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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2012–0079]

Golden Nematode; Removal of Regulated Areas in Livingston and Steuben Counties, NY

Correction

In rule document 2013–206 appearing on pages 1713–1715 in the issue of January 9, 2013, make the following corrections:

(1) On page 1713, in the second column, in the last line, ''§ 301.852(a)'' should read ''§ 301.85–2(a)''.

§ 301.85–2a [Corrected]

■ (2) On page 1714, beginning in the second column, § 301.85–2a is corrected to read as set forth below:

§ 301.85–2a Regulated areas; suppressive and generally infested areas.

* * * * *

New York

(1) *Generally infested area:*

* * * * *

Livingston County. (A) That portion of land in the town of Avon bounded as follows: Beginning at a point marked by latitude/longitude coordinates 42°90′56″, -77°68′72″; then east along a farm road to coordinates 42°90′54″, -77°68′50″; then east along a farm road to coordinates 42°90′60″, -77°68′25″; then north along a drainage ditch to coordinates 42°90′69″, -77°68′23″; then north along a drainage ditch to coordinates 42°90′79″, -77°68′47″; then north to coordinates 42°91′03″, -77°68′44″; then west along the south side of a farm road to coordinates 42°91′03″, -77°68′57″; then south along a farm road to point of beginning at coordinates 42°90′56″, -77°68′72″;

(B) The area known as ''South Lima North Muck'' in the town of Lima bounded as follows: Beginning at a point along the north side of South Lima Road marked by latitude/longitude coordinates 42°85′53″, -77°67′38″; then north along a farm road to coordinates 42°85′88″, -77°67′12″; then east along a farm road and along a forested edge to coordinates 42°85′94.7″, -77°66′60.1″; then north along an irrigation ditch to coordinates 42°86′10.9″, -77°66′59.0″; then east along a forested edge to coordinates 42°86′11.2″, -77°66′47.7″; then north along a farm road to coordinates 42°87′35″, -77°66′51″; then west along a farm road to coordinates 42°87′35″, -77°66′84″; then south along Little Conesus Creek to coordinates 42°87′12.56″, -77°66′93.38″; then west to include a portion of an access road and gravel clean off site to coordinates 42°87′12.60″, -77°67′05.50″; then south to coordinates 42°87′11.19″, -77°67′04.43″; then east to coordinates 42°87′11.05″, -77°66′99.68″; then north to coordinates 42°87′12.03″, -77°66′98.99″; then east to coordinates 42°87′11.97″, -77°66′93.67″; then south along Little Conesus Creek to coordinates 42°86′88″, -77°67′02″; then west along a farm road to coordinates 42°86′88″, -77°67′13″; then south along a farm road to coordinates 42°86′59″, -77°67′33″; then south along a farm road to coordinates 42°86′42″, -77°67′40″; then west along a farm road to coordinates 42°86′43″, -77°67′61″; then south along a farm road to coordinates 42°85′67″, -77°68′02″; then east to coordinates 42°85′64″, -77°67′41″, then south along Little Conesus Creek to coordinates 42°85′53″, -77°67′45″; then east to point of beginning at coordinates 42°85′53″, -77°67′38″;

(C) The area known as ''South Lima South Muck'' in the town of Lima bounded as follows: Beginning at a point along the south side of South Lima Road marked by latitude/longitude coordinates 42°85′52″, -77°67′74″; then south to coordinates 42°85′48″, -77°67′74″; then east to coordinates 42°85′48″, -77°67′67″; then south to coordinates 42°85′09″, -77°67′70″; then south to coordinates 42°84′47″, -77°67′72″; then east to coordinates 42°84′46″, -77°67′39″; then north along a farm road to coordinates 42°84′77″, -77°67′28″; then east along a farm road to coordinates 42°84′88″, -77°67′00″; then north along a farm road to coordinates 42°85′12″, -77°67′01″; then west along a farm road to coordinates 42°85′12″, -77°67′20″; then north along a farm road to coordinates 42°85′16″, -77°67′20″; then west along a farm road to coordinates 42°85′18″, -77°67′40″; then north to coordinates 42°85′41″, -77°67′40″; then west to coordinates 42°85′45″, -77°67′66″; then north to coordinates 42°85′52″, -77°67′65″; then west to point of beginning at coordinates 42°85′52″, -77°67′74″; and

(D) The area known as ''Wiggle Muck'' in the town of Livonia bounded as follows: Beginning at a point along the west side of Plank Road (State Highway 15A) marked by latitude/longitude coordinates 42°84′89.0″, -77°61′36.7″; then west to coordinates 42°84′91″, -77°62′03″; then south along a farm road to coordinates 42°84′68″, -77°61′92″; then south along a farm road to coordinates 42°84′19″, -77°61′88″; then east to coordinates 42°84′22″, -77°61′61″; then north along a farm road to coordinates 42°84′87.2″, -77°61′68.1″; then east to the west side of Plank Road marked by coordinates 42°84′87.2″, -77°61′35.9″; then north to point of beginning at coordinates 42°84′89.0″, -77°61′36.7″.

* * * * *

Steuben County. (A) The towns of Prattsburg and Wheeler;

(B) The area known as ''Arkport Muck North'' located in the town of Dansville and bounded as follows: Beginning at a point along the west bank of the Marsh Ditch that intersects a farm road marked by latitude/longitude coordinates 42°42′30'', -77°71′21″; then north along the Marsh Ditch to coordinates 42°42′96.1″, -77°71′54.0″; then west along a 45-foot wide hedgerow to coordinates 42°42′83.1″, -77°72′00.3″; then south through woods, along a farm road, and field border to coordinates 42°42′55″, -77°71′89″; then east along a tree line to coordinates 42°42′54″, -77°71′80″; then south along a tree line to coordinates 42°42′30″, -77°71′57″; then east to point of beginning at coordinates 42°42′30″, -77°71′21″;

(C) The area known as ''Arkport Muck South'' located in the town of Dansville and bounded as follows: Beginning at a point along the west side of New York Route 36 marked by latitude/longitude coordinates 42°40′54.5″, -77°69′79.0″; then north along the west side of New York Route 36 to coordinates 42°41′45″, -77°69′99″; then west along a farm road

to coordinates 42°41′45″, -77°70′29″; then north along a farm road to coordinates 42°41′60″, -77°70′36″; then west along a farm road to coordinates 42°41′62″, -77°70′83″; then north along the Marsh Ditch to coordinates 42°41′86″, -77°70′97″; then west along a farm road to coordinates 42°41′81″, -77°71′21″; then south along a farm road to coordinates 42°41′76.0″, -77°71′18.0″; then west along a fallow strip to coordinates 42°41′75.6″, -77°71′40.2″; then south along a fallow strip to coordinates 42°41′61.3″, -77°71′42.0″; then west along a farm road to coordinates 42°41′60.4″, -77°71′68.1″; then south along a farm road on the east side of the Conrail right-of-way (Erie Lackawanna Railroad) to coordinates 42°40′50″, -77°71′07″; then east along a farm road to coordinates 42°40′49″, -77°70′38″; then north along an irrigation ditch to coordinates 42°40′69.9″, -77°70′46.8″; then east along an irrigation ditch to coordinates 42°40′69.7″, -77°70′34.3″; then south along the Marsh Ditch to coordinates 42°40′55.0″, -77°70′26.5″; then east to point of beginning at coordinates 42°40′54.5″, -77°69′79.0″;

(D) The property in the town of Cohocton (formerly known as the ''Werthwhile Farm'') bounded as follows: Beginning at a point along the north side of Brown Hill Road marked by latitude/longitude coordinates 42°45′03.5″, -77°53′56.2″; then north along a forest edge to coordinates 42°45′27.5″, -77°53′55.7″; then west along a forest edge to coordinates 42°45′27″, -77°53′72.9″; then north along a forest edge to coordinates 42°45′47.6″, -77°53′72.2″; then west along a forest edge and a hedgerow to the east side of Rex Road to coordinates 42°45′48.7″, -77°54′40.7″; then southwest along the east side of Rex Road to coordinates 42°45′39.4″, -77°54′53.6″; then south along a hedgerow and a forest edge to coordinates 42°45′05.7″, -77°54′54.7″; then east along a hedgerow and the north side of Brown Hill Road to point of beginning at coordinates 42°45′03.5″, -77°53′56.2″; and

(E) The property located in the town of Fremont that is bounded as follows: Beginning at a point on Babcock Road that intersects a farm road marked by latitude/longitude coordinates 42°43′68.06″, -77°57′51.11″; then west along the farm road to coordinates 42°43′67.22″, -77°57′80.56″; then south to coordinates 42°43′60.00″, -77°57′80.28″; then west to coordinates 42°43′59.44″, -77°58′07.50″; then south to coordinates 42°43′35.28″, -77°58′06.39″; then east to coordinates 42°43′33.06″, -77°57′78.89″; then south to coordinates 42°43′18.61″, -77°57′77.78″; then east to coordinates 42°43′23.06″, -77°57′71.39″; then north to coordinates 42°43′30.28″, -77°57′63.89″; then east to coordinates 42°43′30.28″, -77°57′61.39″; then north to coordinates 42°43′49.44″, -77°57′56.94″; then east to coordinates 42°43′49.17″, -77°57′49.72″; then north to the point of beginning at coordinates 42°43′68.06″, -77°57′51.11″.

* * * * *

[FR Doc. C1–2013–00206 Filed 1–16–13; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 764

RIN 0560–AI17

Microloan Operating Loans

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is modifying Operating Loan (OL) application, eligibility, and security requirements for Microloans (ML) to better serve the unique operating needs of small family farm operations. The intended effect of this rule is to make the OL Program more widely available and attractive to small operators through reduced application requirements, more timely application processing, and added flexibility in meeting the managerial ability eligibility requirement. FSA is also removing provisions for the low documentation (Lo-Doc) application process for OLs from the existing direct loan regulations.

DATES: Effective January 17, 2013.

FOR FURTHER INFORMATION CONTACT: Connie Holman; telephone: (202) 690–0756. Persons with disabilities or who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

FSA has a long history of providing agricultural credit to the Nation's farmers and ranchers through its OL Program. The Consolidated Farm and Rural Development Act of 1972 (Pub. L. 92–419, CONACT), as amended, authorizes FSA's OL Program. FSA's OL Program is designed to finance the farm operating needs of family farms for operators who meet the program eligibility requirements. Among other things, eligible applicants must be unable to obtain sufficient credit from other sources; have sufficient applicable education, on-the-job training, or farming experience; have an acceptable credit history; and have adequate collateral for the proposed loan. (See 7 CFR 764.101 and 764.252 for a full explanation of OL eligibility requirements.) OL funds may be used for such things as annual or term operating purposes to refinance certain debts; pay normal farm operating and family living expenses; purchase livestock, equipment, and other materials essential to a farm operation; and may also be used for some minor improvements to farm real estate, such as wells and essential repairs to buildings. (See 7 CFR 764.251 for a complete list of OL funds uses.) Throughout this rule, any reference to ''farm'' or ''farmer'' also includes ''ranch'' or ''rancher,'' respectively; in this document, the word ''operator'' refers to farmers who operate a farm.

In on-going efforts to improve the OL Program, FSA evaluated the unique needs of small farm operations and identified unintended barriers to applying for OLs. As a result, FSA is simplifying the application process and adding flexibility for meeting both loan eligibility and security requirements to encourage their participation. FSA published the proposed rule on May 25, 2012 (77 FR 31220–31226). The proposed rule included provisions for streamlining and abbreviating the application process, modifying security provisions, and providing additional flexibility in meeting the experience eligibility requirement. Additionally, FSA proposed removing the Lo-Doc OL Program provisions from the CFR. As discussed below, this final rule makes a few changes from the proposed rule in response to comments.

The ML application process, or the ML process, is within the existing OL Program framework, and uses existing OL appropriations to focus on the financing needs of small farm operations. These small farms, including non-traditional farm operations, currently have limited financing options available.

ML has been designed to appeal to small family farm operations. The ML application process simplifies the information required to apply by reducing the level of documentation required to more appropriately align with the less complex structure and needs of small operations. Additionally, the eligibility requirement for managerial ability and the loan security requirements for the ML process have been modified from the OL

requirements to be more appropriate for small family farms.

Summary of Comment and Reponses

In response to the proposed rule, FSA received 48 comments. Comments were from national and local organizations primarily with agricultural, financial, and socially disadvantaged group affiliations; the general public; and FSA employees. The issues in the comments and the FSA responses, including a discussion of any changes to the regulation are discussed below.

The majority of the comments received were positive and supportive of the proposed ML process and commended FSA for considering the needs of small farms and niche-type operations while designing the new application process. Many of the comments welcomed the proposed changes without reservation. Some comments included suggestions for fine-tuning the proposed ML process. Some opposing comments stated concerns with inexperienced borrowers, a lessened standard of loan underwriting, and potential losses for the government.

FSA is incorporating some changes to the regulation as discussed in this final rule. Some changes have been made to the farm assessment, security, eligibility, and farm operating plan requirements to accommodate the streamlined process for MLs. The changes in 7 CFR part 764, ''Direct Loan Making,'' add the loan application requirements for ML; alternatives for meeting the managerial ability eligibility requirement for ML; operating loan uses for ML; security requirements for ML; and several other minor amendments.

Comment: Include the work experience of migrant workers in the requirement for managerial experience.

Response: For FSA loans generally and for microloans, as specified in 7 CFR 764.101(i)(3), an applicant with experience as a migrant worker may meet the managerial requirement through their farm experience depending on the type of management responsibilities the migrant worker performed. Internal guidance was added earlier this year to incorporate this type of experience into FSA's handbook at paragraph 69(A) of 3–FLP. Additional handbook guidance will be added to further explain how this type of experience can be used to meet the requirements specified in the ML regulations. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: FSA should broaden the agriculture-related organizations beyond youth programs, such as 4–H Club or Future Farmers of America (FFA), to include groups such as farm incubator programs and community based organizations.

Response: FSA will not limit the experience with agriculture-related organizations to youth programs. FSA agrees and will clarify that there are acceptable organizations with agricultural emphasis that can provide similar benefits to participants. The applicant that demonstrates day-to-day management experience in an agriculture related field. Therefore, FSA is revising § 764.101(i)(4)(i) to include other acceptable agricultural organizations.

Comment: The proposed change to the management experience should not be implemented. An applicant gaining experience on future intent is problematic. There should be at least 1 year of farm experience prior to participating in the proposed apprenticeship. In addition, there should be some type of quality control for the mentors participating in the apprenticeship program.

Response: FSA agrees that an applicant should have some farm experience or small business experience to be determined eligible using proposed participation in the self-directed apprenticeship. FSA's intent was to create a farm management opportunity for applicants who are not able to meet the management ability eligibility requirement through traditional education, on the job training (as a farm laborer with farm management responsibilities), or managerial farm experience. FSA understands that there are applicants who want to farm, but who may not have had the traditional farm experience opportunities available to someone raised on a farm or in a farm or rural community where agriculture-affiliated organizations are within reach. Some applicants, due to a variety of circumstances, may have had only farm labor positions available to them. A self-directed apprenticeship was proposed for ML applicants to allow applicants an alternative means to gain farm management experience for one production cycle.

FSA has considered the suggestions to improve the apprenticeship option. FSA still requires that there be some farm experience. FSA will also consider small business experience of an applicant along with the self-guided apprenticeship as a means to meet the management ability eligibility requirement, if the applicant is unable to meet this requirement through the other options. This will assist applicants who have only farm labor experience by providing them the opportunity to gain farm management experience while working with a mentor during the first production and marketing cycle. FSA will make the relevant changes to the apprenticeship program. FSA will monitor the results of the apprenticeship option in the coming years to determine if it adequately meets the needs of the applicants we expect to help. Therefore, FSA is revising § 764.101(i)(4)(ii) to adjust the proposed alternatives to require sufficient prior experience working on a farm or small business management experience combined with participation in a self-directed apprenticeship.

Comment: Require the mentor to sign the loan application to prevent fraud and abuse of program.

Response: FSA will require that the mentor's full name and description of operation be provided on the application, but disagrees that the mentor should have to sign the application form. FSA believes requiring a signature on the application would make mentors wary of working with FSA applicants and borrowers. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: There should be qualifying criteria for mentors so that their suitability can be evaluated. Mentors should demonstrate appropriate technical and other capabilities to provide guidance to applicants, acknowledge the existence of a proposed mentor relationship, and provide documentation of their farm profitability.

Response: FSA has made adjustments to the regulatory text as proposed for 7 CFR 764.101(i)(4)(ii) to improve the self-directed apprenticeship option to assist applicants in meeting the management ability eligibility requirement. At this time, mentors will not be evaluated as part of the application process. An evaluation would cause the ML application to become cumbersome, and increase the process and burden on the applicant and mentor. As stated previously, FSA believes that this would cause mentors to be reluctant to work with FSA applicants and borrowers. Part of the intent of ML is to keep the process proportional to the loan amount, and to the small operations expected to frequently use ML funds. FSA will evaluate the effectiveness of the apprenticeship program in the coming years to determine if this tool is useful in helping applicants who cannot meet the management ability eligibility requirement in other ways. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Do not limit debt verification to the credit bureau reports; most of the farm creditors do not report to the credit bureaus.

Response: FSA understands that many farm creditors and local suppliers do not report to the credit bureaus. FSA considers the self-certification of debt on the application to be an acceptable risk that will contribute to streamlining efforts. Since applicants will still need to demonstrate credit-worthiness as specified in 7 CFR 764.101(d), among other OL eligibility criteria, any risks in this area are expected to be low. If deemed necessary by the loan official, additional information may be requested from the applicant; however, this should be in exceptional cases in order to keep ML a truly streamlined process. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: The non-itemized cash flow will lower the level of business analysis and supportive documentation that would be required. FSA should require a minimum of 3 years of tax returns plus other information completed in greater detail. The non-itemized cash flow with less experienced operators is a set up for failure in any business venture.

Response: FSA disagrees and will not be requiring an itemized cash flow or increased documentation for ML applicants, as the intent of ML is to keep the process proportional to the smaller loan amounts and to the small, simpler operations expected to seek this financing. For applicants new to FSA who may produce non-traditional crops or with production practices where yield per acre may be less important, other factors, such as the production capacity, the consistency of income and expenses, and the timely harvest and selling of produce, may be more appropriate measurements to use in establishing actual productivity and projected plans. In addition, FSA predicts that many ML borrowers will be existing OL borrowers that already borrow at the $35,000 threshold and below. In these cases, FSA will have information on file for many of these applicants through the normal course of business in past years (year end analysis (YEA), Farm Assessments, etc.). Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: New operations applying for ML should not be required to have yields or yield history.

Response: The proposed rule already allowed for circumstances where yield history or reporting is impractical, not relevant to the proposal submitted, or is not available. Some applicants meeting the managerial eligibility requirements will not have operated a farm in the previous year, and therefore will not be required to have yield history. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Any applicant having caused FSA a loss should be considered ineligible for ML. The documentation needed for the application would be beyond the intent for the simplified ML process; they should have to provide all of the documentation for an OL. The applicant would have the option to apply for OL through the regular process as specified in 7 CFR 764.252(c).

Response: MLs are direct program loans, and the general eligibility requirements for direct loans already state that an applicant who caused the Agency a loss by receiving debt forgiveness (defined in 7 CFR 761.2) may be ineligible (7 CFR 764.101(d)(2)).

Comment: MLs should not be secured by collateral worth only 100 percent of the loan amount; it should still be able to be secured with up to 150 percent, when available. The proposed change differs from the current regulation in § 764.104(c), which requires collateral worth up to 150 percent of the loan amount, if available, to secure the loan. Why decrease security requirements for MLs when these loans are riskier than regular OL loans or loans made to established producers? Additionally, the crops financed for direct sales involve added risk to loan security; it would be impractical for FSA to enforce a Uniform Commercial Code (UCC) filing on these commodities and, therefore, FSA would have no control over the produce sales income.

Response: FSA's intent for ML is to provide flexibility for financing and to prevent possible barriers to meeting loan security requirements: Specifically, requiring additional security to finance unfamiliar crops and production. As a clarification, for FSA's existing OL Program, all agricultural commodities, whether salad greens or corn, are considered eligible production for a family farm and are regularly financed by FSA with UCC filings. So long as the agricultural commodities are determined to have a security value of 100 percent of the amount loaned for annual operating and family living expenses these commodities can be used to secure the loan. FSA agrees that for MLs security of 100 percent should always be required, but the requirement for additional security up to 150 percent, when available, should be limited to MLs for annual operating purposes. FSA also believes that additional security from 100 percent to 150 percent should be limited to farm assets, and is not to include the personal residence. Therefore, FSA is revising § 764.255(c)(1), (2), (3), and (4) to limit collateral to farm property having a security value of at least 100 percent for MLs and up to 150 percent, if available, for MLs made for annual operating purposes. This adjusts the security requirements for crops and equipment separately to meet a balance between adequate collateral margin, the type of security, and security requirements that take into consideration the assets and collateral of the non-traditional, and new farm operations that FSA expects will be seeking ML funding.

Comment: The costs to legally obtain the collateral in cases where loans fail would be onerous and exceed the value FSA would recover.

Response: FSA agrees that in some cases, the costs to obtain the collateral could be onerous and exceed the value FSA would recover. FSA is required to service its loans, but can make the decision on how best to service delinquent loans on a case-by-case basis. This flexibility can limit the amount of loss to FSA. Treasury offsets are also applied to delinquent borrower accounts to recover amounts due. So, even when the loan balance exceeds the liquidated security FSA anticipates it will recover additional amounts through offsets. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Sound underwriting standards would require a second or junior mortgage placed on the property to cover the first mortgage.

Response: FSA is making some adjustments to the security requirements for annual MLs, requiring chattel collateral up to 150 percent when available, excluding personal residences. Therefore, FSA is revising § 764.255(c)(1), (2), and (4) to limit collateral to farm property having security value of at least 100 percent, and up to 150 percent, if available, for MLs made for annual operating purposes.

Comment: Allow a cosigner on the security requirement.

Response: FSA presently accepts a pledge of security from a third party or a cosigner under general security requirements. This option would also apply to MLs. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Do not remove the Lo-Doc OL application process; Lo-Docs still serve a purpose, particularly those that are above the ML maximum of $35,000.

Response: To continue providing streamlined financing for annual OL needs up to $300,000, FSA is implementing internal processing changes, which do not require changes to the regulations, for an OL application process for returning customers with no changes in their operation since their original loan application. This new process for a subsequent OL, along with ML, is expected to improve the overall application process for all levels of OLs; the Lo-Doc would then become obsolete once these proposed changes are implemented. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: The $35,000 maximum loan limit for ML should be a different amount. It should be $25,000 or lower to limit risk. FSA should assess any losses after a period of years, and then consider increasing the maximum. Alternately, the maximum amount should be greater than $35,000, with a limit up to $50,000.

Response: ML will initially have a $35,000 maximum amount. FSA's preliminary analysis predicts this amount will be sufficient to provide financing needs to a substantial group of operators, but still low enough to be a manageable risk. FSA will review the success of the program and will reevaluate the loan amounts periodically, and if any change is needed, it will be made through rulemaking. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: ML should be limited to individuals and husband and wife joint ventures only since this program is intended for more simplistic operations. The additional documentation required for entities does not lend itself to this type of simplified application.

Response: FSA disagrees. This suggestion would cause some entities to be excluded from the ML process that might otherwise benefit from the changes intended for small operations. In addition, one of the requirements of the Regulatory Flexibility Act (5 U.S.C. 603) is to consider alternatives to minimize any significant economic impact of the rule on small entities. Arbitrarily limiting applicants to certain entity compositions could be considered disparate treatment. Furthermore, initial analysis and applicant estimates for the program show that only a small number of ML applicants would be entity applicants. The ML process is intended to tie the dollar amount of risk involved to the level of paperwork and documentation needed, rather than the type of organization. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: ML should be limited to 4 of the 11 possible uses under the OL Program to avoid bringing more complex issues that would not fit a simplified loan application.

Response: FSA disagrees. The ML process is intended to tie the dollar amount and risk involved to the level of paperwork and documentation needed, rather than the use of the loan money. It would be disparate treatment, and unsound business practice, to tie paperwork requirements to the uses of loan funds. Limiting uses of funds to only a few of the normal OL loan uses would punish those who request small loans, and it would be potentially confusing. MLs were designed to be less complicated. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: There should be a limitation on use of balloon payments and terms to those that can be repaid within 7 years. The documentation needed to justify the longer terms requires additional paperwork by both the applicant and Farm Loan Programs (FLP) staff.

Response: Loan terms for MLs will be the same as FSA's regular OL Program, which does limit term loans to a 7-year term. All MLs will be serviced the same as regular OLs. FSA also realizes that the profitability of an operation is not directly tied to the amount of operating funds it borrows and therefore believes that many smaller operations whose loan needs can be accommodated through the new ML process can be quite successful and business savvy enough to easily handle any balloon payment. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: FSA should not require an ML applicant to submit additional information even if specifically needed to make a determination on the loan application. Asking for additional information may sound favorable to FSA; but it may make the process less palatable to the applicant after submitting what is believed to be a complete application.

Response: FSA will not be making this change, as there are situations, such as requesting a divorce decree document in order to determine whose signature is needed to secure a loan, in which additional information will be necessary. FSA believes that there is a responsibility to undertake adequate due diligence to protect loan funds. The intent of the ML process is that requiring additional information will be the exception, in keeping with a truly streamlined process for applicants. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: FSA should partner with agricultural groups to provide training and mentoring for ML applicants to include beginning farmers, sustainable agriculture, and specialty non-traditional operations.

Response: FSA does partner with agricultural groups to provide training and mentoring, and will do so for ML applicants, and all borrower training requirements will apply as with all other FSA loans. FSA is committed to working through outreach and marketing efforts in local Service Centers and State offices to continue to seek additional opportunities for applicants and borrowers to receive appropriate, accessible training and continuing education as they start and build their farm operations. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Outreach for MLs is important to Socially Disadvantaged Applicants (SDA), applicants with limited English proficiency, and various ethnic minority communities. Will MLs target funds for Beginning Farmer (BF) and SDA applicants?

Response: FSA has a strong commitment to Farm Loan Programs outreach and marketing at the Service Center and State Office levels, and anticipates strong demand for ML from SDAs. MLs are part of the OL Program and will be included in the outreach. Loan officials can locate interpreters on an as-needed basis if there is a language barrier with applicants. Loan applications and funding for SDA and BF customers are targeted, tracked, and monitored to ensure that these producers are reached within the communities FSA serves. ML will have the same BF and SDA loan funding goals as does the existing OL Program. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: For ML to effectively assist the non-traditional farmers with this streamlined process, staff will need to be trained at the local and State levels.

Response: Local offices will be provided training when the program is introduced, and further training will be provided on a periodic basis. Training on the new process, and the expected types of operations seeking MLs will be provided for a successful roll-out and implementation of this program. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Prioritize data and data collection to build information on nontraditional types of local markets.

Response: FSA State offices compile the prices and yields of agricultural commodities, and make them available to the Service Center staff for loan underwriting and projecting purposes. For States and regions that currently have more exposure to more non-traditional and direct sales types of operations, additional data has been added on a year by year basis depending on the consistency and availability of market and yield data. Additional guidance on organic and less traditional crops is also being provided and will be in handbook amendments. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: FSA should build in metrics to evaluate, monitor, track, and measure MLs separate from OLs.

Response: FSA is implementing the necessary changes in our system, so that the MLs can be isolated and evaluated. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: The ML application should be made available online with an improved application interface.

Response: Applications and forms are available online for printing; some forms are fillable and can be submitted electronically. FSA agrees that an online application process would be an efficient alternative to the present OL application process, but a regulatory change is not necessary to accomplish this. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: ML would be enhanced if payments could begin 3 years after establishing crops with longer production cycles versus requiring installments due prior to crop maturity.

Response: The suggested change is not necessary. In some circumstances FSA already allows OL (which include MLs) principal and interest payments to be adjusted, and deferred until the crop establishes and produces, including, for example, woody plants, vineyard plantings, asparagus, and cranberries. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Will ML be subject to the direct OL term limits?

Response: ML is a part of the direct OL Program and will be subject to the OL term limits set by law (see 7 U.S.C. 1941). Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Will the Limited Resource (LR) rates be used for ML?

Response: ML is a part of the direct OL Program, and LR rates can be used as appropriate as specified in 7 CFR 764.254. In this current low interest rate environment, the LR rate of 5 percent is above the regular OL rate. When the regular OL interest rate is above 5 percent, it will be appropriate to consider the impact of LR rates on the borrower's cash flow. Therefore, no change is necessary.

Comment: Allow borrowers to make payments when they sell their products.

Response: A change is not necessary because existing regulations already allow FSA borrowers to pay on their loans if receiving sales income throughout the year and prior to the annual due date. There are no prepayment penalties for any FSA direct loans. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: What is the projected annual number of new borrowers, and existing borrowers expected to receive ML funds?

Response: FSA's cost benefit analysis looked at the segment of existing direct OL customers borrowing $35,000 or less and estimates that with ML maximum rate of $35,000 there would be, at most, 3,340 existing borrowers in this group. The analysis provides the best possible information for borrower projections. No regulatory change is necessary.

Comment: FSA should wait for the next Farm Bill. What is FSA's authority for ML regulation?

Response: ML is a subset of OL. Therefore, all the requirements and provisions in 7 U.S.C. 1941 for OL apply to MLs. FSA believes that many of these changes provided through ML, which were overwhelmingly supported by the commenters, will be welcomed by FSA customers. There has been much anticipation for an OL process that is more proportional to the loan amount, and the smaller operations have been seeking this financing. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: This program, like other FLP loans, only applies to people with bad credit, what about people with good credit?

Response: Applicants must show creditworthiness to be eligible for a direct loan. While it is true that an applicant must be unable to obtain credit elsewhere, circumstances surrounding an applicant's inability to obtain credit may not be related to bad credit issues. Some lenders will not lend for certain agricultural loan purposes, for loan amounts or equity amounts below a minimum threshold, or for any agricultural purpose. Weather-related or economic-related conditions beyond the applicant's control may also prove to be a temporary setback for some operations. Statistically, small operations are more susceptible to these situations. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: Technical assistance or guidance from FSA to ML applicants should be required. What resources are available to provide this assistance?

Response: FSA officials will provide technical assistance to direct loan applicants, if needed, to complete FSA forms and gather information necessary for a complete application. This assistance to applicants includes explaining the application process; identifying sources of information, informing applicants of other technical assistance providers who may be of assistance at minimal or no charge (such as Cooperative Extension Service, USDA outreach grants, Service Corp of Retired Executives), and advising applicants of alternatives to help overcome barriers to being determined eligible for FSA assistance. Other resources are available on a regional basis and FSA State Offices and local Service Centers often provide additional information not available on a national basis. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: How will the definition of ''family farm'' relate to small agricultural production; for example, small family farms versus hobby farms? Will there be restrictions on farm size or gross income minimums?

Response: FSA is not changing the ''family farm'' definition with this rule; any definition is unlikely to anticipate and address every possible production financing request. Requests to finance unusual farm production will continue to be handled on a case-by-case basis. FSA will develop additional handbook guidance, and provide initial and ongoing training as needed to field staff that will highlight and review ML financing of small farm operations. The current ''family farm'' definition in 7 CFR 764.101(k) does not specify minimum farm size restrictions, or minimum gross income, and FSA does not believe that it is necessary to be more specific for MLs. Therefore, FSA is not making any change beyond the proposed rule changes.

Comment: When will ML be implemented?

Response: This final rule implements the changes required to start ML.

Other comments and recommended changes were out of scope or related to statutory requirements of the loan

programs other than MLs. Some of the comments falling under the category of statutory requirements or otherwise out of scope for the proposed ML concerned guaranteed ML lending, intermediary (or partnering) lending, elimination of OL term limits; and comments general to FLP and not specific to ML.

Effective Date

According to 5 U.S.C. 553(d), a rule is to be published in the **Federal Register** 30 days prior to its effective date, unless, among other things, there is good cause found by the agency. (See 5 U.S.C. 553(d)(3).) FSA finds that good cause exists to implement this final rule immediately. At this time of year, a 30-day delay between publication and effective date of the final rule will adversely impact the very applicants it is intended to benefit. For ML to have the greatest impact, it is essential for it to be implemented as early in 2013 as possible. Growers need credit as soon as possible to pay land rent and crop expenses so they can plant their crops on time for optimum production and marketing. Many suppliers offer early season discounts for cash purchases of planting inputs; a 3–5 percent discount on seed, fertilizer, and chemicals will go straight to a grower's bottom line, a vital addition to profit margin. Early availability of MLs will allow FSA to provide credit to these small producers on a timely basis, enhancing their prospects for success. This final rule does not put any additional burdens on the FSA borrower. Instead, the rule makes the loan application less burdensome for applicants for MLs than for applicants for a standard OL. The proposed rule was straightforward and very well received by the public. The rule imposes no complex policies or program requirements that the public would need 30 days to analyze and understand prior to implementation.

Executive Orders 12866 and 13563

Executive Order 12866, ''Regulatory Planning and Review,'' and Executive Order 13563, ''Improving Regulation and Regulatory Review,'' direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasized the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other law, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. FSA has determined that this rule will not have a significant impact on a substantial number of small entities for the reasons explained below. Consequently, FSA has not prepared a regulatory flexibility analysis.

The term small entities include small businesses, small organizations, and small governmental jurisdictions. For the purposes of assessing the impacts of this rule on small entities, a small business is based on the categories in the Small Business Administration's Table of Small Business Size Standards by North American Industry Classification System (NAICS) Category (13 CFR 121.201). All of the entities that would request a Microloan would be small businesses that produce crops and livestock in subsectors 111 and 112 listed in 13 CFR 121.201. These categories cover all primary agricultural production. Under the SBA Small Business Size Standard for these two NAICS subsector categories, the majority of businesses are considered small when they receive less than $750,000 in annual receipts; the threshold is higher for two subcategories of animal production. (See 13 CFR 121.201, subsectors 112112 and 112310.) This standard does not exclude any of the potential farm loan borrowers who will make use of the modifications to the OL Program. Nevertheless, even though the applicants under ML are considered small entities, there would not be a substantial number affected by the rule.

