number of the proposals raised during the original rulemaking, or similar proposals, were again considered and rejected by the Commission. For example, in 1995, the Commission rejected requiring dealers to disclose known defects,[20] requiring dealers to keep copies of the Buyers Guides,[21] and expanding the Rule to encompass private used car sales.[22] The Commission decided to retain the Rule, with minor amendments, and since then the Rule has remained unchanged.

II. Rulemaking Procedures

Pursuant to the Dodd-Frank Act Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), the FTC is authorized to prescribe rules under Section 553 of the Administrative Procedure Act (''APA'') [23] with respect to unfair or deceptive acts or practices by motor vehicle dealers.[24] Under the Dodd-Frank Act, the FTC's APA rulemaking authority became effective as of July 21, 2011, the designated ''transfer date'' established by the Treasury Department.[25]

Because the Dodd-Frank Act authorized the Commission to use APA procedures for notice and public comment in issuing or amending rules with respect to motor vehicle dealers, the FTC will not use the procedures set forth in Section 18 of the FTC Act, 15 U.S.C. 57a, with respect to these proposed revisions to the Used Car Rule and the Used Car Buyers Guide. Accordingly, the Commission is publishing this Notice of Proposed Rulemaking pursuant to Section 553 of the APA.

III. Summary of Comments

The Commission received comments addressing the three categories of specific questions expressly asked by the Regulatory Review Notice: [26] comments concerning the Spanish translation of the Buyers Guide and whether a bilingual Buyers Guide would be feasible and beneficial; [27] comments concerning the utility of the List of Systems and defects on the reverse side of the Buyers Guide; and comments concerning whether the Buyers Guide could better disclose manufacturer and other third-party warranties. In addition, many commenters again raised issues as to whether the Rule should or should not be expanded to broaden the types of information that dealers are required to disclose on the Buyers Guide, such as information concerning an individual vehicle's prior use, title history, and mechanical condition.

The Commission received twenty-five comments from twenty-one

[11] *Id.*

[12] The selected participants included several organizations that have also commented during the current rule review, including the National Automobile Dealers Association, National Independent Automobile Dealers Association, and National Consumer Law Center. *Id.* at 45694 n.19.

[13] *Id.* at 45694.

[14] *Id.*

[15] Consumers Union of the U.S., Inc., and Public Citizen, Inc., were plaintiffs in the underlying suit. *Consumers Union of the U.S., Inc.* v. *FTC,* 691 F.2d 575 (DC Cir. 1982), *aff'd sub nom., Process Gas Consumers Group* v. *Consumers Energy Ass'n of America,* 463 U.S. 1216 (1983).

[16] *Process Gas Consumers Group,* 463 U.S. 1216.

[17] SBP, 49 FR at 45694 (*citing Miller Motor Car Corp.* v. *FTC,* No. 81–4144 (2d Cir. 1981)).

[18] *See id.* at 45694–95.

[19] The Rule provides that the Commission will exempt a state from the Rule's coverage upon application by an appropriate state agency if the Commission determines that the state has a requirement that affords equal or greater protections to consumers than the Rule. The exemption shall last as long as the state administers and enforces its requirement effectively. 16 CFR 455.6.

The Commission granted Wisconsin an exemption pursuant to 455.6 in 1986. 51 FR 20936 (June 9, 1986). The Commission granted Maine an exemption in 1988. 53 FR 16390 (May 9, 1988).

[20] 60 FR at 62196–97.

[21] *Id.* at 62197.

[22] *Id.* at 62197–98.

[23] 5 U.S.C. 553.

[24] Public Law 111–203, Title X, § 1029(d); 12 U.S.C. 5519(d). The term ''motor vehicle dealer'' refers to ''any person or resident in the United States, or any territory of the United States, who—(A) is licensed by a State, a territory of the United States, or the District of Columbia to engage in the sale of motor vehicles; and (B) takes title to, holds an ownership in, or takes physical custody of motor vehicles.'' 12 U.S.C. 5519(f)(2).

[25] *See* 75 FR 57252 (Sept. 20, 2010); Dodd-Frank Act § 1029A.

[26] 73 FR 42285, *supra* note 6.

[27] Along with this NPR, the FTC is also publishing a final rule revising the Spanish translation of the Buyers Guide. In issuing this final rule, the FTC concluded that it would continue to require translations of the Buyers Guide only into Spanish rather than into multiple languages as some commenters proposed. Spanish is the second most commonly spoken language in the United States after English.

commenters.[28] The commenters include: an automobile auction firm,[29] an automotive repair firm,[30] an online seller of used cars,[31] automobile dealers,[32] individual consumers,[33] a consumer protection attorney,[34] a group of consumer advocacy organizations,[35] national automobile dealers' associations,[36] state automobile dealers' associations,[37] suppliers of dealer forms,[38] county consumer protection agencies,[39] the National Association of Attorneys General,[40] the International Association of Lemon Law Administrators,[41] and the Wisconsin Department of Transportation.[42]

Although not specifically raised in the Regulatory Review Notice, a number of comments address whether dealers should be required to provide consumers with vehicle history information, including title history, damage history, prior use, and whether a vehicle ever was a lemon law buyback. A group of consumer advocacy organizations recommended mandatory dealer inspections and that dealers be required to disclose known defects.[43] This group also proposed that the Rule require dealers to disclose state title record information, and, in particular, information that is now being made available through the National Motor Vehicle Title Information System (''NMVTIS''), a Department of Justice system that provides consumers with automobile information to prevent the sale of stolen and unsafe vehicles.[44]

Industry commenters opposed these proposals to expand the Rule to require the display of vehicle history and title information. They expressed concern that dealers would have difficulties complying with a federal standard in light of the large variation in state regulation of vehicle titles. Industry commenters also raised concerns about the costs that dealers would face in attempting to comply with Buyers Guide disclosures of title information and with the increased risk of liability that dealers could face if they are required by the Rule to make such disclosures.

Commenters also discussed the specific issues raised in the Regulatory Review Notice: whether to permit a bilingual Buyers Guide and to change the Spanish translation; whether to retain the List of Systems; and whether to modify the Rule to address disclosures of manufacturers' and other third-party warranties. On all but one of these issues, the various commenters often expressed differing views, as described and analyzed below. The only commenter to discuss the proposed Spanish translation changes supported the changes.

None of the commenters provided studies or other empirical evidence in support of the positions taken.

IV. Analysis of Comments and Regulatory Alternatives Under Further Consideration

The Commission is considering several revisions to the Buyers Guide based upon its review of the comments received in response to the Regulatory Review Notice. The Commission has determined to retain the Rule and is seeking comments on the following potential revisions to the Rule: (1) Revising the Buyers Guide to provide additional boxes where dealers would have the option to indicate manufacturers' and third-party warranties; (2) adding a statement to the Buyers Guide encouraging consumers to seek vehicle history information and directing consumers to an FTC Web site for more information about vehicle histories and sources for that information;[45] (3) retaining the List of Systems and adding catalytic converters and airbags to it; and (4) adding a statement in Spanish to the English Buyers Guide directing consumers who cannot read the Buyers Guide in English to ask for a copy of it in Spanish.

A. Proposed Revisions to Buyers Guide Warranty Disclosures

The Regulatory Review Notice asked a series of questions seeking comments about possible changes to the Buyers Guide intended to enhance the disclosure of warranties, such as unexpired manufacturers' warranties, certified used car warranties, and other third-party warranty products (Questions III.B(4)–(8)). The Commission proposes revising the Buyers Guide as described in this NPR to improve the way in which dealers can indicate whether a manufacturer's or other third-party warranty applies.[46] The Commission invites comments on its proposal.

The Regulatory Review Notice included a proposed Buyers Guide containing boxes where dealers could indicate whether a vehicle was covered by third-party warranties other than warranties from the dealer. To

[28] Comments were submitted in response to the Regulatory Review Notice from: Allain-Geisel (''Allain-Geisel''); Anderson, David (Folsom Lake Dodge) (''Anderson''); Broward County, Florida, Permitting, Licensing and Consumer Protection Division (''Broward County''); Campbell, James (Carlabels.com) (''Carlabels''); CarMax Auto Superstores, Inc. (''CarMax''); Copart, Inc. (''Copart''); Dealer Specialties (''Dealer Specialties''); Hillig, Rebecca for Hillig Auto Center (''Hillig''); Howard County Office of Consumer Affairs (''Howard County''); Oregon Vehicle Dealer Association (''Ore. Vehicle Dealer Ass'n''); Minnesota Automobile Dealers Association (''MADA''); National Association of Attorneys General (''NAAG'') (appending and incorporating comment from International Association of Lemon Law Administrators (''IALLA'') (Att. A.)); National Automobile Dealers Association (''NADA''); Consumers for Auto Safety and Reliability, *et al.* (collectively referred to here as ''CARS,'' *see* note 35); National Independent Automobile Dealers Association (''NIADA''); Barbara Sachau (''Sachau''); Stephen Swann (''Swann''); Wholesale Forms, Inc. (''Wholesale Forms''); and Wisconsin Department of Transportation (''WI DOT''). These comments are available online at *http://www.ftc.gov/os/comments/usedcarrule/index.shtm.*

Comments from Downey Brand LLP (''Downey Brand'') and NAAG submitted during the reopened comment period are available at:

http://www.ftc.gov/os/comments/usedcarrulereopen/index.shtm.

[29] Copart.

[30] Hillig.

[31] Downey Brand.

[32] Anderson; CarMax.

[33] Allan-Geisel; Sachau.

[34] Swann.

[35] The comment from the consumer advocacy groups collectively referred to as ''CARS'' is a joint letter from the National Consumer Law Center, Consumer Action, Consumers for Auto Reliability and Safety (''CARS''), Consumer Federation of America (''CFA''); Consumer Federation of California (''CFC''), National Consumer Law Center (''NCLC'') (on behalf of its low income clients); U.S. Public Interest Research Group (''PIRG''); and Watsonville Law Center (''WLC''). CARS signed the comment on behalf of the other members of the group.

[36] NIADA and NADA. On March 17, 2009, NIADA and NADA submitted supplemental comments. NIADA's comments are identified respectively as NIADA1 and NIADA2. NADA's comments are similarly identified as NADA1 and NADA2.

[37] Ore. Vehicle Dealer Ass'n; MADA.

[38] Carlabels; Dealer Specialties; Wholesale Forms.

[39] Broward County; Howard County. Howard County joins the CARS comment.

[40] NAAG. Forty-two attorneys general signed onto the NAAG comment. On June 15, 2009, during the reopened comment period, NAAG submitted a second comment responding to NADA and NIADA. NAAG=s comments submitted during the initial comment period are identified as NAAG1, and its second comment is identified as NAAG2.

[41] IALLA. IALLA=s comment is appended to NAAG1.

[42] WI DOT.

[43] CARS at 17–18.

[44] NMVTIS was created pursuant to the Anti-Car Theft Act of 1992, 49 U.S.C. 30501–05. NMVTIS Final Rule, 74 FR 5740 (Jan. 30, 2009). NMVTIS provides consumers with vehicle history information such as title issue date, latest odometer data, any theft history data, any brand assigned to a vehicle and date applied, and any salvage history. National Motor Vehicle Title Information System Frequently Asked Questions, *http://www.nmvtis.gov/nmvtis_faq.html#info.* For a more extensive discussion of NMVTIS, see *infra* Part III.B.1.

[45] The Web site would be created if the Commission amends the Rule and adopts such a Buyers Guide statement. The Commission also is exploring, and invites comments on, additional ways that this information could be made available to consumers for whom Internet access may not be readily available.

[46] In the proposed rule appearing at the end of this NPR, the Commission also proposes corresponding changes to ' 455.2 Consumer sales-window form, which discusses the Buyers Guide.

differentiate among the various types of possible warranties, this Buyers Guide used the term ''dealer warranty.'' Industry commenters generally favored the approach outlined in the Regulatory Review Notice, but suggested alternatives that might make a revised Buyers Guide clearer to consumers. In light of the comments from industry, the Commission proposes that disclosing manufacturers' warranties should be optional because dealers often do not know whether a manufacturer's warranty applies.

1. Current Buyers Guide Warranty Disclosures

The Buyers Guide's primary purpose is to create a readily understandable disclosure of the warranty coverage offered by a used car dealer. Currently, the Buyers Guide has two large boxes where dealers can indicate whether they offer a warranty on a used car or offer it without a warranty, *i.e.,* ''as is:''

☐ **AS IS - NO WARRANTY**

YOU WILL PAY ALL COSTS FOR ANY REPAIRS. The dealer assumes no responsibility for any repairs regardless of any oral statements about the vehicle.

☐ **WARRANTY**

The Rule currently provides for an alternative Buyers Guide in states that prohibit dealers from waiving implied warranties by selling vehicles ''as is.''

☐ **IMPLIED WARRANTIES ONLY**

This means that the dealer does not make any specific promises to fix things that need repair when you buy the vehicle or after the time of sale. But, state law "implied warranties" may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

☐ **WARRANTY**

Beneath these large boxes is a space where dealers are instructed to provide details of the warranty coverage they offer by identifying the ''Systems Covered'' and the ''Duration'' of coverage for each system. Dealers are required to indicate the warranties that they offer by checking the appropriate large warranty box and completing the Systems Covered/Duration section. The Rule does not require dealers to identify any other applicable warranties, such as unexpired manufacturers' warranties, that are the responsibility of third parties. The Rule also does not provide any mechanism comparable to the large boxes to identify these warranties.

Instead, the Rule permits (but does not require) dealers to indicate the applicability of an unexpired manufacturer's warranty by adding the following statement in the Systems Covered/Duration section:

MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc.[47]

When a vehicle is still covered by an unexpired manufacturer's warranty but is not warranted by the dealer, the Staff Compliance Guidelines advise that dealers may add an optional statement that: ''[t]he dealership assumes no responsibility for any repairs, regardless of any oral statements about the vehicle. All warranty coverages comes from the unexpired manufacturer's warranty.''[48]

2. Proposal for Disclosing Third-Party Warranties on Buyers Guide

The Regulatory Review Notice contained a proposed Buyers Guide that included additional boxes, comparable to those now used to identify dealer warranties, where dealers could easily identify third-party warranties, such as unexpired manufacturers' warranties. The Regulatory Review Notice version of the Guide included the boxes for third-party warranty information on the front of the Guide. After reviewing the comments, the Commission is seeking public comment on a modified Buyers Guide format that differs slightly from the version included in the Regulatory Review Notice.

Specifically, the Commission proposes a revised Buyers Guide that contains some minor wording changes designed to increase readability. More important, the proposed revised Buyer Guide places the additional boxes for

[47] 16 CFR 455.2(b)(2)(v). The SBP does not discuss the optional unexpired manufacturer's warranty statement.

[48] 53 FR at 17663 (1988).

third-party warranty disclosures on the reverse side, above the List of Systems. Dealers who choose to disclose warranty coverage from manufacturers or other third parties may do so by checking the appropriate box or boxes on the reverse side of the Buyers Guide. This format leaves more space for dealers to describe details of their own warranties in the Systems Covered/Duration section than was available in the modified Buyers Guide that appeared in the Regulatory Review Notice, and it separates the ''Dealer Warranty'' section from the ''Non-Dealer Warranty'' section. The face of the proposed revised Buyers Guide includes a statement directing consumers to the back of the Buyers Guide for ''more about warranties and other information that applies to this vehicle,'' instead of the current instruction to see the back for the List of Systems.[49]

The Commission seeks comments on the following proposed revised Buyers Guide: In states that do not permit ''as is'' sales, the face of the Buyers Guide would appear as:

BILLING CODE 6750–01–P

BUYERS GUIDE

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

VEHICLE MAKE MODEL YEAR VEHICLE IDENTIFICATION NUMBER (VIN)

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

☐ **IMPLIED WARRANTIES ONLY**

The dealer doesn't make any promises to fix things that need repair when you buy the vehicle or afterward. But *implied warranties* under your state's laws may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

☐ **DEALER WARRANTY**

☐ FULL WARRANTY.

☐ LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

SYSTEMS COVERED: **DURATION:**

Before you buy this used vehicle:

1. **Get information about its history. Visit the Federal Trade Commission at ftc.gov/usedcars. You will need the vehicle identification number (VIN), shown above, to make the best use of the resources on this site.**
2. **Ask the dealer if your mechanic can inspect the vehicle on or off the lot.**

SEE OTHER SIDE for more about warranties and other information that applies to this vehicle.

Si usted no puede leer este documento en inglés, pídale al concesionario una copia en español.

[49] The Buyers Guide currently states, ''SEE THE BACK OF THIS FORM for important additional information, including a list of some major defects that may occur in used motor vehicles.''

☐ **NON-DEALER WARRANTIES**

☐ MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle.

☐ MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.

☐ OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

☐ SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *Implied warranties* under your state's laws may give you additional rights.

Here is a list of some major defects that may occur in used vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dog tracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage excluding normal seepage
- Cracked or damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)
- Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Air Bags

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage
- Catalytic Converter

DEALER NAME _____

ADDRESS _____

TELEPHONE _____ EMAIL _____

FOR COMPLAINTS AFTER SALE, CONTACT: _____

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removing this label before consumer purchase (except for purpose of test-driving) violates federal law (16 C.F.R. 455).