Overall, this rule creates a new application process and greater options for eligibility and security for small loans within the existing OL Program, so, theoretically, some of the loans could be made under the existing program. Therefore, small entities in two credit segments have to be considered for this analysis. One segment is the number of existing borrowers who might take advantage of the modifications in eligibility for future loans. The other segment is the number of new borrowers who might never have applied for an FSA operating loan without the modifications. The number of existing borrowers who might make use of the application, eligibility, and security modifications for future loans can be estimated using fiscal year 2011 direct operating loan data. Given that the maximum borrowing limit is $35,000 as set forth in the rule, it is estimated there would be at most 3,340 borrowers with $102.7 million in loans in this segment. However, since this estimate consists of existing borrowers with the same credit needs, this segment will have no additional economic impact. Only the demand by additional borrowers will have an incremental economic impact. This demand is more difficult to estimate. Preliminary estimates assume the new borrowers will be younger, below the age of 35, and have relatively low annual sales, less than $10,000 annually. Using data from the 2007 Census of Agriculture, this segment of producers consists of about 14,434 primary operators. Historically, FSA direct operating loans have captured only 2 percent of the agricultural credit market; so fewer than 300 borrowers will probably be added. Therefore, about 4,000 entities could be affected by this rule with an economic impact of only about $10.5 million (300 new borrowers times $35,000 in loans per borrower).

Furthermore, the minimal regulatory requirements will affect large and small businesses equally as part of the loan making process, since MLs are distinguished based on the size of the loan, not the size of the operation. ML applicants will have a lower paperwork burden that will be commensurate with the smaller loan amount, due to a reduction in documentation required for these loans. Therefore, in accordance with the Regulatory Flexibility Act, FSA is certifying that there would not be a significant economic impact on a substantial number of small entities. Due to the limited number of entities, the economic effects from any additional lending are unlikely to have a substantial impact on entities of any size.

Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA (7 CFR part 799 and 7 CFR part 1940, subpart G). FSA

concluded that simplifying the application process and adding flexibility for both meeting loan eligibility and security requirements to encourage small farm operation participation in its OL Program explained in this rule are administrative in nature and will not have a significant impact on the quality of the human environment either individually or cumulatively. The environmental responsibilities for each prospective applicant will not change from the current process followed for all FLP actions (7 CFR 1940.309). Therefore, FSA will not prepare an environmental impact statement on this rule.

Executive Order 12372

Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' requires consultation with State and local officials. The objectives of the Executive Order are to foster an intergovernmental partnership and a strengthened Federalism, by relying on State and local processes for State and local government coordination and review of proposed Federal Financial assistance and direct Federal development. For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988, ''Civil Justice Reform.'' The provisions of this rule will not have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with such provision or which otherwise impede their full implementation. The rule will not have retroactive effect.

Executive Order 13132

This rule has been reviewed under Executive Order 13132, ''Federalism.'' The policies contained in this rule will not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor would this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175

This rule has been reviewed for compliance with Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Executive Order 13175 imposes requirements on the development of regulatory policies that have Tribal implications or preempt Tribal laws. The USDA Office of Tribal Relations has concluded that the policies contained in this rule do not, to USDA's knowledge, preempt Tribal law. FSA held a series of tribal consultation sessions early in the rule making process. Representatives from all federally recognized tribes were invited to participate.

During the Tribal consultation, sessions were held to discuss ML, and FLP staff responded to the several comments and questions. The following summarizes the questions and responses discussed during Tribal consultation.

Comment: Will ML be targeting a certain group?

Response: MLs are designed to better serve small family farm operations. In addition, MLs may provide a bridge between Youth Loans and the traditional OL Program, and between the needs of smaller operations as they grow into larger farm operations.

Comment: What is the purpose of ML?

Response: ML will require less information to provide an application process more proportional to smaller loan amounts and operations in the growing segment of family farms engaged in organic farming and direct sales farming practices. Additionally, ML will provide financing at reasonable rates and terms, as some smaller operations often rely on credit cards, and dealer financing to finance their operations because they believe that paperwork requirements are often not worth the benefits.

Comment: Will financing operations raising rice in lakes owned by the Tribes be eligible for ML and other FSA loans?

Response: Operations using lakes managed by the Tribe can be eligible for FSA loans, including ML. FLP also welcomes the opportunity for future conversations to consider regulations that would permit financing operations that raise fish in bodies of water not fully controlled by the Tribe.

Comment: When will ML be implemented?

Response: FLP explained the steps of the rulemaking process, but could not provide an exact date for implementation. This final rule implements the changes required to start ML.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA, Pub. L. 104–4) requires Federal agencies to assess the effects of their regulatory actions on State, local, or Tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures of $100 million or more in any 1 year for State, local, or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, or Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), FSA described the new information collection activities in the request for public comment in the proposed rule. Comments related to the Paperwork Reduction Act are discussed above and are in the supporting document that OMB reviewed. No change to the information collection was required based on the comments. After the final rule is published, the new information collection request will be merged with FSA existing information collection request approved under OMB control number 0560–0237.

E-Government Act Compliance

FSA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

7 CFR Part 761

Accounting, Loan programs—agriculture, Rural areas.

7 CFR Part 764

Agriculture, Disaster assistance, Loan programs—agriculture.

For reasons discussed above, FSA amends 7 CFR chapter VII as follows:

PART 761—FARM LOAN PROGRAMS; GENERAL PROGRAM ADMINISTRATION

■ 1. The authority citation for part 761 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

■ 2. Amend § 761.2 as follows:

■ a. In paragraph (a), remove the abbreviation ''Lo-Doc'' and add an abbreviation, in alphabetical order, for ''ML Microloan'';
■ b. In paragraph (b), add definitions, in alphabetical order, for ''Apprentice'' and ''Microloan''; and
■ c. In paragraph (b), remove the definition of ''Low-Documentation Operating loan.''

The additions read as follows:

§ 761.2 Abbreviations and definitions.

* * * * *

(a) * * *

ML Microloan.

* * * * *

(b) * * *

Apprentice means an individual who receives applied guidance and input from an individual with the skills and knowledge pertinent to the successful operation of the farm enterprise being financed.

* * * * *

Microloan is a type of OL of $35,000 or less made under reduced application, eligibility, and security requirements.

* * * * *

■ 3. Amend § 761.103 as follows:
■ a. Revise paragraph (b), introductory text;
■ b. Redesignate paragraphs (c) through (e) as paragraphs (d) through (f); and
■ c. Add paragraph (c).

The revision and addition read as follows:

§ 761.103 Farm assessment.

* * * * *

(b) Except for ML, the initial assessment must evaluate, at a minimum, the:

* * * * *

(c) For ML, the Agency will complete a narrative that will evaluate, at a minimum, the:

(1) Type of farming operation and adequacy of resources;

(2) Amount of assistance necessary to cover expenses to carry out the proposed farm operating plan, including building an adequate equity base;

(3) The goals of the operation;

(4) The financial viability of the entire operation, including a marketing plan, and available production history, as applicable;

(5) Supervisory plan; and

(6) Training plan.

* * * * *

■ 4. Amend § 761.104 as follows:
■ a. Redesignate paragraphs (e) and (f) as (f) and (g),
■ b. Add paragraph (e), and
■ c. In newly redesignated paragraph (f), remove the cross reference ''paragraph (f)'' and add in its place the cross reference ''paragraph (g)''.

The addition reads as follows:

§ 761.104 Developing the farm operating plan.

* * * * *

(e) For MLs, when projected yields and unit prices cannot be determined as specified in paragraphs (c) and (d) of this section because the data is not available or practicable, other documentation from other reliable sources may be used to assist in developing the applicant's farm operating plan.

* * * * *

PART 764—DIRECT LOAN MAKING

■ 5. The authority citation for part 764 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

§ 764.1 [Amended]

■ 6. Amend § 764.1(b)(2) by adding the words ''ML and'' immediately following the word ''including''.
■ 7. Revise § 764.51(c) to read as follows:

§ 764.51 Loan application.

* * * * *

(c) For an ML request, all of the following criteria must be met:

(1) The loan requested is:

(i) To pay annual or term operating expenses, and

(ii) $35,000 or less and the applicant's total outstanding Agency OL debt at the time of loan closing will be $35,000 or less,

(2) The applicant must submit the following:

(i) Items (1), (2), (3), (6), (7), (9), and (11) of paragraph (b) of this section;

(ii) Financial and production records for the most recent production cycle, if available, and practicable to project the cash flow of the operating cycle, and

(iv) Verification of all non-farm income relied upon for repayment; and

(3) The Agency may require an ML applicant to submit any other information listed in paragraph (b) of this section upon request when specifically needed to make a determination on the loan application.

* * * * *

■ 8. Amend § 764.101 as follows:
■ a. In paragraph (i)(3) at the end of the first sentence add the text ''or for MLs the applicant may have obtained and successfully repaid one FSA Youth-OL''; and
■ b. Add paragraph (i)(4).

The addition reads as follows:

§ 764.101 General eligibility requirements.

* * * * *

(i) * * *

(4) *Alternatives for ML.* ML applicants also may demonstrate managerial ability by one of the following:

(i) Certification of a past participation with an agriculture-related organization, such as, but not limited to, 4–H Club, FFA, beginning farmer and rancher development programs, or Community Based Organizations, that demonstrates experience in a related agricultural enterprise; or

(ii) A written description of a self-directed apprenticeship combined with either prior sufficient experience working on a farm or significant small business management experience. As a condition of receiving the loan, the self-directed apprenticeship requires that the applicant seek, receive, and apply guidance from a qualified person during the first cycle of production and marketing typical for the applicant's specific operation. The individual providing the guidance must be knowledgeable in production, management, and marketing practices that are pertinent to the applicant's operation, and agree to form a developmental partnership with the applicant to share knowledge, skills, information, and perspective of agriculture to foster the applicant's development of technical skills and management ability.

§ 764.103 [Amended]

■ 9. Amend § 764.103 as follows:
■ a. In paragraph (c) remove the words ''downpayment loans'' and add the words ''downpayment loans, MLs made for purposes other than annual operating,'' in their place.
■ b. In paragraph (e), last sentence, remove the words ''conservation loans'' and add the words ''CL, ML'' in their place.
■ 10. Amend § 764.251 as follows:
■ a. Revise paragraph (a), to add the words ''and ML'' immediately after ''OL'' in the introductory text; and b. Remove paragraph (b).
■ 11. Amend § 764.255 as follows:
■ a. Revise paragraph (b), introductory text; and
■ b. Add paragraph (c).

The revision and addition read as follows:

§ 764.255 Security Requirements.

* * * * *

(b) Except for MLs, by a:

* * * * *

(c) For MLs:

(1) For annual operating purposes, loans must be secured by a first lien on farm property or products having a security value of at least 100 percent of the loan amount, and up to 150 percent, when available.

(2) For loans made for purposes other than annual operating purposes, loans must be secured by a first lien on farm property or products purchased with loan funds and having a security value of at least 100 percent of the loan amount.

(3) A lien on real estate is not required unless the value of the farm products, farm property, and other assets available to secure the loan is not at least equal to 100 percent of the loan amount.

(4) Notwithstanding the provisions of paragraphs (c)(1), (c)(2), and (c)(3) of this section, FSA will not require a lien on a personal residence.

Signed on December 21, 2012.

Juan M. Garcia,

Administrator, Farm Service Agency.

[FR Doc. 2013–00672 Filed 1–15–13; 11:15 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0008]

Drawbridge Operation Regulation; Snohomish River, Everett, WA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedules that govern the SR 529 Bridges across the Snohomish River, mile 3.6 near Everett, WA. This deviation is necessary to facilitate heavy maintenance and equipment upgrades on the bridges. This deviation allows the bridges to remain in the closed position during maintenance activities.

DATES: This deviation is effective from 8 a.m. on January 21, 2013, through 6 p.m. March 15, 2013.

ADDRESSES: The docket, USCG–2013–0008, for this deviation is available online; go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH,'' and then click on ''Open Docket Folder'' next to the item listing this notice of deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email the Bridge Administrator, Coast Guard Thirteenth District; telephone 206–220–7282, email *randall.d.overton@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Washington State Department of Transportation (WSDOT) has requested that the SR 529 Bridges across the Snohomish River remain closed to vessel traffic to facilitate heavy maintenance and equipment upgrades on the bridges. The SR 529 Bridges cross the Snohomish River at mile 3.6 and provide 38 feet of vertical clearance above mean high water elevation while in the closed position. Vessels which do not require a bridge opening may continue to transit beneath the bridges during this closure period. Under normal conditions the SR 529 Bridges crossing the Snohomish River operate in accordance with 33 CFR 117.1059(c) which requires advance notification of 1 hour when a bridge opening is needed. This deviation period is from 8 a.m. on January 21, 2013, through 6 p.m. March 15, 2013. The deviation allows the SR 529 Bridges crossing the Snohomish River to remain in the closed position and need not open for maritime traffic from 8 a.m. on January 21, 2013, through 6 p.m. March 15, 2013. The bridges shall operate in accordance to 33 CFR 117.1059 at all other times. Waterway usage on the Snohomish River includes vessels ranging from commercial tug and barge to small pleasure craft. Mariners will be notified and kept informed of the bridges' operational status via the construction contractor performing the maintenance as well as via the Coast Guard Notice to Mariners publication and Broadcast Notice to Mariners as appropriate. The bridges will not be able to open during this maintenance activity because the lifting mechanisms will be inoperable.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their 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: January 7, 2013.

Randall D. Overton,

Bridge Administrator, Thirteenth Coast Guard District.

[FR Doc. 2013–00886 Filed 1–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–1089]

Drawbridge Operation Regulation; Shark River, Avon, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the draws of two bridges which operate as one unit, specifically, the S71 bridge, mile 0.8 and the railroad bridge, mile 0.9 both of which are across the Shark River (South Channel), at Avon Township, NJ. This deviation is necessary to facilitate machinery replacement on the Shark River railroad bridge. This temporary deviation will allow the drawbridges, which operate in unison, to remain in the closed-to-navigation position on specific dates and times.

DATES: This deviation is effective from 12:01 a.m. February 25, 2013, until 12:01 a.m. on March 6, 2013.

ADDRESSES: The docket, USCG–2012–1089, for this temporary deviation is available online; go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''Search,'' and then click on ''Open Docket Folder'' next to the item listing this notice of deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION: The New Jersey Transit, owner and operator of the Shark River Railroad Bridge across the Shark River (South Channel), mile 0.9, at Avon, NJ, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.751, to accommodate machinery replacement for the Shark River Bridge.

The Shark River Railroad Bridge across the Shark River, mile 0.9, is a bascule lift Bridge, in Avon Township, NJ, and has a vertical clearance in the closed position of 8 feet, above mean high water.

Because the draw of the Shark River Bridge operates in unison with the S71 Bridge, mile 0.8 across Shark River at Avon Township, NJ, the draw of the S71 Bridge will also be restricted under this deviation. The S71 Bridge is also a bascule lift bridge and has a vertical clearance of 13 feet.

The current schedules for both the Shark River Railroad Bascule Bridge operating regulations are set out in 33 CFR 117.751. Under normal operating conditions, the draws of S71 bridge, mile 0.8 and the railroad bridge, mile 0.9, both at Avon, operate as one unit.

To facilitate machinery replacement, the above mentioned drawbridges will be maintained in the closed-to-navigation position from 12:01 a.m. Monday February 25, 2013, to 12:01 a.m. on Wednesday March 6, 2013. The bridges normally open several times a day for transiting vessels. Coordination with the waterway users has been completed.

The Coast Guard will inform all users of the waterway through our Local and Broadcast Notice to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation. Vessels able to pass under the spans when closed may transit under the drawbridges while they are in the closed position. Mariners are advised to proceed with caution. There are no alternate routes for vessels and the bridge will not be able to open in the event of an emergency.

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: January 3, 2013.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2013–00887 Filed 1–16–13; 8:45 am]

BILLING CODE 9110–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 12–137]

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Federal Communications Commission (Commission) reconsiders and clarifies certain aspects of the *USF/ICC Transformation Order,* in response to various petitions for reconsideration and/or clarification. We grant in part petitions related to the financial reporting obligations of eligible telecommunications carriers (ETCs) that are privately held rate of return companies. This Order also provides additional guidance and clarifications regarding the standard and process for requests for waiver of our universal service reforms.

DATES: Effective February 19, 2013, except for the amendments made to § 54.313(f)(2)(i) through (iii) in this document, which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for that section.

FOR FURTHER INFORMATION CONTACT: Alexander Minard, Wireline Competition Bureau, (202) 418–7400 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fifth Order on Reconsideration in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 12–137, adopted on November 13, 2012 and released on November 16, 2012. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0514/FCC-12-52A1.pdf.*

I. Introduction

1. In this Order, we reconsider and clarify certain aspects of the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, in response to various petitions for reconsideration and/or clarification. The *USF/ICC Transformation Order* represents a careful balancing of policy goals, equities, and budgetary constraints. This balance was required in order to advance the fundamental goals of universal service and intercarrier compensation reform within a defined budget while simultaneously providing sufficient transitions for stakeholders to adapt.

2. As a preliminary matter regarding our review of a number of the specific issues discussed below, we observe that, under Commission rules, if a petition for reconsideration simply repeats arguments that were previously considered and rejected in the proceeding, it will not likely warrant reconsideration.

3. With this standard in mind, we take several limited actions stemming from reconsideration petitions. Specifically, this Order grants in part petitions related to the financial reporting obligations of eligible telecommunications carriers (ETCs) that are privately-held rate-of-return companies. This Order also provides additional guidance and clarifications regarding the standard and process for requests for waiver of our universal service reforms.

II. Financial Reporting Requirements for Privately Held Rate-of-Return Carriers

4. In the *USF/ICC Transformation Order,* the Commission required all privately-held rate of return carriers to provide a report on their financial condition and operations and provided two options for doing so: (1) File a copy of the carrier's audited financial statement; or (2) file a copy of the Department of Agriculture's Rural Utility Service (RUS) Form 479, a financial reporting requirement for carriers that borrow money from RUS. The *USF/ICC Transformation Order* requires this information to be filed with the Commission, the Universal Service Administrative Company (USAC), and the relevant state commission, relevant authority in a U.S. Territory, or Tribal governments, as appropriate. Only one party commented generally on the NPRM proposal to require audited financial statements certified by an independent CPA, and no privately held carrier opposed the proposal at that time.

5. The record on reconsideration indicates, however, that a number of rate-of-return carriers do not currently have audited financial statements. Several petitioners argue that the financial reporting requirement is unduly burdensome. For example, Comporium urges ''the Commission to clarify and/or reconsider its decision and revise its rules by determining that companies with multiple study areas under common ownership or control may submit basic financial schedules * * * for regulated operations only, accompanied by an officer affidavit.'' Another party requests that we replace the current financial reporting requirement with a requirement that ''all privately held rate of return carriers file a form approved by the FCC that is based on the RUS Form 479.'' Finally, several petitioners argue that the Commission should allow carriers to file these financial statements confidentially.

6. After reviewing the Petitions for Reconsideration, along with comments filed in the docket, we conclude that some adjustments in the financial reporting rule are appropriate for administrative efficiency and to lessen the potential burden on companies that are not audited in the ordinary course of business. Therefore, we grant in part the reconsideration requests and hereby revise new section 54.313(f)(2) of the Commission's rules.

7. *RUS Borrowers.* On reconsideration, we require that all privately held rate-of-return carriers that are RUS borrowers to file their RUS Operating Report for Telecommunications Borrowers with the Commission, USAC, and the relevant state commission, relevant authority in a U.S. Territory, or Tribal governments, as appropriate, as part of their annual § 54.313 filing. Requiring these ETCs to submit a copy of an existing RUS Operating Report for Telecommunications Borrowers should impose negligible burden on them, while helping the Commission monitor the impact of its reforms on this group of rate-of-return companies. As one commenter recognizes, one benefit of mandating that RUS borrowers submit information in the RUS format is that it will provide the Commission with readily accessible information in a consistent format. The RUS Operating Report for Telecommunications Borrowers is consolidated across all study areas and includes all operations, both regulated and non-regulated, of the borrowing entity. While the RUS Report itself is not audited, the underlying data are audited, and the borrower's auditor must review the information being reported to RUS. We further require that the ETC must make the underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

8. *Non-RUS Borrowers That Are Audited.* For non-RUS borrowers that are audited in the ordinary course of business, we provide two options. Such carriers may either: (1) File their audited financial statements; or (2) provide their financial information in a form consistent with the RUS Operating Report for Telecommunications Borrowers and accompanied by a management letter from their auditors. For those carriers that already are audited in the ordinary course of business—whether as a condition of a loan from a bank or for other reasons, producing a copy of that audit report to the Commission should impose negligible burden. We agree with those parties that suggest it would be beneficial to the Commission to have all carrier financial reporting information in a consistent format, but also recognize that requiring submission of the information in a form similar to the RUS format would require additional effort for companies that are not RUS borrowers. We therefore provide the option of submitting the information in a format comparable to what is required by RUS for its borrowers, but do not make that mandatory for such filers. We further require that the ETC must make the underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

9. *Carriers That Are Not Audited.* With respect to privately held rate-of-return companies that are not audited in the ordinary course of business, we balance the relative costs and benefits of requiring carriers to comply with a financial reporting requirement that requires submission of an audited financial statement. We conclude on reconsideration that our core objectives can be met, while lessening regulatory burden, by revising new section 54.313(f)(2) to provide two options for privately held rate-of-return carriers that are not audited in the ordinary course of business: (1) File a financial statement that has been subject to review by a CPA or (2) file financial information in a format consistent with the RUS form. In the latter instance, the underlying information must be subject to a CPA review, with that review and related workpapers and financial information to be made available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate. For either of these two options, the filing must be accompanied by an officer certification that: (1) The carrier is not audited in the ordinary course of business; and (2) the reported data are accurate.

10. We conclude that requiring the underlying financial information to be subject to a CPA review, rather than a CPA audit, provides sufficient assurance that we will obtain a reasonable understanding of the affected companies' financial picture. A financial review requires the auditor to make inquiries of management and perform analytical procedures to determine whether the financial statements conform with generally accepted accounting principles. An audit requires the auditor additionally to obtain an understanding of the internal controls environment for the company, which requires the development of certain documentation, such as internal controls procedures, that would not have been prepared but for the audit. Typically an audit will perform more in-depth testing of individual transactions posted to the general ledger. Both an audit and a review require the auditor to determine, however, whether the financial statements prepared by management are consistent with generally accepted accounting principles.

11. Because a review does not require the auditor to develop a detailed understanding of the internal controls environment, a CPA review generally is less costly than a full audit. Requiring a CPA review of the underlying information and an officer certification regarding the accuracy of the reported data still provides the accountability of an independent review, while minimizing the economic impact on these generally small carriers associated with an audit. In contrast, we are not persuaded by Comporium's proposal to allow privately-held rate-of-return carriers to provide the Commission with a financial report that has not been subject to any form of independent scrutiny by a CPA. We recognize that some state commissions allow carriers to file self-prepared financial reports only accompanied by an officer certification. Given our responsibility as stewards of the USF, however, we conclude that requiring a CPA review—which requires the CPA to determine whether any material modifications are required in order for the financial statements to be in conformity with

generally accepted accounting principles—is necessary to fulfill our core objective of ensuring financial accountability by USF recipients. Based on the record on reconsideration, we therefore conclude that a review will be sufficient to meet our objectives of providing the Commission with an accurate picture of the financial condition of these privately held rate-of-return carriers, without imposing undue burdens on carriers whose financial statements are not already audited.

12. *Fiscal Year 2011 Financial Statements.* Once PRA approval is received for § 54.313(f)(2) as adopted in this Order, we require any privately held rate-of-return carrier to file with the Commission, USAC, the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate, pursuant to this rule within a reasonable time, as follows:

- If a carrier receives RUS loans, that carrier must file its 2011 RUS Operating Report for Telecommunications Borrowers.
- If a carrier does not receive RUS loans, but its financial statements for 2011 have been audited, that carrier must file a copy of the audited 2011 financial statement, or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit, with the Commission, USAC, the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.
- If a carrier does not receive RUS loans, but its financial statements for 2011 have been subject to review by an independent certified public accountant, that carrier must file a copy of their reviewed 2011 financial statement, or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification the carrier was not audited in the ordinary course of business for the preceding fiscal year and that the reported data are accurate.

13. We find that there is not a significant additional burden for ETCs to file such information because these financial statements already exist. We determine that receiving some 2011 financial statements will assist the Commission and states with verifying whether these carriers are efficiently and appropriately using high-cost support for its intended purposes. Finally, we expect *all* privately held rate-of-return carriers to file on July 1, 2013, pursuant to this rule and subject to PRA approval, Fiscal Year 2012 financial statements.

14. *Submission of Consolidated Information.* We clarify that privately held rate-of-return carriers are not required to submit the financial information on a study area basis. As pointed out in the record on reconsideration, audits of RUS borrowers are not done on a study area basis, and the RUS Operating Report for Telecommunications Borrowers is submitted by the borrowing entity, which could encompass multiple study areas. Several petitioners note that many companies with multiple study areas under common ownership or control prepare a consolidated audit report, which minimizes audit expenses. The Commission has already concluded that holding company level information for RUS borrowers is acceptable, when it concluded that such borrowers could submit the RUS Operating Report for Telecommunications Borrowers to meet the financial reporting requirement. Nothing in the codified rule requires that financial reporting be done on a study area basis. In fact, imposing a requirement that privately held rate-of-return carriers must be audited on a study-area basis would have an unreasonably disparate impact on the respective burdens associated with this reporting requirement for those privately held carriers that are non-RUS borrowers compared to RUS borrowers. We clarify that the language in paragraph 599 of the Order that directs non-RUS borrowers to submit ''financial information as kept in accordance with Part 32'' was not intended to require financial reporting by study area, but rather was focusing on the fact that companies are already required to maintain financial information by study area pursuant to existing Commission requirements. In response to the petitions for reconsideration and/or clarification, we clarify that the Commission did not intend to require financial information broken out by study areas for non-RUS borrowers, and such companies under common ownership or control may file financial reports on a consolidated basis.

15. *Requirement That Financial Disclosures Be Publicly Available.* In the *USF/ICC Transformation Order,* we stated that the financial reporting information required to be filed by ETCS would be made publicly available. Some petitioners encourage the Commission to revisit that requirement. Upon reconsideration, we conclude that in some instances there could be a potential for competitors to use the submitted financial data of private rural rate-of-return carriers in an anti-competitive manner, and therefore, as several commenters suggested, we will allow privately held ETCs to file the financial data pursuant to § 54.313(f)(2) of the Commission's rules subject to a Protective Order.

16. As we stated in the *USF/ICC Transformation Order,* recipients of high-cost and/or Connect America *support* receive extensive public funding, and therefore the public has a legitimate interest in being able to verify the efficient use of those funds. Moreover, as we stated, by making this financial information public, the Commission will be assisted in its oversight duties by public interest watchdogs, consumer advocates, and others who seek to ensure that recipients of support receive funding that is sufficient, but not excessive. On the other hand, we agree that, for example, small ETCs serving only one study area could face competitive harm if their financial data are made available to an overlapping or neighboring competitor. Where an ETC serving a large geographic area across multiple states files a consolidated financial statement, it is not possible to determine the revenues and, thus, profits associated with a particular study area. However, where a small ETC serves only one study area, all reported revenues and profits are attributable to that one study area, thus making it easier for competitors to craft business plans that capitalize on their knowledge of the small ETC's reported finances.

17. We conclude that the public interest would best be served by making the private financial data being requested from privately-held rate of return carriers available only subject to the provisions of the Protective Order, and we delegate authority to the Wireline Competition Bureau to adopt such an order consistent with this decision. In particular, as specified in more detail in the Protective Order, we restrict availability of this material as follows: (1) In the case of commercial entities having a competitive or business relationship with the company whose confidential information it seeks, to In-House Counsel not involved in competitive decision-making, and to their Outside Counsel of Record, their Outside Consultants and experts whom they retain to assist them in this and related proceedings, and employees of such Outside Counsel and Outside Consultants; (2) to employees and representatives of commercial entities having no competitive or business

relationship with the company whose confidential information it seeks; and (3) to employees and representatives of non-commercial entities having no competitive or business relationship with the company whose confidential information it seeks. In sum, we recognize the need to balance the public's legitimate interest in being able to verify the efficient use of universal service high-cost support with the potential competitive harm of such financial data being publicly available. We conclude that adopting such procedures in a Protective Order will give appropriate access to the interested members of the public while protecting especially competitively sensitive information from improper disclosure, and that disclosure pursuant to the Protective Order thereby serves the public interest.

III. Waiver Standard For USF Reforms

18. The National Exchange Carrier Association, Inc., the Organization for the Promotion and Advancement of Small Telecommunications Companies, and the Western Telecommunications Alliance (Rural Associations) seek reconsideration of the USF waiver standard articulated in the *USF/ICC Transformation Order* and ask that the Commission ''discard the various hurdles specified in the Order and instead simply apply the 'good cause' standard applicable to waiver requests generally under § 1.3 of the rules.'' The Rural Associations request that a carrier continue to receive support pursuant to the prior, no-longer-in-effect rules while the carrier's petition for waiver of any new rule is pending. They also argue that the Commission should make the waiver process ''less burdensome'' and ''more equitable and attainable'' for small companies. In particular, the Rural Associations ask that the Commission: (i) Waive the filing fee applicable to USF-related waivers; (ii) exclude costs incurred in preparing a waiver request from corporate operations expenses counted toward the caps; (iii) permit carriers to submit information from intrastate earnings reviews and rate cases or Universal Service Administrative Company (USAC) audits in lieu of the financial information the Commission identified in the *USF/ICC Transformation Order;* (iv) require carriers to only submit information that relates to the use of supported plant; (v) not require carriers to provide geographic data or data about end user rate plans to the extent the Commission already has such information in its possession; (vi) clarify that standard protective order procedures are available for waiver requests; (vii) clarify that carriers are not required to provide additional information about unused or spare capacity as long as they comply with Parts 32 and 36 of the Commission's rules; and (viii) not require carriers to provide additional information about corporate operations expenses except in cases where a carrier seeks a waiver specifically of the corporate operations expense cap.

19. We note that the Commission's intent in discussing waivers relating to reductions in USF support was not to replace the ordinary standard for granting waivers under § 1.3 of the Commission's rules, but rather to provide guidance in advance to potential applicants of the circumstances that would be persuasive and compelling grounds for grant of a waiver under that waiver standard to assist potential applicants in effectively formulating their waiver petitions. While we decline to ''discard'' this guidance, we modify it in several respects, and clarify it in others, based on specific concerns raised by petitioners.

20. In the *USF/ICC Transformation Order,* the Commission stated that ''[w]e envision granting relief only in those circumstances in which the petitioner can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice services, with no alternative terrestrial providers available to provide voice telephony service using the same or other technologies that provide the functionalities required for supported voice service.'' This language in the Order reflected the Commission's longstanding historical commitment to ensuring ubiquitous voice availability and a recognition that the supported service today remains voice telephony. At the same time, we recognize that for the first time, the Commission has now established as explicit goals the preservation and advancement of voice service and ensuring universal availability of voice and broadband, both fixed and mobile, at reasonably comparable rates to reasonably comparable services available in urban areas, while minimizing universal service contribution burdens on consumers and businesses. Accordingly, we now clarify that the Commission will consider the impact of reforms not only on voice service alone, but also on continued operation of a broadband-capable network and the effect on consumer rates.

21. Specifically, we envision granting relief to incumbent telephone companies only in those circumstances in which the petitioner can demonstrate that consumers served by such carriers face a significant risk of losing access to a broadband-capable network that provides both voice as well as broadband today, at reasonably comparable rates, in areas where there are no alternative providers of voice or broadband. To the extent carriers have already made the investment in such broadband-capable networks, reductions in support that would threaten their ability to continue to maintain and operate those existing networks offering service at reasonably comparable rates in areas where consumers have no alternatives would be a public policy concern. A waiver petition claiming that support reductions are substantial, by itself, would be insufficient. The petition must also establish that consumers will suffer loss of services with no alternative *or* that consumers in the relevant study area would *not* be paying reasonably comparable rates to urban consumers. We emphasize that support reductions do not necessarily translate into equivalent rate increases for consumers. Rather, we expect that carriers would look for ways to reduce costs and increase revenues—in addition to ensuring that consumer rates are reasonably comparable—in considering whether to pursue a petition for waiver.

22. In determining whether to provide full or partial relief to a waiver applicant, we also are mindful of the Commission's longstanding commitment to providing support that is ''sufficient but not excessive.'' An important component of the Commission's review of whether a carrier needs additional support is having an accurate picture of the financial operations of the waiver applicant. Information such as financial statements for the past three fiscal years and any outstanding loans should be readily available to any carrier. Such information is the sort of information that any company would maintain to manage its business, and would be part of any financial showing that a company would submit as part of any loan application process. Incumbent carriers are already required by Commission rules to comply with the Uniform System of Accounts specified in part 32, the affiliate transaction rules specified in § 32.27, and the cost allocation rules specified in §§ 64.901 through 64.902, so providing information regarding compliance with those rules should not be burdensome for any such carrier. Information regarding end user rates and the services provided to subscribers likewise should be readily available to any service provider. In keeping with

the focus on providing support that is sufficient but not excessive, Commission staff have asked for additional information from waiver applicants, such as annual compensation provided to the ten most highly paid employees, and the size and nature of payments made to affiliated companies. Again, this information should be readily available, and potential waiver applicants can expedite review of their requests by including such information when initially filing their waiver petitions. Such information can be relevant to a determination of whether there are opportunities for reductions in operating expenses that would lessen the burden on the Fund, and also to assessing whether carriers are complying with our affiliate transaction rules.

23. We decline the request that carriers should receive support under the Commission's previous rules until their waiver petitions are resolved. To the extent immediate or interim relief is necessary while a waiver petition is evaluated, such relief can be provided on a case-by-case basis, and such relief has been provided in one instance to date. But we do not typically permit carriers to excuse themselves from complying with our rules, even on a temporary basis, simply by filing a request for waiver, and we are not persuaded that such a blanket policy is warranted in this context when case-by-case relief may be available.

24. *Filing Fee and Confidentiality.* We also address the Rural Associations' specific suggestions regarding the Commission's fee for filing a waiver petition and the confidential treatment of the waiver process. As an initial matter, we issue a blanket waiver of the filing fee for carriers seeking a waiver of the high-cost loop support (HCLS) benchmark rule contained in § 36.621(a)(5) of our rules. We observe that § 1.1105 does not currently require a filing fee in connection with petitions for waiver of rules contained in part 54 of the Commission's rules. By codifying the benchmark rule in part 36 rather than part 54, the Commission inadvertently subjected applicants seeking a waiver of the benchmark rule to the part 36 filing fee, even though parties seeking a waiver of other universal service reforms, such as the $250 per line cap, are not subject to any filing fee. We conclude that this disparity in treatment does not serve the public interest, and we address the situation by issuing a blanket waiver of the fee for parties seeking a waiver of § 36.621(a)(5). We also clarify, as the Rural Associations request, that carriers filing waiver requests may seek confidential treatment pursuant to the Commission's existing rules.

25. *Submission of Geographic Information.* Based on our review of the waiver applications received to date, and consistent with the Rural Associations' request, we reconsider the language in the *USF/ICC Transformation Order* regarding submission of information regarding the geographic and other characteristics of the areas that contribute to its high costs. Paragraph 542 of the *Order* stated that petitions should include, among other things, the following information: ''Density characteristics of the study area or other relevant geographic area including total square miles, subscribers per square mile, road miles, subscribers per road mile, mountains, bodies of water, lack of roads, remoteness, challenges and costs associated with transporting fuel, lack of scalability per community, satellite and backhaul availability, extreme weather conditions, challenging topography, short construction season or any other characteristics that contribute to the area's high costs.''

26. On reconsideration, we conclude that this language in paragraph 542 should be viewed as illustrative examples of factors that could be relevant in the waiver analysis, to assist applicants in crafting well formulated waiver petitions in support of their requested relief. To the extent applicants choose to address such factors in their waiver petitions, we presume they would be providing information that is readily available, not requiring any additional expenditures or the devotion of substantial staff resources to compile.

27. *Submission of Information Regarding Spare or Unused Equipment.* On reconsideration, we also modify the language in paragraph 542 requesting information regarding spare or unused equipment. Paragraph 542 of the Order stated that petitions should include information regarding accounting for spare or unused equipment. We observe that waiver applicants to date have included a cursory recitation their waiver requests that they account for such equipment in accordance with the Commission's rules. On reconsideration, we conclude that it is not necessary for carriers to reaffirm that they are in compliance with existing accounting rules. To the extent there are questions about such issues, however, the Bureau still may request such information. At this time, we cannot conclude that additional information relating to unused or spare equipment would be unnecessary in all instances.

28. *Submission of Audits and Information from State Rate Cases.* We are not persuaded that waiver applicants should be permitted to file USAC audits in lieu of their financial statements. Compliance with the Commission's high-cost rules prior to the *USF/ICC Transformation Order* is not likely to be dispositive of whether there is an ongoing need for more support than the current rules would allow. As previously discussed, financial information is needed to ensure that support is sufficient, but not excessive, in granting additional support through the waiver process. A USAC audit does not provide such information and, therefore, is not an adequate substitute for a carrier's financial statements.

29. In contrast, information developed in intrastate earnings and rate cases is more likely to be of assistance when reviewing requests for waiver of support reductions, and could serve as a substitute for the submission of financial statements in some cases, depending on the specifics of the prior rate case or earnings review. We encourage carriers that would like to rely on such information, rather than financial statements, to bring it to staff's attention when preparing their waiver requests. We generally encourage staff to provide, and for potential waiver applicants to seek, guidance on the contents of a waiver request, and with respect to financial reviews by state commissions, we specifically encourage applicants to seek staff's input on the substitutability of such information for the company's financial statements.

30. *Information About Corporate Operations Expenses.* We decline to adopt the suggestion that carriers not provide information about their corporate operations expenses unless they are seeking a waiver specifically related to the corporate operations expense cap. As discussed above, a full understanding of a carrier's financial circumstances is necessary when considering a waiver seeking additional support in order to ensure that support overall is sufficient but not excessive. Corporate operations expenses, including expenses such as executive salaries, are relevant to the determination of overall support levels in the face of a claim that existing rules provide inadequate support.

31. *Request to Exempt Costs of Waivers from Calculation of Caps.* The record lacks sufficient detail for us to evaluate how we would exempt costs incurred in preparing a waiver request from the calculation of corporate operations expenses that would count toward any caps. Accordingly, we

decline to allow such exemption at this time.

32. *Grounds for Waiver.* Finally, we also clarify that we will generally not require a thorough financial review of carriers that seek a limited waiver of our rules, such as a temporary waiver of a deadline for meeting our reporting requirements or a waiver seeking to provide broadband that does not meet our upstream requirements (*i.e.,* 768 kbps upstream instead of 1 Mbps upstream). In such cases, we would expect a waiver application would explain why waiver is warranted under § 1.3 of the Commission's rules. Likewise, to the extent a carrier seeks a waiver of the HCLS benchmark rule based on a showing that there is a factual error with respect to one or more input values that results in an inaccurate calculation of the cap value, we would not need to conduct a full review of that carrier's finances. Rather, we would undertake a thorough financial review in those circumstances where the waiver applicant is not seeking to correct an error, but is contending that absent waiver, support levels would be insufficient for the carrier to achieve the purposes of section 254.

IV. Procedural Matters

A. Paperwork Reduction Act

33. This Fifth Order on Reconsideration contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been or will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding.

B. Final Regulatory Flexibility Act Certification

34. The Regulatory Flexibility Act (''RFA'') requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

35. We hereby certify that the rule revisions in this Fifth Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. This Order modifies certain of our reporting requirements. We conclude that these minor revisions, though they may possibly have some impact on some carriers, are not likely to have a significant economic impact on a substantial number of small entities. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Order (or a summary thereof) and certification will be published in the **Federal Register**.

C. Congressional Review Act

36. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

V. Ordering Clauses

37. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and §§ 1.1 and 1.429 of the Commission's rules, 47 CFR 1.1, 1.429, that this Fifth Order on Reconsideration *is adopted,* effective February 19, 2013, except for those rules and requirements involving Paperwork Reduction Act burdens, which shall become effective immediately upon announcement in the **Federal Register** of OMB approval.

38. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 1.429, that the Petition for Partial Reconsideration filed by the Blooston Rural Carriers on December 29, 2011 *is denied.*

39. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 1.429, that the Petition for Reconsideration filed by NTCH, Inc. on December 29, 2011 *is denied in part* to the extent described herein.

40. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and sections 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 47 CFR 1.429, that the Petition for Reconsideration filed by General Communications, Inc. on December 23, 2011 *is denied in part* to the extent described herein.

41. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.331 and 1.429 of the Commission's rules, 47 CFR 0.331 and 1.429, that the Petition for Clarification or Partial Reconsideration filed by Townes Telecommunications, Inc. on December 29, 2011 *is denied.*

42. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, the Petition for Reconsideration of National Exchange Carrier Association, Inc., Organization for the Promotion and Advancement of Small Telecommunications Companies, and Western Telecommunications Alliance *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

43. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, the Petition for Reconsideration of Rock Hill Telephone Company d/b/a Comporium, Lancaster Telephone Company d/b/a Comporium, Fort Mill Telephone Company d/b/a Comporium, PBT Telecom, Inc. d/b/a Comporium, and Citizens Telephone Company d/b/a Comporium *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

44. *It is further ordered* that, pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, and §§ 0.291 and 1.429 of the Commission's rules, 47 CFR 0.291 and 1.429, the Petition for Reconsideration of United States Telecom Association *is granted in part* to the extent described herein, and *is denied in part* to the extent described herein.

45. *It is further ordered* that the Commission *shall send* a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

46. *It is further ordered,* that the Commission's Consumer and

Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Communications common carriers, reporting and recordkeeping requirements, telecommunications, telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

Subpart D—Universal Service Support for High Cost Areas

■ 2. Amend § 54.313 by revising paragraph (f)(2) to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

* * * * *

(f) * * *

(2) *Privately held rate-of-return carriers only.* A full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year.

(i) Recipients of loans from the Rural Utility Service (RUS) shall provide copies of their RUS Operating Report for Telecommunications Borrowers as filed with the RUS. Such carriers must make their underlying audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

(ii) All privately held rate-of-return carriers that are not recipients of loans from the RUS and whose financial statements are audited in the ordinary course of business must provide either: A copy of their audited financial statement; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, accompanied by a copy of a management letter issued by the independent certified public accountant that performed the company's financial audit. A carrier choosing the latter option must make its audit and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

(iii) All other privately held rate-of-return carriers must provide either: A copy of their financial statement which has been subject to review by an independent certified public accountant; or a financial report in a format comparable to RUS Operating Report for Telecommunications Borrowers, with the underlying information subjected to a review by an independent certified public accountant and accompanied by an officer certification that: The carrier was not audited in the ordinary course of business for the preceding fiscal year; and that the reported data are accurate. If the carrier elects the second option, it must make the review and related workpapers and financial information available upon request by the Commission, USAC, or the relevant state commission, relevant authority in a U.S. Territory, or Tribal government, as appropriate.

* * * * *

[FR Doc. 2013–00556 Filed 1–16–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 2013–0003]

RIN 2127–AK42

Federal Motor Vehicle Safety Standards; New Pneumatic and Certain Specialty Tires

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends Federal Motor Vehicle Safety Standard (FMVSS) No. 109, *New pneumatic and certain specialty tires,* to change the test pressure for the physical dimensions test for T-type tires (temporary use spare tires) from 52 pounds per square inch (psi) to 60 psi. This increase in test pressure for the physical dimensions test will marginally increase the stringency of the test and will align FMVSS No. 109 with international and voluntary consensus standards.

DATES: This final rule is effective July 16, 2013. Optional early compliance is permitted immediately. *Petitions for reconsideration:* If you wish to petition for reconsideration of this rule, your petition must be received by March 4, 2013.

ADDRESSES: If you submit a petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

The petition will be placed in the public docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, 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).

FOR FURTHER INFORMATION CONTACT: Marisol B. Medri, NHTSA Office of Rulemaking, telephone 202–366–2720, fax 202–493–2739. For legal issues, you may call David Jasinski, NHTSA Office of Chief Counsel, telephone 202–366–2992, fax 202–366–3820. You may send mail to these officials at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

a. T-Type Spare Tires

NHTSA regulates ''T-type'' spare tires under FMVSS No. 109, *New pneumatic and certain specialty tires.* A ''T-type'' spare tire refers to a type of spare tire that is manufactured to be used as a temporary substitute by the consumer for a conventional tire that failed. For T-type spare tires, FMVSS No. 109 specifies tire dimensions and laboratory test requirements for bead unseating resistance, strength, endurance, and high speed performance. The standard also defines tire load ratings and specifies labeling requirements for the tires.

NHTSA amended FMVSS No. 109 to permit the manufacture of T-type (then known as ''60-psi'') spare tires in 1977, describing them as ''differ[ing] substantially in specification and construction from conventional tires. * * * [with] a higher inflation pressure (60 psi), different dimensions, and a shorter treadwear life than conventional

tires.'' [1] The agency also adopted endurance and high-speed performance tests, strength requirements, a resistance to bead unseating test, and a physical dimensions test, which were appropriate for the temporary use tires.

b. Physical Dimensions Test

The purpose of the physical dimensions test is to measure the tire's growth under inflated conditions and to determine if it is within allowable growth limits. If a tire exceeds allowable growth limits in the physical dimensions test, that indicates that there could be a safety risk from that tire's not matching well with its rim, or not fitting well with the vehicle to which it is attached. Either of these mismatches could present safety risks.

All T-type tires must comply with growth limits as specified by S4.2.2.2 of FMVSS No. 109, which states that the tire's actual section width and overall width may not exceed the specified section width [2] by more than 7 percent or 10 millimeters (0.4 inches), whichever is greater. The ''section width'' of a tire is defined in S3 of FMVSS No. 109 as ''the linear distance between the exteriors of the sidewalls of an inflated tire, excluding elevations due to labeling, decoration, or protective bands.''

The test procedure for the physical dimensions test is specified in S5.1 of FMVSS No. 109. That section states that the tire is mounted on the appropriate test rim and inflated to the pressure listed in Table II of the standard, which for 60-psi tires is 52 psi. The tire is then conditioned at ambient temperature for 24 hours, at which point the inflation is checked and adjusted back to 52 psi if necessary, and then the tire is measured.

c. Test Pressure

NHTSA requires tire manufacturers to specify both a ''recommended'' pressure and a ''maximum permissible inflation pressure.'' The recommended inflation pressure is the operational inflation pressure needed to support the weight of the vehicle when loaded to its gross vehicle weight rating. The maximum permissible inflation pressure, which is required to be molded on the tire's sidewall, is the maximum pressure beyond which the tire should not be inflated. Usually, a manufacturer's recommended inflation pressure is lower than the tire's maximum pressure labeled on the tire sidewall.

Since most tires have a recommended inflation pressure that is lower than the specified maximum pressure for the tire, the test pressure that NHTSA uses to test tires dynamically on a test wheel is generally lower than the maximum pressure labeled on the sidewall. Further, tires may be operated at some level of under-inflation during normal service. To reflect this real-world use, FMVSS No. 109's dynamic test procedures generally specify under-inflating a tire when testing the tire on the road-wheel. Moreover, dynamic tests are more stringent when the tire is tested at an inflation pressure lower than the pressure required to support the given test load. Under-inflating a tire eventually results in greater heat build-up due to over-deflection of a tire's sidewall, which increases the likelihood of tire failure.

Consistent with this approach, in the 1977 final rule, NHTSA determined that T-type (60 psi) tires should be tested in all of the FMVSS No. 109 tests at a test pressure lower than the tire's maximum permissible inflation pressure of 60 psi. For the physical dimensions test, the agency determined that a 52-psi value reflects an operational inflation pressure appropriate for use in the test. The 52-psi maximum permissible inflation pressure adopted in 1977 has not been changed since that final rule.

d. Tire & Rim Association Petition

In a July 13, 2007 petition, the Tire & Rim Association (T&RA) [3] requested that the agency make a ''technical correction'' [4] to Table II of FMVSS No. 109 regarding T-type tires. Specifically, T&RA requested that ''the inflation pressure for the measurement of physical dimensions in Table II be changed from 52 psi to 60 psi.'' T&RA stated that ''There is only one application inflation pressure for T-type tires, 60 psi,'' and that therefore ''this is the appropriate pressure for the subject measurement.'' The petitioner also stated that the inflation pressure for the bead unseating, tire strength, and tire endurance test should remain at 52 psi.

II. Summary of the NPRM

In a notice of proposed rulemaking (NPRM) published on October 30, 2009,[5] NHTSA proposed to grant T&RA's petition and increase the test pressure used for the physical dimensions test from 52 psi to 60 psi. Although we agreed that raising the inflation pressure for the physical dimensions test was appropriate, we did not agree with T&RA's reasoning. Instead, we proposed to raise the inflation pressure for two other reasons. First, we tentatively concluded that raising the inflation pressure makes engineering sense because doing so would raise the stringency of the test under conditions that are within the realm of real world use, since it was conceivable that the tires would be operated at 60 psi (which is the pressure assigned the tire by the tire manufacturer). Second, we tentatively concluded that raising the test pressure will align FMVSS No. 109 with the European and Japanese regulations that cover T-type tires. The European and Japanese regulations both specify an inflation pressure of 4.2 bar or 420 kPa (which is the metric equivalent of 60 psi) [6] for the physical dimensions test.[7]

We believed that existing 60-psi T-type spare tires would be able to pass the amended physical dimensions test. Further, because the request to raise the test pressure for the physical dimensions test came from a tire manufacturer trade association, we believed that the amended test would be practical.

The October 2009 NPRM also proposed other minor changes to FMVSS No. 109:

- The agency proposed deleting references to CT tires.
- The agency proposed revising S4.4.1(b) to update the list of tire industry organizations to make the list consistent with that established in the upgrade of FMVSS No. 139, *New pneumatic radial tires for light vehicles.*
- The agency proposed to redesignate ''Appendix A'' as ''Appendix'' and move it to the end of the standard. The

[1] 42 FR 12869, 12870 (March 7, 1977).

[2] S4.2.2.2 states that the measured section width ''shall not exceed the section width *specified in a submission made by an individual manufacturer, pursuant to S4.4.1(a) or in one of the publications described in S4.4.1(b) for its size designation and type* * * *.'' (Emphasis added.) The ''publications described in S4.4.1(b)'' refer to the year books published by various tire manufacturer associations, such as T&RA. As a practical matter, individual tire manufacturers generally submit section width information to associations like T&RA for inclusion in the year books, rather than submitting such information directly to NHTSA, although FMVSS No. 109 allows the latter option.

[3] T&RA is a technical standardizing body of the tire, rim, valve, and allied part manufacturers in the United States.

[4] The agency believes that the petition should be addressed by this notice and comment rulemaking rather than by way of a technical correction.

[5] 74 FR 56166 (Docket No. NHTSA–2009–0117).

[6] More precisely, 420 kPa is equal to 60.9 psi. However, when adopting metric conversions in 1998, NHTSA generally favored equivalent conversions over exact ones and favored conversions that were already consistent with established tire industry, European, or other international standards. See 63 FR 28912, 28913 (May 27, 1998).

[7] See ECE Regulation No. 30, Annex 6, para. 1.2.5, *available at http://live.unece.org/fileadmin/DAM/trans/main/wp29/wp29regs/r030r3e.pdf;* Automobile Type Approval Handbook for Japanese Certification, Safety Regulations for Road Vehicles, Technical Standards For Pneumatic Tyres For Passenger-Use Motor Vehicles, Annex, 1–2–5.

agency also proposed removing references to tables that were no longer set forth in the appendix and updating the address of NHTSA.

III. Comments and Analysis

The agency received three comments in response to the October 2009 NPRM. The comments were submitted by the Alliance of Automobile Manufacturers (Alliance),[8] Advocates for Highway and Auto Safety (Advocates), and a private citizen (Jonathan David Korhonen).

The Alliance concurred with the proposals in the NPRM to increase the test pressure of T-type tires from 52 psi to 60 psi for the physical dimensions test, the deletion of references to CT type tires, the revisions to update the list of tire industry organizations, and the redesignation of ''Appendix A'' as ''Appendix'' and its relocation to the end of the standard. The Alliance also concurred with the proposed effective date.

Advocates stated that it supports NHTSA's proposal to raise the inflation pressure from 52 psi to 60 psi for the physical dimensions test on T-type tires. Advocates asserted that this will result in a more demanding test that could lead to increased tire quality and integrity during real-world use. Advocates also supported the continued use of a 52 psi inflation pressure for the bead unseating, tire strength, and tire endurance tests because those test pressures represented real-world conditions in which T-type tires would be used while underinflated.

However, Advocates recommended that NHTSA reconsider its continued use of a 58 psi inflation pressure for the high speed performance test. Advocates stated that T-type tires are often stored for long periods of time until an unexpected event leads to their use. Advocates also asserted that, although owners' manuals for passenger motor vehicles advise frequent checking and re-inflation of T-type tires, this is rarely performed, leading to the majority of T-type tires mounted on vehicles being in an underinflated condition. Advocates argued that this problem is further compounded by the majority of motorists who do not carry air pumps to inflate T-type tires to the recommended operating pressure or tire gauges to check the inflation of tired. Further, Advocates noted that the absence of a requirement that T-type tires be equipped with tire pressure monitoring systems (TPMS) further prevents drivers from being notified of underinflated tires. Advocates stated that, by lowering the inflation pressure for the high speed performance test, NHTSA could ensure that T-type tires were better able to withstand higher speeds while underinflated.

NHTSA is making no changes to the proposal in response to Advocates' comment. The agency considers the issues related to the inflation pressure of T-type tires for the high speed performance test to be outside the scope of this rulemaking action.

The agency also addressed the issue of TPMS on spare tires during the rulemaking establishing FMVSS No. 138, *Tire pressure monitoring systems.*[9] NHTSA decided not to require TPMS on spare tires (either T-type or full-sized) for two reasons. First, most drivers know that temporary tires are not intended for extended use. Second, T-type tires pose operational problems for both direct and indirect TPMS because the recommended inflation pressure for these tires is considerably different than the pressure for tires used in normal service. The agency also believed a TPMS requirement for spare tires would be a potential disincentive for a vehicle manufacturer to supply a spare tire.

The agency also received a comment from a private citizen, Jonathan David Korhonen. Mr. Korhonen questioned how the NPRM would affect the overall cost to manufacture vehicles. He recommended keeping the proposed changes as suggestions and concluded that the changes should not take the place of education for drivers.

In response to Mr. Korhonen's comment, the agency believes that the costs of implementing the proposed changes in the NPRM are near zero. We believe that existing T-type tires are likely to pass the upgraded physical dimensions test.

After careful consideration of all comments received and all issues relevant to the NPRM, the agency has decided to adopt the NPRM as proposed.[10] Raising the test pressure for the physical dimensions test will raise the stringency of the test under conditions that are within the realm of real world use. Further, raising the test pressure is consistent with international harmonization. We believe that existing tires will be able to pass the amended physical dimensions test and that the new test will be practicable. We are also adopting the minor changes to FMVSS No. 109 discussed in the NPRM.

Finally, for consistency, we are making three changes to the regulatory text of FMVSS No. 109 that were not included in the NPRM. The agency finds that good cause exists for these amendments to be included in this final rule notwithstanding the fact that they were not included in the October 2009 NPRM because advance public notice would be unnecessary. The specific changes and the basis for the good cause finding are discussed below.

First, we are amending S4.2.2.2(b) to eliminate maximum tire pressures that were used only for the physical dimensions test for CT tires. This is consistent with the proposed amendments, which we are adopting today, to eliminate pressures used for CT tires in S4.2.1(b), S4.3.4, Table I–C, and Table II.

Second, we are further amending S4.2.2.2(b) to correct an error. Although 340 kPa is listed in the maximum tire pressures that are used for conducting the physical dimensions test in Table II, the pressure was inadvertently removed from the list of tire pressures in S4.2.2.2(b) in a prior rulemaking action.[11] The inclusion of the 340 kPa maximum tire pressure in Table II and other similar sections that list the permissible maximum tire pressures shows that this omission was unintentional. Thus, advance notice of this correction is unnecessary.

Third, we are updating NHTSA's address in S4.4.1(a) to be consistent with the correction to NHTSA's address in Appendix A. This is a procedural amendment that will ensure that documents sent to the agency will be delivered to the agency.

IV. Effective Date

Section 30111(d) of title 49, United States Code, provides that a Federal motor vehicle safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed except when a different effective date is, for good cause shown, in the public interest. This final rule is effective 180 days after publication of this final rule in the **Federal Register**. However, we

[8] The Alliance is a trade association of 11 automobile manufacturers: BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, and Volkswagen.

[9] See 70 FR 18136, 18160 (Apr. 8, 2005); 70 FR 53079, 53088 (Sep. 7, 2005).

[10] The only change made to the NPRM was the correction of a misspelled word in the Appendix to § 571.109.

[11] An August 1, 1994 final rule adding the 350 kPa maximum pressure for tires other than CT tires removed the 340 kPa test pressure from S4.2.2.2(b). See 59 FR 38938, 38941. This omission was not discussed in the preamble of the final rule. See 59 FR 38938–40. The 340 kPa pressure was included in S4.2.2.2(b) of FMVSS No. 109 prior to the August 1, 1994 amendment. See 49 CFR 571.109, S4.2.2.2(b) (1993). Furthermore, the 340 kPa was not omitted from S4.2.2.2(b) in the November 8, 1993 NPRM that preceded the amendment. See 58 FR 59226, 59228.

will permit optional early compliance immediately.

V. Rulemaking Analyses and Notices

Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

The agency has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 and the DOT's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under Executive Order 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not ''significant'' under them.

This final rule increases slightly the stringency of an existing test applicable to T-type spare tires for passenger vehicles. The rulemaking will not affect the current costs of testing T-type tires to FMVSS No. 109's performance requirements. The minimal impacts of today's amendment do not warrant preparation of a regulatory evaluation.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required, except as provided below, to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)).

No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will affect tire manufacturers who manufacture T-type tires, none of which, according to the agency's knowledge, are small businesses. Even if there were a substantial number of small businesses manufacturing T-type tires, these entities would not be significantly affected by this final rule since, to the agency's knowledge, all currently manufactured T-type tires meet the new requirement. The rulemaking does not affect costs of testing T-type tires to FMVSS No. 109's performance requirements.

Executive Order 13609 (Promoting International Regulatory Cooperation)

The policy statement in section 1 of Executive Order 13609 provides, in part:

> The regulatory approaches taken by foreign governments may differ from those taken by U.S. regulatory agencies to address similar issues. In some cases, the differences between the regulatory approaches of U.S. agencies and those of their foreign counterparts might not be necessary and might impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

This final rule would harmonize the inflation pressure NHTSA uses for the physical dimensions test with European and Japanese regulations covering T-type tires.

Executive Order 13132 (Federalism)

NHTSA has examined today's final rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments, or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rule does not have sufficient federalism implications to warrant either consultation with State and local officials or preparation of a federalism summary impact statement. The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government.''

Further, no consultation is needed to discuss the issue of preemption in connection with today's final rule. The issue of preemption can arise in connection with NHTSA rules in two ways.

First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision: ''When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter.'' 49 U.S.C. 30103(b)(1). It is this statutory command that unavoidably preempts State legislative and administrative law, not today's rulemaking, so consultation is unnecessary.

Second, the Supreme Court has recognized the possibility of implied preemption: In some instances, State requirements imposed on motor vehicle manufacturers, including sanctions imposed by State tort law, can stand as an obstacle to the accomplishment and execution of some of the NHTSA safety standards. When such a conflict is discerned, the Supremacy Clause of the Constitution makes the State requirements unenforceable. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

NHTSA has considered the nature (e.g., the language and structure of the regulatory text) and purpose of today's final rule and does not foresee any potential State requirements that might conflict with it. Without any conflict, there could not be any implied preemption of state law, including state tort law.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is no information collection requirement associated with this final rule.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272) directs the agency to evaluate and use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent

with applicable law or is 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, such as the Society of Automotive Engineers. The NTTAA directs us to provide Congress (through OMB) with explanations when we decide not to use available and applicable voluntary consensus standards.

This final rule harmonizes FMVSS No. 109 with several voluntary consensus standards, including the T&RA 2008 Year Book standard,[12] the ETRTO standard,[13] and the JATMA standard,[14] all of which specify 60 psi or 420 kPa (or 4.2 bar) as the inflation pressure for measuring T-type tire dimensions. This final rule also harmonizes FMVSS No. 109 with ECE Regulation 30 and Japanese Safety Regulations, which currently require the physical dimensions test for T-type tires to be conducted at the tire's maximum permissible inflation pressure, 4.2 bar (420 kPa or 60 psi).

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly 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. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule will not result in any expenditure by State, local, or tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

This final rule is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all 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 you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, and Tires.

In consideration of the foregoing, NHTSA hereby amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.95.

■ 2. Section 571.109 is amended by
■ a. Removing the definition of CT in S3;
■ b. Revising S4.2.1(b), S4.2.2.2(b), the introductory text of S4.3.4, S4.4.1(a), and S4.4.1(b);
■ c. Redesignating Appendix A as ''Appendix to § 571.109,'' moving the appendix to the end of § 571.109 (following the tables to § 571.109), and revising the appendix; and
■ d. Revising Table I–C and Table II.

The revised and redesignated text, tables, and appendix read as follows:

§ 571.109 Standard No. 109; New pneumatic and certain specialty tires.

* * * * *

S4.2.1 * * *

(b) Its maximum permissible inflation pressure shall be either 32, 36, 40, or 60 psi, or 240, 280, 300, 340, or 350 kPa.

* * * * *

S4.2.2.2 * * *

(b) (For tires with a maximum permissible inflation pressure of 240,

[12] The Tire & Rim Association, Inc., (T&RA), Year Book, 2008, Measuring Procedure for New Tires, at XIII.

[13] European Tyre and Rim Technical Organization (ETRTO), Standards Manual, 2005. Table 11.2, Temporary Use Spare Tyres—T type, at P.22.

[14] The Japan Automobile Tyre Manufacturers Association, Inc. (JATMA), Year Book (Tyre Standards), 2008. Section G–5, ''Measuring Procedure for Tyres,'' Note 1, at 0–4.

280, 300, 340 or 350 kPa, or 60 psi) 7 percent or 10 mm (0.4 inches), whichever is larger.

* * * * *

S4.3.4 If the maximum inflation pressure of a tire is 240, 280, 300, 340, or 350 kPa, then:

* * * * *

S4.4.1 * * *

(a) Listed by manufacturer name or brand name in a document furnished to dealers of the manufacturer's tires, to any person upon request, and in duplicate to the Docket Section (No: NHTSA–2009–0117), National Highway Traffic Safety Administration, West Building, 1200 New Jersey Ave SE., Washington, DC 20590; or

(b) Contained in publications, current at the date of manufacture of the tire or any later date, of at least one of the following organizations:

Tire and Rim Association

The European Tyre and Rim Technical Organization

Japan Automobile Tyre Manufacturers Association, Inc.

Tyre and Rim Association of Australia

Associacao Latino Americana de Pneus e Aros (Brazil)

South African Bureau of Standards

* * * * *

TABLE I–C—FOR RADIAL PLY TIRES

Size designation	Maximum permissible inflation							
	PSI			kPa				
	32	36	40	240	280	300	340	350
Below 160 mm:								
(in-lbs)	1,950	2,925	3,900	1,950	3,900	1,950	3,900	1,950
(joules)	220	330	441	220	441	220	441	220
160 mm or above:								
(in-lbs)	2,600	3,900	5,200	2,600	5,200	2,600	5,200	2,600
(joules)	294	441	588	294	588	294	588	294

* * * * *

TABLE II—TEST INFLATION PRESSURES

[Maximum permissible inflation pressure to be used for the following test]

Test type	psi				kPa				
	32	36	40	60	240	280	300	340	350
Physical dimensions	24	28	32	60	180	220	180	220	180
Bead unseating, tire strength, and tire endurance	24	28	32	52	180	220	180	220	180
High speed performance	30	34	38	58	220	260	220	260	220

* * * * *

Appendix to § 571.109

Persons requesting the addition of new tire sizes not included in S4.4.1(b) organizations may, upon approval, submit five (5) copies of information and data supporting the request to the Vehicle Dynamics Division, Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, West Building, 1200 New Jersey Ave. SE., Washington, DC 20590.

The information should contain the following:

1. The tire size designation, and a statement either that the tire is an addition to a category of tires listed in the tables or that it is in a new category for which a table has not been developed.

2. The tire dimensions, including aspect ratio, size factor, section width, overall width, and test rim size.

3. The load-inflation schedule of the tire.

4. A statement as to whether the tire size designation and load inflation schedule has been coordinated with the Tire and Rim Association, the European Tyre and Rim Technical Organization, the Japan Automobile Tyre Manufacturers Association, Inc., the Tyre and Rim Association of Australia, the Associacao Latino Americana de Pneus e Aros (Brazil), or the South African Bureau of Standards.

5. Copies of test data sheets showing test conditions, results and conclusions obtained for individual tests specified in § 571.109.

6. Justification for the additional tire sizes.

Issued on: January 4, 2013.

David L. Strickland,

Administrator.

[FR Doc. 2013–00938 Filed 1–16–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 120312181–2279–01]

RIN 0648–BC00

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Emergency Rule Extension

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

ACTION: Temporary rule; emergency action extended.

SUMMARY: NMFS is extending the temporary rule that delayed or revised several portions of the Pacific Coast Groundfish Fishery Trawl Rationalization Program (program) regulations. This emergency rule extension is necessary to enable the

National Marine Fisheries Service (NMFS) to comply with a court order requiring NMFS to reconsider the initial allocation of Pacific whiting (whiting) to the shorebased Individual Fishing Quota (IFQ) fishery and the at-sea mothership fishery. This extension of the temporary, emergency rule affects the transfer of Quota Share (QS) and Individual Bycatch Quota (IBQ) between QS accounts in the shorebased IFQ fishery, and severability in the mothership fishery, both of which will be delayed until NMFS can complete reconsideration of whiting allocations in the shorebased IFQ fishery and the at-sea mothership fishery.

DATES: The expiration date of the temporary rule published August 1, 2012 (77 FR 45508) is extended from January 28, 2013, through July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Ariel Jacobs, 206–526–4491; (fax) 206–526–6736; *Ariel.Jacobs@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

This action extends the Reconsideration of Allocation of Whiting, Delay of Relevant Regulations Rule, referred to as ''RAW 1''. RAW 1 delayed or revised several provisions of the Pacific coast trawl rationalization program. Background on this rule was provided in the proposed rule, published on May 21, 2012 (77 FR 29955), and in the final rule, published on August 1, 2012 (77 FR 45508), and is not repeated here. This action would extend the effectiveness of the final rule, which:

(1) Delayed the ability to transfer QS and IBQ between QS accounts in the shorebased IFQ fishery in order to avoid complications that would occur if QS permit owners in the shorebased IFQ fishery were allowed to transfer QS percentages prior to completion of the whiting allocation reconsideration;

(2) Delayed the requirement to divest excess QS amounts for the shorebased IFQ fishery and the at-sea mothership fishery so that QS permit owners would have sufficient time to plan and arrange sales of excess QS, as originally recommended by the Council for this provision of the trawl rationalization program;

(3) Delayed the ability to change mothership catcher vessel (MS/CV) endorsement and catch history assignments from one limited entry trawl permit to another in order to avoid complications that would have occurred had permit owners been allowed to transfer ownership of catch history assignments prior to completion of the reconsideration; and

(4) Modified the issuance provisions for quota pounds (QP) for the beginning of fishing year 2013 to preserve NMFS' ability to deposit the appropriate final amounts into QS accounts based on any recalculation of QS allocations. In January 2013, NMFS deposited into accounts an interim amount of QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for 2013, as reduced by the amount of QP for whiting trips associated with the whiting QS issued based on the limited entry permit history that qualified for an initial allocation, and for species caught incidentally in the whiting fishery (including lingcod, Pacific cod, canary, bocaccio, cowcod, yelloweye, Pacific ocean perch, widow, English sole, darkblotched, sablefish N. of 36° N lat., yellowtail N. of 40°10′ N. lat., shortspine N. of 34°27′ N. lat., minor slope rockfish N. of 40°10′ N. lat., minor slope rockfish S. of 40°10′ N. lat., minor shelf rockfish N. of 40°10′ N. lat., minor shelf rockfish S. of 40°10′ N. lat., and other flatfish). The remainder of the interim QP will be deposited in QS accounts at the start of the whiting primary season.

NMFS is also advising the at-sea mothership fishery that the response to the court order may impact processor obligations and cooperative (coop) formation, if whiting catch history assignments are recalculated. NMFS will announce a process for correcting data, if necessary, following the public comment period for the RAW 2 proposed rule (78 FR 72, January 2, 2013).

Potential Impact on Processor Obligations and Coop Formation

NMFS advises the at-sea mothership fishery that the response to the court-ordered reconsideration may impact processor obligations and coop formation if whiting catch history assignments are recalculated. NMFS will announce any changes to the amount of catch history assignments associated with MS/CV-endorsed limited entry trawl permits by April 1, 2013. The mothership sector has until March 31, 2013, to submit their coop permit applications to NMFS for that fishing year. The coop permit application includes a list of the catch history amounts associated with specific MS/CV-endorsed limited entry permits and which MS permit those amounts are obligated to. Because coop permit applications may be submitted before NMFS has made its final determination on the 2013 catch history assignments associated with MS/CV-endorsed permits, participants in the mothership fishery should be aware that this proposal may potentially impact their processor obligations, coop formation, and coop permit application. NMFS does not anticipate a need for regulatory changes to address these potential impacts and will work with any MS coop permit applicants if there are changes in catch history assignments from that noted in the 2013 coop permit application. For example, in the initial administrative determination for any 2013 MS coop permit application, NMFS will notify the coop manager of any changes in catch history assignments for MS/CV-endorsed permits associated with that coop.