BILLING CODE 6750–01–C

The back of the Buyers Guides in both cases would appear as:

Both NADA and NIADA generally favored revising the Buyers Guide by adding boxes that dealers could check to disclose third-party warranties.[50] No commenters raised significant objections to the proposed additional boxes.[51] The comments, however, also raise questions about how to make the disclosures clearer and about how dealers would complete the revised Buyers Guide included in the Regulatory Review Notice, including (1) whether dealers can check multiple boxes in the ''Non-Dealer Warranty'' section; (2) what dealers should do when they cannot determine if a manufacturer's warranty applies; (3) what dealers should do when only portions of a manufacturer's warranty apply; and (4) how to treat warranties from third parties other than manufacturers.

Several commenters addressed the statement in the version of the Buyers Guide in the Regulatory Review Notice that directs consumers to ''[c]onsult the warranty booklet for details as to warranty coverage, expiration, service location, etc.'' [52] Some consumer advocacy groups argued that dealers should be required to provide warranty booklets to consumers for these third-party warranties. Industry groups, on the other hand, explained that dealers often do not have such warranty booklets, do not receive them from trade-in customers, and cannot obtain them from manufacturers. Moreover, dealer groups commented that many manufacturers do not provide booklets and, therefore, dealers cannot possibly comply with a requirement that they provide the books.

Considering the comments as a whole, the Commission is proposing to modify

[50] The proposed revised Buyers Guide in this NPR may address some of the questions raised by NADA and NIADA about how to complete the Buyers Guide proposed in the Regulatory Review Notice. *See* NADA1 at 6–10; NIADA1 at 8–11. The Commission will reexamine those comments in light of the comments it receives concerning the proposed revised Buyers Guide.

[51] One commenter, Wholesale Forms, thought that using the terms ''dealer warranty'' and ''manufacturer's warranty'' in the same document could confuse consumers. Wholesale Forms at 5–6. That commenter and others also voiced concerns that any changes to the Buyers Guide should be carefully considered because of the costs that would be imposed on dealers to change to a new form after more than twenty-five years of using the same Buyers Guide.

[52] This statement was set forth in the ''Non-Dealer Warranties'' section, below the ''other used car warranty applies'' box. The proposed revised Buyers Guide in this NPR uses the term ''vehicle'' in place of ''car'' to recognize that the Rule applies to vehicles, such as light duty pickup trucks, in addition to cars.

the warranty booklet statement. Commenters have noted that dealers may not have full information on manufacturers' warranties. Franchised dealers may have warranty information on their own manufacturers' products but not on other manufacturers' vehicles, and independent nonfranchised dealers may not have ready access to warranty terms from manufacturers. Other types of warranty products such as so-call ''certified'' manufacturers' warranties also may not be memorialized by actual ''booklets.'' [53] Therefore, the proposed revised Buyers Guide advises: ''Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations.'' The current Buyers Guide already contains a similar statement with respect to dealer warranties.[54] The proposed revised Buyers Guide is not intended to provide full details about any non-dealer warranty and would simply alert consumers to obtain additional information for details about the warranty coverage.

The Commission proposes removing a box from the Buyers Guide proposed in the Regulatory Review Notice that would have stated:

> ''NO INFORMATION PROVIDED. The dealer provides no information about other warranties that may apply.''

Industry groups questioned when to check this box, including whether dealers should check the box when they have reason to believe, but are not certain, that a manufacturer's warranty applies.[55] In addition to confusing dealers about when to check the box, the ''NO INFORMATION'' box also could confuse consumers into believing that third-party warranty coverage applies, although the dealer has not determined that it does. Moreover, the box is not actually needed because dealers could indicate that they offer no information about third-party warranties simply by leaving the boxes associated with third-party non-dealer warranties blank. The Commission believes that these points are well taken and, therefore, the proposed revised Buyers Guide included in this NPR does not contain the ''NO INFORMATION'' box.

3. Disclosure of Unexpired Manufacturers' Warranties

The Regulatory Review Notice asked for comments on the Rule's current system for disclosing unexpired manufacturers' warranties, which permits, but does not require, dealers to indicate that an unexpired manufacturer's warranty applies. Some commenters suggested that the Rule should require dealers to disclose unexpired manufacturers' warranties, but industry commenters opposed such a requirement.

Consumer protection authorities and a consumer advocacy group commented that dealers should be required to disclose any manufacturers' warranties and whether a manufacturer's warranty has been terminated because of a salvage title or other vehicle history.[56] The comments differ in the amount of information that each would require dealers to disclose, but all assume that dealers have, or can readily determine, whether a manufacturer's warranty applies to an individual vehicle.

Industry groups opposed mandatory disclosure of manufacturers' warranties, noting that dealers often cannot determine readily whether a manufacturer's warranty applies.[57] The association of franchised new car dealers (NADA) commented that franchised dealers may not have access to warranty information from manufacturers other than the ones for which they have a franchise.[58] NADA also commented that trade-in customers may not provide dealers with sufficient information to determine if a manufacturer's warranty still applies because coverage can be denied for so many reasons in addition to expiration of the warranty term, such as damage, poor maintenance, differing terms for separate vehicle systems, and non-transferability.[59] An automobile auction firm commented that a mandatory disclosure requirement could expose dealers to potential liability for a manufacturer's warranty because the Buyers Guide is incorporated into the final contract of sale.[60]

The Rule does not now require dealers to disclose warranties, such as manufacturers' warranties, for which the dealers are not responsible, and the comments do not present compelling reasons to expand the Rule's current scope. Industry groups noted that dealers do not necessarily have, and cannot easily acquire, the warranty information that the consumer advocacy groups assume they possess. Consequently, dealers may not always be able to provide consumers with accurate information and may be unable to comply with a mandatory disclosure provision.[61] Therefore, the Commission does not propose making mandatory the optional disclosure of unexpired manufacturers' warranties.

B. Proposals on Vehicle History and Condition

As in the earlier proceedings involving this Rule, many commenters urged that the Buyers Guide provide a variety of information on the history of the vehicle and let consumers know whether the car has problems at the time of sale. As noted above, many of these proposals were previously considered and rejected, in part because the information is already provided in a different form, dealers do not necessarily themselves have reliable information for making disclosures, and it is not clear that, overall, placing some of this information on a buyers guide would actually aid consumer purchase decisions.

The Rule as it currently stands attempts to address some of the concerns consumers might have about post-sale problems. The Buyers Guide makes it easier for consumers to shop for and choose a warranty that would provide protection in the event of mechanical problems. It alerts

[53] Certified used car programs began appearing in the mid-1990s. The programs vary, but typically a manufacturer attaches a new warranty to vehicles that have been returned to a dealer from a lease or a trade-in if they are ''certified'' by its franchised dealer to meet certain mechanical, age, and mileage requirements. Some dealerships offer their own warranties on used cars that are ''certified'' to meet certain mechanical, age, and mileage requirements. *See Certified Used Cars—The Wave of the Future, Edmunds.com, Inc., http://www.edmunds.com/car-buying/certified-used-cars-the-wave-of-the-future.html.*

[54] Adjacent to the full or limited warranty boxes above the Systems Covered/Duration section of the Buyers Guide, the Buyers Guide states, ''[a]sk the dealer for a copy of the warranty document for a full explanation of warranty coverage, exclusions, and the dealer's repair obligations.''

[55] NADA1 at 10.

[56] NAAG1 at 8 (also urges that Buyers Guide list past history indicating salvage, damage, or manufacturer buyback); *id.* at 10; CARS at 19; Broward County at 2–3, 10–11.

[57] NADA1 at 4–6; NIADA1 at 8; Ore. Vehicle Dealer Ass'n at 2.

[58] NADA1 at 5.

[59] *Id.*

[60] Copart.

[61] NADA proposed permitting dealers to state on the Buyers Guide that an unexpired manufacturer's new car warranty *may* apply and, because of the uncertainty in confirming coverage, simultaneously stating that ''[t]he dealer makes no representation regarding any non-dealer warranty or other coverage.'' NADA1 at 6. A consumer protection attorney, however, commented that dealers sometimes check the Buyers Guide's Warranty box and add statements such as ''balance of factory warranty, if any, may apply'' to suggest falsely that a vehicle is covered by an unexpired manufacturer's warranty. Swann at 1. The Rule necessarily requires dealers to determine whether a manufacturer's warranty applies before stating so because it permits, but does not require, dealers to state that a manufacturer's warranty applies 455.2(b)(2)(v), when such a warranty applies. In light of the potential for deception when dealers suggest coverage that the dealer has not confirmed, no change concerning the disclosure of unexpired manufacturers' warranties is proposed in this NPR.

consumers not to rely on spoken promises, so that they can avoid false assurances about steps the dealer would take in the event of future problems. The Buyers Guide also suggests that consumers get an independent inspection of a vehicle before buying it.

Since the Rule was promulgated, however, there have been significant changes in the types of vehicle history available to those buying used cars—both for dealers purchasing cars for resale and for consumers who are shopping for one. State automobile title information is being combined into a database where it can be searched through DOJ's NMVITIS. In addition, firms such as CARFAX and AutoCheck provide individualized vehicle history reports which include not only the information in a NMVITIS report but also may include a wealth of information about prior wrecks, odometer readings, and even maintenance history. Although these reports are not necessarily perfect, they do provide far more useful information than was available previously.

The Commission is proposing a Buyers Guide accompanying this NPR that contains a statement advising consumers to obtain vehicle history information. This statement would be combined with the Buyers Guides' existing recommendation that consumers obtain an independent inspection before purchase. The statement directs consumers to an FTC Web site that the Commission would create where consumers could obtain information about vehicle history reports and sources for those reports. The FTC site could also provide other useful information for consumers who are shopping for a used car.

Dealers would not be required to obtain vehicle histories or to display specific vehicle history information on the proposed revised Buyers Guide. The Buyers Guide would continue to recommend to consumers that they protect themselves by obtaining an independent inspection before making a purchase.

1. Availability of Vehicle History Information

Since the Rule's promulgation in 1984, a variety of public and private sources offering information about the history of individual vehicles have become available. When the Rule was adopted, vehicle history information was available primarily from prior owners of used cars or from state car titling agencies like a state department of motor vehicles (''DMV''). For cars titled in several states, that information sometimes was difficult both for consumers and dealers to obtain. Today consumers can obtain useful title information from NMVITIS, and commercial services offer that in combination with vehicle history information from a variety of sources.

Car titles usually are issued by state DMVs, and the titles typically show the legal owner of the vehicle and other identifying information. The amount of information in a car title varies widely from state to state. Some states issue car titles that include ''brands,'' the descriptive labels assigned by state titling agencies to describe the current or past condition of a vehicle, such as ''junk,'' ''salvage,'' or ''flood.'' [62] The brands that states use on their car titles differ in important ways from state to state. The definitions of those brands also vary from state to state so that, for example, a brand of ''junk'' in one state may mean something different in another state. At the time of the original rulemaking, state DMVs may have been the only source, other than prior owners, of vehicle history information.

One source for vehicle history information that has become available since the Rule was promulgated is NMVTIS. The Department of Justice began its implementation of NMVTIS in January 2009.[63] NMVTIS is a federal system designed to enable nationwide access to title information submitted by state titling agencies. NMVTIS includes odometer readings from state titling data and brands that state titling agencies assign to vehicles. NMVTIS does not create federal uniform definitions for brands or require that state DMVs assign brands in issuing car titles. Consumers may purchase some forms of NMVTIS reports for fewer than five dollars.[64] However, not all states fully participate in NMVTIS, and the program is still being developed.

In addition, state title information, combined with other information about individual vehicles, can be obtained from commercial sources such as CARFAX and AutoCheck, among others. CARFAX obtains data for its reports from state titling agencies, insurers, repair facilities, automobile auctions, salvage facilities, and fleet rental firms. AutoCheck competes with CARFAX and obtains information from similar sources.[65]

Vehicle history reports available from CARFAX and AutoCheck may often include information on prior ownership, usage, odometer readings, damage, and repair history, among other things. Consumers can use the vehicle identification number (''VIN'') for a particular vehicle to purchase a report on that vehicle from these commercial sources. Both CARFAX and AutoCheck also offer consumers the option of paying a flat fee to receive reports on as many individual vehicles as the consumer wishes during a designated time frame. Some dealers also have chosen to distribute commercial vehicle history reports to their customers for free.

2. Comments Received on Disclosure of Title Information

The Commission received many comments suggesting that vehicle title information be disclosed on the Buyers Guide. Comments from NAAG, CARS, WI DOT, and an individual consumer favored requiring dealers to disclose prior title status information on the Buyers Guide.[66] The comments assume that dealers have this information or could easily obtain it. For example, WI DOT noted that dealers usually have a copy of the title or direct access to state DMV databases in relation to their state-imposed duty to process title applications on behalf of buyers.[67] The commenters who favored including vehicle history information generally recommended requiring dealers to obtain the information and to report that information on the Buyers Guide.

CARS proposed a separate warning label stating that a vehicle is listed in NMVTIS as ''salvage, junk, or otherwise totaled by an insurer or sold at auction.'' [68] An individual consumer commented that the Buyers Guide should disclose whether the vehicle was recently sold at an auction.[69]

Industry groups stated that better information about title brands would benefit them as well as consumers but, for a variety of reasons, suggested that it is impracticable to require disclosure of this information on the Buyers Guide. First, these groups contended that dealers often do not themselves have accurate information about titles or vehicle histories. They noted that consumers trading in a car may well not have the title itself, either because it is held by a financing company or a consumer has simply lost it. They stated

[62] *See* NMVTIS Final Rule, 74 FR 5740 n.1 (Jan. 30, 2009).

[63] *Id.* at 5740.

[64] *See* information concerning approved NMVTIS data providers at: *www.nmvtis.gov/nmvtis_vehiclehistory.html.*

[65] *See, e.g., CARFAX* v. *AutoCheck, https://www.autocheck.com/consumers/content/carfax-autocheck-compare.do.*

[66] NAAG1 at 1–10; CARS at 19–21; WI DOT at 2–3; Allan-Geisel.

[67] WI DOT at 2.

[68] CARS at 19–21.

[69] Allan-Geisel.

that some of that information may be available from the online databases at state DMVs, but may take time to obtain and may be as much as six weeks out of date.

Industry groups also contended that even if dealers do have a title, it may not provide an accurate history of the vehicle because the title may have been ''washed.'' [70] Removing or ''washing'' brands from a title—generating a ''clean title''—is accomplished by transporting a vehicle with a branded title in one state to a state that does not check either with the state that issued the previous title (or with all states that may have previously issued titles on that vehicle) to determine if the vehicle has any existing brands not shown on the current paper title.[71] Indeed, NADA's examples of how states treat brands from other states differently, and how a brand or other negative title information reported in one state may not be carried over in a different state,[72] highlight the regulatory conditions that make title washing possible.

Dealers offered strong support for NMVTIS—which is designed in part to prevent or defeat title ''washing'' by providing a national ''brand carry forward'' function—but contend that it is not fully functioning. NMVTIS retains and makes available to users of the system all reported brands applied to a vehicle so that transporting the vehicle from one state to another will not ''wash'' the brand. Once a vehicle is branded by a state motor vehicle titling agency, that brand becomes a permanent part of the vehicle's NMVTIS record. NMVTIS also is intended to prevent criminal title washing, in which a salvage or destroyed vehicle is used to generate a clean paper title that is subsequently attached to a stolen vehicle ''cloned'' to the destroyed vehicle.

NADA raised concerns about NMVTIS's completeness and pointed out that NMVITIS had complete information from only thirteen states (as of March 17, 2009, the date of NADA's comment).[73] Since then, NMVITIS is now receiving data from forty states.[74] Thus, while still in development, NMVITIS already provides a great deal of useful information.

A second concern offered by dealer groups is that, even if consumers know the brand appearing on a car title, they may not understand the significance of that brand because title brands vary dramatically from state to state. In fact, a particular brand in one state may have a different meaning in another.[75] NADA noted, for example, that the term ''salvage'' has different legal meanings in Arkansas, Connecticut, Colorado and Montana.[76]

Third, dealers are concerned about their potential legal liability if they are made the ''guarantors'' of information that they could be required to disclose on a Buyers Guide. NIADA noted that ''the types of damage, repair and history issues noted [on forms required by state law] are considered material facts affecting a consumer transaction, such that the information must be disclosed under [each state's Unfair and Deceptive Acts and Practices Act] statute.'' [77] It added that many disclosures are already required or otherwise dealt with by other laws and administrative regulations. According to NIADA, radical changes as to what information is required to be displayed on what forms and the time when disclosures must be made would expose dealers to significant legal costs by making them the ''guarantors of information over which they have no control.'' [78]

NIADA stated that dealers are concerned that they may be liable if they put out of date or incomplete information on Buyers Guides that they obtain from vehicle history reports or other databases. NIADA noted that information in vehicle history reports is only as good as the data that goes into them. In addition, NIADA stated that there is a lag time before information is included in vehicle history reports. NIADA opined that, even if dealers complete a Buyers Guide with current information, they would have to consistently recheck and update that information. Industry groups noted that such disclosures may duplicate existing legal requirements, and that dealers might be subject to legal action if the information they report later turns out to be inaccurate or incomplete.

3. Analysis of Vehicle History Disclosure Comments

Both consumer and industry commenters agreed that consumers benefit from better information about the history of vehicles. In addition, dealers themselves often purchase cars, either at auction or as trade-ins, and thus also have a real use for better information. However, it is not practicable to include all available vehicle history information on a Buyers Guide. Complete vehicle histories may be several pages long.

Thus the question is whether some subset of that information, particularly from titles, should be provided on the Buyers Guide. Because title records, especially brands, vary considerably from state to state, there may be a risk that consumers could be confused or misled by these terms. Moreover, providing a partial vehicle history on the Buyers Guide also could discourage consumers from seeking more complete vehicle history information.