NMFS also considered whether to allow limited entry permit transfers (i.e., changes in permit ownership) for all limited entry trawl endorsed permits, except for those with a catcher/processor endorsement, for a period of time during the reconsideration. This allowance would simplify reissuance of QS permits in the shorebased IFQ fishery or catch history assignments on MS/CV-endorsed limited entry trawl permits in the at-sea mothership fishery. After assessing this step, NMFS has determined that it is not necessary because the reallocation rule likely will have no planned application process. The initial allocation had a lengthy application process that necessitated not allowing limited entry permit (LEP) transfers while NMFS reviewed applications. For any revised reallocation, NMFS likely will issue an initial administrative determination (IAD), but not an application; these details will be developed as part of the reallocation rulemaking, if necessary. Accordingly, there should not be a need to freeze LEP transfers. If NMFS reissues QS permits and/or catch history assignments on MS/CV-endorsed limited entry trawl permits, NMFS likely will issue those permits or catch history assignments to the QS account owner of record with NMFS at the time of reissuance. Because the RAW 2 rule (78 FR 72, January 2, 2013) is not proposing any reallocation, it did not include these additional details.

Classification

This emergency rule extension is published under the authority of the Magnuson-Stevens Act.

OMB has determined that this action is not significant for the purposes of Executive Order 12866.

This extension to an emergency/interim rule is exempt from the procedures of the Regulatory Flexibility Act because this extension rule is issued without opportunity for prior notice and opportunity for public comment.

The Assistant Administrator finds it is unnecessary and contrary to the public interest to provide for prior notice and an opportunity for public comment on this emergency rule extension. In the initial emergency rule published on May 21, 2012 (77 FR 29955), NMFS requested, and subsequently received, comments on the rulemaking. Therefore, the agency has the authority to extend the emergency action for up to 186 days beyond January 28, 2013. This would extend the emergency action to through August 2, 2013.

The measures of this emergency rule extension remain unchanged from the measures contained in the initial emergency rule that delayed or revised portions of the trawl program regulations pending completion of the reconsideration of the allocation of whiting for the shoreside IFQ and mothership sectors of the program. This extension must be in place during the 2013 whiting fishing season because the reconsideration is still underway and failing to extend the emergency rule would be counter to the NMFS and the Council's efforts to manage the fishery until the reconsideration has been completed. The emergency action authority under 305(c)(3) allows NMFS to extend the provisions of the emergency action rule if there was a public comment period and the Council is currently addressing the reconsideration. NMFS has met both of these provisions.

NMFS solicited public comment during the 30-day comment period on the measures contained in the initial emergency action and extended by this action. The comments received were considered and were addressed in the preamble of the emergency rule. Therefore, for the reasons outlined above, the Assistant Administrator finds it is unnecessary and contrary to the public interest to provide any additional notice and opportunity for public comment under 5 U.S.C. 553(b)(B) prior to publishing the emergency rule extension. Furthermore, NMFS finds good cause to waive the 30-day delay in effectiveness because any lapse in effectiveness of this temporary rule could potentially jeopardize NMFS' ability to comply with the Court order in *Pacific Dawn*.

No Federal rules have been identified that duplicate, overlap, or conflict with this emergency rule extension. Public comment is hereby solicited, identifying such rules. A copy of this analysis is available from NMFS (see **ADDRESSES**).

NMFS issued Biological Opinions under the Endangered Species Act (ESA) on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast Groundfish Fishery Management Plan (PCGFMP) fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, northern California, southern California). These biological opinions have concluded that implementation of the PCGFMP for the Pacific Coast groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat.

NMFS issued a Supplemental Biological Opinion on March 11, 2006 concluding that neither the higher observed bycatch of Chinook in the 2005 whiting fishery nor new data regarding salmon bycatch in the groundfish bottom trawl fishery required a reconsideration of its prior ''no jeopardy'' conclusion. NMFS also reaffirmed its prior determination that implementation of the Groundfish PCGFMP is not likely to jeopardize the continued existence of any of the affected ESUs. Lower Columbia River coho (70 FR 37160, June 28, 2005) and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead.

On December 7, 2012, NMFS completed a biological opinion concluding that the groundfish fishery is not likely to jeopardize non-salmonid marine species including listed eulachon, green sturgeon, humpback whales, Steller sea lions, and leatherback sea turtles. The opinion also concludes that the fishery is not likely to adversely modify critical habitat for green sturgeon and leatherback sea turtles. An analysis included in the same document as the opinion concludes that the fishery is not likely to adversely affect green sea turtles, olive ridley sea turtles, loggerhead sea turtles, sei whales, North Pacific right whales, blue whales, fin whales, sperm whales, Southern Resident killer whales, Guadalupe fur seals, or the critical habitat for Steller sea lions.

As Steller sea lions and humpback whales are also protected under the Marine Mammal Protection Act, incidental take of these species from the groundfish fishery must be addressed under MMPA section 101(a)(5)(E). On February 27, 2012, NMFS published notice that the incidental taking of Steller sea lions in the West Coast groundfish fisheries is addressed in NMFS' December 29, 2010 Negligible Impact Determination (NID) and this fishery has been added to the list of fisheries authorized to take Steller sea lions (77 FR 11493, Feb. 27, 2012). NMFS is currently developing MMPA authorization for the incidental take of humpback whales in the fishery.

On November 21, 2012, the U.S. Fish and Wildlife Service (FWS) issued a biological opinion concluding that the groundfish fishery will not jeopardize the continued existence of the short-tailed albatross. The FWS also concurred that the fishery is not likely to adversely affect the marbled murrelet, California least tern, southern sea otter, bull trout, nor bull trout critical habitat.

Dated: January 11, 2013.

Alan D. Risenhoover,

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

[FR Doc. 2013–00936 Filed 1–16–13; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 78, No. 12
Thursday, January 17, 2013

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[Doc. No. AMS–DA–10–0002]

Increase in Fees for Voluntary Federal Dairy Grading and Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to increase the fees for voluntary Federal dairy grading and inspection services. The fee increases proposed are 15 percent during fiscal year (FY) 2013 and 5 percent during FY 2014. These fees were last adjusted in 2006. Dairy grading and inspection services are voluntary and are financed in their entirety through user fees assessed to participants using the program. Despite the adoption of technologies that have improved services, additional changes in operations that enhanced efficiencies, and reduced employee numbers, increases in salaries, technology investments, and general inflation have more than offset savings resulting in the need to increase fees. AMS estimates the proposed fee increase will result in an overall cost increase to the industry of less than $0.0004 per pound of dairy product graded. This increase is needed to avoid a reduction in the services offered that aid the dairy industry in effectively marketing their products.

DATES: Comments must be received on or before: February 19, 2013.

ADDRESSES: Interested persons are invited to submit comments for public viewing using the electronic process available at the Federal eRulemaking portal: *http://www.regulations.gov.* Reference should be made to the title of the action and docket number, AMS–DA–10–0002, and note the date and page number of this issue of the **Federal Register**. Written comments may also be submitted to Diane Lewis, Director, Grading and Standards Division, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0225, Room 2968—South, 1400 Independence Avenue SW., Washington, DC 20250–0225. Comments may be faxed to (202) 690–3410. All comments received will be available for public inspection at: *http://www.regulations.gov*

FOR FURTHER INFORMATION CONTACT: Diane Lewis, Director, Grading and Standards Division, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0225, Room 2968—South, 1400 Independence Avenue SW., Washington, DC 20250–0225, or call (202) 720–4392.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988

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

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not retroactive. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirement set forth in the Regulatory Flexibility Act, AMS has considered the economic impact of this action on small entities. It has been determined that its provisions would not have a significant economic effect on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. If a plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Under the Agricultural Marketing Act of 1946, the Dairy Grading and Inspection Branch, AMS, provides voluntary Federal inspection and dairy product grading services to about 360 plants. An estimated 345 of these users are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

This proposed rule will raise the fees charged to businesses for voluntary plant inspections, grading services for dairy and related products. This proposal will affect all businesses that use these services equally. Dairy processing plants participating in the voluntary plant inspection program have their facility inspected against established USDA ''General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service'' construction and sanitation requirements. Businesses are under no obligation to use these voluntary user-fee based services and any decision on their part to discontinue the use of the services would not prevent them from marketing their products. It is estimated that the proposed fee increases will result in an increase to plants of $0.0004 per pound of graded product. Therefore, AMS has determined that this proposed rule will not have a significant economic impact on small businesses.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that this rule would have no impact on reporting, recordkeeping, or other compliance requirements for entities currently using voluntary Federal dairy inspection and grading services because they would remain identical to the current requirements.

This action does not request additional information collection that requires clearance by OMB. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is small. Requiring the same information from all participating dairy plants does not significantly disadvantage any plant that is smaller than the industry average.

Description of Program

Plants participating in the voluntary AMS Dairy Grading and Inspection Program process milk into dairy foods that enter commerce as retail products, ingredients for further processing, purchases for Federal food assistance programs, or exports to other countries.

Services provided by the program enhance the marketability and add value to dairy and dairy-containing foods. Dairy products manufactured in facilities complying with the USDA inspection requirements are eligible to be graded against official quality standards and specifications established by AMS and certain contract provisions between buyer and seller. Dairy products tested and graded by AMS have certificates issued describing the product's quality and condition.

AMS continually reviews cost structures to assure it is operating efficiently while maintaining the resources necessary to meet the dairy industry's demand for services. Periodically, fees must be adjusted to ensure that the program remains financially self-supporting. The AMS Dairy Grading and Inspection Program has made great efforts to reduce the costs associated with providing grading and inspection services since the last fee increase in 2006 (71 FR 60805). Cost-saving initiatives to date have resulted in substantial gains in the efficiency of service delivery. In 2006, total costs for the program were $5.2 million to grade and certify 1.5 billion pounds of dairy products–a per pound cost of $0.0035. In 2011, the program's total costs were $5.3 million to grade and certify 2.0 billion pounds of dairy products—a per pound cost of product certified of $0.0026, a 25 percent improvement in efficiency. Further enhancements will continue to improve the efficiency, quality and timeliness of providing inspection and grading services.

In an effort to minimize the costs associated with managing its workforce, the Dairy Grading and Inspection Program has restructured. The number of administrative personnel has been reduced from 14 full time employees to 5 resulting in annual savings of over $400,000. The National Field Office, located in the suburbs of Chicago, co-located with other USDA offices in Lisle, Illinois, saving about $32,000 annually. One supervisor and one training position were eliminated allowing about $170,000 to be redirected to cover cost increases for additional grading staff needed to provide requested services. In addition, incorporation of system automation has resulted in faster customer service with less staff involvement, especially in the delivery of export certificates. Advances in electronic submissions and deliveries allowed nearly 20,000 export certificates to be issued with only 2.0 staff positions during FY 2011.

Although significant effort has been directed at reducing expenses, savings from these efforts have not offset increasing operating expenses incurred over the past 6 years. Consequently, existing fee rates are no longer adequate to cover current obligations. The program is depleting reserve funds at a rate that jeopardizes its ability to ensure effective delivery of services to meet industry needs. Given these trends, services will have to be significantly reduced if revenue is not increased. Fees must be adjusted to cover current and projected operating costs. Without a fee increase, AMS anticipates that it will have to reduce Federal Dairy Grading and Inspection Services in 2013.

Proposed Action

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal dairy inspection and grading services to facilitate the orderly marketing of dairy products and to enable consumers to obtain the quality of dairy products they desire. The AMA also provides for the collection of reasonable fees from users of the Federal dairy inspection and grading services to cover the cost of providing these services. The hourly fees are established by distributing the program's projected operating costs over the estimated service-revenue hours provided to users. AMS continually reviews its cost structure to assure it is operating efficiently while maintaining the resources necessary to meet the dairy industry's demand for services. Periodically, fees must be adjusted to ensure that the program remains financially self-supporting.

As part of its financially self-supporting status, agency requirements necessitate that the program maintain a reserve trust fund with a minimum of 4 months of operating funds to account for program closure or an unexpected decrease in revenues. Since revenues have not covered program costs for several years, the trust fund has gradually been depleted. The fund first dipped below its mandated 4-month reserve level in FY 2010. Fiscal year 2012 revenue was $5.190 million with operating expenses at $5.333 million, resulting in an end of year trust fund balance of $83,000 or 0.2 months of operating reserve. Similar financial performance in FY 2013 will create a deficit of $198,000. Without a fee increase, the AMS Dairy Grading and Inspection Branch will be put in an unstable financial position that will adversely affect the ability to provide dairy inspection and grading services.

In an effort to reduce costs and delay depletion of reserve funds, AMS has continued to automate its business practices, consolidate facilities, limit personnel, and implement other efficiencies. As detailed earlier, progress to date for the AMS Dairy Grading and Inspection Program has been significant and has resulted in decreasing costs per pound of graded product from $0.0035 to $0.0026. This is equivalent to a savings of approximately $816,000 on every one billion pounds of product graded. Further enhancements in automated business practices will continue to improve the efficiency and timeliness of providing inspection and grading services as well as information to users of these services.

In view of the above considerations, AMS proposes to increase the hourly fees associated with Federal dairy grading and inspection services. This proposed rule includes a two-part incremental fee increase consisting of 15 percent beginning in February 2013 and an additional 5 percent in October 2013. Currently the fees are $63.00 per hour for continuous resident services and $68.00 per hour for non-resident services. The proposed increases result in fees of $72.00 per hour for continuous resident services effective February 2013 and $76.00 per hour effective October 2013. The proposed fee for non-resident services between the hours of 6 a.m. and 6 p.m. would be $78.00 per hour beginning February 2013 and $82.00 per hour as of October 2013. The fee for non-resident services between the hours of 6 p.m. and 6 a.m. would be $85.80 per hour effective February 2013 and $90.20 as of October 2013. For services performed in excess of 8 hours per day and for services performed on Saturday, Sunday, and legal holidays, 1½ times the base fees would apply and result in increases to $108.00 per hour for resident grading beginning February 2013 and $114.00 per hour effective October 2013. Similarly, a fee of $117.00 per hour for non-resident grading services effective February 2013 and $123.00 as of October 2013 would also apply. The following table summarizes the proposed fee changes:

Service (all rates in dollars per hour)	Current	February 2013	October 2013
Continuous resident services	$63.00	$72.00	$76.00
Non-resident services	68.00	78.00	82.00
Non-resident services 6 p.m.–6 a.m. (10 percent night differential)	74.80	85.80	90.20
Continuous resident services—in excess of 8 hours (1½ × base)	94.50	108.00	114.00
Non-resident—in excess of 8 hours	102.00	117.00	123.00

AMS estimates that dairy grading and inspection fees including the proposed increases will generate the following revenue (in thousands of dollars): FY 2013 ($5,618); FY 2014 ($6,199); FY 2015 ($6,254); and FY 2016 ($6,296). Program costs are estimated as follows (in thousands of dollars): FY 2013 ($5,522); FY 2014 ($5,517); FY 2015 ($5,583); FY 2016 ($5,800). The additional cost to the industry will represent less than $0.0004 per pound of product certified. Even at this increased rate, program analysis estimate that trust fund reserves will not reach its required minimum level before FY 2016. Trust fund reserves are estimated as follows (in thousands of dollars): FY 2013 ($113); FY 2014 ($795); FY 2015 ($1,466); FY 2016 ($1,961).

List of Subjects in 7 CFR Part 58

Dairy Products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reason set forth in the preamble, 7 CFR part 58 is proposed to be amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

■ 1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 58.43 is revised to read as follows:

§ 58.43 Fees for inspection, grading, and sampling.

Except as otherwise provided in §§ 58.38 through 58.46 and through the last day of September 2013 inclusive, charges shall be made for inspection, grading, and sampling service at the hourly rate of $78.00 for services performed between 6:00 a.m. and 6:00 p.m. and at $85.80 for services performed between 6:00 p.m. and 6:00 a.m. for service performed for the time required to perform the service calculated to the nearest 15-minute period, including the time required for preparation of certificates and reports and the travel time of the inspector or grader in connection with the performance of the service. Following the last day of September 2013, the hourly rate will be equal to $82.00 for service performed between 6:00 a.m. and 6:00 p.m. and $90.20 for services performed between 6:00 p.m. and 6:00 a.m. calculated in the same manner. A minimum charge of one-half hour shall be made for service pursuant to each request or certificate issued. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

■ 3. Section 58.45 is revised to read as follows:

§ 58.45 Fees for continuous resident services.

Irrespective of the fees and charges provided in §§ 58.39 and 58.43, charges for the inspector(s) and grader(s) assigned to a continuous resident program shall be made at the rate of $72.00 per hour for services performed during the assigned tour of duty until the last day of September 2013. Following the last day of September 2013, the hourly rate shall be assessed at $76.00 for services calculated in the same manner. Charges for service performed in excess of the assigned tour of duty shall be made at a rate of 1½ times the rate stated in this section.

Dated: January 14, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–00916 Filed 1–16–13; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 71 and 72

[NRC–2013–0004]

Retrievability, Cladding Integrity and Safe Handling of Spent Fuel at an Independent Spent Fuel Storage Installation and During Transportation

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comments for potential rulemaking.

SUMMARY: The regulations for packaging and transport of spent nuclear fuel are separate from requirements for storage of spent nuclear fuel. Because these regulatory schemes are separate, there is no requirement that loaded storage casks also meet transportation requirements. Integration of storage and transport regulations could enable a more predictable transition from storage to transport by potentially minimizing future handling of spent fuel and uncertainty as to whether loaded storage casks may be transported from the storage location. As part of its evaluation of integration and compatibility between storage and transportation regulations, the U.S. Nuclear Regulatory Commission (NRC) staff is reviewing its policies, regulations, guidance, and technical needs in several key areas, such as: retrievability, cladding integrity, and safe handling of spent fuel; criticality safety features and requirements for spent fuel transportation; and aging management and qualification of dual-purpose canisters and components after long-term storage. The NRC staff is reviewing the potential policy issues and requirements related to retrievability, cladding integrity, and safe handling of spent fuel as the lead issue for evaluating compatibility of storage and transportation regulations. As part of its evaluation of integration and compatibility between NRC's storage regulations and transportation regulations, the NRC is issuing this request for comment (available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML12293A434) as the staff begins its review of NRC policies, guidance, and technical needs related to retrievability, cladding integrity, and safe handling of spent fuel.

DATES: Submit comments by March 18, 2013. Comments received after the comment period deadline will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before the end of the public comment period.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov*

under Docket ID NRC–2013–0004. You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0004. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov*.

• *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

• *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Bernard White, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3303, or email: *Bernard.White@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0004 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0004.

• *ADAMS:* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for comment document is available in ADAMS under Accession No. ML12293A434.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0004 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

After more than 20 years of regulatory experience with dry cask storage and in the anticipation of longer storage durations and with more nuclear power plants storing high burnup fuel (fuel with peak rod average burnup greater than 45,000 MWd/MTU is considered high burnup fuel), the NRC is reviewing its policies and regulatory framework for dry cask storage and spent fuel transportation in several key areas. As discussed in COMSECY–10–0007, ''Project Plan for the Regulatory Program Review to Support Extended Storage and Transportation of Spent Nuclear Fuel'' (ADAMS Accession No. ML101390216), the NRC is currently evaluating its spent fuel storage and transportation regulatory structure. The goal of this review is to identify areas for enhancing the regulatory framework (e.g. regulations, guidance, procedures and processes) to incorporate past regulatory knowledge and experience, and to ensure long-term stability and effectiveness of NRC's future dry cask storage and transportation program. NRC expects to consider a number of issues for which NRC will request public input early in the decisionmaking process. Current regulatory areas that NRC has identified for evaluation and potential enhancement include: (1) Compatibility and integration of storage and transportation requirements; (2) streamlining the process for spent fuel storage cask design certification; (3) administration of storage certificates of compliance and amendments to certificates of compliance; (4) applicability, compatibility, and consistency of the storage regulatory framework; and (5) regulating stand-alone ISFSIs. The NRC staff held two public meetings on July 27, 2011 and August 16, 2012, (*see http://www.nrc.gov/waste/spent-fuel-storage/public-involvement.html* for more information on these two meetings) to solicit initial stakeholder feedback on these topics. This is the first of a series of requests for stakeholder input related to these topics that NRC expects to issue during its review of its storage and transportation regulatory framework.

III. NRC Consideration of Public Comments

The NRC does not intend to provide detailed comment responses to information provided by stakeholders in response to this request. The NRC staff will consider timely comments on this request in its evaluation of policy issues on retrievability, cladding integrity and safe handling of spent fuel. In its efforts to enhance the efficiency and effectiveness of the regulatory framework for spent fuel storage and transportation, NRC may ultimately revise regulations or guidance. Stakeholders will have the opportunity to participate in any future rulemaking or guidance developments.

Dated at Rockville, Maryland, this 31st day of December, 2012.

For the Nuclear Regulatory Commission.

Mark Lombard,

Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2013–00478 Filed 1–16–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

10 CFR Chapter II

Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC)

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

ACTION: Notice of open meeting.

SUMMARY: This document announces the first meeting of the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC). The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, February 26, 2013, 9:00 a.m.–5:00 p.m. (EST).

ADDRESSES: U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: John Cymbalsky, ASRAC Designated Federal Officer, U.S. Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy, 950 L'Enfant Plaza SW., Washington, DC 20024. Email: *asrac@ee.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and recommendations to the Energy Department on the development of standards and test procedures for residential appliances and commercial equipment, certification and enforcement of standards, and product labeling.

Tentative Agenda: (Subject to change; final agenda will be posted at the following Web site: *www.appliancestandards.energy.gov*):

- Overview of the Appliance Standards Program.
- Discussion of the Committee's purpose and structure.
- Discussion of appliances and equipment best suited for the negotiated rulemaking process.

Public Participation: Members of the public are welcome to observe the business of the meeting and may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email: *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Space is limited. Please indicate if the individual is not a U.S. citizen to ensure the proper paperwork for entry can be completed in advance. Please notify ASRAC staff as soon as possible, but no later than Friday, February 15, 2013, by emailing: *asrac@ee.doe.gov.* Anyone attending the meeting will be required to present government-issued photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending are advised to arrive early for processing.

Public comment will be available on a first come, first served basis. Time allotted per speaker will depend on the number of individuals who wish to speak but will not exceed five minutes. Reasonable provision will be made to include the scheduled oral statements on the agenda. The co-chairs of the Committee will make every effort to hear the views of all interested parties and are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. ASRAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be emailed to *asrac@ee.doe.gov.*

Minutes: The minutes of the meeting will be available for public review at *www.appliancestandards.energy.gov*

Issued in Washington, DC, on January 11, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–00931 Filed 1–16–13; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL TRADE COMMISSION

16 CFR Part 429

Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations

AGENCY: Federal Trade Commission.

ACTION: Proposed rule amendment; request for public comment.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has completed its regulatory review of the Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (''Cooling-Off Rule'' or ''Rule'') as part of the Commission's systematic review of all current Commission regulations and industry guides. The Rule makes it an unfair and deceptive act or practice for a seller engaged in a door-to-door sale of consumer goods or services, with a purchase price of $25 or more, to fail to provide the buyer with certain oral and written disclosures regarding the buyer's right to cancel the contract within three business days from the date of the sales transaction. Based on the comments received, the Commission has determined to retain the Rule. In addition, the Commission is soliciting public comment on a proposed increase in the $25 exclusionary limit identified in the Rule to account for inflation since the exclusionary limit was established.

DATES: Written comments concerning the Cooling-Off Rule must be received no later than March 4, 2013.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/coolingoffproposedamend,* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex C), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Sana Coleman Chriss, Attorney, (404) 656–1364, or Cindy A. Liebes, Regional Director, (404) 656–1390, Federal Trade Commission, Southeast Region, 225 Peachtree Street NE., Suite 1500, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission systematically reviews all its rules and guides to ensure they continue to achieve their intended purpose without unduly burdening commerce. These reviews seek information about the costs and benefits of the rules and guides, and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission.

To that end, the Commission sought comment on the effectiveness of the Cooling-Off Rule, 16 CFR part 429, including the continuing need for the Rule, its economic impact, and the effect of any technological, economic, or industry changes on the Rule.[1] The comment period closed on September 25, 2009.[2] The Commission has completed its analysis of the comments

[1] *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations,* Request for Public Comment, 74 FR 18170 (April 21, 2009).

[2] *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations,* Reopening of Comment Period, 74 FR 36972 (July 27, 2009).

and finds that the Cooling-Off Rule continues to serve a valuable purpose in protecting consumers from unfair and deceptive transactions that fall within the scope of the Rule. Accordingly, consistent with the record established in this proceeding, the Commission has determined to retain the Rule and conclude its regulatory review. Simultaneously, the Commission has decided to seek public comment on a proposed increase in the exempted dollar amount identified in section 429.0(a) of the Rule from $25 to $130. This increase would account for inflation in the years since the Rule was promulgated and could balance compliance costs and consumer benefits in a manner that is consistent with the exclusionary limit established at the Rule's promulgation in 1972.

II. Background of the Regulatory Review

The Cooling-Off Rule was promulgated by the Commission on October 26, 1972, and it was last amended on October 20, 1995.[3] The Rule, as amended, declares it an unfair and deceptive act or practice for a seller engaged in a door-to-door sale[4] of consumer goods or services, with a purchase price of $25 or more, to fail to provide the buyer with certain oral and written disclosures regarding the buyer's right to cancel the contract within three business days from the date of the sales transaction.[5]

In particular, the Rule requires door-to-door sellers to furnish the buyer with a completed receipt, or a copy of the sales contract, containing a summary notice informing the buyer of the right to cancel the transaction, which must be in the same language as that principally used in the oral sales presentation. Door-to-door sellers also must provide the buyer with a completed cancellation form, in duplicate, captioned either ''Notice of Right to Cancel'' or ''Notice of Cancellation,'' one copy of which can be returned by the buyer to the seller to effect cancellation.

The Rule also requires such sellers, within 10 business days after receipt of a valid cancellation notice from a buyer, to honor the buyer's cancellation by refunding all payments made under the contract, returning any traded-in property, cancelling and returning any security interests created in the transaction, and notifying the buyer whether the seller intends to repossess or abandon any shipped or delivered goods.

The Rule excludes certain kinds of transactions from the definition of door-to-door sale, including, for example, transactions conducted and consummated entirely by mail or telephone, and without any other contact between the buyer and seller or its representative prior to the delivery of goods or performance of services; transactions pertaining to the sale or rental of real property, to the sale of insurance, or to the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission; and transactions in which the consumer is accorded the right of rescission by the provisions of the Consumer Credit Protection Act, or its regulations.[6] In addition, the Rule exempts: (1) Sellers of automobiles, vans, trucks or other motor vehicles sold at auctions, tent sales or other temporary places of business, provided that the seller is a seller of vehicles with a permanent place of business; [7] and (2) sellers of arts and crafts sold at fairs or similar places.[8]

Finally, the Rule preempts only those state laws or municipal ordinances that are directly inconsistent with the Rule, including, for example, state laws or ordinances that impose a fee or penalty on the buyer for exercising his or her right under the Rule, or that do not require the buyer to receive a notice of his or her right to cancel the transaction in substantially the same form as provided in the Commission's Rule.[9]

III. Regulatory Review Comments and Analysis

The Commission received a total of five comments from: four consumer groups that filed jointly—the National Consumer Law Center, Consumers for Auto Reliability and Safety, Consumer Federation of America, and Consumers Union (collectively, the ''Jointly Filing Consumer Groups''); the Direct Selling Association (''DSA''); the National Automobile Dealers Association (''NADA''); a small business, Fabian Seafood Company; and an individual, Helen Yohanek.[10] The comments are discussed below.

A. Comments Supporting Retention of the Rule

The Jointly Filing Consumer Groups, DSA, the small business, and the individual commenter all addressed the issue of whether there is a continuing need for the Rule. These commenters uniformly concluded that a continuing need for the Rule does exist. Specifically, DSA stated that it believes that ''the Rule continues to serve the needs of consumers and sellers by enhancing the confidence of consumers in direct selling and serves as an ongoing deterrent to any firm or salesperson tempted to use high-pressure sales tactics.'' [11] The individual commenter stated that she believes the Rule is ''vital to protect some consumers.'' [12] The small business owner acknowledged that while he does not believe the Rule should apply to his business, he understands that there should be rules for door-to-door sales.[13] Finally, the Jointly Filing Consumer Groups stated that they see a ''strong continued need for the Rule due to ongoing consumer vulnerability to the types of abuses which the Rule initially sought to prevent.'' [14] No commenters stated that the Rule should be rescinded. Accordingly, based on its experience and its analysis of the comments, the Commission finds that the Rule continues to benefit both consumers and sellers, and that there is a continuing need for the Rule.

B. Comments Requesting Clarification of Portions of the Rule

In their comments, the Jointly Filing Consumer Groups requested that the

[3] *Cooling-Off Period for Door-to-Door Sales,* Trade Regulations Rule and Statement of Basis and Purpose (''*Cooling-Off Rule SBP*''), 37 FR 22933 (Oct. 26, 1972); *Rules Concerning Cooling-Off Period for Sales Made at Homes or Certain Other Locations,* Final Non-Substantive Amendments to the Rule, 60 FR 54180 (Oct. 20, 1995).

[4] Door-to-door sales includes sales, leases, or rentals of consumer goods or services made at a place other than the place of business of the seller (*e.g.,* sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges). 16 CFR 429.0(a). A seller's place of business is a main or permanent branch office or local address of the seller. 16 CFR 429.0(d).

[5] *See* 16 CFR 429.1. Moreover, as a basis for promulgating the Rule, the Commission identified five categories of complaints directed to the industries utilizing door-to-door marketing techniques: (1) Deceptive tactics for getting in the door; (2) high pressure sales tactics; (3) misrepresentation of price, quality, and characteristics of the product; (4) high prices for low quality merchandise; and (5) the nuisance created by the uninvited salesperson. *Cooling-Off Rule SBP,* 37 FR at 22940.

[6] 16 CFR 429.0(a) (1)–(6).

[7] 16 CFR 429.3(a).

[8] 16 CFR 429.3(b).

[9] 16 CFR 429.2.

[10] The comments responsive to this regulatory review have been placed on the Commission's public record and may be found online at the following links on the Commission's Web site: *http://www.ftc.gov/os/comments/coolingoffrule/index.shtm* and *http://www.ftc.gov/os/comments/coolingoffrulereopen/index.shtm.*

[11] DSA at 2.

[12] Yohanek at 1.

[13] Fabian Seafood at 1 (''I understand that there should be rules for door-to-door sales, but there should be an exemption for our type of business, which does not go door-to-door and deals in perishable food.'').

[14] Jointly Filing Consumer Groups at 2.

Commission clarify several aspects of the Rule, including whether the Rule covers rent-to-own transactions; covers services related to real property; requires payment for services rendered during the cooling-off period if the right to cancel is properly exercised; and gives consumers a continuing right to cancel if proper notice is not given. Each of these requests for clarification is discussed in turn below.

(1) Rent-to-Own Transactions

The Jointly Filing Consumer Groups requested that the Commission clarify that the Cooling-Off Rule applies to rent-to-own transactions consummated away from the seller's place of business.[15] These commenters argued that rent-to-own transactions in which the consumer makes weekly payments to rent a product with the stated goal of ownership, often lead to the consumer paying an exorbitant amount that is typically more than the product is actually worth.[16] The commenters added that rent-to-own businesses target low-income consumers.[17] These commenters argued, therefore, that the Rule should be clarified to make its coverage of rent-to-own transactions evident to consumers by adding ''rent-to-own'' to the list of transactions set forth in section 429.0, subsections (a) and (b) of the Rule.[18]

In response to this request, the Commission clarifies that nothing in the Rule prevents its application to rent-to-own transactions away from a seller's place of business when such transactions meet the Rule's other requirements. Accordingly, the Commission believes that it is not necessary to change the Rule to reflect the Rule's application to rent-to-own transactions.[19]

(2) Services Related to Real Property

The Jointly Filing Consumer Groups also requested that the Commission clarify that the Cooling-Off Rule applies to services related to real property, such as mortgage modification, mortgage loan brokerage, and foreclosure rescue services.[20] The commenters argued that these services fall under the Rule's definition of ''consumer services'' because they are primarily for personal, family, or household purposes in accordance with section 429.0(b) of the Rule.[21] The commenters also noted that in some instances sellers of these services identify consumers through foreclosure notices and then approach the consumers in their homes.[22]

The Commission's Cooling-Off Rule expressly excludes transactions pertaining to the sale or rental of real property, the sale of insurance, or the sale of securities or commodities by a broker-dealer registered with the Securities and Exchange Commission.[23] As determined by the Commission when it promulgated the Rule, this exclusion, which renders the Rule inapplicable to the sale of real estate, does not necessarily reach so far as to exempt service-related transactions in which a consumer engages a real estate broker to sell his or her home or to rent and manage his or her residence during a temporary period of absence.[24] Similarly, the exclusion does not necessarily reach so far as to exempt the types of mortgage assistance relief services described by the Jointly Filing Commenters.

Further, in the Mortgage Assistance Relief Services (''MARS'') rulemaking, the Commission declined to include a right-to-cancel provision in the final rule for all contracts for such services.[25] The basis for this decision was the Commission's belief that, although MARS providers' conduct may undermine consumers' ability to make well-informed decisions, a right-to-cancel provision is not necessary because the final MARS Rule requires that MARS providers neither seek nor accept a fee until the consumer accepts an offer of relief. In the MARS proceeding, however, the Commission did not receive information concerning, and did not specifically address, a right to cancel MARS sales transactions accomplished in a door-to-door sales setting.