In addition, industry groups raised a concern about dealers' potential liability for reporting information that they do not control. Vehicle history information is available from multiple sources, and that information could be inaccurate, untimely, or incomplete. Dealers face potential legal risks for reporting third-party information that turns out to be deficient.

Thus, while commenters agreed that consumers could benefit from additional information, even if it has potential deficiencies, the Commission believes that requiring dealers to place potentially misleading partial or deficient information on the Buyers Guide would not necessarily benefit consumers. Instead, the Commission believes that consumers should be alerted to the existence of this information and encouraged to obtain and to evaluate it themselves—while combining that knowledge with an independent inspection of the vehicle.

4. Proposed Buyers Guide Vehicle History Statement

Having considered all of these comments, and to facilitate consumer access to vehicle history information, the Commission proposes adding the following statement to the Buyers Guide that would encourage consumers to obtain vehicle history reports and that would direct consumers to an FTC Web site, to be created by the Commission, where consumers could learn details about vehicle history information and sources, including NMVTIS, for that information:

Before you buy this used vehicle:
1. Get information about its history.
Visit the Federal Trade Commission at ftc.gov/usedcars. You will need the vehicle identification number (VIN), shown above, to make the best use of the resources on this site.
2. Ask the dealer if your mechanic can inspect the vehicle on or off the lot.

The proposed statement would further two principal purposes of the Rule: (1) Providing consumers with important pre-sale information about a vehicle

[70] NADA2 at 7.
[71] *See* 74 FR at 5741.
[72] NADA2 at 5.
[73] NADA2 at 6.
[74] *See National Motor Vehicle Title System: For States, www.nmvtis.gov/nmvtis_states.html.*
[75] NADA2 at 4–5.
[76] *Id.* at 5.
[77] NIADA2 at 2.
[78] *Id.*

they may purchase, and (2) diminishing the degree to which consumers must rely solely upon the selling dealer for information when they are shopping for used cars.

In much the same way that the current Buyers Guide encourages consumers to ask the dealer about an independent inspection, the proposed vehicle history statement would encourage consumers to obtain information about a particular vehicle's history from independent sources. Both the proposed vehicle history statement and the existing independent inspection statement direct consumers to independent sources of information about the mechanical condition of vehicles that are not controlled by the selling dealer. Under this proposal, dealers would not be required to obtain vehicle history reports or to provide those reports to consumers in conjunction with the Buyers Guide, thereby alleviating concerns that a dealer could be held responsible for shortcomings in vehicle history information that is controlled by others.

5. Other Mechanical Condition and Vehicle History Disclosures Recommended by Some Comments

In addition to recommending that the Buyers Guide include vehicle history information from NMVTIS and other sources, some commenters also recommended expanding the Rule to require disclosure of prior damage, prior use history (such as whether a vehicle was a taxi, rental, police car, etc.), and manufacturer buyback or ''lemon law'' status. These, or similar proposals, were extensively argued, carefully considered, and ultimately rejected by the Commission during the original rulemaking. Many were raised again and rejected during the 1995 Rule review. The current comments do not provide sufficient new evidence or point to any change in circumstances that compel the Commission to reach a different conclusion during this review of the Rule. Moreover, the Commission's proposal to revise the Buyers Guide—by adding a recommendation that consumers obtain a vehicle history report, in addition to an independent inspection, before purchasing a used car—should serve to provide consumers with the means to obtain important information about the mechanical condition of individual vehicles. The Commission continues to believe that consumers can obtain more reliable information about the mechanical condition of a used vehicle from independent sources than they can from relying on dealers.[79] Accordingly, for these and the additional reasons discussed below, the Commission declines to reverse its long-held position on these issues in this NPR.

a. Disclosure of Prior Vehicle Damage

The Commission declines to propose amending the Rule to require dealers to disclose prior damage history, as several commenters recommended.[80] Several commenters who broadly favored disclosure of vehicle title history stressed the particular importance of disclosing damage history. For example, NAAG urged that the Buyers Guide should require dealers to disclose past damage, including title history showing such damage.[81] Similarly, CARS recommended a warning label for used vehicles with salvage title histories.[82] NAAG and CARS also recommended that the Buyers Guide disclose if a manufacturer's warranty has been terminated because of salvage or other title history.[83]

NIADA opposed a Rule requirement to disclose damage history, for the same reasons that it opposed a requirement that dealers disclose title history: (1) Lack of reliable information, and (2) potential liability for third-party vehicle history statements.[84] As with title history disclosures, NIADA recommended a ''safe harbor'' from liability should dealers be required to disclose damage history.[85]

The Commission did not directly address a damage history disclosure requirement during the 1984 rulemaking. In 1979, however, it had adopted a staff recommendation to drop a proposed provision requiring the disclosure of any repair work performed by the dealer.[86] The Commission agreed with staff's conclusion that the record did not show that prior repairs are ''reliable indicators of current mechanical condition'' and that requiring disclosure of repair history would reduce a dealer's incentive to make necessary repairs.[87] Like repair history, damage history would not be an indicator of current mechanical condition and forced disclosure of it could reduce dealer incentives to ascertain damage and repair it.

For reasons similar to those outlined above in discussing vehicle history information generally, the Commission does not propose mandatory disclosure by dealers of the prior damage history of individual vehicles. Nevertheless, prior damage information may be available to consumers if it is reported in title documents or vehicle history reports. The vehicle history statement on the proposed revised Buyers Guide encourages consumers to seek out and to obtain these reports.

b. Disclosure of Prior Use

The Commission declines to propose the prior use disclosure urged by three commenters[88] because such a requirement was rejected by the Commission in 1979 and the comments do not provide sufficient new evidence for the Commission to revisit that conclusion. In any event, prior use information may be available to consumers in a NMVTIS report or a commercial vehicle history report.

In 1979, the Commission rejected a staff recommendation that the Buyers Guide disclose prior use because the record did not demonstrate either that consumers were injured by the lack of such a disclosure or that prior use was an accurate indicator of a vehicle's mechanical condition.[89] Commenters did not present new evidence about the possible benefits of a prior use disclosure on the Buyers Guide. To the extent that individual consumers are interested in prior use information, however, they may be able to obtain it from a NMVTIS report or a commercial vehicle history report. The Commission thus declines to alter its long-held view on this issue.

c. Disclosure of ''Manufacturer Buyback'' or ''Lemon Law'' Status

The Commission does not propose requiring that dealers disclose a vehicle's ''lemon law'' (also called ''manufacturer buyback'' or ''repurchase'') status on the Buyers Guide. All fifty states have some form of ''lemon law'' that requires manufacturers to repurchase new cars that fail to conform to express

[79] *See, e.g.,* SBP, 49 FR at 45716 (rejecting a known defects disclosure requirement in part because ''[i]t gives the wrong signal to consumers by encouraging them to focus their attention on dealer-controlled information about a car's mechanical condition'').

[80] NAAG1 at 2–5, 7–9; CARS at 18–21; WI DOT at 2–3; Allan-Geisel.

[81] NAAG commented that the Buyers Guide should disclose ''[P]ast title history indicating prior salvage, damage or manufacturer buyback.'' NAAG1 at 7–8.

[82] The proposed warning label would apply to vehicles listed as ''salvage, junk, or otherwise totaled by an insurer or sold at auction'' in NMVTIS. CARS at 20–21, 30.

The Rule does not apply to vehicles ''sold only for scrap or parts (title documents surrendered to the State and a salvage certificate issued).'' 16 CFR 455.1(d)(2).

[83] NAAG1 at 7–8; CARS at 19–21.

[84] NIADA2 at 1–3.

[85] *Id.* at 2–3.

[86] SBP, 49 FR at 45720–21.

[87] *Id.*

[88] CARS at 20; NAAG1 at 16–17; WI DOT at 2.

[89] SBP, 49 FR at 45720.

warranties, typically after a number of unsuccessful repair attempts. Many states also require that dealers disclose manufacturer repurchase status to the first retail purchaser of a repurchased vehicle. However, it is not clear that used car dealers would necessarily know whether a vehicle is a manufacturer repurchase in subsequent sales. In more than half the states, the fact that a vehicle has been repurchased by the manufacturer pursuant to a lemon law is not a ''brand'' that is carried on the vehicle's title.[90] Accordingly, the Commission believes that a manufacturer repurchase in a vehicle's history should be treated in the same way as other aspects of vehicle history discussed above. The proposed revised Buyers Guide would recommend that consumers obtain a vehicle history report that may include information on whether an individual vehicle is a manufacturer repurchase. However, the proposed Rule would not affirmatively require that dealers obtain this information and disclose it on the Buyers Guide.[91]

State lemon laws typically require manufacturers to repurchase and, if necessary, to repair new vehicles that fail to meet warranty standards because of alleged defects. Once repurchased and repaired, the vehicles are then often offered for sale as used cars.[92] Laws in some states require that the manufacturer warrant the repair of the vehicle's nonconformity for a designated period of time or a designated number of miles. According to the IALLA, fifteen states require manufacturers to issue warranties to the first retail buyer of a vehicle after the vehicle's repurchase pursuant to a state lemon law.[93] IALLA further reports that several manufacturers offer limited warranties on repurchased lemon law vehicles, even if not required to do so by state law.[94] Several commenters recommended that the Commission require dealers to disclose on the Buyers Guide that a vehicle had been repurchased by a manufacturer and to provide information about warranty coverage associated with the repurchase.[95]

Commenters advocating the disclosure of manufacturer repurchase status typically do so in the context of a broader recommendation that the Commission model a revised Buyers Guide on Wisconsin's Buyers Guide, which requires dealers to check boxes to disclose various types of vehicle history and ''title brands,'' including boxes for prior use and brands like ''rebuilt salvage'' or ''manufacturer buyback.'' [96] As discussed above, the Commission declines to propose the type of check box disclosures for vehicle history and title brands that are used on the Wisconsin Buyers Guide, and instead proposes that a statement be added to the Buyers Guide recommending that consumers obtain vehicle history reports. None of the commenters has provided persuasive reasons for treating manufacturer repurchase status differently from other aspects of a vehicle's history.

Moreover, given the extensive state laws and regulations on this topic, a Buyers Guide disclosure that a vehicle is a manufacturer repurchase appears to be unnecessary and duplicative. State laws already require dealers to disclose to the first retail purchaser after the repurchase that a vehicle has been repurchased by a manufacturer under state law. According to the IALLA, all fifty states have some form of lemon law, and forty-one states require a disclosure that a vehicle is a manufacturer repurchase to the first retail purchaser.[97] Even in those states in which statutes or associated regulations do not expressly require a manufacturer repurchase disclosure, the failure to disclose the vehicle's repurchase status could violate the state's unfair and deceptive practices statute. In most states, then, dealers are already required to disclose that an individual vehicle is a manufacturer repurchase at least to the first retail purchaser. Therefore, with respect to the first retail purchaser at least, an additional disclosure on the Buyers Guide would merely duplicate existing requirements. The Commission is unaware of any evidence suggesting that these existing state disclosure requirements have been inadequate or that an apparently duplicative federal disclosure is necessary.

Disclosures of manufacturer repurchase status may be more problematic with respect to vehicles resold after the first retail sale. It is not clear that dealers who sell these vehicles necessarily would know or be able to determine readily whether any such vehicle is a manufacturer repurchase. Although IALLA reports that all fifty states have some form of lemon law, titles in fewer than half of those states carry brands such as ''buyback'' or ''lemon.'' [98] As a result, depending on the applicable state's law, dealers may not always be able to determine from a vehicle's title or NMVTIS report whether a vehicle is a manufacturer repurchase, and the availability of that information from other sources is unclear. Dealers who know that a vehicle is a manufacturer repurchase, however, are likely to disclose that information because the failure to do so could expose the dealer to liability for violating state unfair and deceptive practices statutes. Under these circumstances, the Commission sees no reason to treat manufacturer repurchase differently from other aspects of vehicle history such as, for example, salvage, flood, or prior use. Rather than requiring dealers to attempt to obtain, to report, and essentially to be responsible for the accuracy of a disclosure on the Buyers Guide that a vehicle is a manufacturer repurchase, the Commission proposes a statement on the Buyers Guide recommending that consumers obtain vehicle history information, which may reveal whether

[90] *See* NADA2, Exhibit A (chart: ''Brand/Vehicle Status-Reference'').

[91] Notably, in 1996, the Commission held a public forum on issues related to lemon law buybacks. Participants in that forum included manufacturers, dealer associations, state and local consumer protection agencies, and consumer groups. No lemon law disclosure proposal resulted from that forum. Information about the proceedings, including a transcript, is available at *http://www.ftc.gov/bcp/lemon/.*

[92] The number of cars repurchased pursuant to state lemon laws and resold by manufacturers is unknown. Accurate estimates are difficult to make for many reasons including the fact that manufacturers also repurchase cars for reasons that may be unrelated to defects, such as ''goodwill'' programs designed to enhance customer relations.

In 1995, CARS, citing NAAG figures, stated that 50,000 vehicles were repurchased annually under lemon laws. *See* Request for Comments Concerning Disclosures in the Resale of Vehicles Repurchased Due to Warranty Defects, 84 FR 19067, *Petition for Investigation of ''Lemon Law'' Motor Vehicle Resale Practices* (Nov. 8, 1995), 84 FR 19069, at 19070 (Apr. 30, 1996). That figure would amount to about 0.56% of the more than 8.6 million new cars sold that year. Research and Innovative Technology Administration [''RITA''] Bureau of Transportation Statistics, U.S. Dept. of Transportation, *http://www.bts.gov/publications/national_transportation_statistics/html/table_01_16.html.*

Industry sources contacted by staff in preparing this NPR estimated that only 0.2% of used vehicles sold by used car dealers are manufacturer repurchases.

[93] Arkansas, California, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Minnesota, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, and Washington require the manufacturer to warrant the repair of the nonconformity to the first subsequent retail buyer for a period of at least one year or 12,000 miles, whichever occurs first. NAAG1, Att. A (IALLA comment).

[94] For example, several manufacturers issue separate one year/12,000 mile limited warranties on their reacquired vehicles regardless of where the vehicle is resold. *Id.*

[95] CARS at 20; IALLA (NAAG1, Att. A); NAAG1 at 3, 8–9.

[96] NAAG1, Att. B.

[97] NAAG1, Att. A (IALLA comment).

[98] IALLA; *See* NADA2, Exhibit A (chart: ''Brand/Vehicle Status-Reference'' listing states that carry lemon law brands).

an individual vehicle is a manufacturer repurchase under state law.

In terms of specific warranty coverage that applies because of state lemon law, dealers who have knowledge of this warranty coverage may disclose information about it on the current Buyers Guide by using a statement similar to the one permitted for disclosing an unexpired manufacturer's warranty.[99] The proposed revised Buyers Guide in this NPR would make that disclosure easier because it includes boxes where dealers would be able to indicate whether a manufacturer's original or used car warranty applies. Dealers could check the ''Manufacturer's Used Vehicle Warranty Applies'' box when a vehicle is covered by a manufacturer's lemon law warranty. When that or any of the other non-dealer warranty boxes is checked, the proposed revised Buyers Guide advises: ''Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.'' Consumers who follow this advice are then likely to learn the terms of the coverage and that it results from the vehicle's status as a manufacturer buyback or repurchased lemon.

6. Disclosure of Known Defects

Some comments urge that the Commission require that dealers disclose on the Buyers Guide whether the vehicle has defects. The Commission declines to alter its previous decisions on a ''known defects'' disclosure requirement. The Commission carefully considered such a requirement in the original rulemaking and ultimately rejected it in 1984.[100] The issue was raised and rejected again in the 1995 Rule review.[101] Although consumer groups like CARS again have advocated for a known defects disclosure requirement, NAAG did not, acknowledging in its comment the controversy that this proposal engendered in the original rulemaking and declining to ''reincarnat[e] that long ago debate.'' [102] As explained below, the commenters seeking a known defects disclosure rule have not provided any new information about its benefits that would cause the Commission to change its long-held view. The Commission believes that the recommendations on the Buyers Guide that consumers obtain a vehicle history report and inspection from independent sources are likely to provide consumers with more reliable information about the mechanical condition of a used car than a requirement that dealers disclose known defects.

When a known defects disclosure requirement was raised in connection with the 1995 Rule review, the Commission explained that it had carefully considered such a requirement in the original rulemaking but had then decided that the requirement would ''not provide used car buyers with a reliable source of information concerning a car's mechanical condition and that the provision would be exceedingly difficult to enforce.'' [103] The Commission instead decided in 1984, and reaffirmed in 1995, that the Buyers Guide's ''warranty and 'As-Is' disclosures—along with the warnings about spoken promises and the pre-purchase inspection notice—are effective remedies for the deceptive practices occurring in the used car industry.'' [104] The new proposed notice that consumers obtain vehicle history information would serve to supplement the Rule's existing disclosures, providing consumers with another independent source for particularized information about the mechanical condition of a used vehicle.

As in 1995, those advocating a known defects disclosure requirement have not pointed to any new studies showing that such a requirement would ''provide substantial information benefits in practice.'' [105] In the original rulemaking, the Commission discussed two studies, neither of which established that a known defects disclosure requirement had achieved beneficial results in practice.