The Commission concludes in the instant proceeding that, notwithstanding its general determination not to impose a right to cancel in all MARS transactions, the Cooling-Off Rule's right to cancel should extend to door-to-door sales of MARS. It does not follow from the Commission's determination not to include a right-to-cancel provision in the MARS Rule that other statutes and regulations, such as the Cooling-Off Rule, cannot impose a remedy on transactions otherwise covered by those statutes and regulations. Both MARS sales and door-to-door sales, considered separately, raise concerns. As the Commission noted in the MARS Rule Statement of Basis and Purpose, ''MARS providers direct their claims to financially distressed consumers who often are desperate for any solution to their mortgage problems and thus are vulnerable to the providers' purported solutions. The Commission has long held that the risk of injury is exacerbated in situations in which sellers exercise undue influence over susceptible classes of purchasers.'' [26] MARS sales undertaken door-to-door compound the concerns that either type of transaction, by itself, raises. Therefore, the Commission is hereby clarifying that to safeguard consumers' ability to make informed purchasing decisions in these circumstances, the Cooling-Off Rule applies to the providers who sell mortgage assistance relief services door-to-door.[27]

(3) Payment for Services Rendered During the Cooling-Off Period if the Right to Cancel is Properly Exercised

In their comment, the Jointly Filing Consumer Groups observed that it is not possible to return services that the seller may have chosen to provide prior to the expiration of the three-day period and they correctly pointed out that the Rule imposes no such requirement.[28] The commenters requested that the Commission make clear that a consumer who validly exercises his or her right of cancellation pursuant to the Rule does not owe the seller for any service the

[15] *Id.* at 5.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] The Rule broadly defines a door-to-door sale and describes various exclusions and exemptions from the definition. As noted above, the definition includes certain sales, leases, or rentals of consumer goods or services. *See supra* note 4. The Rule does not exhaustively list the types of transactions to which the Rule applies. Attempting to itemize the types of transactions that meet the definitional requirements of the Rule could result in the Rule being erroneously interpreted to apply only to those types of transactions listed in the Rule. Accordingly, the Commission declines to propose adding rent-to-own transactions to section 429.0, subsections (a) and (b) of the Rule.

[20] Jointly Filing Consumer Groups at 5.

[21] *Id.*

[22] *Id.* at 6.

[23] 16 CFR 429.0(a)(6).

[24] *Cooling-Off Rule SBP,* 37 FR at 22948.

[25] *Mortgage Assistance Relief,* Final Rule and Statement of Basis and Purpose (''*MARS SBP*''), 75 FR 75092, 75123 (Dec. 1, 2010). The MARS Rule is codified at 12 CFR part 1015.

[26] *MARS SBP,* 75 FR at 75117. Similarly, the Commission has stated that ''[h]igh-pressure sales tactics are the leading cause for consumer complaints about door-to-door selling * * *. The door-to-door sale, however, seems to be particularly susceptible to the use of these tactics.'' *Cooling-Off Rule SBP,* 37 FR at 22937.

[27] The record in the MARS rulemaking, including the Commission's enforcement experience, suggests that few MARS providers sell mortgage assistance relief services door-to-door. Instead, the record indicates that MARS providers typically employ other means to initiate contact with consumers. *See MARS SBP,* 75 FR at 75096 (''MARS providers commonly initiate contact with prospective consumers through Internet, radio, television, or direct mail advertising.'') (footnote omitted).

[28] Jointly Filing Consumer Groups at 6.

seller elected to perform during the cooling-off period.[29]

The Commission has reviewed this comment and takes this opportunity to reiterate the determination made in its Statement of Basis and Purpose when it adopted the Rule in 1972: ''in non-emergency situations the seller should properly bear the risk of cancellation if he elects to perform before expiration of the cooling-off period.'' [30] Thus, the Commission clarifies that, except in cases covered by the Rule's exception for emergency repairs, a buyer who validly invokes the three-day right of rescission under the Rule is not obligated to reimburse the seller for services performed during the cooling-off period.[31]

(4) Continuing Right to Cancel Under the Rule if Proper Notice is Not Given

The Jointly Filing Consumer Groups argued that in a situation where the seller has failed to provide the required notice, the consumer should have a continuing right to cancel. That is, the consumer should be allowed to cancel until three days have elapsed since the consumer received notice of the right to cancel, whenever that occurs.[32] The commenters stated that courts have consistently interpreted various state cooling-off rules as including this continuing right and that many state statutes explicitly provide this right.[33] The commenters pointed out that if no continuing right were provided, the seller could deprive the consumer of her or his right to cancel simply by failing to provide the required notice.[34] The commenters requested that the Commission clarify that consumers have a continuing right to cancel by inserting a statement into the Rule at 16 CFR 429.1.[35]

A seller theoretically could deny a consumer the right to cancel under the Rule by failing to provide the required notice. As a practical matter, however, the record does not indicate that this practice currently occurs with any prevalence.[36] Consequently, the Commission determines that a failure of sellers to provide the required cancellation notice is likely not sufficiently prevalent to justify proposing additional Rule provisions at this time. As a result, the Commission presently declines to propose modification of the Rule's treatment of this issue.[37] A seller who does not provide a buyer with compliant notice of his or her right to cancel is in violation of the Rule. The Commission, therefore, will continue its program of monitoring, investigating, and, where appropriate, taking enforcement against, persons who fail to comply with the Rule's notice requirements.

With respect to those state statutes that explicitly provide a continuing right to cancel, those state provisions would not be preempted to the extent those provisions provide consumers with broader protection than, and are not otherwise directly inconsistent with, the Commission's Rule.[38]

C. Comments Requesting Expansion of the Rule

(1) Motor Vehicle Sales at Temporary Locations

The Jointly Filing Consumer Groups requested that the Commission remove the exemption for motor vehicle sales at temporary locations because, they asserted, consumers at temporary sales events are particularly susceptible to high-pressure sales tactics and misrepresentations.[39] The commenters requested that the exemption be removed or, alternatively, if it is retained, that it be modified to require the seller to inform the consumer in writing of the name of and contact information for its permanent place of business and to permit the seller only to hold temporary sales within 30 miles of its permanent place of business.[40]

In creating the exemption for sellers of automobiles at auctions, tent sales, or other temporary places of business, the Commission concluded that:

> To the extent that certain problems occur at auto sales, they typify the same problems that may occur at transactions at the seller's place of business and are addressed by other Commission rules, e.g., the Used Car Rule and Guides on Bait and Switch, or state laws, e.g., prohibitions of ''As is Sales.'' [41]

Thus, while the Commission recognizes the concerns expressed by the Jointly Filing Consumer Groups, the Commission continues to believe that other laws more appropriately address potential problems occurring at those venues. Accordingly, the Commission does not find sufficient justification to propose the requested modification to the Rule at this time. The Commission reiterates, however, that the exemption for automobile sales will continue to be limited to sellers who have at least one permanent place of business.[42] The Rule will continue to cover any itinerant automobile sellers without at least one permanent place of business.

(2) Used Car Sales at Any Location

The Jointly Filing Consumer Groups request that the Commission expand the Rule to cover used car sales at any location.[43] They argued that used car dealers create conditions, such as forcing consumers to stay in the dealership for long periods of time by keeping the potential trade-in or the consumer's driver's license, or using other ruses, which are equivalent to a salesperson keeping a buyer captive in his or her home, if not worse.[44] The commenters stated that, in contrast to new car sales, used car sales have a higher risk of misrepresentations and sales at a much higher price than the used car is worth.[45] The commenters

[29] *Id.*

[30] *Cooling-Off Rule SBP,* 37 FR at 22947.

[31] This clarification also applies in the context of a seller who installs goods before the expiration of the three-day cooling-off period. For example, in the context of the door-to-door sales of home security systems, the FTC recently issued a consumer education publication that advises consumers they have a right to cancel the purchase even if the equipment already has been installed. ''FTC Facts for Consumers: Knock, Knock. Who's There? Want to Buy a Home Security System?'' (March 2011), available online at *http://www.ftc.gov/bcp/edu/pubs/consumer/homes/rea18.shtm.*

[32] Jointly Filing Consumer Groups at 6.

[33] *Id.*

[34] *Id.* at 7.

[35] *Id.*

[36] A review of complaints in the Consumer Sentinel database reveals only a *de minimis* percentage of total complaints that address a seller's noncompliance with the Rule's notice requirements.

[37] *See* 15 U.S.C. 57a(b)(3) (requiring the Commission to have reason to believe that the practices to be addressed by a rulemaking are ''prevalent'' before commencing a rulemaking proceeding); *see also* 16 CFR 1.14(a)(1).

[38] *See* 16 CFR 429.2(b).

[39] Jointly Filing Consumer Groups at 8 (stating that consumers may be lured to the sale by deception on the part of the seller, citing how an out-of-state car dealer holding a tent sale misled consumers into thinking it was a local dealer, and discussing high-pressured sales tactics such as ''flipping'' a consumer from one salesperson to another until the customer signs an agreement, often without clearly understanding its terms). NADA, however, stated in its comment that it is not aware of any circumstances that would warrant expanding the Cooling-Off Rule to cover motor vehicle sales at the place of business of a motor vehicle dealer or at temporary business locations. NADA at 1.

[40] Jointly Filing Consumer Groups at 9.

[41] *See Rule on Cooling-Off Period for Door-to-Door Sales,* Final Non-Substantive Amendments and Exemptions to Sellers of Automobiles at Auctions and Arts and Crafts at Fairs (''Exemptions for Sellers of Automobiles at Auctions and Arts and Crafts at Fairs''), 53 FR 45455, 45458 (Nov. 10, 1988).

[42] *Id.* Moreover, at this time, there is insufficient evidence in the record to support proposing a modification that would impose a geographical limitation of 30 miles for sellers of used cars at temporary locations.

[43] Jointly Filing Consumer Groups at 9.

[44] *Id.* at 11.

[45] *Id.* The commenters cite to a practice in which a dealer steers borrowers toward more expensive loans in exchange for a kickback from the automobile financing lender. The commenters also describe a practice called ''yo-yo'' sales, in which a dealer offers an attractive interest rate to a consumer, allows the consumer to drive the car

also noted that low-income consumers are especially vulnerable to dealer abuses in the used car market.[46] In addition, the commenters cited certain safety risks with used cars sold ''as is,'' and cite to the selling of used flood-damaged cars without disclosure of the car's condition.[47] The commenters believe that the right of cancellation under the Cooling-Off Rule is necessary to combat these issues, particularly given the magnitude and importance of a car purchase for most consumers.[48]

The Commission has never intended for the Rule to be construed so broadly as to apply to used car sales at a dealer's premises. In its **Federal Register** notice announcing that sales of automobiles at temporary places of business are exempt from the Rule, the Commission stated that:

> Although the Rule is primarily directed toward door-to-door sales, the Commission was also concerned with itinerant salesmen who sell at restaurants, shops and other places, and with the possibility that salespeople would attempt to evade the Rule's application by luring consumers outside the home by subterfuge. The Commission therefore broadened the definition of a ''door-to-door'' sale to include those sales made away from the seller's place of business.[49]

The Rule is tailored to remedy practices associated with sales that occur in settings other than the seller's place of business. Modification of the Rule to cover at-premises sales would go beyond the scope of what the Rule is intended to cover.

Additionally, in many instances, disclosures required by other Commission rules, such as the Used Car Rule, adequately address the concerns identified by the commenters. For example, the Buyers Guide provision under the Used Car Rule requires dealers to disclose to consumers: Whether the vehicle is being sold ''as is'' or with a warranty; what percentage of the repair costs a dealer will pay under warranty; information about the car's major mechanical and electrical systems, as well as any major potential problems; and that consumers can ask to have the car inspected by an independent mechanic before buying.[50]

With respect to other potential issues involving car dealers, in 2011, the Commission conducted a series of public roundtables to gather information on consumers' experiences in the sales, financing, and leasing of motor vehicles at dealerships. The information will help the Commission determine what, if any, future actions would be appropriate, such as specific enforcement initiatives, increased consumer and business education, promulgating rules, or other action.[51]

(3) Online Payday Lending

The Jointly Filing Consumer Groups requested that the Commission expand the Rule to include transactions with online payday lenders.[52] These commenters argued that online payday lenders use aggressive techniques that are similar to the practices of door-to-door salespersons.[53] They stated that consumers accessing payday loans are generally low-income consumers without access to more regulated, legitimate lines of credit or loans.[54] These consumers are vulnerable to the misrepresentations made by payday lenders, who frequently do not make the actual cost of loans clear.[55] Consumers who get payday loans online, they argued, are particularly vulnerable because these online providers do not disclose their physical place of business, if any, or make clear any state where they purport to be licensed.[56] The commenters also stated that the industry aggressively seeks to make personal contact with consumers by sending email messages to them promising immediate loans, without always making clear that the email messages are advertisements.[57]

In the Commission's experience, consumers in typical online payday loan transactions receive cash in exchange for their personal checks or authorization to debit their bank accounts, and lenders and consumers agree that consumers' checks will not be cashed or their accounts debited until a designated future date. Online payday loans have high fees and short repayment periods, which translate to high annual rates, and they often are due on the borrower's next payday, usually within about two weeks. The Commission determines that the Cooling-Off Rule is not designed to address online payday loan transactions, but notes that other protections for consumers are available. For example, the federal Truth in Lending Act (''TILA'') treats payday loans like other types of credit. Under TILA, and its implementing Regulation Z, those who advertise the specific cost of credit must disclose the annual percentage rate (''APR'') of the loans to help consumers make better-informed decisions, including assisting them in comparison shopping among loans.

To the extent that payday lenders aggressively seek to make personal contact with consumers by sending email messages, additional protections could apply under the Controlling the Assault of Non-Solicited Pornography And Marketing Act (the ''CAN–SPAM Act''). For example, the CAN–SPAM Act requires a sender of an unsolicited commercial email message to clearly and conspicuously disclose that the message is an advertisement and to provide consumers with a way to opt-out of receiving unwanted email messages from the sender in the future.[58]

In addition, the FTC has jurisdiction to bring enforcement actions under Section 5 of the FTC Act, 15 U.S.C. 45, for unfair and deceptive acts or practices in the payday lending industry. The Commission has brought several such actions, mostly stemming from either deceptive representations made by payday lenders or unfair practices regarding the collection of payday loans.[59]

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home, and later contacts the consumer to say that the financing could not be arranged at the original terms in order to impose on the consumer a higher interest rate or less favorable terms. *Id.* at 12.

[46] *Id.* at 11.

[47] *Id.* at 12.

[48] *Id.* The commenters also discuss their interpretation of a European Union directive that gives ''consumers 14 days to withdraw from essentially any transaction based on credit for any reason. Council Directive 2008/48/EC, art. 14, 2008 O.J. (L 133/66 (EC). It appears as if cars purchased on credit—which most are—are included.'' *Id.* at 10.

[49] Exemptions for Sellers of Automobiles at Auctions and Arts and Crafts at Fairs, 53 FR at 45458.

[50] 16 CFR 455.2(a)–(b).

[51] *See Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles,* Notice Announcing Public Roundtables Regarding Public Participation, and Providing Opportunity for Comment, 76 FR 14014 (Mar. 15, 2011), *available at http://www.gpo.gov/fdsys/pkg/FR-2011-03-15/pdf/2011-5873.pdf; see also http://www.ftc.gov/bcp/workshops/motorvehicles.* Public comments filed regarding these motor vehicle sales, financing and leasing issues are available at *http://www.ftc.gov/os/comments/motorvehicleroundtable/index.shtm.*

[52] Jointly Filing Consumer Groups at 13.

[53] *Id.*

[54] *Id.*

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] 15 U.S.C. 7704(a)(3) and (a)(5).

[59] *See, e.g., FTC* v. *Loanpointe, LLC,* Case No. 2:10–CV–00225 (D. Utah 2010) (the Commission brought Section 5 and Fair Debt Collection Practices Act claims alleging that the lender falsely claimed an entitlement to garnish wages, falsely claimed they informed debtors that their wages would be garnished, and disclosed information about debts to third parties); *FTC* v. *Virtual Works, LLC,* Case No. C09–03815 (N.D. Cal. 2009) (the Commission alleged that the defendants violated Section 5 by deceiving payday borrowers into purchasing offered debit cards for a fee); *FTC and State of Nevada* v. *Cash Today, Ltd.,* Case No. 3:08–CV–00590–BES–VPC (D. Nev. 2008) (the Commission alleged that the defendants violated Section 5 by falsely claiming that consumers were legally obligated to pay debts when they were not, falsely threatening consumers with arrest or imprisonment, repeatedly calling consumers at work, using abusive and

Continued

D. Comment Requesting Exemption for Truck Sales of Perishable Food

One commenter requested that the Commission exempt from the Rule sales of perishable food from trucks parked at ''fixed locations.'' [60] The commenter stated that his business periodically sells fresh seafood in such a manner in various cities and towns throughout the country. He noted that the business does not accept credit cards, nor does it enter into any contracts with consumers for future delivery.[61]

The Rule generally covers businesses that sell consumer goods from trucks or other temporary locations (such as fairgrounds or convention centers).[62] Sales at temporary locations, like sales in consumers' homes, can involve techniques that prompted the Commission to adopt the Rule in 1972 (discussed at note 5, *supra*). These types of sales, for example, may involve high-pressure sales tactics, misrepresentations about the price, quality, and characteristics of the products, and high prices for low quality merchandise. In the absence of other protections, consumers purchasing from sellers at temporary locations also can face challenges locating those sellers after their transactions to seek recourse if there are problems. Nothing in the record or the Commission's experience indicates that these techniques are less of a concern now than they were in 1972. Consequently, the Commission declines to propose an exemption for truck-based sales.

E. Comments Concerning Increase in $25 Exclusionary Limit to $130 to Reflect Inflation

In its comment, DSA requested that the Commission increase the Rule's $25 exclusionary limit to one that reflects inflation since the Rule's enactment.[63] The Jointly Filing Consumer Groups, however, stated that because transactions of $25 or more can result in financial over-extension for many consumers, the Rule's current exclusionary limit should be maintained without adjustment for inflation.[64]

Based on its review of these comments and the Commission's regulatory and enforcement experience as a whole, the Commission has determined to seek public comment on a proposed increase in the Rule's exempted amount [65] to $130. The proposed increase in the Rule's exclusionary limit would exempt a seller only with regard to a sale, lease, or rental of consumer goods or services, with a purchase price below $130 whether under single or multiple contracts.[66]

Under Section 18(g)(2) of the FTC Act, the Commission may on its own motion, or in response to a petition, provide for exemptions from the operation of trade regulation rules if the Commission finds that the application of the rule to persons or a class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates.[67] Section 18 provides that procedures under the Administrative Procedure Act, 5 U.S.C. 553, shall apply in proceedings to consider such an exemption.[68]

The Commission tentatively concludes that an increase in the exclusionary amount is warranted because application of the Rule to sellers of goods priced below $130 appears unnecessary to prevent the unfair or deceptive practices addressed by the Rule. Currently, the Rule, in part, defines a door-to-door sale as a sale, lease, or rental of consumer goods or services with a purchase price of $25 or more, whether under single or multiple contracts. The $25 exempted dollar amount has remained unchanged for four decades since the Commission promulgated the Rule in 1972. Based on changes in the most general consumer price index, an item that cost $25 in 1972 would cost approximately $130 today.[69]

Given this data, the Commission is seeking comment on a proposed increase in the exclusionary limit from $25 to $130. By accounting for inflation, this increase of the exempted dollar amount could balance compliance costs and consumer benefits in today's marketplace in a manner that is consistent with the exclusionary limit originally established at the Rule's promulgation in the early 1970s.[70] The Commission specifically seeks comment on:

1. Whether the Rule's $25 exclusionary limit should be increased to account for inflation since the Rule was first promulgated in 1972 and to exempt from the Rule's coverage sales, leases, or rentals of consumer goods or services with a purchase price of less than $130, whether under single or multiple contracts;

2. What types of transactions would become exempt from the Rule as a consequence of the increase;

3. Whether transactions intended to be covered by the Rule when originally adopted in 1972 would become exempt as a result of the increase;

4. How the increase would impact the benefits the Rule currently provides to consumers and commerce;

5. How the increase would impact the burdens or costs the Rule currently imposes on sellers subject to the Rule's requirements; and

6. Whether the increase would impact the enforcement of state laws and municipal ordinances.

F. Comments Proposing Modifications That Would Affect Contractual Provisions in Agreements Between Buyers and Sellers in Door-to-Door Transactions

(1) Arbitration Agreements

The Jointly Filing Consumer Groups argued that the Rule should expressly prohibit arbitration agreements because they believe sellers may try to insulate themselves from liability for abusive practices associated with door-to-door

profane language, and disclosing debts to third parties).

[60] Fabian Seafood Company at 1.

[61] The commenter also expresses concern that ''[a]ccording to the present rules, a customer can purchase $100 in fresh seafood, cancel the sale within 3 days for no reason, get a refund from us, and then, since we will not return to the customer's city for 3–4 weeks to retrieve the seafood, the customer may then just keep the seafood.'' *Id.* The comment, however, does not cite examples of this actually happening, and the proposed change in the exclusionary limit identified in § 429.0 from $25 to $130 may moot this concern for many transactions.

[62] *See* 16 CFR 429.0(a).

[63] DSA at 5.

[64] Jointly Filing Consumer Groups at 4.

[65] 16 CFR 429.0

[66] The Rule would continue to cover a seller's transactions that are valued above the proposed revised exempted amount of $130 or more. A seller would be exempt from the Rule only to the extent that a particular transaction, whether under single or multiple contracts, falls below the proposed revised minimum dollar amount of $130.

[67] 15 U.S.C. 57a(g)(2).

[68] *Id.* The Commission has previously used this exemption authority to exempt sales of autos at public auctions by established companies and sales at arts and craft fairs from the operation of the Rule. 53 FR 45455; *see also* 16 CFR 429.3.

[69] The average value of the CPI–U for 2010 was 218.056, while the average value for 1972 was 41.8. *See* U.S. Department of Labor, Bureau of Labor Statistics, ''Consumer Price Index, All Urban Consumers, U.S. City Average, All Items,'' *available at ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt,* visited Oct. 1, 2012. Dividing 218.056 by 41.8 gives a value of 5.217 and multiplying this figure by $25 gives a value of $130.43. Rounding down to $130 yields the proposed new minimum dollar amount.

[70] *See also Cooling-Off Rule SBP,* 37 FR at 22946 (''In deciding that the $10 exclusion in the proposed rule should be increased to $25, the Commission was persuaded by the fact that a door-to-door salesman could not long survive if his livelihood depended upon the expenditure of very much time and effort to make a sale of under $25. Sales for less than that amount simply would not justify the use of a lengthy high-pressure sales pitch which has been identified as the most prevalent source of complaints regarding door-to-door sales. Virtually all of the examples of the sort of sales which outraged consumers were for amounts substantially in excess of $25.'').

sales through the use of arbitration clauses.[71] The commenters described the potential for abuse by sellers using arbitration agreements, but presented no evidence to show that there is any widespread abuse of arbitration agreements occurring within the door-to-door sales industry that might warrant a provision addressing the use of arbitration agreements.[72] Consequently, the Commission declines to propose modification of the Rule to address the use of arbitration provisions in agreements between door-to-door sellers and their customers.

(2) An Independent Contractual Provision Stating That the Consumer Has the Right To Cancel Pursuant to the Terms of the Notice

The Jointly Filing Consumer Groups requested that the Commission amend the Rule to require sellers to include a contractual provision which states that consumers have the right to cancel pursuant to the terms of the cancellation notice.[73] This provision, they argued, would enable consumers to access the ''full range of options for redress available under contract law.''[74] The commenters, however, did not present any evidence to suggest that the absence of such a provision has in any way impinged upon consumers' ability to exercise their rights against sellers under this Rule. The Rule provides consumers a three-day cooling off period for door-to-door sales and requires sellers to provide clear disclosures regarding a consumer's right to cancel. Specifically, the Rule requires the following statement on the contract itself in immediate proximity to the signature lines (or on the front page of the receipt if no contract is used): ''You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right.''[75] The commenters did not explain how this provision falls short in protecting consumers' rights under the Rule. It is a violation of the Rule to fail or refuse to honor any valid notice of cancellation by a buyer.[76] The Commission will continue to monitor, investigate, and, where appropriate, take enforcement action for violations of the Rule. Accordingly, due to the lack of evidentiary support indicating that the Rule's current requirements are insufficient to protect consumers' ability to exercise their rights under the Rule, the Commission declines to propose further modifications to the Rule to mandate that sellers include an additional contract provision stating that buyers have the right to cancel pursuant to the terms of the cancellation notice.

G. Comments Proposing Modifications to Requirements for Effecting Cancellation

(1) Alternative Compliance for Companies That Offer 100% Money-Back Guarantees

DSA argued that many DSA member companies offer 100% money-back guarantees or longer periods of rescission than required by the Rule.[77] DSA recommended that companies be allowed to substitute the language giving notice of these protections for that of the Cooling-Off Rule.[78] DSA asserted that permitting such alternative compliance would reduce costs associated with printing and administering the cooling-off notice and reduce costs associated with training both home-office personnel and independent sellers.[79] In its Statement of Basis and Purpose that accompanied the Rule in 1972, the Commission stated:

> Adoption of a provision which would exclude from applicability of the rule sellers who provide a money-back guarantee would increase the enforcement problems associated with the rule to a point that the rule would be almost ineffectual. Every direct seller who desired such an exclusion would claim he offered such guarantee. Then the Commission would be confronted with a neverending problem of determining whether the seller in fact gave such a guarantee and whether he performed his obligations under it. One of the principal advantages of the cooling-off rule is that it is self-enforcing. The consumer is given the unilateral right to cancel the sale. Its effectiveness does not depend upon whether a branch representative or subordinate manager understands the meaning and effect of a guarantee, or even upon his willingness to honor such a guarantee.[80]

The commenter advanced no compelling reason to revisit this issue. It is still the case that enforceability problems associated with 100% money-back guarantees would undermine the self-enforcing nature of the Cooling-Off Rule. The Commission, therefore, declines to propose modification of the Rule to allow an alternative compliance scheme for companies that offer 100% money-back guarantees or longer periods of rescission.

(2) Duplicate Notice Requirement

DSA requested that the Commission eliminate the Rule's duplicate notice requirement.[81] DSA contended that there is virtually an automatic record of sales and cancellations in most transactions and that when paper cancellations are made, the almost universal access to copier machines makes the duplicate notice superfluous.[82] DSA argued further that reducing the duplicate notice requirement would reduce environmental waste.[83]

The Rule provides in part that sellers must furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form, in duplicate, captioned either ''NOTICE OF RIGHT TO CANCEL'' or ''NOTICE OF CANCELLATION.''[84] The requirement that this notice be provided in duplicate is to ensure that consumers desiring to cancel their transactions have both a copy of the notice to return to sellers to effect the cancellation and a copy to keep. In earlier proceedings, the Commission clarified that sellers could comply with this provision by, for example, using a contract or receipt with the reverse side containing one ''Notice of Cancellation'' and an attached ''Notice'' to be used by the buyer should the buyer decide to cancel.[85] The Commission also stated that another alternative method of complying with the duplicate notice requirement would be for the seller to give the buyer two copies of the contract or receipt with both having the notice on the reverse side of the contract or receipt.[86] The Commission continues to believe that:

> by providing the seller with increased flexibility in complying with the duplicate notice provisions of the Rule, the policy objectives of those provisions will be attained at a lower cost (including paperwork-related

[71] Jointly Filing Consumer Groups at 14.

[72] The Commission, however, is cognizant of concerns about arbitration provisions in general and in particular as they relate to debt collection agreements. *See, e.g.,* Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* (July 2010), *available at http://www.ftc.gov/os/2010/07/debtcollectionreport.pdf.*

[73] Jointly Filing Consumer Groups at 15.

[74] *Id.*

[75] 16 CFR 429.1.

[76] 16 CFR 429.1(g).

[77] DSA at 3.

[78] *Id.*

[79] *Id.*

[80] *Cooling-Off Rule SBP,* 37 FR at 22948.

[81] DSA at 4.

[82] *Id.*

[83] *Id.*

[84] 16 CFR 429.1(b).

[85] Exemptions to Sellers of Automobiles at Auctions and Arts and Crafts at Fairs, 53 FR at 45457.

[86] *Id.*

costs) to the seller and ultimately to the consumer.[87]

The Commission believes that the flexible duplicate notice requirement avoids imposing additional expense on, and time required of, those consumers who would need to access copier machines in order to preserve a record of their right to cancel. The Commission further believes that this burden on consumers would likely exceed the potential benefits of reducing environmental waste that DSA claims would be achieved by eliminating the duplicate receipt requirement. Consequently, the Commission declines to propose elimination of the duplicate notice requirement.

(3) Phone Cancellations

One commenter argued that the Commission should permit phone cancellations under the Rule.[88] During the Commission's promulgation of the Rule in 1972, both industry and consumer representatives opposed permitting oral cancellations due to the potential difficulty that would arise as to whether the buyer had actually exercised his or her right of cancellation.[89] Consumer groups responded that salesmen who frequent impoverished neighborhoods would simply disregard oral cancellations and that the method would not be of any real assistance to those who were expected to benefit from it.[90] The Commission found at that time that the possibility of confusion and uncertainty were sufficiently great to warrant rejection of a Rule provision permitting oral cancellations.[91] The concerns expressed by the Commission at that time appear to remain unchanged and the current record does not reflect any evidence to the contrary. For these reasons, the Commission declines to propose permitting the use of phone cancellations.

H. Comments Proposing That the Commission Study the Language of the Cancellation Notice and Modify the Notice's Font Size

DSA argued that the Commission should conduct a study to determine the efficacy of the language in the Rule's cancellation notice because, in their view, the notice uses too many words to convey the buyer's rights.[92] However, DSA offered no evidence tending to show that the language is burdensome on businesses or confusing to consumers, or that any other issue exists that would warrant an examination of the notice's efficacy.

Moreover, during its 1988 regulatory review concerning the Cooling-Off Rule, the Commission recognized that sellers should have the option of shortening the notice by eliminating sections that are inapplicable to a particular transaction. The Commission determined that much of the mandatory language in the notice may not apply to many direct sales because they do not involve, for example, traded-in property, negotiable instruments, or property being delivered prior to the expiration of the three day cooling-off period. As a result, the Commission then amended the Rule by giving sellers the option to shorten the notice by eliminating sections that are inapplicable to a particular transaction.[93] The Commission stated that its amendment would reduce paperwork and related costs incurred by sellers in complying with the Rule and benefit consumers by increasing the likelihood of consumers reading and understanding key provisions of all documents.[94]

In addition, the Jointly Filing Consumer Groups argued that the Rule's 10 point font size should be increased.[95] These commenters argued that in light of the range of font options available with today's word-processing technology, a font size of 10 may be too small.[96] They cited a study which concluded that an 11 to 14 point font size should be used regardless of one's audience.[97] These commenters recommended increasing the minimum font size to at least 12 points.[98]

The Rule states that sellers should use bold face type in a minimum size of 10 points.[99] The Commission agrees that whenever possible, an appropriate larger font size should be used in sellers' cancellation notices. However, there is no evidence on the record indicating that buyers are having any widespread problems reading or understanding sellers' cancellation notices due to the minimum font size requirement. Accordingly, the Commission declines to propose modification of the Rule's minimum font size requirement at this time.

I. Suggestion To Preempt All State Cooling-Off Regulations

DSA argued that a complete preemption of all state and municipal cooling-off ordinances is warranted in the case of the Cooling-Off Rule because requiring different standards for different states is an unjustified burden on businesses and confusing to consumers with little to no benefit.[100] They argued that the Commission's Cooling-Off Rule is sufficient protection and should be uniformly used by all companies in all U.S. jurisdictions.[101]

The Commission believes there is no valid rationale for complete preemption of all state and municipal cooling-off rules. As stated in the Commission's 1972 Statement of Basis and Purpose: ''If the State cooling-off laws give the consumer greater benefit and protection in regard to notice, time for election of the cancellation remedy, or in transactions exempted from this rule, there seems to be no reason to deprive the affected consumers of these benefits.'' [102] Moreover, the record continues to support the view that ''the joint and coordinated efforts of both the Commission and State and local officials are required to insure that consumers who have purchased from a door-to-door seller something they do not want, do not need, or cannot afford, be accorded a unilateral right to rescind, without penalty, their agreements to purchase those goods or services.'' [103] Additionally, state laws governing door-to-door transactions hold particular importance given the local nature of these types of transactions. Accordingly, the Commission declines to propose to adopt a provision preempting all state-cooling off regulations.

IV. Instructions for Comment Submissions

The Cooling-Off Rule currently excludes from the Rule's coverage sales, leases, or rentals of consumer goods or services with a purchase price of $25 or less, whether under single or multiple contracts.[104] Through the instant proceeding, the Commission requests comment on a proposed increase of this exclusionary limit to $130 to account for inflation since the exempted dollar amount was established in 1972.[105]

The Commission invites interested persons to submit written comments on

[87] *Id.*

[88] Yohanek at 1.

[89] *Cooling-Off Rule SBP,* 37 FR at 22950.

[90] *Id.*

[91] *Id.*

[92] DSA at 5.

[93] Exemptions for Sellers of Automobiles at Auctions and Arts and Crafts at Fairs, 53 FR at 45457.

[94] *Id.*

[95] Jointly Filing Consumer Groups at 15.

[96] *Id.*

[97] *Id.* According to the commenters, the study is a final class project submitted by a graduate student who is pursuing a Master's Degree in the subject of Information Science.

[98] *Id.*

[99] 16 CFR 429.1(a).

[100] DSA at 5.

[101] *Id.*

[102] *Cooling-Off Rule SBP,* 37 FR at 22958.

[103] 16 CFR 429.2(a).

[104] 16 CFR 429.0.

[105] *See supra* Section III. E.

any issue of fact, law, or policy that may bear upon the proposals under consideration. Please include explanations for any answers provided, as well as supporting evidence where appropriate. After examining the comments, the Commission will determine whether to issue specific amendments.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before March 4, 2013. Write ''Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment doesn't include any sensitive health information, like medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information * * * which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[106] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/coolingoffproposedamend,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Cooling-Off Rule Regulatory Review, 16 CFR 429, Comment, Project No. P087109'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex C), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before March 4, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

V. Regulatory Analysis and Regulatory Flexibility Act

Under Section 22 of the FTC Act, 15 U.S.C. 57b, the Commission must issue a regulatory analysis for a proceeding to amend a rule only when 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 believes the amendments will have no significant economic or other impact on the economy, prices, or regulated entities or consumers. The proposed Rule would merely increase the Rule's exclusionary limit to take into account inflation since the Rule's promulgation in 1972. Sellers of many goods previously covered by the Rule will experience a reduction in their compliance burden. As such, the economic impact of the final Rule will be minimal.

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis (''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.[107] For the reasons stated above, the FTC does not expect that the final Rule will have a significant economic impact on a substantial number of small entities. The proposed Rule would exempt many small entities from the Rule's requirements when they engage in transactions valued below $130. Accordingly, the Commission hereby certifies that this proposed Rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

The Rule applies to sellers of goods and services, including small entities, who make sales at a place other than the place of business of the seller (e.g., buyer's home, workplace or dormitory, or at facilities rented by the seller on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants). Under the Small Business Size Standards issued by the Small Business Administration, retail sellers and service providers generally qualify as small businesses if their sales are less than $7.0 million annually.[108]

The proposed Rule is intended to reduce burdens on these small entities by exempting transactions valued at less than $130 from the Rule's coverage. The proposed amendment does not expand the coverage of the Rule in a way that would affect small businesses.