The first such study, known as the ''Wisconsin Study,'' produced inconclusive results after comparing the experiences of consumers in three states with different inspection and defect disclosure rules: Wisconsin (which required, and continues to require, mandatory inspections and disclosure of known defects), Iowa (which at the time required mandatory safety inspections, but not disclosure of known defects), and Minnesota (which had neither).[106] Although the Wisconsin Study suggested that the Wisconsin disclosure law had resulted in a slight increase in consumer knowledge of defects at the time of sale, other data were inconclusive about the law's benefits. For example, the study showed that more consumers in Minnesota, which had no defect disclosure requirement, reported an awareness of defects than did consumers in Wisconsin. Moreover, the study failed to show that Wisconsin's disclosure requirement made it more likely that consumers would receive the information they felt they needed about the mechanical condition of a used vehicle.[107] Indeed, the study ''revealed that 51% of Wisconsin consumers still ultimately experienced repair problems not identified at the time of purchase.'' [108] From this somewhat contradictory data, the Commission concluded that the results of the Wisconsin Study tended ''to indicate that the Wisconsin defect disclosure requirement did not have a strong effect on consumers' knowledge of defects.'' [109]

A second study discussed in the original rulemaking, which compared results from Wisconsin with the rest of the country (the ''Baseline Survey''), also did not demonstrate that Wisconsin's experience with a known defects disclosure requirement had produced beneficial results. The Baseline Survey suggested that Wisconsin's defect disclosure requirement had not increased the amount of information that consumers receive about the mechanical condition of a used car, had not improved consumers' ability to predict future repair costs, and had not reduced the need for post-sale repairs.[110] The Commission concluded that, taken as a whole, the Baseline Survey data ''suggest that the expected beneficial effects of a defect disclosure requirement were not achieved in Wisconsin.'' [111]

The inconclusive nature of these earlier studies and the absence of any new empirical data establishing the benefits of a known defects disclosure

[99] As noted elsewhere, *see* note 41 and accompanying text, the Rule currently provides that unexpired manufacturers' warranties may be identified by adding the following statement to the Buyers Guide: ''MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle. Consult the manufacturer's warranty booklet for details as to warranty coverage, service location, etc.'' Dealers could use similar language and state that a ''MANUFACTURER'S LEMON LAW WARRANTY APPLIES.''

[100] *See* SBP, 49 FR at 45694–95, 45711–18.

[101] 60 FR at 62197.

[102] CARS at 18–19; NAAG1 at 7.

[103] 60 FR at 62196–97 (quoting SBP, 49 FR at 45712).

[104] *Id.* at 62197.

[105] *Id.*

[106] SBP, 49 FR at 45713–15.

[107] The study showed only a minor decrease in the percentage of Wisconsin consumers who reported that dealers failed to provide important information about a vehicle's mechanical condition and virtually no change in the percentage of Wisconsin consumers reporting that dealers provided inaccurate mechanical defect information after the Wisconsin disclosure law became effective. SBP, 49 FR at 45714.

[108] 60 FR at 62197; SBP, 49 FR at 45712.

[109] SBP, 49 FR at 45714.

[110] *Id.* at 45715.

[111] *Id.* at 45714.

requirement counsels against reversing the Commission's decades-old decision that the Buyers Guide not require the disclosure of known defects.

In addition to the lack of empirical data supporting a known defects disclosure requirement, the Commission also is concerned that such a requirement would be inconsistent with the overall goal of decreasing consumers' reliance on dealer-controlled information when making a used car purchase decision. The Commission concluded in the original rulemaking, for instance, that the requirement would send ''the wrong signal to consumers by encouraging them to focus their attention on dealer-controlled information about a car's mechanical condition.'' [112] By contrast, the Commission explained, ''the warranty disclosure requirements, the warning about spoken promises and the pre-purchase inspection notice encourage consumers to avoid reliance on dealer-controlled information about a car's mechanical condition.'' [113] If dealers were required by the Rule to disclose known defects, there likely would be a tendency for consumers to rely completely on the dealer for information about the mechanical condition of a used car and to ignore the Buyers Guide's important advice that they seek an inspection and vehicle history information from independent sources.[114] The Commission believes that consumers are likely to obtain more reliable information about the mechanical condition of particular vehicles from an independent inspection and vehicle history report than from the dealer's required disclosure of known defects.

In addition, as discussed in the original rulemaking, consumers might assume incorrectly that a dealer's failure to disclose any defects pursuant to a mandatory disclosure requirement means that no defects actually exist.[115] Of course, no disclosure requirement could ever insure that all defects would be discovered and disclosed to potential purchasers. Particular defects might go undisclosed for a variety of reasons, including an intentional decision by the dealer not to inspect for defects in the first place, a good faith failure to discover a particular defect during an inspection, or an intentional concealment of defects that in fact were discovered. As explained in the original rulemaking, a disclosure on the Buyers Guide ''that the dealer is not aware of any defects in a car provides no information about the actual existence of an undiscovered or latent defect'' but may cause consumers to conclude mistakenly ''that the dealer's lack of knowledge about defects means that no defects exist.'' [116] The consumer's confusion could even be used by dealers to blunt the impact of an ''as-is'' warranty disclosure—that is, dealers could tell consumers that the ''as-is'' disclosure is irrelevant because the vehicle has no known defects.[117]

Finally, as the Commission noted in the original rulemaking, a known defects disclosure requirement may actually serve to lessen the likelihood that dealers would carefully inspect their used vehicles:

> Disclosing ''known defects'' calls attention to the car's problems but does not reward the dealer's integrity for revealing those problems. Thus, a dealer who regularly inspects and honestly discloses all ''known defects'' may be put at a competitive disadvantage relative to dealers who do not inspect. This factor may then have the unintended and perverse effect of discouraging, rather than encouraging, inspections and disclosure of defects.[118]

For all of these reasons, the Commission again declines to impose a requirement as part of the Buyers Guide that dealers disclose known defects.

7. Dealer Inspections

Similarly, the Commission also declines to propose a dealer inspection requirement, as urged by several commenters.[119] The comments advocating an inspection requirement do not offer any new evidence that the Commission did not previously consider in rejecting mandatory inspections.

In originally promulgating the Rule, the Commission declined to impose an inspection requirement and noted that some of the reasons for rejecting the known defects disclosure provision applied ''with equal force'' to mandatory inspections.[120] The Commission explained that mandatory inspections would tend to encourage reliance by consumers on the dealer's inspection and thus discourage consumers from seeking independent inspections and warranty protections.[121] The Commission also noted that the Baseline Survey discussed above had shown that Wisconsin's mandatory inspection rule ''ha[d] not achieved significant beneficial effects.'' [122] The Commission was concerned, in short, that ''a mandatory inspection rule has the potential to do more harm than good because it encourages reliance on dealer inspections and, as a consequence, discourages consumers from seeking more reliable information.'' [123]

The reasons behind the Commission's 1984 decision to reject an inspection requirement are still applicable today. The Commission would add only that reliance on a mandatory inspection also could cause consumers to forego seeking vehicle history information. As previously noted, the Commission believes that obtaining these vehicle history reports and an independent inspection provide consumers with the most reliable information on the mechanical condition of a used vehicle.

C. List of Systems and Defects

1. Summary of Comments

The Regulatory Review Notice requested comments on whether the List of Systems should be retained or modified. The List of Systems has not been updated since 1984 despite changes in automotive technology. The Commission received several comments recommending retention and several recommending deletion.

Two commenters, NAAG and the Oregon Vehicle Dealer Ass'n, stated that the List of Systems should be deleted.[124] NAAG noted that the List of Systems is of little value when compared with important information, such as past history of the vehicle, that it argued should be disclosed.[125] The Oregon Vehicle Dealer Ass'n observed that ''[n]obody looks at'' the List of Systems.[126]

On the other hand, NIADA recommended retaining the List and opined that ''the list provides useful information to a customer who might, otherwise, have no or limited knowledge of the mechanical systems in a motor vehicle.'' [127] According to NIADA, if the customer takes the vehicle to a mechanic for inspection, the information in the List of Systems may make possible a more understandable exchange between the mechanic and the customer prior to the customer electing to purchase a vehicle.[128] NIADA added that ''Retaining the list is useful but not critical. For example, if space is needed to achieve other goals for revising the

[112] *Id.* at 45716.
[113] *Id.*
[114] *Id.*
[115] *Id.* at 45715–16.
[116] *Id.* at 45716.
[117] *Id.*
[118] *Id.* at 45713.
[119] CARS at 17–18; Sachau; Hillig.
[120] SBP, 49 FR at 45718.
[121] *Id.* at 45719.
[122] *Id.*
[123] *Id.*
[124] NAAG1 at 10; Ore. Vehicle Dealer Ass'n.
[125] NAAG1 at 10.
[126] Ore. Vehicle Dealer Ass'n.
[127] NIADA1 at 6.
[128] *Id.*

Guide, then deletion of part or all of the list should be considered.''[129]

Wholesale Forms also supported retaining the List of Systems for similar reasons. Wholesale Forms commented that the List of Systems conveys information to uneducated buyers who may not know much about cars.[130]

Broward County commented that boxes should be added next to each item on the List of Systems where dealers could indicate which are covered by any warranty, along with a duration column where dealers would be instructed to indicate the duration of warranty coverage for each system. Broward County further proposed that the front of the Buyers Guide direct the consumer to the reverse side of the Buyers Guide to obtain details about warranty coverage over individual systems.[131]

2. Retention of List of Systems

The Commission proposes retaining the List of Systems and revising it by adding catalytic converters, as a component of the exhaust system, and airbags. The proposed revised Buyers Guide in this NPR decreases the type size of the List of Systems to free space for boxes where dealers can indicate the applicability of manufacturers' and other third-party warranties, as described in Part IIIC. In making this proposal, the Commission recognizes the limitations of the value of the List of Systems described by some commenters as well as the benefits of the List of Systems that would be lost by deleting it altogether.

Adding boxes to the items on the list where dealers could disclose details of their own warranty coverage, as Broward County suggested, is not necessary because that information already can be provided by using the Systems Covered/Duration section of the Buyers Guide.

The Commission does not believe that deleting the List of Systems entirely, as some commenters recommend, would benefit consumers. The List of Systems arose out of the Commission's consideration of prior proposed versions of the Rule, including a version in 1980 that would have required dealers to disclose known defects in what were identified as the fourteen major systems of a vehicle.[132] The Commission rejected the known defects requirement but retained the List of Systems when the Rule was adopted. The Commission concluded, for example, that the List of Systems would help address misrepresentations about the mechanical condition of vehicles that dealers may make on a system-by-system basis by providing consumers with a framework to evaluate the extent of the warranty coverage that must be indicated in the warranties section of the Buyers Guide.[133] The Commission also concluded that the List of Systems would help consumers compare warranties on different cars or from different dealers and identify mechanical and safety systems that consumers may wish to have inspected by third parties.[134] The Commission believes that retaining the List of Systems is appropriate for the reasons articulated during the original rulemaking.

3. Adding Catalytic Converters and Airbags to the List of Systems

The Commission is proposing to add catalytic converters and airbags to the List of Systems. Both are required on vehicles operated in the United States, and the Commission believes that consumers would likely want to evaluate the warranty coverage and to consider an inspection of these components.

a. Catalytic Converters

Catalytic converters can be expensive and are targets for theft. Catalytic converters have been mandated for all U.S. vehicles since 1975. Catalytic converters remove hydrocarbons from a vehicle's exhaust by converting the hydrocarbons into water and carbon dioxide. Precious metals such as platinum, palladium, rhodium, or gold are used as the catalyst for the chemical reaction that results in the conversion. The use of these metals makes catalytic converters relatively expensive to replace and a target for thieves.[135] Catalytic converters may fail for a variety of reasons, including road damage or premature wear caused by, for example, faulty welds or uncombusted fuel reaching the converter. The failure of a catalytic converter could cause a vehicle to fail a state emissions test required for licensing.

In light of the universal use of catalytic converters in U.S. vehicle exhaust systems and the expense associated with replacing them, the Commission proposes amending the Rule to add catalytic converters to the List of Systems in the Buyers Guide as a component of the exhaust system.

b. Airbags

The Commission proposes adding airbags to the List of Systems. Airbags became a standard component of motor vehicles after the Rule's 1984 issuance. In 1984, the federal government mandated passive restraint systems for all vehicles manufactured after 1989. Manufacturers could comply with the mandate by installing systems such as airbags or automatic seat belts. Dual driver and front passenger airbags were not mandated until 1997.[136]

Although the Commission did not receive comments recommending that airbags be added to the List of Systems, it did receive comments about the failure of airbags in used cars and the need to require disclosures about their functionality.[137] Therefore, the Commission proposes to amend the Rule by adding airbags to the List of Systems because of their widespread use and obvious importance to vehicle safety. The Commission invites comments on this proposal.

D. Spanish Buyers Guides

The Rule requires that dealers display Spanish language Buyers Guides when they conduct sales in Spanish. The current Staff Compliance Guidelines recommend that dealers who conduct sales in both English and Spanish display each version of the Buyers Guide.[138] The Regulatory Review Notice specifically asked whether a single bilingual Buyers Guide was desirable and feasible, and sought design proposals for a bilingual Buyers Guide (Question III.B(1)). The Notice did not include a draft bilingual Buyers Guide.

After reviewing the comments, the Commission proposes to retain separate English and Spanish versions of the

[129] *Id.*

[130] Wholesale Forms at 4–5.

[131] Broward County at 3–4, 16.

[132] *See* SBP, 49 FR at 45711–12. The 1980 proposed rule would have required dealers to check off each system as ''OK,'' ''Not OK,'' or ''We Don't Know.'' Sale of Used Motor Vehicles; Disclosure and Other Regulations, 45 FR 52750 (Aug. 7, 1980) (Summary).

[133] *See* 49 FR at 45706.

[134] *See id.*

[135] Replacement converters can cost over $1,000. Thieves can sell the converters to metal recyclers for $20 to $200 and the metal recyclers in turn can extract the precious metal for as much as $6,000 per ounce. Not surprisingly, the incidence of catalytic converter theft increases as metal prices rise. *See* Edmunds.com, Inc., *In Under Two Minutes: Catalytic Converter Theft,* Edmunds.com, Inc., *http://www.edmunds.com/auto-insurance/in-under-two-minutes-catalytic-converter-theft.html.*

[136] Airbags are a passive restraint system that supplement seatbelt restraints. Manufacturers originally conceived of the airbag as a replacement for the seat belt, but eventually it became a supplement to the seat belt. Passive restraint systems (automatic seat belts, airbags, or some combination) are mandated for vehicles built after September 1989. 49 CFR 571.208, S4.1.4.1. Dual front driver and passenger airbags are mandated for all passenger vehicles manufactured after September 1, 1997. 49 CFR 571.208, S4.1.5.3.

[137] For example, CARS cited to missing, previously deployed, and nonfunctioning airbags. CARS at 7–8.

[138] Staff Compliance Guidelines, 53 FR at 17664.

Buyers Guide. To ensure that the Spanish guide reaches its intended audience, however, the Commission also proposes adding a sentence in Spanish on the face of the English language Buyers Guide, alerting Spanish-speaking consumers who cannot read the Buyers Guide in English to ask for a copy in Spanish.

The Commission received only one proposed bilingual Buyers Guide.[139] This proposed Buyers Guide compresses the contents of the Buyers Guide to fit both an English and a Spanish version on a single page (front and back). The proposal does not appear to follow the Rule's specific type styles, sizes, and format requirements. Displaying both a Spanish and English Buyers Guide side by side on a single sheet of paper arguably may be permitted by the Rule, but such a bilingual guide would require extremely large, oversized paper to comply with the Rule's type style, size, and format requirements,[140] which are intended to ensure the clarity and readability of the Buyers Guide.

Three commenting dealers, two trade associations, and a supplier of forms generally supported an optional bilingual Buyers Guide to generate potential cost savings for dealers.[141] NIADA qualified its support for a bilingual Buyers Guide by noting that any change to paper size or major format changes to fit in the additional text would entail heavy compliance costs for dealers that have automated systems programmed to produce the current Buyers Guide, which would discourage use of the optional bilingual version. Two commenters stated that a bilingual Buyers Guide would make test driving safer because the view from the vehicle would be less obstructed with one window sticker instead of two.[142] A national used car seller added that the informational impact of the Buyers Guide may be diluted by the ''clutter'' of posting two separate versions and noted that permitting a single bilingual document potentially could reduce displaying errors or omissions.[143] An automobile auction firm noted that a bilingual Buyers Guide would be more environmentally friendly because it would use less paper.[144]

A supplier of forms to car dealers commented that a bilingual Buyers Guide would contain too much text, would likely require reduced font sizes that would be illegibly small for some consumers, and would leave little space for important information.[145] The supplier suggested retaining separate English and Spanish versions and adding the following statement to the English Buyers Guide in Spanish: ''If you are unable to read this document [in English], ask your salesperson for a copy in Spanish.'' [146]

After reviewing the comments and considering the difficulties in devising a clear and understandable bilingual Buyers Guide,[147] the Commission has decided to retain separate English and Spanish Buyers Guides. The comments do not show that a clear and understandable bilingual Buyers Guide can be drafted. Instead, the Commission proposes to add a statement in Spanish to the English Buyers Guide that directs consumers to request a copy of the Buyers Guide in Spanish if they cannot read the English Buyers Guide. Accordingly, the proposed revised English Buyers Guide in this NPR includes, in Spanish, the following statement: ''If you are unable to read this document in English, ask your salesperson for a copy in Spanish'' (''Si usted no puede leer este documento en inglés, pidale al concesionario una copia en español'').