Pursuant to 5 U.S.C. 605(b), this proposed Rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This document serves as notice to the Small Business Administration of the agency's certification of no significant impact.

VI. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501 *et seq.,* requires government agencies, before promulgating rules or other regulations that require ''collections of information''

[106] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[107] 5 U.S.C. 603–605.

[108] See *http://www.sba.gov/content/summary-size-standards-industry.*

(i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget (''OMB''). The amendment will not impose collection requirements, so OMB approval is unnecessary.

VII. Communications by Outside Parties to the Commissioners or Their Advisors

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.

List of Subjects in 16 CFR Part 429

Sales Made at Homes or at Certain Other Locations; Trade practices.

For the reasons stated in the preamble, the Federal Trade Commission proposes to amend part 429 of title 16, Code of Federal Regulations, as follows:

■ 1. The authority citation for 16 CFR parts 429 is revised to read as follows:

Authority: 15 U.S.C. 41 *et seq.*

■ 2. Amend § 429.0, by revising the introductory text of paragraph (a) to read as follows:

§ 429.0 Definitions

* * * * *

(a) *Door-to-Door sale*—A sale, lease, or rental of consumer goods or services with a purchase price of $130 or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges). The term *door-to-door sale* does not include a transaction:

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2012–31558 Filed 1–16–13; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

Proposed Priority—National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers

CFDA Number: 84.133E–1.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes a priority for Rehabilitation Engineering Research Centers (RERCs): Hearing Enhancement. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend to use this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before February 19, 2013.

ADDRESSES: Address all comments about this notice to Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by email, use the following address: *marlene.spencer@ed.gov.* You must include ''Proposed Priorities for RERCs'' and the priority title in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice of proposed priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training methods to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

This notice proposes a priority that NIDRR intends to use for an RERC competition in FY 2013 and possibly in later years. However, nothing precludes NIDRR from publishing additional priorities, if needed. Furthermore, NIDRR is under no obligation to make awards for this priority. The decision to make an award will be based on the quality of applications received and available funding.

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priorities, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in room 5140, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the Disability and Rehabilitation

Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities; to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities; and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers (RERCs) Program

The purpose of NIDRR's RERCs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

The general requirements for RERCs are set out in subpart D of 34 CFR part 350 (What Rehabilitation Engineering Research Centers Does the Secretary Assist?).

Additional information on the RERCs program can be found at: *www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority: This notice contains one proposed priority.

Hearing Enhancement.

Background: Approximately 34.2 million Americans have a hearing impairment (Kochkin, 2009). An untreated hearing impairment has profound implications for people across the lifespan (e.g., in education, school-to-work transition, employment, community participation, and general social and emotional well-being) (Pallarito, 2010; Kochkin, 2010b; Chisolm et al., 2007a).

Research and development related to hearing enhancement technologies has produced advances in areas related to digital and wireless hearing aids, assistive technologies, cochlear and middle ear implants, and aural rehabilitation, but many research and development needs remain (Fellinger et al., 2012; Stender, 2011; Groth and Anthonsen, 2010; Kochkin, 2010a; Chisolm et al., 2007b; Sweetow and Sabes, 2007; Pirzanski, 2006). For example, research has indicated that while 95 percent of people with a hearing impairment can benefit from hearing aids, only 23 percent actually use them (Kochkin, 2007). Among the many reasons for not using hearing aids are characteristics of the hearing aids themselves (e.g., the hearing aids are uncomfortable and unreliable, do not work well in noisy environments, and do not work seamlessly across multiple settings and technologies) (Kochkin, 2010a; Kochkin, 2007). Assistive listening devices (e.g., FM systems, infrared systems, and audio induction loop systems) still have significant limitations related to portability, usability, and performance, particularly during group discussions (Harkins and Tucker, 2007). More research and development is needed on cochlear and middle ear implants to determine and optimize performance and benefits in real-life situations (Peterson et al., 2010; Rameh et al., 2010).

Successful hearing enhancement technologies have been demonstrated to improve the quality of life for people with hearing impairments (Fellinger et al., 2012; Kochkin, 2010b; Chisolm et al., 2007a, 2007b). Accordingly, NIDRR seeks to fund an RERC to address problems that prevent the use of, or reduce the use and benefit of, hearing enhancement technologies, and to optimize options for people with hearing impairments.

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Stender, T. (2011). Phone and TV solutions for better hearing. Hearing Review, 18(10): 24–30.

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Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes the following priority for the establishment of a Rehabilitation Engineering Research Center (RERC) on Hearing Enhancement. The RERC must focus on innovative technological solutions, new knowledge, and concepts that will improve the lives of individuals with disabilities.

Under this priority, the RERC must research, develop, and evaluate technologies, methods, and systems that will improve the accessibility, usability, and performance of hearing enhancement technologies (e.g., hearing aids, ear molds, assistive listening devices, and implants) for people with hearing loss, including but not limited to people with untreated hearing loss. This includes: (a) Addressing technological factors that prevent or reduce adoption of and benefit from hearing enhancement devices (e.g., hearing aid and implant design features, ear mold fit and comfort, and assistive listening devices and technologies for

group settings); (b) improving the compatibility of hearing enhancement technologies with other technologies such as cell phones, mobile devices, television, and the Internet; (c) improving the performance of hearing enhancement devices in social environments (e.g., school, work, recreation, and entertainment); and (d) enhancing aural rehabilitation and consumer involvement strategies (e.g., online access to peer and expert input on hearing technologies and communication strategies; consumer focus groups and surveys; and consumer beta testing and review of products) to maximize hearing enhancement in real-life settings. The RERC must involve key stakeholders (including but not limited to people with hearing loss) in the design and implementation of RERC activities.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority: We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed priority only upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years, as projects similar to the one envisioned by the proposed priority have been completed successfully. Establishing new RERCs based on the proposed priority would generate new knowledge through research and development and improve the lives of individuals with disabilities. The new RERCs would generate, disseminate, and promote the use of new information that would improve the options for individuals with disabilities to fully participate in their communities.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by

contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: January 14, 2013.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–00939 Filed 1–16–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0700; FRL–9771–5]

Approval and Promulgation of Implementation Plans; Kentucky; 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve in part, conditionally approve in part, and disapprove in part, the July 17, 2012, State Implementation Plan (SIP) submission provided by the Commonwealth of Kentucky, through the Division of Air Quality (DAQ) of the Kentucky Energy and Environment Cabinet. Kentucky DAQ submitted the July 17, 2012, SIP submission as a replacement to its original September 8, 2009, SIP submission. Specifically, this proposal pertains to the Clean Air Act (CAA or Act) requirements for the 2008 8-hour ozone national ambient air quality standards (NAAQS) infrastructure SIP. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. Kentucky DAQ made a SIP submission demonstrating that the Kentucky SIP contains provisions that ensure the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in the Commonwealth (hereafter referred to as ''infrastructure submission''). EPA is now proposing three related actions on Kentucky DAQ's infrastructure SIP submission. First, EPA is proposing to determine that Kentucky DAQ's infrastructure submission, provided to EPA on July 17, 2012, satisfies certain required infrastructure elements for the 2008 8-hour ozone NAAQS. Second, with respect to the infrastructure requirements related to specific prevention of significant deterioration (PSD) requirements, EPA is proposing to approve, in part and conditionally approve in part, the infrastructure SIP submission based on a December 19, 2012, Kentucky DAQ commitment to submit specific enforceable measures for approval into the SIP to address specific PSD program deficiencies. Third, EPA is proposing to disapprove Kentucky DAQ's infrastructure SIP submission with respect to certain interstate transport requirements for the 2008 8-hour ozone NAAQS because the submission does not address the statutory provisions with respect to the relevant NAAQS and thus does not satisfy the criteria for approval. The CAA requires EPA to act on this portion of the SIP submission even though under a recent court decision (which is not yet final as EPA has requested rehearing), Kentucky DAQ was not yet required to submit a SIP submission to address these interstate transport requirements. Moreover, under that same court decision, this disapproval does not trigger an obligation for EPA to promulgate a Federal Implementation plan (FIP) to address these interstate transport requirements.

DATES: Written comments must be received on or before February 7, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0700, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: R4-RDS@epa.gov.*

3. *Fax:* (404) 562–9140.

4. *Mail:* ''EPA–R04–OAR–2012–0700,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0700. 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. 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/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is

not publicly available, *i.e.,* 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 in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can also be reached via electronic mail at *ward.nacosta@epa.gov*.

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I. Background and Overview

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million (ppm). *See* 77 FR 16436. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2008 8-hour ozone NAAQS to EPA no later than March 2011.

Midwest Environmental Defense and Sierra Club filed a complaint in federal court on November 20, 2011, alleging EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 2008 8-hour ozone NAAQS. On December 13, 2011, and March 6, 2012, Midwest Environmental Defense and Sierra Club filed amended complaints alleging that EPA had failed to promulgate PSD regulations required with respect to the 2008 8-hour ozone NAAQS within two years, alleging that EPA had failed to approve or disapprove SIP submittals, and removing claims regarding states that had by that time submitted infrastructure SIPs for the 2008 8-hour ozone NAAQS, respectively. Kentucky was among the states named in the November 2011 complaint, and in the December 2011, and March 2012, amended complaints. Specifically, the plaintiffs claimed that EPA had failed to perform a mandatory duty under section 110(k) to take action upon Kentucky's 2008 8-hour ozone infrastructure SIP addressing sections 110(a)(2)(A)–(H) and (J)–(M) by no later than March 8, 2011.

Kentucky DAQ's infrastructure submission for the 2008 8-hour ozone NAAQS was originally received by EPA on September 8, 2009. Kentucky DAQ's September 8, 2009, SIP revision became complete by operation of law on March 8, 2010, and thus under CAA section 110(k)(2) EPA was required to take action on this SIP revision no later than March 8, 2011. On July 17, 2012, Kentucky DAQ withdrew its September 8, 2009, submission and concurrently provided a new submission to satisfy the infrastructure requirements for the 2008 8-hour ozone NAAQS.[1]

On December 7, 2012, EPA was ordered by the U.S. District Court for the Northern District of California (hereafter also referred to as the ''district court'') to ''sign a final rule or rules taking final action on the 2008 ozone NAAQS Infrastructure SIP submittals from Kentucky (submittal dated 9/8/2009, revised 7/17/2012) * * * by no later than 3/4/2013.'' EPA does not agree that the July 17, 2012, submission ''revised'' the earlier September 8, 2009, infrastructure submission. Instead, according to the transmittal letter from Kentucky DAQ, the latter submission was a new infrastructure submission sent to EPA to completely replace the earlier September 8, 2009, submission which Kentucky DAQ withdrew. The July 17, 2012, infrastructure submission and accompanying transmittal letter are available in the docket for today's action. Although Kentucky DAQ clearly stated its intention to replace the original September 8, 2009, submission with the July 17, 2012, submission, EPA interprets the district court order as requiring EPA to act on both infrastructure SIP submittals and to treat the July 17, 2012, submission merely as a revision to the original September 8, 2009, submission, and EPA is proposing to do so in this notice. EPA views the actions proposed today as steps toward satisfying the requirements of the December 7, 2012, district court order regarding Kentucky DAQ's infrastructure submission.

On December 19, 2012, Kentucky DAQ submitted a request for conditional approval of the infrastructure SIP submission with respect to the PSD requirements of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) (hereafter referred to as prong 3 of section 110(a)(2)(D)(i)),[2] and 110(a)(2)(J) to address deficiencies in the infrastructure SIP concerning the fine particulate matter ($PM_{2.5}$) PSD requirements for these elements. Today's action proposes conditional approval of the Commonwealth's infrastructure SIP submission, consistent with section 110(k)(4) of the CAA, for the portions of the submission related to PSD requirements based upon a commitment by Kentucky DAQ to submit the necessary SIP revisions with specific enforceable measures to address $PM_{2.5}$ PSD requirements. EPA notes that these requirements are part of the structural requirements for the PSD program that are relevant for purposes of infrastructure SIPs for the 2008 8-hour ozone NAAQS.

Kentucky DAQ's July 17, 2012, infrastructure SIP submission for the 2008 8-hour ozone NAAQS also addressed CAA section 110(a)(2)(D)(i)(I), which requires that SIPs contain adequate provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment maintenance of the NAAQS in another

[1] EPA understands that Kentucky believed, based upon the 2006 24-hour $PM_{2.5}$ Infrastructure Guidance (the most current infrastructure guidance at the time), it did not need to hold a public hearing for its original letter certification for the 2008 8-hour ozone NAAQS infrastructure SIP (dated September 8, 2009). EPA further understands that, following the publication of EPA's Infrastructure Guidance for the 2008 Lead NAAQS, Kentucky decided to undergo public notice and comment for its 2008 8-hour ozone NAAQS infrastructure SIP. Following that public review and comment, on July 17, 2012, Kentucky withdrew its original infrastructure submission, and provided EPA with a new, publically noticed infrastructure submission.

[2] Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 appear in section 110(a)(2)(D)(i)(I); prongs 3 and 4 appear in section 110(a)(2)(D)(i)(II).

state. In its submission, Kentucky DAQ asserts that section 110(a)(2)(D)(i)(I) is satisfied by the Commonwealth's previously approved SIP revision to meet the Clean Air Interstate Rule (CAIR) requirements.

CAIR was promulgated by EPA in 2005 to address, for certain states, the requirements of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 8-hour ozone and 1997 annual $PM_{2.5}$ NAAQS. *See* 70 FR 25162. In 2008, the U.S. Court of Appeals for the D.C. Circuit granted several petitions for review of CAIR; however, the D.C. Circuit ultimately decided to leave CAIR in place to preserve the environmental values of the rule while EPA promulgated a new rule to replace it. *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), *as modified on rehearing,* 550 F.3d 1176 (D.C. Cir. 2008). In 2011, EPA promulgated the Cross-State Air Pollution Rule (CSAPR) to replace CAIR and to address, for certain states, the requirements of 110(a)(2)(D)(i)(I) with respect to the 1997 8-hour ozone, the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS. *See* 76 FR 48208. Neither CAIR nor CSAPR addressed the requirements of 110(a)(2)(D)(i)(I) with respect to the 2008 8-hour ozone NAAQS.

In August of 2012, a panel of the U.S. Court of Appeals for the D.C. Circuit issued a decision to vacate CSAPR. *See EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012). This decision addressed the requirements of 110(a)(2)(D)(i)(I). The *EME Homer City* panel decision vacated CSAPR and ordered EPA to continue implementing CAIR. The D.C. Circuit has not yet issued the final mandate in *EME Homer City* as EPA (as well as several interveners) petitioned for rehearing *en banc,* asking the full court to review the decision. Nonetheless, while rehearing proceedings are pending, EPA intends to act in accordance with the panel opinion in *EME Homer City* opinion.

Several aspects of the *EME Homer City* opinion are potentially relevant to this proposal. First, the opinion concludes that a section 110(a)(2)(D)(i)(I) SIP submission cannot be considered a ''required'' SIP submission until EPA has defined a state's obligations pursuant to that section. *See EME Homer City,* 696 F.3d at 32 (''A SIP logically cannot be deemed to lack a 'required submission' or deemed to be deficient for failure to meet the good neighbor obligation before EPA quantifies the good neighbor obligation.'') EPA historically has interpreted section 110(a)(1) of the CAA as establishing the required submittal date for SIPs addressing all of the ''interstate transport'' requirements in section 110(a)(2)(D), including the provisions in section 110(a)(2)(D)(i)(I) regarding significant contribution to nonattainment and interference with maintenance. However, at this time in light of the *EME Homer City* opinion, EPA is not treating the section 110(a)(2)(D)(i)(I) SIP submission from Kentucky DAQ as a required SIP submission. Second, the *EME Homer City* opinion provides that EPA does not have authority to promulgate a FIP to address the requirements of section 110(a)(a)(2)(D)(i)(I) until EPA has identified emissions in a state that significantly contribute to nonattainment or interfere with maintenance of the NAAQS in another state and given the state an opportunity to submit a SIP to address those emissions. *EME Homer City,* 696 F.3d at 28.

As explained in greater detail below, in this action, EPA is proposing to disapprove Kentucky DAQ's SIP submission as it relates to section 110(a)(2)(D)(i)(I) because the submission does not address the statutory provisions with respect to the relevant NAAQS and thus does not satisfy the criteria for approval presented in CAA section 110(k)(3). EPA must act on the 110(a)(2)(D)(i)(I) SIP submission from the Commonwealth because, even if the submission is not considered to be ''required,'' section 110(k)(2) of the CAA requires EPA to act on all SIP submissions. However, unless the *EME Homer City* decision is reversed or otherwise modified by the D.C. Circuit, any final disapproval would not obligate the Commonwealth to take any action or make a new SIP submission. Nor would it trigger an obligation for EPA to promulgate a FIP to address these interstate transport requirements.

Kentucky DAQ's July 17, 2012, 2008 8-hour infrastructure submission also addressed sections 110(a)(2)(A)–(B); (D)(i) prong 4;(E)–(H); other sub-elements of (J); and (K)–(M). Today, EPA is proposing to fully approve these elements of the Commonwealth's submission for the reasons explained below.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are summarized below.[3]

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[4]
- 110(a)(2)(D): Interstate transport.[5]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[5] As explained above, EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submission from Kentucky DAQ as a required SIP submission. The portions of the SIP submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii), in contrast, are required, and are being acted upon by EPA in today's proposed rulemaking.

• 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[6]

• 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.

• 110(a)(2)(K): Air quality modeling/data.

• 110(a)(2)(L): Permitting fees.

• 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA notes that this rulemaking does not address four substantive issues that are not integral to the Commonwealth's infrastructure SIP submission. These four issues are: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (SSM), that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion); (iii) existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform).

Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's August 3, 2012, proposed rule entitled, ''Approval and Promulgation of Implementation Plans; Kentucky; 110(a)(1) and (2) Infrastructure Requirements for the 1997 annual and 2006 24-hour Fine Particulate Matter National Ambient Air Quality Standards'' in the section entitled, ''Scope of Infrastructure SIPs'' (*See* 77 FR 46352).

[6] As mentioned above, this element is not relevant to today's proposed rulemaking.

IV. What is EPA's analysis of how the Commonwealth of Kentucky addressed the elements of sections 110(a)(1) and (2) ''infrastructure'' provisions?

Kentucky DAQ's infrastructure submission addresses the provisions of sections 110(a)(1) and (2) as described below.

1. 110(a)(2)(A): *Emission limits and other control measures:* Kentucky DAQ's infrastructure submission provides an overview of the provisions of the Kentucky Air Regulations relevant to air quality control regulations. The regulations described below have been federally approved in the Kentucky SIP and include enforceable emission limitations and other control measures. Chapter 50—*Division for Air Quality; General Administrative Procedures* of the Kentucky Air Regulations generally authorizes the Kentucky Energy and Environment Cabinet to adopt rules for the control of air pollution, including those necessary to obtain EPA approval under section 110 of the CAA and details the authority and means with which DAQ can require testing and emissions verification. Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* also includes references to rules adopted by Kentucky DAQ to control air pollution, including ozone precursors. Chapter 53—*Ambient Air Quality Standards,* serves to establish the requirements for the prevention, abatement, and control of air pollution. EPA has made the preliminary determination that the provisions contained in these chapters and the Commonwealth's practices are adequate to demonstrate enforceable emission limitations and other control measures for the 2008 8-hour ozone NAAQS in Kentucky. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(A).

In this action, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at a facility. EPA believes that a number of states have SSM provisions which are contrary to the CAA and existing EPA guidance, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (September 20, 1999), and the Agency plans to address such state regulations in the future. In the meantime, EPA encourages any state having deficient SSM provisions to take steps to correct them as soon as possible.

Additionally, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. EPA believes that a number of states have such provisions which are contrary to the CAA and existing EPA guidance (52 FR 45109, November 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

2. 110(a)(2)(B) *Ambient air quality monitoring/data system:* Chapter 50:050—*Monitoring,* Chapter 51:010—*Attainment status designations,* and Chapter 53—*Ambient Air Quality Standards,* along with the Commonwealth's Network Description and Ambient Air Monitoring Network Plan, provide for an ambient air quality monitoring network in Kentucky. Annually, EPA approves the ambient air monitoring network plan for the state agencies. On May 25, 2012, the Commonwealth of Kentucky submitted its plan to EPA, which also included the Louisville-Jefferson County local monitoring program. On June 29, 2012, EPA approved the Commonwealth's monitoring network plan. The Commonwealth's approved monitoring network plan can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0700. EPA has made the preliminary determination that the Commonwealth's SIP and practices are adequate for the ambient air quality monitoring and data system related to the 2008 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(B).

3. 110(a)(2)(C) *Program for enforcement of control measures including review of proposed new sources:* Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. These requirements are designed to ensure that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Chapter 51 also sets the permitting requirements for areas in or around nonattainment areas and a description of the Commonwealth's statutory authority to enforce regulations relating to attainment and

maintenance of the 2008 8-hour ozone NAAQS.

At present, there are four SIP revisions that are relevant to EPA's review of Kentucky DAQ's infrastructure SIP submission for the 2008 8-hour ozone NAAQS in connection with the current PSD-related infrastructure requirements. *See* sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) of the CAA. The EPA regulations that require these SIP revisions are: (1) ''Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule'' (November 29, 2005, 70 FR 71612) (hereafter referred to as the ''Phase II Rule''); (2) ''Prevention of Significant Deterioration and Title V Greenhouse Gas [GHG] Tailoring Rule; Final Rule'' (June 3, 2010, 75 FR 31514) (hereafter referred to as the ''GHG Tailoring Rule''); (3) ''Implementation of the New Source Review Program for Particulate Matter Less Than 2.5 Micrometers; Final Rule'' (May 16, 2008, 73 FR 28321) (hereafter referred to as the ''NSR $PM_{2.5}$ Rule''); and, (4) ''Final Rule on the Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant monitoring Concentration (SMC); Final Rule'' (October 20, 2010, 75 FR 64864) (hereafter referred to as the''$PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments)'').

The first revision to the Kentucky SIP (Phase II Rule revisions) was submitted by Kentucky DAQ on February 4, 2010. Kentucky DAQ's submittal addressed the structural PSD program revisions required by the Phase II Rule, including requirements to include nitrogen oxides (NO_X) as an ozone precursor for permitting purposes for PSD and nonattainment NSR. EPA published a final action approving Kentucky DAQ's revisions which incorporate NO_X as an ozone precursor on September 15, 2010. *See* 75 FR 55988. Thus, EPA has preliminarily determined that the infrastructure SIP submission is approvable with respect to this issue.

The second revision to the Kentucky SIP pertains to revisions to the PSD program promulgated in the GHG Tailoring Rule, submitted to EPA by Kentucky DAQ on December 13, 2010. EPA published a final action to approve revisions to Kentucky DAQ's SIP related to GHG regulations on December 29, 2010. *See* 75 FR 81868. The revisions include two significant changes impacting the regulation of GHGs under the Commonwealth's NSR/PSD program: (1) They provide the Commonwealth with authority to issue PSD permits governing GHGs, and (2) they establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Kentucky DAQ's PSD permitting requirements for its GHG emissions. Thus, EPA has preliminarily determined that the infrastructure SIP submission is approvable with respect to this issue.

The third revision to the Kentucky SIP pertains to the adoption of PSD and Nonattainment New Source Review (NNSR) requirements related to the implementation of the NSR $PM_{2.5}$ Rule approved in EPA's May 16, 2008, final rule. The fourth revision to the Kentucky SIP pertains to $PM_{2.5}$ PSD Increment-SILs-SMC Rule approved in EPA's October 20, 2010, final rule (only as it relates to $PM_{2.5}$ Increments). Currently, Kentucky DAQ's SIP does not contain provisions to address these structural PSD requirements and thus the infrastructure SIP submission is deficient with respect to these requirements.

On December 19, 2012, however, Kentucky DAQ submitted a commitment letter to EPA requesting conditional approval of the infrastructure SIP submission for the 2008 8-hour ozone NAAQS to address outstanding requirements related to the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments).[7] In its December 19, 2012, letter, Kentucky DAQ described the specific rules that it is developing to address outstanding requirements related to the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments), provided its intended schedule and process to address the requirements, and committed to adopt these specific enforceable provisions to address the requirements.[8] Further, Kentucky DAQ has committed to submitting these SIP revisions to EPA for incorporation into the Kentucky SIP by no later than one year from the publication date of EPA's final conditional approval action of the infrastructure SIP for this requirement. Failure by the Commonwealth to adopt these provisions and submit them to EPA for incorporation into the SIP within one year from the publication date of EPA's final conditional approval action would result in this proposed conditional approval being treated as a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register**.[9] Based on Kentucky DAQ's commitment, EPA is proposing to conditionally approve the Commonwealth's infrastructure SIP submission as it relates to PSD requirements related to 110(a)(2)(C) in accordance with section 110(k)(4) of the Act.

EPA has preliminarily determined that the Kentucky SIP meets the relevant PSD program requirements, with the exception of those SIP revisions described in the commitment letter. Accordingly, in this action EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of section 110(a)(2)(C), but for the remaining narrow issues related to the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule. In addition, EPA is proposing to conditionally approve Kentucky DAQ's infrastructure SIP submission for the 2008 8-hour ozone NAAQS with respect to these specific issues related to NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule based upon the Commonwealth's commitment letter.

EPA is not proposing to approve or disapprove the Commonwealth's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program because this is not germane in the context of acting on an infrastructure SIP submission. EPA believes that a number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR

[7] The December 19, 2012, commitment letter submitted to EPA by Kentucky DAQ can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0700.

[8] The December 19, 2012, comment letter references Kentucky's June 19, 2012, submittal to EPA of the proposed regulatory amendments that the Commonwealth will submit to meet the applicable requirements of the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule. Accordingly, EPA's proposed conditional approval related to these requirements as they pertain to sections 110(a)(2)(C) and (J), and prong 3 of section 110(a)(2)(D)(i), is based upon the Commonwealth's commitment to submit the specific enforceable provisions as described in the December 19, 2012, commitment letter. This letter references the June 19, 2012, proposed regulatory amendments which Kentucky commits to incorporate into the SIP consistent with requirements of section 110(k)(4). The June 19, 2012, submittal is included in the docket for today's proposed rulemaking.

[9] EPA notes that pursuant to section 110(k)(4), a conditional approval is treated as a disapproval in the event that a State fails to comply with its commitment. Notification of this disapproval action in the **Federal Register** is not subject to public notice and comment.

programs, and EPA believes it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable consistency across the country in protecting the NAAQS with respect to new and modified minor sources. EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for program enforcement of control measures including review of proposed new sources related to the 2008 8-hour ozone NAAQS.

4. 110(a)(2)(D)(i) and (ii) *Interstate and International transport provisions:* Section 110(a)(2)(D) has two components; 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). Section 110(a)(2)(D)(i) includes four distinct components, commonly referred to as ''prongs,'' that must be addressed in SIP submissions. The first two prongs, which are codified in section 110(a)(2)(D)(i)(I), are provisions that prohibit any source or other type of emissions activity in one state from contributing significantly to nonattainment of the NAAQS in another state (''prong 1''), and interfering with maintenance of the NAAQS in another state (''prong 2''). The third and fourth prongs, which are codified in section 110(a)(2)(D)(i)(II), are provisions that prohibit emissions activity in one state interfering with measures required to prevent significant deterioration of air quality in another state (''prong 3''), or to protect visibility in another state (''prong 4''). Section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with sections 115 and 126 of the Act, relating to interstate and international pollution abatement. EPA's analysis of Kentucky DAQ's infrastructure submission with regard to the requirements of 110(a)(2)(D) is as follows:

110(a)(2)(D)(i)(I): With regard to section 110(a)(2)(D)(i)(I) (prongs 1 and 2), EPA is proposing to disapprove Kentucky DAQ's infrastructure submission for this subsection. In its submission, Kentucky DAQ provides that section 110(a)(2)(D)(i)(I) is met through the Commonwealth's approved regulations to meet the Clean Air Interstate Rule (CAIR) requirements. However, CAIR was promulgated before the 2008 8-hour ozone NAAQS were promulgated, and CAIR did not, in any way, address interstate transport requirements related to the 2008 8-hour ozone NAAQS. The submission from Kentucky DAQ thus does not purport to address the requirements of section 110(a)(2)(D)(i)(I) with respect to the relevant NAAQS. As such, it does not appear to be complete with respect to this element. Nonetheless as the submission has become complete by operation of law, EPA is obligated to act on it pursuant to CAA section 110(k)(2). Because the submission does not address the requirements with respect to the relevant NAAQS and relies exclusively on the CAIR—a rule that was promulgated to address the requirements of 110(a)(2)(D)(i)(I) with respect to earlier NAAQS and found insufficient to do so [10]—EPA is proposing to disapprove the submission with regard to the requirements of 110(a)(2)(D)(i)(I).

If the opinion in *EME Homer City* is neither reversed nor modified as a result of the pending petitions for rehearing, disapproval of the Kentucky SIP submission as proposed herein will neither obligate the Commonwealth to make a new SIP submission nor trigger EPA's obligation to promulgate a FIP to address the requirements of 110(a)(2)(D)(i)(I) for Kentucky. The D.C. Circuit's recent opinion in *EME Homer City* concluded that EPA cannot promulgate a FIP to address the requirements of 110(a)(2)(D)(i)(I) for a state until sometime after EPA has quantified the emissions that must be prohibited under that provision. *See EME Homer City,* 696 F.3d at 28 (''explaining that EPA must, after quantifying state's obligations under section 110(a)(2)(D)(i)(I) give states an initial opportunity to implement the obligations through SIPs''). For this reason, unless the *EME Homer City* opinion is reversed or modified, the disapproval proposed herein by itself will not trigger any FIP obligation under CAA section 110(c). Thus, EPA disapproval of the infrastructure SIP submission cannot be said to start a ''FIP clock''—that is activation of the two year deadline for EPA to promulgate a FIP pursuant to CAA section 110(c). Moreover, and unless the portion of the *EME Homer City* opinion holding that 110(a)(2)(D)(i)(I) SIPs are not required SIP submissions until EPA defines state's obligations pursuant to that section is reversed or otherwise modified, any final disapproval of the section 110(a)(2)(D)(i)(I) portion of the infrastructure SIP submittal will not require Kentucky DAQ to take any additional action related to the requirements of 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS.

110(a)(2)(D)(i)(II)—prong 3: With regard to prong 3 of section 110(a)(2)(D)(i), this requirement may be met by the state's confirmation in an infrastructure SIP submission that new major sources and major modifications in the state are subject to a PSD program meeting all the current structural requirements of part C of title I of the CAA or (if the state contains a nonattainment area for the relevant pollutant) to a NNSR program that implements the 2008 8-hour ozone NAAQS. As discussed in more detail with respect to section 110(a)(2)(C), Kentucky's SIP contains provisions for the Commonwealth's PSD program that reflect relevant SIP revisions most of the structural PSD requirements.[11] There are, however, additional relevant PSD program revisions that EPA considers relevant to action on the infrastructure SIP submission for the 2008 8-hour ozone NAAQS. On December 19, 2012, Kentucky DAQ submitted a letter to EPA with a schedule and commitment to make the necessary SIP revisions to include specific enforceable provisions to address the deficiency in the infrastructure SIP submission with respect to the structural requirements for PSD programs required by the NSR $PM_{2.5}$ Rule and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule.

EPA has preliminarily determined that the Kentucky SIP meets the relevant PSD program requirements, but for those SIP revisions described in the December 19, 2012, commitment letter. Accordingly, in this action EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of prong 3 of section 110(a)(2)(D)(i), but for the remaining narrow issues related to the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule. In addition, based on the Commonwealth's commitment, EPA is proposing to conditionally approve the Commonwealth's SIP infrastructure submission with respect to prong 3 of section 110(a)(2)(D)(i) consistent with section 110(k)(4) of the Act.

110(a)(2)(D)(i)(II)—prong 4: Prong 4 of section 110(a)(2)(D)(i) requires that SIPs include provisions prohibiting any source or other type of emissions activity in one state from interfering

[10] Moreover, in its decision granting the petitions for review of CAIR, the D.C. Circuit held that compliance with CAIR did not constitute compliance with section 110(a)(2)(D)(i)(I) even for the NAAQS that were addressed by CAIR—namely the 1997 ozone and 1997 annual $PM_{2.5}$ NAAQS. *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008).

[11] See: (1) EPA's approval of Kentucky's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements and (2) EPA's approval of Kentucky's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Kentucky. For additional detailed information on these requirements, see section 3 above.

with measures to protect visibility in another state. In describing how its submission meets this requirement, the Commonwealth referred to EPA-approved provisions requiring electric generating units (EGUs) in Kentucky DAQ to comply with CAIR and to the limited approval and limited disapproval of Kentucky DAQ's regional haze SIP. Although Kentucky DAQ's regional haze SIP has not been fully approved, EPA believes that the infrastructure SIP submission together with previously approved SIP provisions, specifically those provisions that require EGUs to comply with CAIR and the additional measures in the regional haze SIP addressing best available retrofit technology (BART) and reasonable progress requirements for other sources or pollutants, are adequate to demonstrate compliance with prong 4, thus, EPA is proposing to fully approve this aspect of the submission.

Kentucky DAQ's regional haze SIP relied on the Commonwealth's previous incorporation of the CAIR into the EPA-approved SIP for Kentucky as an alternative to the requirement that the regional haze SIPs provide for source-specific BART emission limits for sulfur dioxide (SO_2) and NO_X emissions from EGUs. At the time the Commonwealth's regional haze SIP was being developed, the Commonwealth's reliance on CAIR was fully consistent with EPA's regulations. CAIR, as originally promulgated, requires significant reductions in emissions of SO_2 and NO_X to limit the interstate transport of these pollutants, and EPA's determination that states could rely on CAIR as an alternative to requiring BART for CAIR-subject EGUs had specifically been upheld in *Utility Air Regulatory Group* v. *EPA,* 471 F.3d 1333 (D.C. Cir. 2006). Moreover, the states with Class I areas affected by emissions from sources in Kentucky had adopted reasonable progress goals for visibility protection that were consistent with the EGU emission limits resulting from CAIR.

In 2008, however, the D.C. Circuit remanded CAIR back to EPA. See *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008). The court found CAIR to be inconsistent with the requirements of the CAA, see *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the court's] opinion would at least temporarily preserve the environmental values covered by CAIR.'' *North Carolina,* 550 F.3d at 1178.