E. Miscellaneous Issues

1. Box to Indicate State-Mandated Warranty

The Commission declines to propose adding boxes to the Buyers Guide where dealers can indicate the applicability of warranty coverage required by state law. Nine states currently have mandatory warranty, as well as lemon law, coverage for some used vehicles.[148] Accordingly, comments from both NAAG and IALLA favor including a box on the Buyers Guide where dealers could indicate warranty coverage because of a state-mandated warranty.[149]

The Commission declines to propose such changes to the Buyers Guide because both the current and proposed revised Buyers Guide provide an adequate mechanism to disclose warranties required by state law. As noted in the current Compliance Guidelines, dealers can already disclose details of state-mandated warranties in the ''Systems Covered/Duration'' section of the Buyers Guide in the same way that they disclose details of warranties that are not prescribed by law.[150] The Rule would also permit pre-printing the applicable state-mandated warranties on the Buyers Guide. The additional space that will be created by moving the Non-Dealer Warranty and Service Contract boxes to the back of the Buyers Guide should help accommodate disclosures of state-mandated dealer warranties and address MADA's concern that the appendices in the Regulatory Review Notice did not provide sufficient space for these disclosures.[151]

2. Application of Rule to Private/Individual Sales

The Commission declines to propose expanding the Rule to cover private sales. The Rule applies to ''dealers,'' which is defined as ''any person or business which sells or offers for sale a used vehicle after selling or offering for sale five (5) or more used vehicles in the previous twelve months.'' [152] The Commission rejected coverage of private sales during the original rulemaking and again in 1995. In the present rule review, the Commission received one comment recommending that the Rule apply to sales by private individuals so that the Rule would treat all used car sales transactions in the same way.[153]

During the original rulemaking, the Commission concluded that the Rule should not extend to private or casual sellers of used cars because the record failed to support a finding that

[139] Carlabels.

[140] The Rule provides that ''[t]he capitalization, punctuation, and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7¼ inches wide in the type styles, sizes and format indicated.'' 16 CFR 455.2(a)(2).

[141] CarMax; Copart at 1; Anderson; NADA1 at 4; NIADA1 at 5; Carlabels.

[142] CarMax at 2; Carlabels.

[143] CarMax at 1.

[144] Copart at 1.

[145] Wholesale Forms at 4.

[146] *Id.*

[147] Staff attempted to devise a bilingual Buyers Guide in which an English statement was followed immediately by the Spanish translation, but the resulting guide was cluttered and confusing.

[148] Arizona, Connecticut, Hawaii, Massachusetts, Minnesota, New Jersey, New Mexico, New York, and Rhode Island have enacted warranty laws specific to used cars. These laws mandate warranty/lemon law coverage for periods that range from 15 days/500 miles to 90 days/4,000 miles for either all vehicles or those sold above a certain price or within certain age and mileage limitations. NAAG1, Att. A (IALLA comment).

[149] *Id.*

[150] Staff Compliance Guides, 53 FR at 17663.

[151] MADA. A non-binding Commission staff opinion letter previously approved a Buyers Guide containing Minnesota's required warranty terms listed in the Systems Covered/Duration section. Letter from Joyce E. Plyler, Used Car Coordinator, Division of Enforcement, Federal Trade Commission, to James Schutjer, Assistant Counsel, MADA (May 25, 1988).

The Staff Compliance Guidelines permit dealers to enlarge the Systems Covered/Duration section if necessary to comply with state or local disclosure requirements. 53 FR at 7663.

[152] 16 CFR 455.1(d)(3). The Rule excludes from the definition banks or financial institutions, businesses selling a used vehicle to their employees, or a lessor selling a leased vehicle to the lessee. *Id.*

[153] Hillig.

deceptive sales practices were prevalent in private sales.[154] The Commission noted that in private sales, prospective customers often receive more reliable information about mechanical condition than they do from dealers and that private sellers typically do not offer warranty protection.[155] In 1995, the Commission rejected a suggestion from NIADA that Buyers Guides be displayed in all advertised used car sales, noting that warranties typically are not offered in private sales and that enforcing the requirement in private sales would not be cost effective.[156] The one comment recommending that the Rule be extended to private sales does not provide any compelling reasons for the Commission to revisit its prior decision. The Commission therefore declines to propose extending coverage of the Rule to private sales.

3. Internet Sales

Used car sales that to some degree involve the Internet are a potentially large and growing segment of the used car market.[157] The Commission received three comments about Internet sales from industry groups, all generally addressing the availability of the Buyers Guide to consumers in such sales. A supplier of forms to car dealers, including Buyers Guides, suggested that the Buyers Guides be available electronically and viewable in dealership Internet listings.[158] NIADA suggested that dealers could post examples of Buyers Guides online to identify each category of warranty, including whether vehicles are sold ''As Is,'' rather than posting individual Buyers Guides applicable to each vehicle.[159] A multi-state Internet dealer proposed giving dealers the option of providing online customers with electronic Buyers Guides applicable to individual vehicles, either by posting them on dealer Web sites or emailing them to consumers who request copies.[160]

The Rule requires that dealers complete and display the Buyers Guide on vehicles offered for sale.[161] Some information in the Buyers Guide, such as the warning that oral promises are difficult to enforce and the recommendation that consumers ask about an independent pre-purchase inspection, is most valuable if consumers see the Buyers Guide as early as possible in the potential transaction. The terms of the Buyers Guide are incorporated into the contract of sale and override any contrary provisions in the contract.[162] Consumers who physically view a car on a dealer's lot can see information contained in a Buyers Guide before purchase whereas consumers who purchase entirely online may not see that information until after the sale is completed.

The Rule currently has no provisions specifically addressing Internet used car sales. Like classified, other forms of print, or electronic media advertising, Internet advertising is often used to draw a consumer's attention to the advertised goods or services, and the sale is ultimately consummated at a dealership. Consumers who respond to this form of Internet advertising are in a position similar to those who visit a dealer because of other forms of advertising. The Rule has no provisions concerning the general advertising of used cars, and the comments do not suggest reasons to treat this form of Internet advertising differently from classified, other print, and other electronic media advertising.

Internet sales may also be consummated entirely online with consumers never physically seeing a vehicle or the Buyers Guide that is displayed on it. Although the Rule requires that dealers display a Buyers Guide prior to sale, it does not preclude them from disclosing that information in other ways, such as by making Buyers Guides available online. Staff routinely tells dealers that they should attempt to provide the Buyers Guide to purchasers before an Internet sale is concluded because some of the information in the Buyers Guide is most valuable to consumers prior to sale. Staff also advises dealers to include the final version of the Buyers Guide with the final sales contract because the Buyers Guide is incorporated into that contract.

The Commission is unaware of evidence of prevalent deceptive practices by dealers in the Internet sale of used cars. The three comments that address Internet sales do not cite to evidence of prevalent deceptive practices by dealers in Internet sales, and, in particular, to those Internet sales in which the consumer does not physically see the offered vehicle or Buyers Guide prior to consummation of the transaction. In fact, Internet used vehicle purchasers may in some circumstances have greater protections from fraud than traditional purchasers. eBay Motors, for example, lists consumer buying tips on its Web site and provides certain protections to consumers buying used cars through its service.[163] Finally, the comments do not suggest that deceptive practices are unique to or any more prevalent in private Internet sales of used vehicles than in traditional sales. The Rule does not apply to private used car sales generally, and the comments do not suggest reasons to treat private Internet used car sales differently.

Therefore, in this NPR, the Commission does not propose amending the Rule to address Internet used vehicle sales, but seeks comment on whether deceptive practices by dealers are prevalent in the Internet sale of used cars.

4. Use of the Term ''Certified''

The Commission is making no proposals to change the Rule, as urged by CARS, to restrict the use of the term ''certified'' or similar terms in used car sales.[164] CARS commented that the Rule should prohibit dealers from labeling certain less valuable and problem vehicles as ''certified.''[165]

As explained elsewhere in this NPR, the term ''certified'' in used vehicle sales typically refers to used vehicles that have been ''certified'' to meet certain prescribed mechanical, age, and mileage conditions after a mechanical inspection that are then offered for sale with a manufacturer's ''certified'' used car warranty.[166] The term ''certified'' has no standard definition and could be

[154] SBP, 49 FR at 45708.

[155] *Id.*

[156] 60 FR at 62197.

[157] According to NIADA, in 2008, 48,700,000 used cars were offered over the Internet, but only 7,700,000 were sold through the Internet. In 2007, 39,100,000 used cars were offered over the Internet, and 7,900,000 were sold through the Internet. NIADA *Used Car Industry Report 2009* at 19.

In its comment, a multi-state Internet dealer cites to projections that ''Internet-generated'' sales (sales that are generated by the Internet but consummated either on or off-line) will grow to 5.6 million in 2012 (11.3 percent of used car sales) from 4.1 million in 2007 and ''direct online'' sales (Internet-generated sales in which consumers make their first financial commitments to purchase online) will rise from 1.4 million vehicles in 2007 (3% of total used car sales) to 2.1 million in 2012 (4% of total used car sales). Downey Brand at 2 and 3. Although these statistics suggest that use of the Internet is increasing in the used car market, they do not shed any light on the prevalence of sales consummated entirely online or the prevalence of deception in connection with Internet used vehicle sales generally.

[158] Dealer Specialties.

[159] NIADA1 at 5.

[160] Downey Brand at 4–5. The comment is not clear whether it proposes that dealers should be permitted to make Buyers Guides electronically available online in addition to or as an alternative to requiring that they be displayed on a used vehicle offered for sales.

[161] 16 CFR 455.2.

[162] 16 CFR 455.3(b).

[163] *See* eBay Motors Vehicle Purchase Protection, *http://pages.motors.ebay.com/buy/purchase-protection/index.html.*

[164] CARS at 25–28.

[165] CARS at 25.

[166] *See* note 47, Edmunds.com, Inc., *Certified Used Cars—The Wave of the Future, http://www.edmunds.com/car-buying/certified-used-cars-the-wave-of-the-future.html.*

used to describe manufacturer supported warranty programs, dealer warranty programs, or simply used vehicles that a dealer represents to be in good mechanical condition, regardless of whether the vehicle is offered for sale with a warranty. Even when the term ''certified'' refers to manufacturers' certified used vehicle warranty programs, those programs can vary widely in their precise terms, such as warranty duration and vehicle components covered. Manufacturers, and dealers for that matter, are free to adopt their own competing certification programs and to define the meaning of the term ''certified,'' or any other term that they choose to use, in describing those programs.

CARS recommends possible federal standards for when a vehicle can be sold as ''certified.'' The CARS comment refers to a California law that prohibits use of the term ''certified'' or similar terms whenever any of seven enumerated conditions apply.[167] Similarly, the comment proposes that the Commission prohibit describing a used car as ''certified'' if any of several conditions is present.[168]

CARS did not offer evidence that application of ''certified'' labels to substandard vehicles is a prevalent practice other than several news reports showing anecdotal instances of the practice. Misrepresenting the mechanical condition of used cars with terms such as ''certified'' is already prohibited by § 5 of the FTC Act,[169] the Rule itself,[170] and state consumer protection laws. The deceptive practices that CARS seeks to remedy can be addressed on a case-by-case basis.

At this time, the Commission is unconvinced that the Rule should be changed to address deception that potentially may be associated with use of the term ''certified'' or with vehicle certification programs generally. The Commission is unclear how the adoption of a federal standard for use of a term like ''certified'' or for vehicle certification programs would uniformly address the potential for deception suggested by the comment. Therefore, the Commission does not propose any Rule changes to address use of the term ''certified'' or vehicle certification programs generally.

5. ''50/50'' and Other ''Split Cost'' Warranties

One commenter suggested that the Commission should amend the Rule to prohibit 50/50 or other split cost used car warranties. In a split cost warranty, the consumer pays a percentage of the cost of warranty work. A 50/50 warranty refers to a split cost warranty in which a consumer pays half of the cost of the warranty service (*i.e.,* 50% of the parts and 50% of the labor). The Commission has already determined that split cost warranties are permissible, as described below. Indeed, the Buyers Guide contemplates split cost warranties by requiring dealers to identify the percentage of labor and parts that the dealer will pay for warranty service.

CARS commented that 50/50 warranties are inherently deceptive under the Magnuson-Moss Act's prohibition of deceptive warranties[171] because the warrantor could raise the price of the warranty work high enough to make consumers pay the entire warranty repair cost, both parts and labor.[172] The comment argues that 50/50 warranties also violate the Magnuson-Moss Act's prohibition against ''tying'' a warranty to a consumer's use of any product, article, or service identified by brand or corporate name, unless the product, article, or service is provided without charge.[173]

In 2002, the Commission formally declared that 50/50 warranties are not prohibited by the Magnuson-Moss Act's anti-tie in provisions.[174] Moreover, the Commission noted that other practices, such as inadequate disclosures, could constitute unfair or deceptive acts or practices and that such determinations would be made on a case-by-case basis.

The Magnuson-Moss Act allows the Department of Justice or the Commission to seek injunctions to stop deceptive warranty practices.[175] Such practices would also violate § 5 of the FTC Act,[176] and could be attacked under § 13(b) of that act. CARS offered no evidence suggesting that pricing used in connection with 50/50 warranties is likely to mislead consumers or that evidence could be developed to show that such warranty pricing practices are prevalent. The Commission can address any such practices on a case-by-case basis. Therefore, the Commission sets forth no proposal to address this issue in this NPR.

6. Buyers Guide Statement That Purchase of Service Contract May Give Consumers Additional Rights Under State Law Implied Warranties

The Commission proposes no change to the statement on the Buyers Guide that describes the relationship between the purchase of a service contract and a dealer's capacity to disclaim implied warranties. The Magnuson-Moss Act prohibits suppliers from disclaiming or modifying state law implied warranties if the supplier enters into a service contract with the consumer within 90 days of the time of sale.[177] The Buyers Guide explains this relationship by stating, ''[i]f you buy a service contract within 90 days of the time of sale, state law 'implied warranties' may give you additional rights.''

The Commission received one comment asserting that the statement on the Buyers Guide is confusing to consumers. According to MADA, the statement is confusing because it leads consumers to believe that dealers *must* offer a service contract for up to 90 days after a sale.[178] MADA noted that most

[167] Specifically, California prohibits applying the term ''certified'' to used cars when any of the following conditions are met: (1) The dealer knew or should have known that the odometer had been rolled back; (2) the dealer knew or should have known that the vehicle had been reacquired by the manufacturer or a dealer under state or federal warranty law; (3) the vehicle had been titled as a ''Lemon Law Buyback,'' ''manufacturer repurchase,'' ''salvage,'' ''junk,'' ''nonrepairable,'' ''flood,'' or similar title designation required by California or another state; (4) the vehicle had sustained damage in an impact, fire, or flood that substantially impairs the use or safety of the vehicle; (5) the dealer knew or should have known that the vehicle had sustained frame damage; (6) the dealer fails to provide a completed inspection report prior to sale; or (7) the dealer disclaims the warranty of merchantability. *Id.* at 26–27 (citing Cal. Veh. Code 11713.18).

[168] According to CARS, vehicles that should not be advertised or sold as ''certified'' include those that: (1) Have substantial nonconformities that substantially impair the use, value or safety of the vehicles, such as vehicles repurchased under lemon laws; (2) have manufacturers' warranties or extended service contracts that exclude coverage for prior damage; (3) were previously used as daily rentals, program cars, taxicabs, police vehicles, or were reported as stolen; and (4) are grey market vehicles (imported vehicles that were not manufactured in compliance with United States emissions and safety standards and that require additional regulatory approvals to be licensed as road ready). *Id.* at 27–28.

[169] 15 U.S.C. 45.

[170] 16 CFR 455.1(a)(1) (deceptive act or practice for a dealer to ''misrepresent the mechanical condition of a used vehicle'').

[171] 15 U.S.C. 2310(c)(2).

[172] CARS at 23–24.

[173] *Id.* (citing 15 U.S.C. 2302(c)).

[174] Letter to Keith E. Whann, Whann & Assocs., representing NIADA (December 31, 2002), *http://www.ftc.gov/os/2003/01/niadaresponseletter.htm.* (''2002 Magnuson-Moss Opinion Letter'' interpreting § 102(c) of the Magnuson-Moss Act (codified at 15 U.S.C. 2302(c))).

The CARS comment urges the Commission to adopt a position that, according to CARS, was suggested by the Commission's comments in 1999 that split cost warranties that require repair work to be performed by the dealer or at a place of the dealer's choosing ''likely violate'' the anti-tie in provisions. CARS at 24 (citing 64 FR 19700, 19703 (Apr. 22, 1999)). The 2002 Opinion Letter clarified the Commission's interpretation that the Magnuson-Moss Act's anti-tie in provisions do not prohibit split cost warranties, notwithstanding the prior **Federal Register** document.

[175] 15 U.S.C. 2310(c)(1)(A).

[176] 15 U.S.C. 45, 2310(b).

[177] 15 U.S.C. 2308(a)(2).

[178] MADA.

dealers will offer a service contract only at the time of sale and not afterwards. MADA did not propose an alternative statement or offer any survey or other evidence suggesting the statement often causes consumer confusion.

The statement on the Buyers Guide clearly explains the relationship between the purchase of a service contract and a dealer's capacity to disclaim implied warranties. Neither the statement on the Buyers Guide nor the Magnuson-Moss Act sets the length of time during which a service contract must be made available for purchase or whether a dealer must make a service contract available. At most, MADA's comment suggests that consumers may complain when they learn that the dealership will not offer a service contract after the time of sale or that dealers may have difficulty selling service contracts because consumers mistakenly believe that they can always purchase them later. Dealers who offer service contracts only at the time of sale can address consumer confusion about the Buyers Guide statement simply by explaining the meaning of the statement as well as the dealership's policies concerning service contract sales.