After the remand of CAIR by the D.C. Circuit and the promulgation by EPA of a new rule—CSAPR—to replace CAIR, EPA issued a limited disapproval of Kentucky DAQ's regional haze SIP (and other states' regional haze SIPs that relied similarly on CAIR) because EPA believed that full approval of the SIP was not appropriate in light of the court's remand of CAIR and the uncertain but limited remaining period of operation of CAIR. EPA finalized a limited approval of the regional haze SIP, indicating that except for its reliance on CAIR, the SIP met CAA requirements for the first planning period of the regional haze program. *See* 77 FR 19098 (March 30, 2012).[12] EPA also finalized a limited FIP for Kentucky, which merely substituted reliance on EPA's more recent Transport Rule's (also known as CSAPR) NO_X and SO_2 trading programs for EGUs for the SIP's reliance on CAIR. *See* 77 FR 33642, June 7, 2012.

Since the above-described developments with regard to Kentucky DAQ's regional haze SIP, the situation has changed. In August 2012, the DC Circuit issued a decision to vacate CSAPR. *See EME Homer City* , 696 F.3d 7. In this decision, the court ordered EPA to ''continue administering CAIR pending the promulgation of a valid replacement.'' Thus, EPA has been ordered by the court to develop a new rule, and to continue implementing CAIR in the meantime, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. Implementation of CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process; states have had an opportunity to draft and submit SIPs; EPA has reviewed the SIPs to determine if they can be approved; and EPA has taken action on the SIPs, including promulgating a FIP, if appropriate.

EPA has filed a petition for rehearing of the court's decision on the Transport Rule. However, based on the current direction from the court to continue administering CAIR, EPA believes that it is appropriate to rely on CAIR emission reductions as permanent and enforceable for purposes of assessing the adequacy of Kentucky DAQ's infrastructure SIP with respect to prong 4 while a valid replacement rule is developed and until implementation plans complying with any new rule are submitted by the states and acted upon by EPA or until the court case is resolved in a way that provides different direction regarding CAIR and CSAPR. In addition, EPA believes that based on the court's decision on CSAPR it would be appropriate to propose to rescind its limited disapproval of Kentucky DAQ's regional haze SIP and propose a full approval, but EPA is not proceeding to do so at this time because of the possibility that an *en banc* review of the court's decision may have a different outcome that could bear on such action on the regional haze SIP.

As neither the Commonwealth nor EPA has taken any action to remove CAIR from the Kentucky SIP, CAIR remains part of the EPA-approved SIP and can be considered in determining whether the SIP as a whole meets the requirement of prong 4 of 110(a)(2)(D)(i). EPA is proposing to approve the infrastructure SIP submission with respect to prong 4 because Kentucky's regional haze SIP which EPA has given a limited approval in combination with its SIP provisions to implement CAIR adequately prevent sources in Kentucky from interfering with measures adopted by other states to protect visibility during the first planning period. While EPA is not at this time proposing to change the March 30, 2012, limited approval and limited disapproval of Kentucky DAQ's regional haze SIP, EPA expects to propose an appropriate action regarding Kentucky DAQ's regional haze SIP upon final resolution of *EME Homer City.*

110(a)(2)(D)(ii): With regard to 110(a)(2)(D)(ii), Chapter 51:017—*Prevention of significant deterioration of air quality* of the Kentucky Air Regulations outlines how Kentucky DAQ will notify neighboring states of potential impacts from new or modified sources. The Kentucky SIP also includes federally approved regulations that satisfy the requirements for the NOx SIP Call. *See* 67 FR 17624 (April 11, 2002). Further, EPA is unaware of any pending obligations for the Commonwealth pursuant to sections 115 or 126 of the CAA. EPA has made the preliminary determination that Kentucky DAQ's SIP and practices are adequate for insuring compliance with the applicable requirements relating to interstate and international pollution abatement for the 2008 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(D)(ii).

[12] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

5. 110(a)(2)(E) *Adequate resources:* Section 110(a)(2)(E) requires that each implementation plan provide (i) necessary assurances that the State will have adequate personnel, funding, and authority under state law to carry out its implementation plan, (ii) that the State comply with the requirements respecting State Boards pursuant to section 128 of the Act, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provisions. EPA is proposing to approve Kentucky DAQ's SIP as meeting the requirements of sub-elements 110(a)(2)(E)(i), (ii) and (iii).

In support of EPA's proposal to approve elements 110(a)(2)(E)(i) and (iii), Kentucky DAQ's infrastructure submission demonstrates that it is responsible for promulgating rules and regulations for the NAAQS, emissions standards general policies, a system of permits, fee schedules for the review of plans, and other planning needs. As evidence of the adequacy of Kentucky DAQ's resources with respect to sub-elements (i) and (iii), EPA submitted a letter to Kentucky DAQ on March 14, 2012, outlining 105 grant commitments and current status of these commitments for fiscal year 2011. The letter EPA submitted to Kentucky DAQ can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0700. Annually, states update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. There were no outstanding issues in relation to the SIP for fiscal year 2011, therefore, Kentucky DAQ's grants were finalized and closed out. EPA has made the preliminary determination that Kentucky has adequate resources for implementation of the 2008 8-hour ozone NAAQS. In addition, the requirements of 110(a)(2)(E)(i) and (iii) are met when EPA performs a completeness determination for each SIP submittal. This determination ensures that each submittal provides evidence that adequate personnel, funding, and legal authority under state law has been used to carry out the state's implementation plan and related issues. Kentucky DAQ's authority is included in all prehearings and final SIP submittal packages for approval by EPA. EPA has made the preliminary determination that Kentucky has adequate resources for implementation of the 2008 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(E)(i) and (iii).

Section 110(a)(2)(E)(ii) requires that the Commonwealth comply with section 128 of the CAA. Section 128 requires that: 1) The majority of members of the state board or body which approves permits or enforcement orders represent the public interest and do not derive any significant portion of their income from persons subject to permitting or enforcement orders under the CAA; and 2) any potential conflicts of interest by such board or body, or the head of an executive agency with similar, powers be adequately disclosed. Kentucky DAQ's July 17, 2012, infrastructure SIP submission adequately demonstrated that Kentucky's SIP meets the applicable section 128 requirements pursuant to section 110(a)(2)(E)(ii).

For purposes of section 128(a)(1), Kentucky has no boards or bodies with authority over air pollution permits or enforcement actions. Such matters are instead handled by the Director of Division for Air Quality. As such, a ''board or body'' is not responsible for approving permits or enforcement orders in Kentucky, and the requirements of section 128(a)(1) are not applicable. For purposes of section 128(a)(2), Kentucky DAQ's SIP has recently been updated. On October 3, 2012,, EPA finalized approval of Kentucky DAQ's July 17, 2012, SIP revision requesting incorporation of KRS Chapters 11A.020, 11A.030, 11A.040 and Chapters 224.10–020 and 224.10–100 into the SIP to address sub-element 110(a)(2)(E)(ii). *See* 77 FR 60307. With the incorporation of these regulations into the Kentucky SIP, EPA has made the preliminary determination that the Commonwealth has adequately addressed the requirements of section 128(a)(2), and accordingly has met the requirements of section 110(a)(2)(E)(ii) with respect to infrastructure SIP requirements. Thus, EPA is proposing approval of Kentucky DAQ's infrastructure SIP submission for the 2008 8-hour ozone NAAQS with respect to this requirement as well.

6. 110(a)(2)(F) *Stationary source monitoring system:* Chapter 50—*General Administrative Procedures* of the Kentucky Air Regulations describes how the major source and minor source emission inventory programs collect emission data throughout the Commonwealth (including Jefferson County) and ensure the quality of such data. Additionally, the Commonwealth is required to submit emissions data to EPA for purposes of the National Emissions Inventory (NEI). The NEI is EPA's central repository for air emissions data. EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and the precursors that form them—NO_X, SO_2, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. the Commonwealth made its latest update to the NEI on March 14, 2012. EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.* EPA has made the preliminary determination that Kentucky's SIP and practices are adequate for the stationary source monitoring systems related to the 2008 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(F).

7. 110(a)(2)(G) *Emergency power:* Kentucky's infrastructure submission provides an overview of the Kentucky Air Regulations, specifically Chapter 55—*Emergency Episodes,* which identifies air pollution emergency episodes and preplanned abatement strategies. The episode criteria specified in this chapter for ozone are based on a 1-hour average ozone level at a monitoring site. These criteria have previously been approved by EPA. EPA has made the preliminary determination that these criteria are adequate to address ozone emergency episodes for the 2008 8-hour ozone NAAQS. As a result, EPA has made the preliminary determination that Kentucky DAQ's SIP and practices are adequate for emergency powers related to the 2008 8-hour ozone NAAQS. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(G).

8. 110(a)(2)(H) *Future SIP revisions:* As previously discussed, Kentucky's DAQ is responsible for adopting air quality rules and revising SIPs as needed to attain or maintain the NAAQS. Kentucky DAQ has the ability and authority to respond to calls for SIP

revisions, and has provided a number of SIP revisions over the years for implementation of the NAAQS.

Kentucky has one area, Cincinnati, OH–KY–IN, that is designated as nonattainment for the 2008 8-hour ozone NAAQS. This area is classified as marginal nonattainment area and therefore no attainment demonstration SIPs are required. Section 182(a) of the CAA does require that, for marginal areas, states must submit Base Year Emissions Inventory SIPs, Periodic Emission Inventory SIPs, Emission Statement SIPs, and possibly SIP updates to their NSR program. While the CAA requires these types of SIPs for marginal areas, the specific requirements and compliance dates for these SIPs, as they relate to the 2008 8-hour ozone NAAQS, are not yet established but are expected to be addressed in the upcoming Implementation Rule for the 2008 Ozone NAAQS SIP Requirements. Kentucky DAQ has provided SIP revisions for both the 1-hour ozone and 1997 8-hour ozone NAAQS. EPA has made the preliminary determination that Kentucky DAQ's SIP and practices adequately demonstrate a commitment to provide future SIP revisions related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(H).

9. 110(a)(2)(J): EPA is proposing to approve in part, and conditionally approve in part, the Commonwealth's infrastructure SIP for the 2008 8-hour ozone NAAQS with respect to the requirements in section 110(a)(2)(J) to include a program in the SIP that provides for meeting the applicable consultation requirements of section 121, the public notification requirements of section 127, and the PSD and visibility protection requirements of part C of the Act.

110(a)(2)(J) (121 consultation) *Consultation with government officials:* Kentucky Air Regulations Chapter 50—*Division for Air Quality; General Administrative Procedures* of the Kentucky Air Regulations, and Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* provide for consultation with government officials whose jurisdictions might be affected by SIP development activities. More specifically, Kentucky DAQ adopted state-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development. Required partners covered by Kentucky DAQ's consultation procedures include federal, state, and local transportation and air quality agency officials. Additionally, Kentucky DAQ submitted a regional haze plan which outlines its consultation practices with Federal Land Managers. EPA has made the preliminary determination that Kentucky DAQ's SIP and practices adequately demonstrate consultation with government officials related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(J) (121 consultation).

110(a)(2)(J) (127 public notification) *Public notification:* The Commonwealth's emergency episode provisions provide for notification to the public when the NAAQS, including the ozone NAAQS, are exceeded. See also the discussion above in regarding section 110(a)(2)(G). Additionally, the Commonwealth reports daily air quality information on its Web site at *http://air.ky.gov/Pages/AirQualityIndexMonitoring.aspx* to inform the public on the existing air quality within the Commonwealth. EPA has made the preliminary determination that Kentucky DAQ's SIP and practices adequately demonstrate the Commonwealth's ability to provide public notification related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(J) (127 public notification).

110(a)(2)(J) (PSD) *PSD:* Kentucky DAQ demonstrates its authority to regulate new and modified sources of ozone to assist in the protection of air quality in Kentucky. Chapter 51—*Attainment and Maintenance of the National Ambient Air Quality Standards,* describes the permit requirements for new major sources or major modifications of existing sources in areas classified as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the CAA. These permitting requirements are designed to ensure that sources in areas attaining the NAAQS at the time of designations prevent any significant deterioration in air quality. Chapter 51 also sets the permitting requirements for areas in or around nonattainment areas. Accordingly, this portion of element (J) also requires compliance with the Phase II Rule, the ''GHG Tailoring Rule'', the NSR $PM_{2.5}$ Rule, and the $PM_{2.5}$ PSD Increment-SILs-SMC Rule. Two of these SIP revisions [13] have been approved into the Kentucky SIP and address requisite requirements of the PSD-related requirement of infrastructure element 110(a)(2)(J). As with infrastructure elements 110(a)(2)(C), and prong 3 of 110(a)(2)(D)(i), EPA has preliminarily determined that Kentucky DAQ's infrastructure SIP submission does not fully meet element 110(a)(2)(J). Kentucky DAQ's SIP does not include provisions to meet relevant requirements for NSR/PSD program related to the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments). As noted above, on December 19, 2012, Kentucky DAQ submitted a letter to EPA providing a schedule to address outstanding PSD program requirements promulgated in the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule and committed to provide specific enforceable provisions for incorporation into the SIP to address the outstanding requirements. EPA has preliminarily determined that the Kentucky SIP meets the relevant PSD program requirements, with the exception of those SIP revisions described in the December 19, 2012, commitment letter. Accordingly, in this action EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of section 110(a)(2)(J) (PSD), with the exception of the remaining issues related to the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule. In addition, EPA is proposing to conditionally approve Kentucky DAQ's infrastructure SIP submission for the 2008 8-hour ozone NAAQS with respect to these specific issues related to NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule based upon the Commonwealth's commitment letter.

110(a)(2)(J) *Visibility protection:* With regard to the visibility protection aspect of 110(a)(2)(J), EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act (which includes sections 169A and 169B). In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, EPA finds that there are no applicable visibility obligations under part C ''triggered'' under section 110(a)(2)(J) when a new NAAQS becomes effective. Kentucky DAQ has submitted SIP revisions to satisfy the requirements of the CAA

[13] (1) EPA's approval of Kentucky's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements promulgated in the Phase II Rule and (2) EPA's approval of Kentucky's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Kentucky.

Section 169A and 169B, and the regional haze and BART rules contained in 40 CFR 51.308. On March 30, 2012, EPA published a final rulemaking regarding Kentucky DAQ's regional haze program, consisting of a limited approval and a limited disapproval. *See* 77 FR 19098. In EPA's view, the current status of Kentucky DAQ's regional haze SIP as having not been fully approved is not a bar to full approval of the infrastructure SIP submission with respect to the visibility protection aspect of 110(a)(2)(J), and EPA is proposing to fully approve the infrastructure SIP for this aspect. While EPA is not at this time proposing to change the March 30, 2012, limited approval and limited disapproval of Kentucky DAQ's Regional haze SIP itself, EPA expects to address the approval status of the regional haze SIP upon final resolution of *EME Homer City.*

10. 110(a)(2)(K) *Air quality and modeling/data:* Kentucky DAQ conducts air quality modeling and reports the results of such modeling to EPA as set forth in Kentucky Air Regulations Chapter 50:040—*Air Quality Models.* This regulation provides for the use of ambient ozone monitoring is used, in conjunction with pre- and post-construction ambient air monitoring, to track local and regional scale changes in ozone concentrations. Additionally, the Commonwealth supports a regional effort to coordinate the development of emissions inventories and conduct regional modeling for several NAAQS, including the 2008 8-hour ozone NAAQS, for the Southeastern states. Taken as a whole, the Commonwealth's air quality regulations demonstrate that the Kentucky DAQ has the authority to provide relevant data for the purpose of predicting the effect on ambient air quality of the 8-hour ozone NAAQS. EPA has made the preliminary determination that Kentucky DAQ's SIP and practices adequately demonstrate the Commonwealth's ability to provide for air quality and modeling, along with analysis of the associated data, related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(K).

11. 110(a)(2)(L) *Permitting fees:* Kentucky DAQ addresses the review of construction permits as previously discussed in 110(a)(2)(C) above. Permitting fees are collected through the Commonwealth's title V fees program, which has been federally approved. EPA has made the preliminary determination that Kentucky DAQ's SIP and practices adequately provide for permitting fees related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(L).

12. 110(a)(2)(M) *Consultation/ participation by affected local entities:* The Kentucky DAQ coordinates with local governments affected by the SIP. More specifically, Kentucky DAQ adopted state-wide consultation procedures for the implementation of transportation conformity which includes the consideration of the development of mobile inventories for SIP development and the requirements that link transportation planning and air quality planning in nonattainment and maintenance areas. EPA approved these procedures in Chapter 50:066 *Conformity of transportation plans, programs, and projects (Amendment)* on April 21, 2010 (75 FR 20180). Required partners covered by Kentucky DAQ's consultation procedures include federal, state, and local transportation and air quality agency officials. The state and local transportation agency officials are most directly impacted by transportation conformity requirements and are required to provide public involvement for their activities including the analysis of how the Commonwealth meets transportation conformity requirements. Additionally, Chapter 65—*Mobile Source-Related Emissions* also discusses consultation related activities specifically related to mobile sources. EPA has made the preliminary determination that Kentucky DAQ's SIP and practices adequately demonstrate consultation by affected local entities related to the 2008 8-hour ozone NAAQS when necessary. Accordingly, EPA is proposing to approve Kentucky DAQ's infrastructure SIP submission with respect to section 110(a)(2)(J) (127 public notification).

V. Proposed Action

EPA is proposing to approve in part, conditionally approve in part, and disapprove in part, Kentucky DAQ's July 17, 2012, SIP revision submitted to satisfy infrastructure requirements for the 2008 8-hour ozone NAAQS. These proposed actions to approve in part, conditionally approve in part, and disapprove in part the Commonwealth of Kentucky's infrastructure submission are consistent with sections 110(k)(3) and 110(k)(4) of the CAA.

First, EPA is proposing to approve Kentucky DAQ's infrastructure submission with regard to sections 110(a)(2)(A); (B); (D)(i) prong 4; (E)–(H); (J) with the exception of the PSD element; and (K)–(M). EPA has made the preliminary determination that Kentucky DAQ's July 17, 2012, SIP revision meets the infrastructure requirements for the 2008 8-hour ozone NAAQS for all the pertinent sections for 110(a)(2) with the exception of portions of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J), related to the SIP revisions identified in the commitment letter described above; and with the exception of section 110(a)(2)(D)(i)(I).

Second, EPA has preliminarily determined that the Kentucky SIP meets the relevant PSD program requirements of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J), with the exception of those SIP revisions described in the December 19, 2012, commitment letter described above. Accordingly, in this action EPA is proposing to approve the infrastructure SIP submission as meeting the applicable requirements of these sections, with the exception of the remaining issues related to the NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule. In addition, EPA is proposing to conditionally approve Kentucky DAQ's infrastructure SIP submission for the 2008 8-hour ozone NAAQS with respect to these specific issues related to NSR $PM_{2.5}$ Rule and $PM_{2.5}$ PSD Increment-SILs-SMC Rule based upon the Commonwealth's commitment letter.

Third, EPA is proposing to disapprove Kentucky DAQ's infrastructure submission as it relates to 110(a)(2)(D)(i)(I) (*i.e.* prongs 1 and 2 of 110(a)(2)(D)(i)) because the Commonwealth's submission does not address the statutory provisions with respect to the relevant NAAQS and thus does not satisfy the criteria for approval. EPA notes, that unless the *EME Homer City* decision is reversed or otherwise modified, the disapproval proposed herein will not require promulgation of a FIP for Kentucky related to the requirements of 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS. Also as EPA is not at this time treating the 110(a)(2)(D)(i)(I) SIP submission as a required submission, no further action will be required on the part of Kentucky related to the requirements of 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices,

provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by Commonwealth law. For that reason, this proposed 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 proposed 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 Commonwealth, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: January 10, 2013.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2013–00951 Filed 1–16–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–374; RM–11687; DA 12–2072]

Radio Broadcasting Services; Peach Springs, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth a proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's rules. The Commission requests comment on a petition filed by the Hualapai Tribe, proposing to amend the Table of Allotments by allotting Channel 265A at Peach Springs, Arizona, as a Tribal Allotment. Channel 265A would constitute a first tribal allotment and a second potential service at Peach Springs. Channel 265A can be allotted at Peach Springs, Arizona, in compliance with the Commission's minimum distance separation requirements at 35–33–17 NL and 113–23–41 WL. *See* Supplementary Information *infra.*

DATES: The deadline for filing comments is February 11, 2013. Reply comments must be filed on or before February 26, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the following: F. W. Hannel & Associates, 10733 East Butherus Drive, Scottsdale, Arizona 85255; and Philbert Watahomigie, Vice Chairman, Hualapai Tribe, Post Office Box 179, Peach Springs, Arizona 86434.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 12–374, adopted December 20, 2012, and released December 21, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

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

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

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

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202 paragraph (b), the Table of FM Allotments under Arizona entry, is amended by adding 265A (Tribal Allotment) at Peach Springs.

[FR Doc. 2013–00921 Filed 1–16–13; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 78, No. 12
Thursday, January 17, 2013

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Renewal of the Advisory Committee on Voluntary Foreign Aid

AGENCY: United States Agency for International Development.

ACTION: Notice of renewal of advisory committee.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Administrator of USAID has determined that renewal of the Advisory Committee on Voluntary Foreign Aid for a two-year period beginning January 10, 2013 is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Sandra Stonesifer, 202–712–4372.

Dated: January 11, 2013.

Sandra Stonesifer,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. 2013–00913 Filed 1–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 11, 2013.

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: Health Screening Questionnaire.

OMB Control Number: 0596–0164.

Summary of Collection: The Protection Act of 1922 (16 U.S.C. 594) authorizes the Forest Service (FS) to fight fires on National Forest System lands. Individuals seeking recertification or employment as a new firefighter with the FS or Department of Interior (DOI) must complete the Health Screening Questionnaire (HSQ). The information collected pertains to an individual's health status and health history.

Need and Use of the Information: FS and DOI will collect information from potential applicants using forms FS–5100–31, HSQ and FS–5100–30, Work Capacity Test. Wildland firefighters perform long hours of arduous labor in adverse conditions. The information collected is used to determine whether an individual being considered for a position can carry out those duties in a manner that will not place the candidate or coworkers unduly at risk due to inadequate physical fitness and health. If the information is not collected, the Government's liability risk is high, special needs of an individual may not be known, or the screening of an applicant's physical suitability would be greatly inhibited.

Description of Respondents: Individuals or households.

Number of Respondents: 12,630.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 2,097.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–00850 Filed 1–16–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 11, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by February 19, 2013 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW., Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail

Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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.

Animal and Plant Health Inspection Service

Title: Foreign Quarantine Notices.

OMB Control Number: 0579–0049.

Summary of Collection: Under the Plant Protection Act (PPA) (Title IV, Pub. L. 106–224, 114 Stat. 438, 7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plant pests and other articles to prevent the introduction of plant pests into the United States. Regulations authorized by the PPA concerning the importation of nursery stock, plants, roots, bulbs, seeds, and other plant products to include log, lumber, and other unmanufactured wood articles are contained in Title 7, Code of Federal Regulations (CFR) part 319. Implementing the laws is necessary to prevent injurious plant and insect pest from entering the United States, a situation that could produce serious consequences for U.S. agriculture. The Animal and Plant Health Inspection Service (APHIS) is require to collect information from a variety of individuals, both within and outside the United States, who are involved in growing, packing, handling, transporting, and importing foreign plants, roots, bulbs, seeds, importing foreign logs, lumber, other unmanufactured wood articles, and other plant products. APHIS will collect this information using a number of forms.

Need and Use of the Information: APHIS will collect information to ensure that plants, fruits, vegetables, roots, bulbs, seeds, foreign logs, lumber, other unmanufactured wood articles, and other plant products imported into the United States do not harbor plant diseases or insect pests that could cause serious harm to U.S. agriculture.

Description of Respondents: Business or other for-profit; Individuals or households; Farms; Federal Government.

Number of Respondents: 95,730.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 95,253.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–00856 Filed 1–16–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ochoco National Forest, Paulina Ranger District; Oregon; Fox Canyon Cluster Allotment Management Plan Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Ochoco National Forest is preparing an environmental impact statement (EIS) to analyze the effects of changing grazing management in four allotments on the Paulina Ranger District. The Fox Canyon Cluster project area is located approximately 35 miles east of Prineville, south of Big Summit Prairie. The four allotments are Antler, Brush Creek, Fox Canyon, and Gray Prairie. The Proposed Action would reauthorize term grazing permits, construct rangeland improvements, manage livestock use and distribution, and conduct riparian restoration activities to facilitate the improvement of riparian conditions for streambank stability, riparian vegetation, and water temperature. These actions are needed to achieve and maintain consistency with the Ochoco National Forest Land and Resource Plan, as amended.

DATES: Scoping comments must be received by February 18, 2013. The draft environmental impact statement is expected to be completed and available for public comment in May, 2013. The final environmental impact statement is expected to be completed in September, 2013.

ADDRESSES: Send written comments to Sandra Henning, District Ranger, Paulina Ranger District, Ochoco National Forest, 3160 NE Third Street, Prineville, Oregon 97754. Alternately, electronic comments may be sent to comments-pacificnorthwest-ochoco@fs.fed.us. Electronic comments must be submitted as part of the actual email message, or as an attachment in plain text (.txt), Microsoft Word (.doc), rich text format (.rtf), or portable document format (.pdf).

FOR FURTHER INFORMATION CONTACT: Jeffrey Marszal, Project Leader, or Jacob Young, Range Specialist, at 3160 NE Third Street, Prineville, Oregon 97754, or at (541) 416–6500, or by email at *jmarszal@fs.fed.us and jcyoung@fs.fed.us*

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposal is to reauthorize livestock grazing consistent with the Ochoco National Forest Land and Resource Management Plan (Forest Plan), as amended, and other applicable legal requirements within the project area. Paulina Ranger District data indicates that throughout the project area, stream shade and bank stability do not meet Forest Plan standards. In addition, several streams in the project area are listed on Oregon DEQ's 303(d) list for water quality limited streams, due to high summer water temperatures. Livestock grazing is one of multiple factors that can contribute to low levels of shade, high summer water temperatures, and unstable stream banks. In these four grazing allotments, there is a need to facilitate the achievement of the following standards: forage utilization, stream shade, bank stability, and width-to-depth ratio.

Proposed Action

The proposed actions vary by allotment, and are specific to the resource situations within each allotment. The Proposed Action for all allotments includes reauthorizing grazing and reauthorizing existing rangeland improvements. The actual season for livestock use may be less than permitted in order to meet Forest Plan goals and objectives/desired conditions. The number of days livestock spend on each allotment may be adjusted annually based on variations in weather and range readiness or unpredictable events such as wildfire and drought. The actual season of use may also be adjusted annually based on variations in weather and range readiness. The dates listed in each allotment description are target dates for grazing. The season of use may occur sooner or later than indicated based on annual conditions. The length of grazing also depends on meeting utilization standards or thresholds (triggers) for pasture moves.

Allotment-specific proposals are as follows:

Antler Allotment

This allotment would continue to consist of 843 acres divided into eight pastures: One (172 ac.), Two A (61 ac.), Two B (74 ac.), Three (173 ac.), Four (52 ac.), Five (60 ac.), Six (82 ac.), and Seven (168 ac).The current permitted

amount of 433 AUMs (Animal Unit Month) with 92 cow/calf pair from June 16 to September 30 would be reauthorized. Existing structural improvements would be reauthorized, including approximately 11 miles of fence. The grazing system would be an eight pasture deferred rotation with partial rest of pastures on a seasonal basis. Active management of livestock would be recommended, but due to the frequent rotation through the eight essentially riparian pastures the checking may not be as regular.

One Pasture

- Riparian restoration activities would take place on .5 miles of Jungle Creek; activities would include in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site
- Aspen stands would be enhanced and protected through conifer thinning and utilization of thinned materials, prescribed fire, and mechanical treatment in an approximately 1-acre stand. Exclosure may be used when thinning and placement of thinned materials to protect aspens stand is not found to provide adequate protection.

Seven Pasture

- Planting hardwoods, and creating physical barriers (such as wood, rock, or fences) to protect hardwoods and improve bank stability would take place on .75 miles of North Fork Crooked River.

Two A Pasture

- Planting hardwoods, and creating physical barriers (such as wood, rock, or fences) to protect hardwoods and improve bank stability would take place on .25 miles of North Fork Crooked River.

Brush Creek Allotment

This allotment would continue to consist of 4,378 acres divided into two pastures: Lower Pasture (3,513 ac.) and Middle Pasture (865 ac.). The current permitted amount of 455 AUMs would be reauthorized but the amount of head would be changed to 375 cow/calf pairs from May 1 to September 30. The total number of days of permitted use in this allotment is 27 days to equal the authorized AUMs. The ''turn on'' date may be adjusted annually based on range readiness indicators. The grazing system would be a modified nine pasture rest rotation; four pastures in Fox Canyon allotment, three pastures in Gray Prairie allotment, and two pastures in Brush Creek allotment. The modified nine pasture rest rotation would include yearly adaptations in duration and timing of grazing use in some pastures. This would include partial rest of one or more pastures a year and/or may include full rest of a pasture based on resource management objectives. Active management of livestock would be required.

The following actions were proposed, analyzed and authorized within the Big Summit Cluster Allotment Management Plans Final Environmental Impact Statement (Record of Decision, September 18, 2009), and would be carried forward in this Decision.

- Existing structural improvements would be reauthorized, including 3 water developments and approximately 10 miles of fence. One new water development is proposed.
- Modify existing pasture layout to create a riparian pasture on Jungle Creek (Jungle Creek Riparian Pasture).
  - Pasture would be about 449 acres and would require approximately 1.5 miles of new fence.
  - Rest for a minimum of 4 years and until upward trend is identified.
  - Riparian restoration on 1 mile of Jungle Creek would include in-stream placement of wood and/or rock structures, thinning small-diameter conifers in alder and willow stands, protecting hardwoods, and headcut repair.
- When grazing is reinitiated within the riparian pasture, the pasture would be grazed every other year, for a maximum of two weeks.
- Fix fence in lower Jungle Creek; protect aspen stand.

Lower Pasture

- Rebuild fence at upper part of pasture (west edge).

Middle Pasture

- Modify Lost Spring Reservoir: Repair/reconstruct exclosure fence and bury pipe to trough.

Fox Canyon Allotment

This allotment would continue to consist of 13,612 acres divided into four pastures: Fox Canyon (6,795 ac.), Long Prairie (2,844 ac.), Williams Prairie (3,281 ac.), and Williams Prairie Riparian Pasture (691 ac.).The current permitted amount of 1031 AUMs would be reauthorized but the amount of head would be changed to 375 cow/calf pairs from May 1 to September 30. The total number of days of permitted use in this allotment is 62 days to equal the authorized AUMs. The ''turn on'' date may be adjusted annually based on range readiness indicators. The grazing system would be a modified nine pasture rest rotation; four pastures in Fox Canyon allotment, three pastures in Gray Prairie allotment, and two pastures in Brush Creek allotment. The modified nine pasture rest rotation would include yearly adaptations in duration and timing of grazing use in some pastures. This would include partial rest of one or more pastures a year and/or may include full rest of a pasture based to resource management objectives. Existing structural improvements would be reauthorized, including 12 water developments and approximately 20 miles of fence. Five new water developments are proposed. Active management of livestock would be required.

Fox Canyon Pasture

- Construct four and reconstruct two water developments to improve livestock distribution.
- Construct exclosure with water-gaps on 1.4 miles of North Fork Fox Canyon Creek. The exclosure would include gates to allow for periodic grazing for vegetation management. Riparian restoration activities would take place within the newly constructed exclosure; activities would include head-cut repair, in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site.
- Reconstruct existing riparian exclosure on .5 miles of South Fork Fox Canyon Creek.
- In-stream placement of wood and/or rock structures would take place on 1.5 miles of South Fork Fox Canyon Creek. Wood and physical barrier material may come from on-site.
- Aspen stands would be protected and enhanced through conifer thinning and utilization of thinned materials, prescribed fire, and mechanical treatment in 3 stands, totaling 3 acres of treatment. Exclosures may be used when thinning and placement of thinned materials to protect aspens stands is not found to provide adequate protection.

Long Prairie Pasture

- Riparian restoration activities would take place on .75 miles of Long Prairie Creek; activities would include in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability, conifer thinning to improve RHCA

(Riparian Habitat Conservation Area) stand conditions and utilization of thinned materials for in-stream placement and improved bank stability. Wood and physical barrier material may come from on-site.

- Aspen stands would be protected and enhanced through conifer thinning and utilization of thinned materials, prescribed fire, and mechanical treatment in 2 stands, totaling 2 acres of treatment. Exclosures may be used when thinning and placement of thinned materials to protect aspens stands is not found to provide adequate protection.
- Hand-place wood around 3 fens to reduce cattle/wildlife trailing.

Williams Prairie Pasture

- Construct one and reconstruct two water developments to improve livestock distribution.
- Reconstruct riparian exclosure.
- Riparian restoration activities would take place on .5 miles of North Fork Crooked River up-stream of Sera Springs; activities would include in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site.
- Hand-place wood around two fens to reduce cattle/wildlife trailing.
- Prescribed burning would take place in Williams Prairie meadow with the objective of removing decadent vegetative material and stimulating growth.

Gray Prairie Allotment

This allotment would continue to consist of 11,630 acres divided into five pastures: East B (2,692 ac.), Gray Prairie (3,672 ac.), Holding (552 ac.), North (4,631 ac.), and Spring Creek (82 ac). The current permitted amount of 1,544 AUMs would be reauthorized but the amount of head would be changed to 375 cow/calf pairs from May 1 to September 30. The total number of days of permitted use in this allotment is 93 days to equal the authorized AUMs. The grazing system would be a modified nine pasture rest rotation; four pastures in Fox Canyon allotment, three pastures in Gray Prairie allotment, and two pastures in Brush Creek allotment. The modified nine pasture rest rotation will include yearly adaptations in duration and timing of grazing use in some pastures. This will include partial rest of one or more pastures a year and/or may include full rest of a pasture based to resource management objectives. Existing structural improvements would be reauthorized, including 13 water developments and approximately 21.5 miles of fence. Five new water developments are proposed. Two new cattle-guards would be installed between the North and Gray Prairie pastures. Active management of livestock would be required.

East B Pasture

- Reconstruct three water developments.
- Riparian restoration activities would take place on .75 miles of Spring Creek; activities would include in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site.
- Aspen stands would be enhanced and protected through conifer thinning and utilization of thinned materials, prescribed burning, and mechanical treatment in 4 stands, totaling 4 acres of treatment. Exclosures may be used when thinning and placement of thinned materials to protect aspens stands is not found to provide adequate protection.