The Buyers Guide ultimately adopted in 1984 was designed and reviewed to ensure that the disclosures in it were conveyed in a clear and succinct manner.[179] Various versions of the Buyers Guide were subjected to several rounds of consumer testing to measure comprehensibility.[180] The Commission considered that consumer testing when it adopted the 1984 Buyers Guide, which included the current statement describing the relationship between the purchase of a service contract and implied warranties.

The comment does not offer any evidence of widespread consumer confusion caused by the Buyers Guide statement describing the relationship between the purchase of a service contract and implied warranties. Therefore, the Commission does not propose changing this statement.

7. Consumer Acknowledgment Signature Line

The 1995 amendments to the Rule gave dealers the option of adding a signature line to the Buyers Guide where dealers could obtain consumers' acknowledgment that they had received the Buyers Guide.[181] One commenter suggested that dealers should be *required* to obtain a signature and to retain a second signed copy.

Broward County commented that the Rule should be revised to make a signature mandatory on two copies, one of which would be given to the consumer and the other kept in the dealer's file, to facilitate subsequent investigations into consumer complaints.[182]

As the Commission noted in 1995 when it added the optional signature line, mandating that dealers obtain purchaser signatures might help establish whether consumers received the Buyers Guide but would not prove that the dealer had displayed a a Buyers Guide on the vehicle.[183] Only requiring dealers to keep copies of the signed Buyers Guides (with omissions suggesting non-compliance) could serve that purpose.[184] The Commission noted, however, that dealers already had a ''considerable incentive'' to obtain signatures and concluded that the compliance costs of mandatory signatures, with the necessary recordkeeping requirements, would be ''unnecessarily burdensome.'' [185]

Thus, during the original rulemaking, and again in 1995, the Commission declined to impose mandatory signature and recordkeeping provisions, reasoning that the possible benefits of the requirements did not justify their cost.[186] The comment does not demonstrate a need to revisit the prior decision, and the Commission intends to retain the optional signature line as it now stands.

8. Enhanced Enforcement

The Commission received several comments concerning enforcement of the Rule that do not directly pertain to the Regulatory Review Notice, which is concerned with whether, and in what form, the Rule should be retained. A consumer protection attorney commented that he hoped that the Commission ''will more clearly establish rules for and aggressive enforcement of non-complying dealers.'' [187] CARS and an individual consumer commented that the FTC should increase relevant financial penalties.[188] Two suppliers of forms commented that stepping up monitoring and enforcement actions would be adequate to improve compliance without the need for enhanced penalties.[189]

As to civil penalties, the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, requires the Commission to adjust the civil penalty amount that applies to violations of Commission trade regulation rules every four years.[190] The Commission, however, has no independent authority beyond that Act to adjust the statutory civil penalty amount that applies to violations of Commission trade regulation rules. Over the years the Commission has undertaken a number of ''sweeps'' of dealers to investigate compliance with the Rule, often working with State and local partners. The Commission remains committed to enforcing the Rule.

V. Regulatory Review

There is a continuing need for the Rule, and the Commission has determined to retain it, to propose the additional amendments described above, and to adopt the Spanish translation of the Buyers Guide discussed in the Regulatory Review Notice.[191] Industry groups supported retaining the Rule, in part, because it provides valuable information to consumers.[192] Consumer groups supported retaining the Rule, and recommended various modifications discussed above.[193] The comments provide evidence that the Rule serves a useful purpose, while imposing minimal costs on industry.

VI. Communications to Commissioners and Commissioner Advisors by Outside Parties

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.

VII. Paperwork Reduction Act

As discussed above, the Commission is proposing amendments to the Rule designed to provide dealers with a method to disclose optional additional information. The proposed amendments do not require dealers to disclose this

[179] SBP, 49 FR at 45724.

[180] *Id.* at 45725.

[181] 60 FR at 62205.

[182] Broward County at 2.

[183] 60 FR at 62197.

[184] *Id.*

[185] *Id.*

[186] *Id.* at 62197 n.36.

[187] Swann at 1.

[188] CARS at 2; Sachau.

[189] Wholesale Forms; Carlabels.

[190] 28 U.S.C. 2641 note. The civil penalty amount for § 5 violations was last increased on January 9, 2009, effective February 9, 2009, and is currently $16,000 per violation. 74 FR 857–888; 16 CFR 1.98.

[191] The translation revisions are made in a final rule published in a separate **Federal Register** document.

[192] *E.g.,* NADA1 at 2; NIADA1 at 2; Wholesale Forms at 1.

[193] *E.g.,* NAAG1 at 2; CARS at 2.

additional information nor do they alter the Rule's existing disclosure requirements or impose recordkeeping requirements. The FTC previously submitted ''collection of information'' requirements and related Paperwork Reduction Act (''PRA'') burden analyses for public comment [194] that have been cleared by the Office of Management and Budget (''OMB'').[195]

The FTC anticipates making amended Buyers Guides, if adopted, available on its Web site for downloading by dealers. The FTC expects that current suppliers of Buyers Guides, such as commercial vendors and dealer trade associations, will supply dealers with amended Buyers Guides. Accordingly, dealers' cost to obtain amended Buyers Guides should increase only marginally, if at all.

For simplicity, FTC staff assumes that dealers will make the optional disclosures on 25% of used cars offered for sale. Dealers who choose to make the optional disclosures should obtain amended Buyers Guides and complete them by checking additional boxes not appearing on the current Buyers Guide. Staff previously estimated that completing Buyers Guides would require approximately 2 minutes per vehicle for cars sold without a warranty and 3 minutes per vehicle for vehicles sold with a warranty. Checking the additional boxes should require dealers no more than an additional 30 seconds per car. Thus, making the optional disclosures presented by the proposed amendments would increase estimated burden by 57,539 hours (25% × 27,618,480 cars sold [196] × 1/120 hour per car).

Assuming that dealers use lower level clerical staff at a mean hourly wage of $13.90 per hour [197] to complete the Buyers Guides, incremental labor costs associated with making the optional disclosures will total $799,792 per year [57,539 hours × $13.90 per hour].

Assuming, as stated above, that dealers will make the optional disclosures on 25% of the 27,618,480 used cars offered for sale, and assuming further a cost of twenty cents per pre-printed Buyers Guide, incremental purchase costs per year will total $1,380,924. Any other capital costs associated with the proposed amendments are likely to be minimal.

VIII. Regulatory Analysis

Section 22 of the FTC Act, 15 U.S.C. 57b, requires the Commission to issue a preliminary regulatory analysis when publishing a Notice of Proposed Rulemaking, but requires the Commission to prepare such an analysis for a rule amendment proceeding only if it: (1) Estimates that the amendment will have an annual effect on the national economy of $100,000,000 or more; (2) estimates that the amendment will cause a substantial change in the cost or price of certain categories of goods or services; or (3) otherwise determines that the amendment will have a significant effect upon covered entities or upon consumers. The Commission has set forth in Section IX below, in connection with its Initial Regulatory Flexibility Analysis (''IRFA'') under the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, and has discussed elsewhere in this Document: The need for and objectives of the Proposed Rule (IX.B below); a description of reasonable alternatives that would accomplish the Rule's stated objectives consistent with applicable law (IX.F below); and a preliminary analysis of the benefits and adverse effects of those alternatives (*id.*).

The Commission estimates that the proposed amendments to the Used Car Rule will not have such an annual effect on the national economy, on the cost or prices of goods or services sold by used car dealers, or on covered businesses or consumers. The Commission has not otherwise determined that the proposed amendments will have a significant impact upon regulated persons. As noted in the PRA discussion above, the Commission staff estimates each business affected by the Rule will likely incur only minimal initial added compliance costs as dealers obtain revised Buyers Guides and become familiar with them. To ensure that the Commission has considered all relevant facts, however, it requests additional comment on these issues.

IX. Initial Regulatory Flexibility Analysis

The RFA requires an agency to provide an IRFA with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. The FTC does not expect that the Proposed Rule will have a significant economic impact on a substantial number of small entities.

The Proposed Rule, like the current Used Car Rule, does not contain reporting or recordkeeping requirements, but does require that dealers disclose certain information. The disclosure requirements of the Proposed Used Car Rule are the minimum necessary to give consumers the information that they need to protect themselves and to permit effective enforcement of the rule. The Proposed Rule requires only that dealers use a revised Buyers Guide. It does not impose additional recordkeeping requirements or change the information that dealers themselves must disclose on the Buyers Guide. Additional disclosures consist of pre-printed verbatim statements and check boxes that dealers will have the option, but are not required, to complete. As such, the economic impact of the proposed Used Car Rule will be minimal. In any event, the burdens imposed on small businesses are likely to be relatively small, and in the Commission's enforcement experience, insignificant in comparison to their gross sales and profits.

This document serves as notice to the Small Business Administration (''SBA'') of the agency's certification of no effect. Nonetheless, the Commission has determined that it is appropriate to publish an IRFA in order to inquire into the impact of the Proposed Rule on small entities. Therefore, the Commission has prepared the following analysis.

A. Description of the Reasons That Action by the Agency Is Being Considered

The comments received during the Regulatory Review Notice indicate a continuing need for the Rule. The comments indicate that consumers would benefit from a revised Rule that enhances consumer access to information about manufacturers' and other third-party warranties. The comments also indicate that consumers would benefit with improved

[194] 76 FR 144 (Jan. 3, 2011); 75 FR 62538 (Oct. 12, 2010).

[195] OMB Control No. 3084–0108 (exp. Feb. 28, 2014). Should final rule amendments change existing disclosure requirements for the Used Car Rule, the FTC will pursue OMB clearance and appropriate adjustment for its prior PRA burden estimates.

[196] *See NIADA Used Car Industry Report* (2012) (''*Used Car Industry Report 2012*''), available at *www.niada.com/publications.php,* at 16,18 (*citing* CNW Marketing Research data for 2011). Dealers sold 71.2% (*i.e.,* 27,618,480 vehicles) of the approximately 38,790,000 used cars sold in 2011. The remaining used cars were sold in casual/private party sales. *Id.* at 16.

[197] The hourly rate derives from Bureau of Labor Statistics data for the mean hourly wage of ''Office clerks, general.'' *See Occupational Employment and Wages—May 2011* (released March 27, 2012), available at *http://www.bls.gov/news.release/archives/ocwage_03272012.pdf.*

knowledge about the availability of vehicle history information.

B. Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed Used Car Rule is to provide material information about used car warranties and used vehicle histories. This information will help protect consumers from dealer misrepresentations and aid consumers in making informed choices when considering the purchase of a used car, while minimizing the compliance burdens on dealers. The legal basis for this proposed rule is the FTC Act and ' 1029 of the Dodd-Frank Act, 12 U.S.C. 5519. Section 18(a)(1)(B) of the FTC Act, 15 U.S.C. 57a, authorizes the Commission to issue rules that define with specificity acts or practices in or affecting commerce that are unfair or deceptive within the meaning of ' 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1), and may include requirements for the purpose of preventing such acts or practices. Section 1029 of the Dodd-Frank Act authorizes the Commission, when issuing such rules with respect to motor vehicle dealers, to use standard APA procedures in accordance with 5 U.S.C. 553.

C. Description of and, Where Feasible, Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

The Used Car Rule primarily applies to ''dealers,'' defined as individuals or businesses which sell or offer for sale a used vehicle after selling or offering for sale five or more used vehicles in the previous year.[198] The Commission believes that many of these dealers would be considered small businesses according to the applicable SBA size standards. Under those standards, independent used car dealers having annual receipts of less than $23 million and franchised new car dealers, which also typically sell used cars, having fewer than 200 employees each are classified as small businesses.[199]

In 2011, the nation's 37,594 independent used car dealers had average total revenue of $3,974,916.[200] Used car dealers' average annual revenue is well below the maximum $23 million in annual sales established by the SBA for classification as a small business.

Many franchised new car dealers would also be classified by the SBA as small businesses. In 2011, the nation's 17,540 franchised new car dealers had an average of fifty employees.[201] The average number of employees at each dealership was 53, well below the 200 employee maximum established by the SBA for classification as a small business.[202]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Type of Professional Skills Necessary for Preparation of the Report or Record

The Used Car Rule imposes disclosure obligations on used car dealers, but does not impose any reporting or recordkeeping requirements. Specifically, dealers are required to complete and display a Buyers Guide on each used car offered for sale. Dealers are required to complete and display Spanish versions of the Buyers Guide when sales are conducted in Spanish. Staff has determined that clerical or low-level administrative personnel can perform the tasks necessary to meet dealers' disclosure obligations. Neither the current Rule nor the Proposed Rule requires dealers to retain any records other than may be necessary to meet their obligations to complete and display the Buyers Guides. The Proposed Rule does not change the tasks that dealers must perform to meet their obligations under the Rule. Dealers may experience a slight initial increase in costs as they familiarize themselves with using revised Buyers Guides. The Commission invites comments on the Proposed Rule's compliance requirements and on the types of professional skills necessary to meet dealers' compliance obligations.

E. Other Duplicative, Overlapping, or Conflicting Federal Rules

No other federal statutes, rules, or policies conflict with the Used Car Rule or with the Proposed Rule. No other federal law or regulation requires that the Buyers Guide disclosures be made when a used vehicle is placed on the dealer's lot or when it is offered for sale.[203] Two states that are exempt from the Rule, Maine and Wisconsin, require disclosure of related but different information regarding used car sales.[204]

The Commission invites comments on federal rules that may duplicate, overlap, or conflict with the Proposed Rule.

F. Description of Any Significant Alternatives to the Proposed Rule That Would Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered, Such as: (1) Establishment of Differing Compliance or Reporting Requirements or Timetables That Take Into Account the Resources Available to Small Entities; (2) Clarification, Consolidation, or Simplification of Compliance and Reporting Requirements Under the Rule for Such Small Entities; and (3) Any Exemption From Coverage of the Rule, or Any Part Thereof, for Such Small Entities

The Proposed Rule's disclosure requirements are designed to impose the minimum burden on all affected dealers, regardless of size. The Proposed Rule is intended to avoid increasing the burden on dealers. The Proposed Rule does not impose any new recordkeeping requirements and does not require dealers to disclose more information on the Buyers Guide than the current Rule does.

The proposed revised Buyers Guide contains additional pre-printed disclosures not found in the current Buyers Guide. These include a verbatim statement advising consumers to obtain vehicle history information prior to purchasing a used vehicle and a statement in Spanish on the English Buyers Guide advising consumers to ask for a Spanish Buyers Guide if they are unable to understand the English Buyers Guide. The revised Buyers Guide also lists airbags and catalytic converters as components of vehicles in which defects may arise.

The information that the Proposed Rule would require dealers to provide on a revised Buyers Guide is unchanged from the current Rule. The revised Buyers Guide contains additional sections pertaining to manufacturers' and third-party warranties that dealers

[198] 16 CFR 455.1(d)(3).

[199] *U.S. Small Business Admin. Table of Small Bus. Size Standards Matched to North American Indus. Classification System [''NAICS''] Codes* (effective Mar. 26, 2012), *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.* Used car dealers are classified as NAICS 441120 and franchised new car dealers as NAICS 441110.

[200] *Used Car Market Report 2012,* at 16, 20. Used vehicle sales accounted for 36.2% ($1,463,564) of that revenue. *Id.*

[201] Calculated from the monthly number of new dealers listed in *2011 Data Source Book* at 10.

[202] *NADA Data 2012,* available at *http://www.nada.org/Publications/NADADATA/2012/,* at 5, 14 (data as of January 1, 2011).

[203] Some states also have adopted the Rule as state law. In addition, the Magnuson-Moss Warranty Act, 15 U.S.C. 2301–2312, requires that written warranties on consumer products be *available* before sale, as specified by 16 CFR Part 702, but displaying warranty information is not required.

[204] Both states were granted exemptions from the Rule pursuant to 16 CFR 455.6.

have the option, but are not required, to complete by simply checking boxes on the revised Buyers Guide.

The Commission does not believe that the Proposed Rule will impose a significant economic impact on a substantial number of small businesses. Nonetheless, the Commission specifically requests comment on the question of whether the Proposed Rule would impose a significant impact upon a substantial number of small entities, and what modifications to the Proposed Rule the Commission could make to minimize the burden on small entities. Moreover, the Commission requests comment on the general question of whether new technology or changes in technology can be used to reduce the burdens imposed by the Proposed Rule.

In some situations, the Commission has considered adopting a delayed effective date for small entities subject to a new regulation in order to provide them with additional time to come into compliance. In this case, however, the Commission believes that small entities should feasibly be able to come into compliance with the Proposed Rule by the proposed effective date, six months following publication of the final Rule. Nonetheless, the Commission invites comment on whether small businesses might need additional time to come into compliance and, if so, why.

In addition, the Commission has the authority to exempt any persons or classes of persons from the Proposed Rule's application pursuant to § 18(g) of the FTC Act. By definition, sellers of used cars that have not sold or offered for sale five or more used cars in the previous year are exempt from the Rule.[205] The Proposed Rule does not change this threshold. The Commission requests comment on whether it should consider exempting any persons or classes of persons covered by the Rule from application of the proposed amendments. The Commission notes, however, that the Proposed Rule's purpose of protecting consumers from unfair or deceptive acts or practices in used car sales could be undermined by the granting of a broad exemption to small entities.

G. Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide information or comment on the number and type of small entities affected by the Proposed Rule. Include in your comment the number of small entities that will be required to comply with the Proposed Rule's disclosure requirements.

2. Please provide comment on any or all of the provisions in the Proposed Rule with regard to: (a) the impact of the provision(s) (including benefits and costs to implement and comply with the Proposed Rule or any of its provisions), if any; and (b) what alternatives, if any, the Commission should consider, as well as the costs and benefits of those alternatives, paying specific attention to the effect of the Proposed Rule on small entities in light of the above analysis. In particular, please describe any ways in which the Proposed Rule could be modified to reduce any costs or burdens for small entities consistent with the Proposed Rule's purpose, and costs to implement and to comply with provisions of the Proposed Rule, including expenditures of time and money for: any employee training; attorney, computer programmer, or other professional time; preparing relevant materials (*e.g.,* completing Buyers Guides); and recordkeeping.

3. Please describe ways in which the Proposed Rule could be modified to reduce any costs or burdens on small entities, including whether and how technological developments could further reduce the costs of implementing and complying with the Proposed Rule for small entities.

4. Please provide any information quantifying the economic costs and benefits of the Proposed Rule on the entities covered, including small entities.

5. Please identify any relevant federal, state, or local rules that may duplicate, overlap, or conflict with the Proposed Rule.

X. Invitation to Comment

The Commission invites interested members of the public to submit written data, views, facts, and arguments addressing the issues raised by this NPR, including the proposed revisions to the Buyers Guide. Such comments must be received by February 11, 2013, and must be filed in accordance with the **ADDRESSES** section of this document.

The Commission asks that comments be confined to the following specific issues pertaining to the proposals discussed in **SUPPLEMENTARY INFORMATION** PARTS IVA–IVD and IVE3. In particular, the Commission requests written responses to any or all of the following questions. The Commission requests that responses be as specific as possible, including a reference to the question being answered, and a reference to empirical data or other evidence wherever available and appropriate.

1. Should the Buyers Guide be revised, as discussed in **SUPPLEMENTARY INFORMATION** PART IVA, to include check boxes for disclosing manufacturers' and other third-party warranties? Why or why not? What alternative revisions to the Buyers Guide, if any, should be adopted to improve disclosure of manufacturers' and third-party warranties?

2. Should the proposed vehicle history statement on the front of the proposed Buyers Guide be adopted? Why or why not?

3. Should the proposed vehicle history statement be modified? If so, how?

4. Should the proposed vehicle history statement list both *ftc.gov/usedcars* (the FTC Web site) and *vehiclehistory.gov* (the NMVTIS Web site)? Should it list only *ftc.gov/usedcars*? Should it list only *vehiclehistory.gov*? Why or why not?

5. Should the List of Systems include catalytic converters? Why or why not?

6. Should the List of Systems include airbags? Why or why not?

7. Should the proposed statement, ''Si usted no puede leer este documento en inglés, pidale al concesionario una copia en español,'' directing Spanish-speaking consumers to ask for a copy of the Buyers Guide in Spanish be adopted? Why or why not? What alternative statement, if any, should be considered? What alternative proposals to alert Spanish-speaking customers to the Spanish Buyers Guide should be considered?

8. Identify and describe deceptive practices, if any, that are prevalent in Internet used vehicle sales. Provide studies, analyses, and data demonstrating the extent of those practices. If deceptive practices are prevalent in Internet used vehicle sales, what regulatory steps, if any, should the FTC consider taking to prevent those practices?

9. What is the extent of consumer injury, if any, that results from consumers' inability to see information on the Buyers Guide prior to purchase in Internet used vehicle sales in which consumers cannot visually inspect a car and see the Buyers Guide prior to purchase? Provide examples, studies, analyses and data indicating the nature and extent of such consumer injury.

10. To what extent do consumers who consummate Internet used vehicle sales online receive copies of the Buyers Guide with their final sales contracts? Provide examples, studies, analyses, and data to support your answer.

11. The FTC also invites comments on the nature and extent of information that it should make available on the Web site, *ftc.gov/usedcars* that it

[205] 16 CFR 455.1(d)(3).

proposes to create in connection with the proposed Buyers Guide.

12. If the FTC creates the proposed Web site, *ftc.gov/usedcars,* should the FTC include active links to other Web sites, such as the Web sites of providers of vehicle history reports, and, if so, which Web sites? If the FTC includes active links to other Web sites, what mechanisms and standards should the FTC apply to ensure that it directs consumers only to Web sites and firms that are trustworthy and that accommodate consumer privacy and data security expectations?

List of Subjects in 16 CFR Part 455

Motor vehicles, Trade practices.

For the reasons set forth in this document, the Federal Trade Commission is proposing to amend part 455 of title 16, Code of Federal Regulations, as follows:

PART 455—USED MOTOR VEHICLE TRADE REGULATION RULE

1. Revise the authority citation to read as follows:

Authority: 15 U.S.C. 2309; 15 U.S.C. 41–58.

2. Amend § 455.2 by revising the introductory text of paragraph (a), and paragraphs (a)(2), (b)(1), (b)(2)(v), (b)(3), and (e) to read as follows:

§ 455.2 Consumer sales—window form.

(a) *General duty.* Before you offer a used vehicle for sale to a consumer, you must prepare, fill in as applicable and display on that vehicle the applicable ''Buyers Guide'' illustrated by Figures 1–6 at the end of this part.

(1) * * *

(2) The capitalization, punctuation and wording of all items, headings, and text on the form must be exactly as required by this Rule. The entire form must be printed in 100% black ink on a white stock no smaller than 11 inches high by 7¼ inches wide in the type styles, sizes and format indicated. When filling out the form, follow the directions in paragraphs (b) through (e) of this section and § 455.4 of this part.

(b) *Warranties*—(1) *No Implied Warranty—''As Is''/No Dealer Warranty.* (i) If you offer the vehicle without any implied warranty, i.e., ''as is,'' mark the box appearing in Figure 1. If you offer the vehicle with implied warranties only, substitute the IMPLIED WARRANTIES ONLY disclosure specified in § 455.2(b)(1)(ii) below, and mark the IMPLIED WARRANTIES ONLY box illustrated by Figure 2. If you first offer the vehicle ''as is'' or with implied warranties only but then sell it with a warranty, cross out the ''As Is—No Dealer Warranty'' or ''Implied Warranties Only'' disclosure, and fill in the warranty terms in accordance with paragraph (b)(2) of this section.

(ii) If your State law limits or prohibits ''as is'' sales of vehicles, that State law overrides this part and this rule does not give you the right to sell ''as is.'' In such States, the heading ''As Is—No Dealer Warranty'' and the paragraph immediately accompanying that phrase must be deleted from the form, and the following heading and paragraph must be substituted. If you sell vehicles in States that permit ''as is'' sales, but you choose to offer implied warranties only, you must also use the following disclosure instead of ''As Is—No Dealer Warranty'' [206] as illustrated by the Buyers Guide in Figure 2.

IMPLIED WARRANTIES ONLY

The dealer doesn't make any promises to fix things that need repair when you buy the vehicle or afterward. But *implied warranties* under your state's laws may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

(2) * * *

(v) You may, but are not required to, disclose that a warranty from a source other than the dealer applies to the vehicle. If you choose to disclose the applicability of a non-dealer warranty, mark the box labeled ''Non-Dealer Warranties'' on the back of the Buyers Guide, as illustrated by Figure 3, and also the applicable box or boxes to indicate: ''MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle,'' ''MANUFACTURER'S USED VEHICLE WARRANTY APPLIES,'' and/or ''OTHER USED VEHICLE WARRANTY APPLIES.''

If, following negotiations, you and the buyer agree to changes in the warranty coverage, mark the changes on the form, as appropriate. If you first offer the vehicle with a warranty, but then sell it without one, cross out the offered warranty and mark either the ''As Is—No Dealer Warranty'' box or the ''Implied Warranties Only'' box, as appropriate.

(3) *Service contracts.* If you make a service contract (other than a contract that is regulated in your State as the business of insurance) available on the vehicle, you must add the following heading and paragraph below the Non-Dealer Warranties Section on the back of the Buyers Guide, as illustrated by Figure 3, and mark the box labeled ''Service Contract:'' [3]

☐ SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

* * * * *

(e) *Complaints.* In the space provided, put the name, telephone number, and email address of the person who should be contacted if any complaints arise after sale.

* * * * *

3. Revise § 455.5 to read as follows:

§ 455.5 Spanish language sales.

If you conduct a sale in Spanish, the window form required by § 455.2 and the contract disclosures required by § 455.3 must be in that language. You may display on a vehicle both an English language window form and a Spanish language translation of that form. Use the translation and layout for Spanish language sales in Figures 4, 5, and 6.[4]

BILLING CODE 6750–01–P

[206] See § 455.5 n. 4 for the Spanish version of this disclosure.

[3] See § 455.5 n. 4 for the Spanish version of this disclosure.

[4] Use the following language for the ''Implied Warranties Only'' disclosure when required by § 455.2(b)(1):

GARANTÍAS IMPLÍCITAS SOLAMENTE

El concesionario no hace ninguna promesa de arreglar aquello que necesite reparación cuando usted compra el vehículo o a partir de ese momento. Pero, las *garantías implícitas* establecidas por la ley de su estado pueden otorgarle algunos derechos para que el concesionario se haga cargo de resolver problemas graves que no eran evidentes al momento de comprar el vehículo.

Use the following language for the ''Service Contract'' disclosure required by § 455.2(b)(3):

CONTRATO DE SERVICIO. Por un cargo extra, usted puede disponer de un contrato de servicio para este vehículo. Consulte los detalles sobre la cobertura, deducibles, precio y exclusiones. Si usted compra un contrato de servicio dentro de los 90 días posteriores a la compra de este vehículo, las *garantías implícitas* establecidas por la ley de su estado pueden otorgarle derechos adicionales.

FIGURE 1 – "AS IS"- NO DEALER WARRANTY Buyers Guide (English)

BUYERS GUIDE

26 pt bold caps centered

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

1 pt rule
8.5 pt bold & regular, caps & lc

VEHICLE MAKE MODEL YEAR VEHICLE IDENTIFICATION NUMBER (VIN)

0.5 pt rule
6 pt regular caps

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

12 pt bold caps
2 pt rule

☐ **AS IS - NO DEALER WARRANTY**

22 pt box, 1 pt stroke
24 pt bold caps

THE DEALER WON'T PAY FOR ANY REPAIRS. The dealer is not responsible for any repairs, regardless of what anybody tells you.

8.5/15 pt regular, caps & lc

1 pt dashed rule

☐ **DEALER WARRANTY**

22 pt box, 1 pt stroke
24 pt bold caps

☐ FULL WARRANTY.

☐ LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

8 pt boxes, 1 pt stroke
8.5/9 pt regular, caps & lc

SYSTEMS COVERED: **DURATION:**

9 pt bold caps, 2 columns

2 pt rule

Before you buy this used vehicle:

10 pt bold, -2 pt after para

1. Get information about its history. Visit the Federal Trade Commission at ftc.gov/usedcars. You will need the vehicle identification number (VIN), shown above, to make the best use of the resources on this site.

10/12 pt bold, 20 pt lft ind, -11 pt first line ind, -2 pt after para

2. Ask the dealer if your mechanic can inspect the vehicle on or off the lot.

10/12 pt bold, 20 pt lft ind, -11 pt first line ind, -2 pt after para

SEE OTHER SIDE for more about warranties and other information that applies to this vehicle.

10/12 pt bold, caps & lc, -2 pt after para

Si usted no puede leer este documento en inglés, pidale al concesionario una copia en español.

10/12 pt bold, lc

* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 2 – IMPLIED WARRANTIES ONLY Buyers Guide (English)

BUYERS GUIDE

26 pt bold caps centered

IMPORTANT: Spoken promises are difficult to enforce. Ask the dealer to put all promises in writing. Keep this form.

1 pt rule
8.5 pt bold & regular, caps & lc

VEHICLE MAKE MODEL YEAR VEHICLE IDENTIFICATION NUMBER (VIN)

0.5 pt rule
6 pt regular caps

DEALER STOCK NUMBER (Optional)

WARRANTIES FOR THIS VEHICLE:

12 pt bold caps
2 pt rule

☐ **IMPLIED WARRANTIES ONLY**

22 pt box, 1 pt stroke
24 pt bold caps

The dealer doesn't make any promises to fix things that need repair when you buy the vehicle or afterward. But *implied warranties* under your state's laws may give you some rights to have the dealer take care of serious problems that were not apparent when you bought the vehicle.

8.5/15 pt regular, caps & lc

1 pt dashed rule

☐ **DEALER WARRANTY**

22 pt box, 1 pt stroke
24 pt bold caps

☐ FULL WARRANTY.

☐ LIMITED WARRANTY. The dealer will pay ____% of the labor and ____% of the parts for the covered systems that fail during the warranty period. Ask the dealer for a copy of the warranty, and for any documents that explain warranty coverage, exclusions, and the dealer's repair obligations. *Implied warranties* under your state's laws may give you additional rights.

8 pt boxes, 1 pt stroke
8.5/9 pt regular, caps & lc

SYSTEMS COVERED: **DURATION:**

9 pt bold caps, 2 columns

2 pt rule

Before you buy this used vehicle:

10 pt bold, -2 pt after para

1. Get information about its history. Visit the Federal Trade Commission at ftc.gov/usedcars. You will need the vehicle identification number (VIN), shown above, to make the best use of the resources on this site.

10/12 pt bold, 20 pt lft ind, -11 pt first line ind, -2 pt after para

2. Ask the dealer if your mechanic can inspect the vehicle on or off the lot.

10/12 pt bold, 20 pt lft ind, -11 pt first line ind, -2 pt after para

SEE OTHER SIDE for more about warranties and other information that applies to this vehicle.

10/12 pt bold, caps & lc, -2 pt after para

Si usted no puede leer este documento en inglés, pídale al concesionario una copia en español.

10/12 pt bold, lc

* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 3 – Back of Buyers Guide (English)

NON-DEALER WARRANTIES

☐ MANUFACTURER'S WARRANTY STILL APPLIES. The manufacturer's original warranty has not expired on the vehicle.

☐ MANUFACTURER'S USED VEHICLE WARRANTY APPLIES.

☐ OTHER USED VEHICLE WARRANTY APPLIES.

Ask the dealer for a copy of the warranty document and an explanation of warranty coverage, exclusions, and repair obligations.

☐ SERVICE CONTRACT. A service contract on this vehicle is available for an extra charge. Ask for details about coverage, deductible, price, and exclusions. If you buy a service contract within 90 days of your purchase of this vehicle, *implied warranties* under your state's laws may give you additional rights.

Here is a list of some major defects that may occur in used vehicles.

Frame & Body
- Frame-cracks, corrective welds, or rusted through
- Dog tracks—bent or twisted frame

Engine
- Oil leakage, excluding normal seepage
- Cracked block or head
- Belts missing or inoperable
- Knocks or misses related to camshaft
- lifters and push rods
- Abnormal exhaust discharge

Transmission & Drive Shaft
- Improper fluid level or leakage, excluding normal seepage
- Cracked or damaged case which is visible
- Abnormal noise or vibration caused by faulty transmission or drive shaft
- Improper shifting or functioning in any gear
- Manual clutch slips or chatters

Differential
- Improper fluid level or leakage, excluding normal seepage
- Cracked of damaged housing which is visible
- Abnormal noise or vibration caused by faulty differential

Cooling System
- Leakage including radiator
- Improperly functioning water pump

Electrical System
- Battery leakage
- Improperly functioning alternator, generator, battery, or starter

Fuel System
- Visible leakage

Inoperable Accessories
- Gauges or warning devices
- Air conditioner
- Heater & Defroster

Brake System
- Failure warning light broken
- Pedal not firm under pressure (DOT spec.)
- Not enough pedal reserve (DOT spec.)
- Does not stop vehicle in straight line (DOT spec.)

Hoses damaged
- Drum or rotor too thin (Mfgr. Specs)
- Lining or pad thickness less than 1/32 inch
- Power unit not operating or leaking
- Structural or mechanical parts damaged

Air Bags

Steering System
- Too much free play at steering wheel (DOT specs.)
- Free play in linkage more than 1/4 inch
- Steering gear binds or jams
- Front wheels aligned improperly (DOT specs.)
- Power unit belts cracked or slipping
- Power unit fluid level improper

Suspension System
- Ball joint seals damaged
- Structural parts bent or damaged
- Stabilizer bar disconnected
- Spring broken
- Shock absorber mounting loose
- Rubber bushings damaged or missing
- Radius rod damaged or missing
- Shock absorber leaking or functioning improperly

Tires
- Tread depth less than 2/32 inch
- Sizes mismatched
- Visible damage

Wheels
- Visible cracks, damage or repairs
- Mounting bolts loose or missing

Exhaust System
- Leakage
- Catalytic Converter

DEALER NAME

ADDRESS

TELEPHONE EMAIL

FOR COMPLAINTS AFTER SALE, CONTACT:

IMPORTANT: The information on this form is part of any contract to buy this vehicle. Removing this label before consumer purchase (except for purpose of test-driving) violates federal law (16 C.F.R. 455).

2 pt rule

22 pt box, 1 pt stroke
24 pt bold, caps

8 pt box, 1 pt stroke
8.5/10.2 pt regular, caps & lc

8.5/10.2 pt regular

2 pt rule
8 pt box, 1 pt stroke
8.5/10.2 pt regular, caps & lc

2 pt rule

8.5/10.2 pt regular, caps & lc

2" columns, left, centered, right
7 pt bold, 2 pt before para,
7/8.4 pt regular, 15 pt lft ind,
-10 pt first line ind

2 pt rule

0.5 pt rule
8 pt regular, caps

2 pt rule

9/10.8 pt bold & regular, caps & lc

* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 4 – "AS IS"- NO DEALER WARRANTY Buyers Guide (Spanish)

GUÍA DEL COMPRADOR

26 pt bold caps centered

IMPORTANTE: Las promesas verbales son difíciles de hacer cumplir. Solicite al concesionario que ponga todas las promesas por escrito. Conserve este formulario.

1 pt rule
8.5 pt bold & regular, caps & lc

MARCA DEL VEHÍCULO MODELO AÑO NÚMERO DE IDENTIFICACIÓN DEL VEHÍCULO (VIN)

0.5 pt rule
6 pt regular caps

NÚMERO DE ABASTO DEL DISTRIBUIDOR (Opcional)

GARANTÍAS PARA ESTE VEHÍCULO:

12 pt bold caps
2 pt rule

☐ **COMO ESTÁ - SIN GARANTÍA DEL CONCESIONARIO**

22 pt box, 1 pt stroke
24/24 pt bold caps

EL CONCESIONARIO NO PAGARÁ NINGUNA REPARACIÓN. El concesionario no es responsable por ninguna reparación, sin importar lo que cualquier persona le haya dicho.

8.5/15 pt regular, caps & lc

1 pt dashed rule

☐ **GARANTÍA DEL CONCESIONARIO**

22 pt box, 1 pt stroke
24 pt bold caps

☐ GARANTÍA COMPLETA.

☐ GARANTÍA LIMITADA. El concesionario pagará el _____% de la mano de obra y el _____% de las partes de los sistemas cubiertos que fallen durante el periodo de garantía. Pídale al concesionario una copia de la garantía y de cualquier documento que le explique la cobertura, las exclusiones y las obligaciones de reparación del concesionario. Las *garantías implícitas*, según las leyes de su estado, podrían darle derechos adicionales.

8 pt boxes, 1 pt stroke
8.5/9 pt regular, caps & lc

SISTEMAS CUBIERTOS: **DURACIÓN:**

9 pt bold caps, 2 columns

Antes de comprar este vehículo usado:

1. **Obtenga información acerca de su historia. Consulte a la Comisión Federal de Comercio en ftc.gov/carrosusados. Necesitará el número de identificación del vehículo (VIN) mencionado anteriormente para poder aprovechar de la mejor manera los recursos de este sitio.**
2. **Pregúntele al concesionario si su mecánico puede inspeccionar el vehículo dentro o fuera del concesionario.**

CONSULTE EL DORSO para obtener más información acerca de las garantías y otros datos que se apliquen para este vehículo.

* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 5 – IMPLIED WARRANTIES ONLY Buyers Guide (Spanish)

GUÍA DEL COMPRADOR

26 pt bold caps centered

IMPORTANTE: Las promesas verbales son difíciles de hacer cumplir. Solicite al concesionario que ponga todas las promesas por escrito. Conserve este formulario.

1 pt rule
8.5 pt bold & regular, caps & lc

MARCA DEL VEHÍCULO MODELO AÑO NÚMERO DE IDENTIFICACIÓN DEL VEHÍCULO (VIN)

0.5 pt rule
6 pt regular caps

NÚMERO DE ABASTO DEL DISTRIBUIDOR (Opcional)

GARANTÍAS PARA ESTE VEHÍCULO:

12 pt bold caps
2 pt rule

☐ **SOLO GARANTÍAS IMPLÍCITAS**

22 pt box, 1 pt stroke
24 pt bold caps

El concesionario no hace ninguna promesa de reparar lo que sea necesario cuando compre el vehículo o posteriormente. Sin embargo, las *garantías implícitas* según las leyes estatales podrían darle algunos derechos para hacer que el concesionario se encargue de ciertos problemas que no fueran evidentes cuando compró el vehículo.

8.5/15 pt regular, caps & lc

1 pt dashed rule

☐ **GARANTÍA DEL CONCESIONARIO**

22 pt box, 1 pt stroke
24 pt bold caps

☐ GARANTÍA COMPLETA.

☐ GARANTÍA LIMITADA. El concesionario pagará el _____% de la mano de obra y el _____% de las partes de los sistemas cubiertos que fallen durante el período de garantía. Pídale al concesionario una copia de la garantía y de cualquier documento que le explique la cobertura, las exclusiones y las obligaciones de reparación del concesionario. Las *garantías implícitas*, según las leyes de su estado, podrían darle derechos adicionales.

8 pt boxes, 1 pt stroke
8.5/9 pt regular, caps & lc

SISTEMAS CUBIERTOS: **DURACIÓN:**

9 pt bold caps, 2 columns

2 pt rule

Antes de comprar este vehículo usado:

10 pt bold, -2 pt after para

1. **Obtenga información acerca de su historia. Consulte a la Comisión Federal de Comercio en ftc.gov/carrosusados. Necesitará el número de identificación del vehículo (VIN) mencionado anteriormente para poder aprovechar de la mejor manera los recursos de este sitio.**

10/12 pt bold, 20 pt lft ind, -11 pt first line ind, -2 pt after para

2. **Pregúntele al concesionario si su mecánico puede inspeccionar el vehículo dentro o fuera del concesionario.**

10/12 pt bold, 20 pt lft ind, -11 pt first line ind, -2 pt after para

CONSULTE EL DORSO para obtener más información acerca de las garantías y otros datos que se apliquen para este vehículo.

10/12 pt bold, caps & lc

* Typeface is Arial, text is flush left unless otherwise noted.

FIGURE 6 – Back of Buyers Guide (Spanish)

☐ **GARANTÍAS QUE NO PERTENECEN AL CONCESIONARIO**

22 pt box, 1 pt stroke
24/24 pt bold, caps

☐ SE APLICA LA GARANTÍA DEL FABRICANTE. La garantía original del fabricante para el vehículo no venció.

☐ SE APLICA LA GARANTÍA DEL FABRICANTE PARA VEHÍCULOS USADOS.

☐ SE APLICA OTRA GARANTÍA PARA VEHÍCULOS USADOS.

8 pt box, 1 pt stroke
8.5/10.2 pt regular, caps & lc

Pídale al concesionario una copia del documento de garantía y una explicación de la cobertura, las exclusiones y las obligaciones de reparación.

8.5/10.2 pt regular

2 pt rule

☐ CONTRATO DE MANTENIMIENTO. Con un cargo adicional, puede obtener un contrato de mantenimiento para este vehículo. Pregunte acerca de los detalles de la cobertura, los deducibles, el precio y las exclusiones. Si compra un contrato de mantenimiento dentro de los 90 días desde el momento en que compró el vehículo, las *garantías implícitas* según las leyes de su estado podrían darle derechos adicionales.

8 pt box, 1 pt stroke
8.5/10.2 pt regular, caps & lc

2 pt rule

A continuación podrá encontrar una lista de los defectos principales que podrían ocurrir en vehículos usados.

8.5/10.2 pt regular, caps & lc

Chasis y carrocería
- Grietas en el chasis, soldaduras correctivas u oxidadas
- Descuadrado: chasis doblado o torcido

Motor
- Pérdidas de aceite, excepto las filtraciones normales
- Bloque o cárter con grietas
- Correas ausentes o fuera de servicio
- Golpes o fallas relacionados con levantadores de levas o bielas
- Descarga del escape fuera de lo normal

Transmisión y eje motor
- Nivel inadecuado de fluido o pérdidas excepto filtraciones normales
- Grietas o daños visibles en la caja
- Ruidos o vibraciones fuera de lo normal ocasionadas por la transmisión o el eje motor
- Cambios o funcionamiento inadecuados en cualquier velocidad
- Patinados o vibraciones del embrague manual

Diferencial
- Nivel inadecuado de fluido o pérdidas excepto filtraciones normales
- Grietas o daños visibles en el cárter del diferencial
- Ruidos o vibraciones fuera de lo normal ocasionadas por fallas en el diferencial.

Sistema de enfriamiento
- Pérdidas, incluidas las del radiador
- Funcionamiento inadecuado de la bomba de agua

Sistema eléctrico
- Pérdidas en la batería
- Funcionamiento inadecuado del alternador, generador, batería o arrancador

Sistema de combustible
- Pérdidas visibles

Accesorios fuera de servicio
- Indicadores o dispositivos de advertencia
- Aire acondicionado
- Calefacción y Desempañador

Sistema de frenos
- Luz de advertencia de fallas rota
- Falta de firmeza cuando se presiona el pedal (según especificaciones del Departamento de Transporte [DOT])
- Distancia insuficiente del pedal (según especificaciones del DOT)
- El vehículo no se detiene en línea recta (según especificaciones del DOT)
- Mangueras dañadas
- Tambor o rotor muy delgados (según especificaciones del fabricante)
- Grosor de la placa o del revestimiento inferior que 1/32 pulgadas
- Unidad de potencia fuera de servicio o con pérdidas
- Partes estructurales o mecánicas dañadas

Bolsas de aire

Sistema de dirección
- Demasiado juego en el volante (según especificaciones del DOT)
- Juego mayor a 1/4 de pulgada en el varillaje
- El mecanismo de dirección se traba
- Alineación inadecuada de las ruedas frontales (según especificaciones del DOT)
- Grietas o deslizamientos en las correas de la unidad de potencia
- Nivel inadecuado de fluidos de la unidad de potencia

Sistema de suspensión
- Juntas de rótula dañadas
- Partes estructurales dobladas o dañadas
- Barra estabilizadora desconectada
- Resorte roto
- Cojinete del amortiguador suelto
- Cojinetes de caucho dañados o ausentes
- Biela dañada o ausente
- Amortiguador con pérdidas o con funcionamiento inadecuado

Neumáticos
- Profundidad de las ranuras menor que 2/32 de pulgada
- Tamaños que no corresponden
- Daños visibles

Ruedas
- Grietas, daños o reparaciones visibles
- Tornillos de sujeción sueltos o ausentes

Sistema de escape
- Pérdidas
- Convertidor catalítico

2" columns, left, centered, right
7 pt bold, 2 pt before para,
7/8.4 pt regular, 15 pt lft ind,
-10 pt first line ind

2 pt rule

NOMBRE DEL CONCESIONARIO

DIRECCIÓN DEL CONCESIONARIO

TELÉFONO CORREO ELECTRÓNICO

PARA QUEJAS DESPUÉS DE LA VENTA COMUNÍQUESE CON:

2 pt rule
0.5 pt rule
8 pt regular, caps

IMPORTANTE: La información de este formulario es parte de cualquier contrato para comprar este vehículo. Quitar esta etiqueta antes de la compra del consumidor (excepto a los fines de realizar una prueba de conducción) es una infracción a la ley federal (16 C. F. R. 455).

2 pt rule
9/10.8 pt bold & regular, caps & lc

* Typeface is Arial, text is flush left unless otherwise noted.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–29920 Filed 12–14–12; 8:45 am]

BILLING CODE 6750–01–C

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Federal Register

Vol. 77, No. 242

Monday, December 17, 2012

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, DECEMBER

71483–71686 3
71687–72194 4
72195–72680 5
72681–72912 6
72913–73262 7
73263–73540 10
73541–73896 11
73897–74102 12
74103–74340 13
74341–74554 14
74555–74774 17

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8909 72195
8910 72675
8911 72677
8912 72679
8913 72911
8914 73891
8915 74345
Executive Orders:
13630 73893
13631 (See EO 13544 of 6/10/2010; continued by EO 13591) 74101
13632 74341
Administrative Orders:
Presidential Determinations:
No. 2013-02 of December 4, 2012 74553

5 CFR

532 74347
870 71687
Ch. XCVIII 74347

7 CFR

915 71688
922 72681
923 72683
927 72197
Proposed Rules:
905 73961
927 72245
3201 72654

9 CFR

98 74555
417 72686

10 CFR

171 72199
430 74559
710 71689
Proposed Rules:
61 72997
429 72763
430 74616
431 ..... 72763, 74616

11 CFR

Proposed Rules:
110 74121

12 CFR

308 74573
390 74573
703 74103
704 74103
709 74103
713 74112
741 74103
905 73263
1090 72913
1200 73263
1700 73263
Proposed Rules:
Ch. X 74625
1209 72247

13 CFR

121 ..... 72691, 72702
Proposed Rules:
121 72766

14 CFR

21 71691
39 ..... 71483, 71485, 71487, 71489, 71491, 72200, 72203, 72913, 73265, 73268, 73270, 73273, 73279, 73282, 73897, 73902, 73906, 73908, 74579
71 ..... 71492, 71493
91 ..... 72766, 72778
97 ..... 71494, 71495, 71497, 71499
117 73911
119 73911
121 73911
Proposed Rules:
39 ..... 71723, 71729, 71731, 72250, 72252, 72766, 72778, 73340, 73343, 73557, 74123, 74125, 74126, 74628
71 71734
91 72998
121 ..... 71735, 72998
125 ..... 71735, 72998
135 ..... 71735, 72998

15 CFR

6 72915
744 72917
774 72917
902 71501
Proposed Rules:
1400 72254

16 CFR

455 73912
681 72712
1107 72205
1500 ..... 73286, 73289
1700 73294
Proposed Rules:
240 71741
455 74746
1112 ..... 73345, 73354
1222 73345
1225 73354

17 CFR

1 74351

39 74284
50 74284
240 73302
249 73302
Proposed Rules:
Ch. II 71743
240 71568

19 CFR

4 73306
10 72715
24 ....72715, 73306
101 73306
102 ....72715, 73306
122 73310
123 72715
127 73306
128 72715
141 72715
143 72715
145 72715
148 72715
159 73306
161 73306
177 73306

21 CFR

1 74582
173 71695
Proposed Rules:
150 71746
500 72254
520 72254
522 72254
524 72254
529 72254
556 72254
558 72254
573 71750

24 CFR

203 72219
232 72920
1000 71513

25 CFR

162 72240

26 CFR

1 ....72923, 74583
40 72721
46 72721
48 72924
602 72721
Proposed Rules:
1 ....72268, 72612, 73965
31 72268

27 CFR

25 72939
Proposed Rules:
25 72999

28 CFR

Proposed Rules:
811 73558

29 CFR

4022 74353
Proposed Rules:
18 72142
1910 72781
1926 72781
2520 74063
2550 74063
2578 74063

30 CFR

Proposed Rules:
926 73965
944 73966
1206 71751

31 CFR

515 71530
Proposed Rules:
356 72278
1010 72783

32 CFR

68 72941
706 ....72736, 74113
Proposed Rules:
157 72788

33 CFR

100 ....71531, 72956, 72957, 73311
117 ....72737, 74586
165 ....71697, 72957, 73541, 73916, 74587
Proposed Rules:
117 73967

34 CFR

685 72960
Proposed Rules:
Subtitle A 74407
75 74392
77 74392

36 CFR

7 73919

37 CFR

Proposed Rules:
201 72788
203 72788

38 CFR

51 72738
53 73312
Proposed Rules:
3 73366

39 CFR

20 72960

40 CFR

52 ....71533, 71551, 71700, 72512, 72742, 72966, 72968, 73313, 73316, 73320, 73322, 73544, 73923, 73924, 73926, 74115, 74355, 74372, 74590
55 72744
80 ....72746, 74592
82 74381
122 72970
180 ....71555, 72223, 72232, 72747, 72975, 72984, 73934, 73937, 73940, 73945, 73951, 74116
716 71561
Proposed Rules:
52 ....71568, 71751, 72284, 72287, 72291, 73005, 73369, 73386, 73387, 73391, 73392, 73560, 73570, 73575, 74129, 74421
60 ....72294, 73968
63 ....72294, 73968
81 ....73560, 73575
82 74435
131 74449

42 CFR

8 72752
73 71702
438 74381
441 74381
447 74381
495 72985

44 CFR

64 74607
67 ....71702, 73324, 74610
Proposed Rules:
67 ....73393, 73394, 73396, 73398, 74142

45 CFR

170 72985
Proposed Rules:
153 73118
155 73118
156 73118
157 73118
158 73118
800 72582

46 CFR

8 73334
Proposed Rules:
10 74630

47 CFR

0 71711
54 ....71711, 71712
73 ....71713, 72237, 73545
101 73956
Proposed Rules:
1 ....73586, 73969
20 72294
27 73969
73 73969
76 72295

48 CFR

Ch. 1 ....73516, 73520
4 73516
25 73516
52 73516
2401 73524
2402 73524
2403 73524
2404 73524
2406 73524
2407 73524
2409 73524
2415 73524
2416 73524
2417 73524
2419 73524
2426 73524
2427 73524
2428 73524
2432 73524
2437 73524
2439 73524
2442 73524
2452 73524
908 74382
945 74382
952 74382
970 74382
Proposed Rules:
538 74631
552 74631

49 CFR

567 71714
571 71717
Proposed Rules:
234 73589
235 73589
236 73589
571 ....71752, 72296, 74144
665 74452

50 CFR

17 ....71876, 72070, 73740, 73770
300 71501
622 ....72991, 73338, 73555, 74119, 74389
635 ....72993, 74612
648 ....71720, 72242, 72762, 72994, 73556, 73957, 74390
679 ....72243, 72995
Proposed Rules:
17 ....71757, 71759, 73828
223 73220
224 73220
300 73969
635 73608
648 ....72297, 74159
660 73005
679 ....72297, 72791
680 74161

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

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H.R. 915/P.L. 112–205

Jaime Zapata Border Enforcement Security Task Force Act (Dec. 7, 2012; 126 Stat. 1487)

H.R. 6063/P.L. 112–206
Child Protection Act of 2012 (Dec. 7, 2012; 126 Stat. 1490)

H.R. 6634/P.L. 112–207
To change the effective date for the Internet publication of certain financial disclosure forms. (Dec. 7, 2012; 126 Stat. 1495)

Last List December 7, 2012

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