Gray Prairie Pasture

- Construct two and reconstruct five water developments to improve livestock distribution.
- Riparian restoration activities would take place on 1 mile of lower Gray Creek; activities would include in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability, conifer thinning to improve RHCA stand conditions and utilization of thinned materials for in-stream placement and improved bank stability. Wood and physical barrier material may come from on-site.
- Aspen stands would be enhanced and protected through conifer thinning and utilization of thinned materials, prescribed fire, and mechanical treatment in 2 stands, totaling 2 acres of treatment. Exclosures may be used when thinning and placement of thinned materials to protect aspens stands is not found to provide adequate protection.
- Hand-place wood around 2 fens to reduce cattle/wildlife trailing.
- Prescribed burning would take place in Gray Prairie meadow with the objective of removing decadent vegetative material and invigorating growth.

North Pasture

- Construct three and reconstruct three water developments to improve the distribution of livestock.
- Riparian restoration activities would take place on .3 miles of lower Lytle Creek and .5 miles of upper Lytle Creek; activities would include in-stream placement of wood and/or rock structures, planting hardwoods, and creating physical barriers (such as wood, rock or fences) to protect hardwoods and improve bank stability. Wood and physical barrier material may come from on-site.
- Aspen stands would be enhanced and protected through conifer thinning and utilization of thinned materials, prescribed fire, and mechanical treatment in 5 stands, totaling 5 acres of treatment. Exclosures may be used when thinning and placement of thinned materials to protect aspens stands is not found to provide adequate protection.

Possible Alternatives

In addition to the Proposed Action and any alternative that is developed following this scoping effort, the project interdisciplinary team will analyze the effects of:

- *No Action alternative:* No grazing permits would be reauthorized; cattle would be removed from all allotments within two years.
- *Current management alternative:* Permits would be reauthorized at current levels; there would be no new water developments, no riparian restoration, and there would be no requirement for permittees to move livestock out of sensitive areas, except as required by current permits.

Responsible Official

The responsible official will be Kate Klein, Forest Supervisor, Ochoco National Forest, 3160 NE Third Street, Prineville, Oregon 97754.

Nature of Decision To Be Made

Given the purpose and need, the deciding official will review the proposed action, the other alternatives, and the environmental consequences in order to make the following decisions:

- Whether and under what circumstances grazing will be reauthorized in the Fox Canyon Creek, Antler, Gray Prairie and Brush Creek Allotments.
- Whether and under what circumstances range improvements would be constructed.
- Whether and under what circumstances riparian restoration activities would be implemented.

Preliminary Issues

Preliminary issues identified include the potential effect to livestock grazing, heritage resources, fisheries, water quality, sensitive plants, the introduction and/or spread of invasive plants, and forage for big game species. In addition, the team will analyze the cumulative effects of this Proposed Action where it overlaps with the effects of other activities, including vegetation and fuels management.

Scoping Process

Public comments about this proposal are requested in order to assist in identifying issues, determining how to best manage the resources, and focusing the analysis. Comments received to this notice, including names and addresses of those who comments will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to afford the respondent with subsequent environmental documents.

Dated: January 11, 2013.

Sandra Henning,

District Ranger.

[FR Doc. 2013–00890 Filed 1–16–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the U. S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee) in Denver, CO.

Dates and Times: The meeting will be held on Wednesday February 6, 2013, from 8:00 a.m. to 5:00 p.m. These times and the agenda topics described below are subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

ADDRESSES: The meeting will be held at the Western Management Development Center, Cherry Creek Place, 3151 S Vaughn Way, Aurora, CO 80014.

FOR FURTHER INFORMATION CONTACT: Jessica Snowden, Alternate Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, 1100 Wayne Ave., Suite 1225, Silver Spring, MD 20910; Phone 301–427–2453; Fax 301–427–2073; Email *Jessica.snowden@noaa.gov* or visit the U.S. IOOS Advisory Committee Web site at *http://www.ioos.gov/advisorycommittee.*

SUPPLEMENTARY INFORMATION: The Committee was established by the NOAA Administrator as directed by Section 12304 of the Integrated Coastal and Ocean Observation System Act, part of the Omnibus Public Land Management Act of 2009 (Pub. L. 111–11). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in section 12302 of the Integrated Coastal and Ocean Observation System Act of 2009 and other appropriate matters as the Under Secretary refers to the Committee for review and advice.

The Committee will provide advice on:

(a) Administration, operation, management, and maintenance of the System;

(b) expansion and periodic modernization and upgrade of technology components of the System;

(c) identification of end-user communities, their needs for information provided by the System, and the System's effectiveness in dissemination information to end-user communities and to the general public; and

(d) any other purpose identified by the Under Secretary of Commerce for Oceans and Atmosphere or the Interagency Ocean Observation Committee.

The meeting will be open to public participation with a 15-minute public comment period on February 6, 2013, from 4:30 p.m. to 4:45 p.m. (check agenda on Web site to confirm time.) The Committee expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Official by January 25, 2013 to provide sufficient time for Committee review. Written comments received after January 25, 2013, will be distributed to the Committee, but may not be reviewed prior to the meeting date. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will focus on finalizing a vision statement for U.S. IOOS, and framing a vision for the U.S. IOOS business model. The agenda is subject to change. The latest version will be posted at *http://www.ioos.gov/advisorycommittee.*

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jessica Snowden, alternate Designated Federal Official at 301–427–2453 by January 23, 2013.

Dated: December 20, 2012.

Zdenka S. Willis,

Director, U.S. Integrated Ocean Observing System.

[FR Doc. 2013–00892 Filed 1–16–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XJ40

Endangered Species; File No. 13543

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

ACTION: Notice; receipt of application for a permit modification.

SUMMARY: Notice is hereby given that South Carolina Department of Natural Resources, 217 Ft. Johnson Rd., Charleston, SC 29412, has requested a modification to scientific research Permit No. 13543.

DATES: Written, telefaxed, or email comments must be received on or before February 19, 2013.

ADDRESSES: The modification request and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/,* and then selecting File No. 13543 from the list of available applications. These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at

the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Amy Hapeman or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 13543, issued on May 6, 2009 (74 FR 20926) is requested under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 13543 authorizes the permit holder to handle, measure, weigh, passive integrated transponder tag, flipper tag, and photograph loggerhead (*Caretta caretta*), green (*Chelonia mydas*), Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), olive ridley (*L. olivacea*), and hawksbill (*Eretmochelys imbricata*) sea turtles that have already been captured by authorized coastal trawl surveys in waters off of North Carolina to Florida. The purpose of the research is to further the understanding of the growth, distribution, and life history of sea turtles. The permit is valid through April 30, 2014. The permit holder requests authorization to increase the annual take limit for Kemp's ridley and loggerhead sea turtles from 15 to 32 animals and 45 to 50 animals, respectively, on which they may conduct authorized research procedures. The increase would accommodate recent increases in capture rates of these species in the trawl surveys. Unless additional take is authorized, opportunities will be lost to collect valuable data on Kemp's ridley and loggerhead sea turtles.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–00889 Filed 1–16–13; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Consumer Product Safety Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 78, No. 7, Thursday, January 10, 2013, page 2257.

ANNOUNCED TIME AND DATE OF MEETING: Wednesday, January 16, 2013, 10 a.m.–11 a.m.

MEETING CANCELED. For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: January 15, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–01082 Filed 1–15–13; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, January 23, 2013, 10:00 a.m.—11:00 a.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Briefing Matters: Sections 1112/1118 Requirements for Third Party Conformity Assessment Bodies—Draft Final Rule

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: January 15, 2013.

Todd A. Stevenson,

Secretary.

[FR Doc. 2013–01030 Filed 1–15–13; 4:15 pm]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 13–C0002]

The Bon-Ton Stores, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with The Bon-Ton Stores, Inc., containing a civil penalty of $450,000.00, within twenty (20) days of service of the Commission's final Order accepting the Settlement Agreement.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by February 1, 2013.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 13–C0002, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 820, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Sean R. Ward, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7602.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: December 12, 2012.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (CPSA) and 16 CFR 1118.20, The Bon-Ton Stores, Inc. (Bon-Ton) and staff of the U.S. Consumer Product Safety Commission (staff and Commission) hereby enter into this Settlement Agreement (Agreement). The Agreement and the incorporated attached Order resolve staff's allegations set forth below.

The Parties

2. Staff is the staff of the Commission, an independent federal regulatory agency established pursuant to, and responsible for, the enforcement of the CPSA, 15 U.S.C. 2051–2089.

3. Bon-Ton is a corporation, organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal corporate office located in York, PA. Bon-Ton is a retailer, selling a wide selection of apparel, shoes, jewelry, fragrances, and accessories.

Staff Allegations

4. Between September 2006 and September 2009, Bon-Ton purchased from three U.S. importers and distributed in commerce, approximately 812 children's upper outerwear garments with drawstrings (Garments) to consumers. The Garments were sold at retail stores in the United States for between $5 and $100.

5. The Garments are ''consumer products'' and, at all relevant times, Bon-Ton was a ''retailer'' of these consumer products, which were ''distributed in commerce,'' as those terms are defined or used in sections 3(a)(5), (8), and (13) of the CPSA, 15 U.S.C. 2052(a)(5), (8), and (13).

6. In February 1996, staff issued the *Guidelines for Drawstrings on Children's Upper Outerwear* (Guidelines) to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items, such as playground equipment, bus doors, or cribs. In the Guidelines, staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, which incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance directed to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (FHSA) section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

9. On December 7, 2007, the Deputy Director of the Commission's Office of Compliance sent directly to retailers, including Bon-Ton, an electronic mail reminder that children's upper outerwear must comply with ASTM F1816–97.

10. Bon-Ton's distribution in commerce of the Garments did not meet the Guidelines or ASTM F1816–97; it failed to comport with staff's May 2006 defect notice; and it posed a strangulation hazard to children.

11. On February 18, 2010, March 10, 2010, and May 27, 2010, the Commission and three U.S. importers announced three recalls of the Garments that were distributed in commerce by Bon-Ton. Bon Ton was identified as a retailer of the Garments in the press release announcing the three recalls. The recalls informed consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. Bon-Ton had presumed and actual knowledge that the Garments distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Bon-Ton had obtained information that reasonably supported the conclusion that the Garments contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), required Bon-Ton to inform the Commission immediately of the defect and risk.

13. Bon-Ton knowingly failed to inform the Commission immediately about the Garments, as required by CPSA sections 15(b)(3) and (4), 15 U.S.C. 2064(b)(3) and (4), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Bon-Ton to civil penalties.

Bon-Ton's Response

14. Bon-Ton denies staff's allegations set forth in paragraphs 4 through 13, *supra,* including, but not limited to, the allegations that the Garments contained a defect which could create a substantial product hazard pursuant to section 15(a) of the CPSA, and that Bon-Ton failed to inform the Commission immediately about the Garments, as required by section 15(b) of the CPSA, *supra.* This payment is made in settlement of the staff allegations. Neither the payment, nor the fact of entering into this Settlement Agreement, constitutes evidence of, or an admission of, any fault, liability, or statutory or regulatory violation by Bon-Ton or any admission by Bon-Ton of the accuracy of any allegations made by staff.

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Bon-Ton.

16. In settlement of staff's allegations, Bon-Ton shall pay a civil penalty in the amount of $450,000.00 within 20 calendar days of receiving service of the Commission's final Order accepting the Agreement. The payment shall be made electronically to the CPSC via *www.pay.gov.*

17. The parties enter into this Agreement for settlement purposes only. The Agreement does not constitute any admission by Bon-Ton, nor does it constitute any determination by the Commission that Bon-Ton violated CPSA's reporting requirements.

18. Upon provisional acceptance of the Agreement by the Commission, the Agreement shall be placed on the public record and published in the **Federal Register**, in accordance with the procedures set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Agreement within 15 calendar days, the Agreement shall be deemed finally accepted on the 16th calendar day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Bon-Ton knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (a) An administrative or judicial hearing; (b) judicial review or other challenge or contest of the Commission's actions; (c) a determination by the Commission of whether Bon-Ton failed to comply with the CPSA and the underlying regulations; (d) a statement of findings of fact and conclusions of law; and (e) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Bon-Ton and each of its successors and/or assigns.

22. The Commission issues the Order under the provisions of the CPSA, and a violation of the Order may subject Bon-Ton and each of its successors and/or assigns to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict the terms or the Agreement and the Order. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto, executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement or the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Bon-Ton agree that severing the provision materially affects the purpose of the Agreement and Order. This agreement may be signed in counterparts.

THE BON-TON STORES, INC.

Dated: 11/28/12.
By:

J. Gregory Yawman, *Esquire,*
Vice President and General Counsel.
The Bon-Ton Stores, Inc., 2801 East Market Street, York, PA 17402.
Dated: 11/30/12
By:

Timothy L. Mullin, Jr., *Esquire,*
Miles & Stockbridge P.C.
10 Light Street, Baltimore, MD 21202–1487,
Counsel for The Bon-Ton Stores, Inc.

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

Mary T. Boyle,
Acting General Counsel.
Mary B. Murphy,
Assistant General Counsel.
Dated: 11/30/12.
By:

Sean R. Ward,
Trial Attorney, Office of the General Counsel.

Order

Upon consideration of the Settlement Agreement entered into between The Bon-Ton Stores, Inc. (Bon-Ton), and the U.S. Consumer Product Safety Commission (Commission) staff, and the Commission having jurisdiction over the subject matter and over Bon-Ton, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered that the Settlement Agreement be, and is, hereby, accepted; and it is

Further ordered, that Bon-Ton shall pay a civil penalty in the amount of $450,000.00 within 20 calendar days of receiving service of the Commission's final Order accepting the Settlement Agreement. The payment shall be made electronically to the CPSC via *www.pay.gov.* Upon the failure of Bon-Ton to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Bon-Ton at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the *7th* day of *December,* 2012.

By Order of the Commission:

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2013–00893 Filed 1–16–13; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Research Fellowships Program

AGENCY: Office of Special Education and Rehabilitative Service, National Institute on Disability and Rehabilitation Research (NIDRR), Department of Education.

ACTION: Notice.

Overview Information: Research Fellowships Program.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133F–1.

DATES:

Applications Available: January 17, 2013.

Date of Pre-Application Meeting: February 7, 2013.

Deadline for Transmittal of Applications: March 18, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to perform research on the rehabilitation of individuals with disabilities.

Fellows must conduct original research in an area authorized by section 204 of the Act. Section 204 authorizes research, demonstration projects, training, and related activities, the purposes of which are to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency, of individuals with disabilities, especially individuals with the most significant disabilities, and to improve the effectiveness of services authorized under the Act.

Note: This program is in concert with NIDRR's currently approved long-range plan (the Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8166), can be accessed on the Internet at the following site: *www2.ed.gov/legislation/FedRegister/other/2006-1/021506d.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine the best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

Priorities: Under this competition we are particularly interested in applications that address one or more of the following priorities.

Invitational Priorities: Under 34 CFR 75.105(c)(1) we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

These priorities are:

(1) The Secretary is particularly interested in applications from eligible applicants who are individuals with disabilities.

(2) The Secretary is particularly interested in applications that result in practical methods of improving participation and community living and employment outcomes for individuals with disabilities.

Note: The Secretary is interested in outcomes-oriented research projects that use rigorous scientific methodologies. To address this interest, applicants are encouraged to articulate goals, objectives, and expected outcomes for the proposed research activities. Proposals should describe how results and planned outputs are expected to contribute to advances in knowledge or improvements in policy and practice. Applicants should propose projects that are optimally designed to be consistent with these goals. Submission of the information identified under this paragraph is not required by law or regulation, but is desired.

Program Authority: 29 U.S.C. 762(e).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 and 75.61, and parts 77, 81, 82, 84, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 356. (d) The regulations in 34 CFR 350.51 and 350.52.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $106,817,000 for the NIDRR program for FY 2013, of which we intend to use an estimated $505,000 for the Research Fellowships Program. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2014 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $60,000 to $65,000 for Merit Fellowships and $70,000 to $75,000 for Distinguished Fellowships. (These fellowships are described in the *Eligible Applicant* section of this notice.)

Estimated Average Size of Awards: $63,000 for Merit Fellowships and $73,000 for Distinguished Fellowships.

Maximum Awards: We will reject any application that proposes a budget exceeding $65,000 for Merit Fellowships and $75,000 for Distinguished Fellowships for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: Seven, including both Merit Fellowships and Distinguished Fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 12 months. We will reject any application that proposes a project period exceeding 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum project period through a notice published in the **Federal Register**.

III. Eligibility Information

1. *Eligible Applicants:* Eligible individuals must: (1) Satisfy the requirements of 34 CFR 75.60 and 75.61 and (2) have training and experience that indicate a potential for engaging in scientific research related to the solution of rehabilitation problems of individuals with disabilities. The program provides two categories of research fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or experience in independent study in an area which is directly pertinent to disability and rehabilitation.

Note: In the most recent competitions for this program, Merit Fellowship recipients had research experience at the doctoral level.

(b) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

Note: Institutions are not eligible to be recipients of research fellowships.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program as follows: CFDA number 84.133F.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The project narrative section of the application, which must be uploaded into the Project Narrative Attachment Form on Grants.gov, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the project narrative of your application to the equivalent of no more than 24 double-spaced pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit for the project narrative does not apply to the documents you upload under the other two Grants.gov headings: ED Project Abstract and Other Attachments. The ED Project Abstract Form should contain only your one-page abstract. The Other Attachments Form should contain all other attachments, including your bibliography, eligibility statement, resume/curriculum vitae, and letters of recommendation/support. Information regarding the protection of human subjects, if applicable, should be included under the Other Attachments Form or in the place provided on the SF–424 Supplemental Form. You do not need to upload a table of contents for your application, as this will be automatically generated by Grants.gov.

We will reject your application if you exceed the page limit for the project narrative or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: January 17, 2013.

Date of Pre-Application Meeting: February 7, 2013.

Deadline for Transmittal of Applications: March 18, 2013.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how

to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* Applicants are not required to submit a budget with their proposal.

The Merit Fellowship and Distinguished Fellowship awards are one Full Time Equivalent (FTE) awards. Fellows must work principally on the fellowship during the term of the fellowship award. We define ''one FTE'' as equal to 40 hours per week. No fellow is allowed to be a direct recipient of Federal government grant funds in addition to those provided by the Merit Fellowship or Distinguished Fellowship grant (during the duration of the fellowship award performance period). Fellows may, subject to compliance with their institution's policy on additional employment, work on a Federal grant that has been awarded to the fellow's institution.

To satisfy the requirement that fellows devote one FTE to the fellowship work, applicants must include in their Eligibility Statement a plan for how they will fulfill the obligation to work principally on the fellowship during the term of the fellowship award. We will reject your application if you fail to include such a plan in your Eligibility Statement.

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Requirements for Registering for Grants.gov and Submitting Your Application:*

All individuals applying for a research fellowship must register at *www.Grants.gov* prior to submitting their application. To register with Grants.gov you must know the Funding Opportunity Number (FON) of the grant opportunity you are applying for. You can obtain this number by searching Grants.gov using the CFDA number, 84.133. This search will lead you to available NIDRR solicitations and identify the FON for each. You will use the FON to register in Grants.gov. Once you register with Grants.gov, to facilitate the safe and secure transfer of your application to the Department, you will be asked to create a profile with your username and password, which will be used to identify you within the system, and create an electronic signature. Details on registering with Grants.gov as an individual are outlined in the following Grants.gov tutorial: *www.grants.gov/assets/IndividualRegistrationOverview.html.*

To register with Grants.gov, you do not have to provide a Data Universal Numbering System Number, a Taxpayer Identification Number, or your Social Security Number (SSN). You also do not have to complete a Central Contractor Registry or System for Award Management registration in order to access Grants.gov or submit your application.

However, your SSN is required to complete your application for a research fellowship.

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the Research Fellowships Program, CFDA Number 84.133F–1, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Research Fellowships Program at *www.Grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133F).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format only. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material. Additional, detailed information on how to attach files is in the application instructions.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. Once the Department receives your application from Grants.gov, Grants.gov will send you a second notification indicating that the ''Grantor agency has retrieved your application'' and assigned your application a PR/Award number (a Department-specified identifying number unique to your application). These two automatic notifications from Grants.gov should not be interpreted as evidence that your application was correctly uploaded or that it is without any disqualifying errors. For instructions on how to verify that your application was submitted on time and was successfully validated as having no disqualifying errors, refer to ''Grants.gov Submission Tips'' available under News and Events on the G5 Web site at *https://www.g5.gov/int/wps/portal* or refer to Section E in the FY 2013 Application Package for New Grants under the Research Fellowships Program.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. FAX: (202) 245–7643.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.133F–1)
LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education,
Application Control Center,
Attention: (CFDA Number 84.133F–1)
550 12th Street SW., Room 7041,
Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 356.30 through 356.32 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine the extent to which grantees are conducting high-quality research and related activities that lead to high-quality products. Performance measures for the Research Fellowships Program include—

- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals;
- The percentage of grantee research and development that has appropriate study design, meets rigorous standards of scientific and/or engineering methods, and builds on and contributes to knowledge in the field; and
- The number of publications per award based on NIDRR-funded research and development activities in refereed journals.

NIDRR evaluates the overall success of individual research and development grants through a review of grantee performance and products. NIDRR uses information submitted by grantees as part of their final performance report for these reviews. Approved final performance report guidelines require grantees to submit information regarding research methods, results, outputs, and outcomes. Because grants made under the Research Fellowships Program are limited to a maximum of 12 months, they are not eligible for continuation awards.

VII. Agency Contact

For Further Information Contact: Either Lynn Medley or Marlene Spencer as follows: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by email: *lynn.medley@ed.gov.* Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a TDD or a TTY, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced

search feature at this site, you can limit your search to documents published by the Department.

Dated: January 14, 2013.

Michael Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–00940 Filed 1–16–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, February 13, 2013, 6:00 p.m.

ADDRESSES: Department of Energy Information Center, Office of Science and Technical Information, 1 Science.gov Way, Oak Ridge, Tennessee 37830.

FOR FURTHER INFORMATION CONTACT: Melyssa P. Noe, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 241–3315; Fax (865) 576–0956 or email: *noemp@oro.doe.gov* or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Welcome and Announcements
- Comments from the Deputy Designated Federal Officer
- Comments from the DOE, Tennessee Department of Environment and Conservation, and Environmental Protection Agency Liaisons
- Public Comment Period
- Fiscal Year 2015 Oak Ridge EM Budget and Prioritization Presentation
- Additions/Approval of Agenda
- Motions/Approval of January 9, 2013 Meeting Minutes
- Status of Recommendations with DOE
- Committee Reports
- Federal Coordinator Report
- Adjourn

Public Participation: The EM SSAB, Oak Ridge, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Melyssa P. Noe at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to the agenda item should contact Melyssa P. Noe at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Melyssa P. Noe at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.oakridge.doe.gov/em/ssab/minutes.htm.*

Issued at Washington, DC on January 11, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–00905 Filed 1–16–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–13–000]

Dominion Transmission, Inc.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Natrium to Market Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Natrium to Market Project (Project) involving construction and operation of facilities by Dominion Transmission, Inc. (Dominion) in Greene and Westmoreland County, Pennsylvania. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Details on how to submit written comments are in the Public Participation section of this notice. Please note that the scoping period will close on February 11, 2013.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Dominion provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Dominion proposes to construct and operate the Natrium to Market Project to provide 185,000 dekatherms per day of firm natural gas transportation service to Texas Eastern Transmission, LP.

The project would consist of the following facilities:

- A new 7,700-horsepower (hp) gas turbine/compressor package and auxiliary equipment at Dominion's existing Crayne Compressor Station in Greene County, Pennsylvania;
- Upgraded measurement and regulation (M&R) facilities, referred to as the Crayne II M&R facility, located near Dominion's existing Crayne Compressor Station; and
- Modification of existing regulators, installation of a jumper line, and overpressure regulation on pipelines within the grounds of the existing J.B. Tonkin Compressor Station in Westmoreland County, Pennsylvania.

The general location of the project facilities is shown in appendix 1.[1]

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

Land Requirements for Construction

Construction of the proposed facilities would disturb about 42 acres of land. All disturbed areas would be within existing facilities, with the exception of a 10-acre contractor yard and the Crayne II M&R facility. Approximately 2.42 acres of Dominion-owned land would be converted from open and forested land to industrial use for construction and operation of the Crayne II M&R facility.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Cumulative impacts; and
- Public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Pennsylvania State Historic Preservation Office (SHPO), and to solicit its views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before February 11, 2013.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP13–13–000) 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 interested persons to submit brief, text-only comments on a project;

(2) You can 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.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are located under the *Help* link on the Commission's Web site, by clicking on ''*How to Intervene.*''

Additional Information

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 at *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., CP13–13). 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 now 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.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: January 10, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00901 Filed 1–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. UL11–1–000; Project No. 2299–078]

Turlock Irrigation District and Modesto Irrigation District; Notice Clarifying Party Status

On January 9, 2013, the Modesto Irrigation District (Modesto) filed a motion for clarification of party status or, in the alternative, for intervention in the above-captioned jurisdictional proceeding with respect to the La Grange Project. In its December 19, 2012 *Order Finding Licensing of Hydroelectric Project Required,* 141 FERC ¶ 62,211 (2012), Commission staff imposed filing requirements on Modesto and included Modesto in the caption of the Order. In addition, Modesto is part owner of the La Grange Dam. Therefore, the Commission clarifies that Modesto is a party to the jurisdictional proceeding.

Dated: January 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00900 Filed 1–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14451–000]

Archon Energy 1, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On August 30, 2012, Archon Energy 1, Inc., filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Crocker-Huffman Diversion Dam Hydroelectric Project (Crocker-Huffman Project or project) to be located on the Merced River, near the town of Merced, in Merced County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be located at the existing Crocker-Huffman diversion dam and would consist of the following: (1) A 70-foot-long, 55-foot-wide, and 35-foot-high, turbine structure containing a powerhouse with 5 screw turbine generating units; (2) a gated water intake canal, located upstream of the dam; and (3) a 75-foot-wide and 150-foot-long concrete diversion trough structure. The estimated annual generation of the Crocker-Huffman Project would be 10 gigawatt-hours.

Applicant Contact: Mr. Paul Grist, President, Archon Energy 1, Inc., 101 E. Kennedy Blvd. Suite 2800, Tampa, FL 33602; phone: (415) 377–2460.

FERC Contact: Matt Buhyoff; phone: (202) 502–6824.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14451) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: January 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00903 Filed 1–16–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–35–000]

Columbia Gas Transmission, LLC; Notice of Request Under Blanket Authorization

Take notice that on January 7, 2013, Columbia Gas Transmission, LLC (Columbia) 5151 San Felipe, Suite 2500, Houston, Texas 77056, filed in Docket No. CP13–35–000, an application pursuant to sections 157.205, 157.213(b), and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to abandon one underperforming natural gas storage well and associated facilities in Guernsey County, Ohio, and convert and abandon certain natural gas storage facilities in Kanawha County, West Virginia, under Columbia's blanket certificate issued in Docket No. CP83–76–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Columbia proposes to abandon the historically underperforming Guernsey Well 8161 together with the associated well pipeline (Line SOW–8161) and appurtenances located in the Guernsey Storage Field, in Guernsey County, Ohio. Columbia also proposes to convert the underperforming Lanham Storage Well No. 7137 from active injection/withdrawal status to observation status and abandon the associated X–2–W7137 pipeline and appurtenances located in the Lanham Storage Field in Kanawha County, West Virginia. Columbia does not propose to abandon any natural gas service; however, Columbia would terminate service to one free gas customer pursuant to the terms of the lease agreement between the customer and Columbia. Columbia estimates that it would cost $1,700,000 to replace the facilities that Columbia proposes to retire in this proceeding.

Any questions concerning this application may be directed to Fredric J. George, Senior Counsel, Columbia Gas Transmission, LLC, P.O. Box 1273, Charleston, West Virginia 25325–1273 or via telephone at (304) 357–2359 or by facsimile (304) 357–3206.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Dated: January 11, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–00902 Filed 1–16–13; 8:45 am]

BILLING CODE 6717–01–P

[1] 22 FERC ¶ 62,029 (1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS13–17–000]

Enbridge Energy, Limited Partnership; Notice of Technical Conference

The Commission's December 20, 2012 Order in the above-captioned proceeding [1] directed that a technical conference be held to address issues raised by Enbridge Energy, Limited Partnership's proposed revision to its downstream Nomination Verification Procedure.

Take notice that a technical conference will be held on Wednesday, February 6, 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 are permitted to attend. For further information please contact Andrew Knudsen at (202) 502–6527 or email *Andrew.Knudsen@ferc.gov*.

Dated: January 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00891 Filed 1–16–13; 8:45 am]

BILLING CODE 6717–01–P

[1] *Enbridge Energy, Limited Partnership,* 141 FERC ¶ 61,246 (2012).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9526–4]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Rick Westlund (202) 566–1682, or email at *westlund.rick@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR Number 1973.05; Cooling Water Intake Structures—New Facility (Renewal); 40 CFR 122.21(r); 40 CFR 125.86–125.89; was approved on 12/07/2012; OMB Number 2040–0241; expires on 12/31/2015; Approved without change.

EPA ICR Number 1791.06; Establishing No-Discharge Zones Under Clean Water Act Section 312 (Renewal); 40 CFR parts 140 and 1700; was approved on 12/07/2012; OMB Number 2040–0187; expires on 12/31/2015; Approved without change.

EPA ICR Number 1816.05; EPA Strategic Plan Information on Source

Water Protection (Renewal); was approved on 12/07/2012; OMB Number 2040–0197; expires on 12/31/2015; Approved without change.

EPA ICR Number 0002.15; National Pretreatment Program (Renewal); 40 CFR part 105; 40 CFR 122.41, 122.42, 123.24, 123.62, 403.1–403.20; 40 CFR 430.02, 40 CFR part 437; 40 CFR 442.15, 442.16, 442.25, 442.26, 455.41; was approved on 12/07/2012; OMB Number 2040–0009; expires on 12/31/2015; Approved without change.

EPA ICR Number 2048.04; BEACH Act Grant Program (Renewal); was approved on 12/07/2012; OMB Number 2040–0244; expires on 12/31/2015; Approved without change.

EPA ICR Number 0988.11; Water Quality Standards Regulation (Renewal); 40 CFR 131.6–131.8, 131.20–131.22, 131.31–131.36; and 40 CFR part 132; was approved on 12/07/2012; OMB Number 2040–0049; expires on 12/31/2015; Approved without change.

EPA ICR Number 1896.09; Disinfectants/Disinfection Byproducts, Chemical and Radionuclides (Renewal); 40 CFR 141.14, 141.23(a)–(d), 141.24, 141.26; 141.31(a)–(c) and (e), 141.33(a)–(d), 141.42, 141.43, 141.75, 141.80–141.91, 141.111, 141.130–141.132, 141.134, 141.135, 141.601, 141.626; 40 CFR 142.14, 142.15, 142.16; was approved on 12/07/2012; OMB Number 2040–0204; expires on 12/31/2015; Approved without change.

EPA ICR Number 1363.22; Toxic Chemical Release Reporting; 40 CFR part 372; was approved on 12/10/2012; OMB Number 2025–0009; expires on 10/31/2014; Approved without change.

EPA ICR Number 1428.09; Trade Secret Claims for Emergency Planning and Community Right-to-Know Act (Renewal); 40 CFR part 350; was approved on 12/11/2012; OMB Number 2050–0078; expires on 12/31/2015; Approved without change.

EPA ICR Number 2332.03; NESHAP for Aluminum, Copper, and Other Non-Ferrous Foundries; 40 CFR part 63 subparts A and ZZZZZZ; was approved on 12/11/2012; OMB Number 2060–0630; expires on 12/31/2015; Approved without change.

EPA ICR Number 1285.08; Nonconformance Penalties for Heavy-Duty Engines and Heavy-Duty Vehicles, including Light-Duty Trucks; 40 CFR part 86 subpart L; was approved on 12/13/2012; OMB Number 2060–0132; expires on 12/31/2015; Approved with change.

EPA ICR Number 1803.06; Drinking Water State Revolving Fund Program (Renewal); 40 CFR 35.3545, 35.3550 and 35.3570; was approved on 12/17/2012; OMB Number 2040–0185; expires on 12/31/2015; Approved with change.

EPA ICR Number 0574.15; Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances; 40 CFR parts 700, 720, 721, 723, 725; was approved on 12/21/2012; OMB Number 2070–0012; expires on 12/31/2015; Approved without change.

EPA ICR Number 1715.13; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting (Renewal); 40 CFR part 745; was approved on 12/21/2012; OMB Number 2070–0155; expires on 12/31/2015; Approved with change.

EPA ICR Number 1395.08; Emergency Planning and Release Notification Requirements under Emergency Planning and Community Right-to-Know Act Sections 302, 303, and 304 (Renewal); 40 CFR part 355; was approved on 12/27/2012; OMB Number 2050–0092; expires on 12/31/2015; Approved without change.

EPA ICR Number 1656.14; Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under Section 112(r) of the Clean Air Act (Renewal); 40 CFR part 68; was approved on 12/27/2012; OMB Number 2050–0144; expires on 12/31/2015; Approved without change.

EPA ICR Number 1426.10; EPA Worker Protection Standards for Hazardous Waste Operations and Emergency Response (Renewal); 40 CFR part 311; was approved on 12/27/2012; OMB Number 2050–0105; expires on 12/31/2015; Approved without change.

EPA ICR Number 2032.07; NESHAP for Hydrochloric Acid Production; 40 CFR part 63 subparts A and NNNNN; was approved on 12/27/2012; OMB Number 2060–0529; expires on 12/31/2015; Approved without change.

EPA ICR Number 0229.20; National Pollutant Discharge Elimination System (NPDES) Program (Renewal); 40 CFR 122.21, 122.26, 122.41, 122.42, 122.44, 122.45, 122.47, 122.48, 122.62, 122.63, 123.21–123.29, 123.35, 123.43–123.45, 123.62–123.64, 124.5, 124.53, 124.54, 131.1, 131.5 and 131.21; 40 CFR part 132; 40 CFR 403.17 and 403.18; 40 CFR parts 423, 430, 434, 435, 439 and 501; 40 CFR 465.03, 466.03 and 467.03; was approved on 12/27/2012; OMB Number 2040–0004; expires on 12/31/2015; Approved without change.

EPA ICR Number 2034.05; NESHAP for the Wood Products Surface Coating Industry; 40 CFR part 63 subparts A and QQQQ; was approved on 12/27/2012; OMB Number 2060–0510; expires on 12/31/2015; Approved without change.

EPA ICR Number 0113.11; NESHAP for Mercury; 40 CFR part 61 subparts A and E; was approved on 12/27/2012; OMB Number 2060–0097; expires on 12/31/2015; Approved without change.

EPA ICR Number 0663.11; NSPS for Beverage Can Surface Coating; 40 CFR part 60 subparts A and WW; was approved on 12/28/2012; OMB Number 2060–0001; expires on 12/31/2015; Approved without change.

EPA ICR Number 1156.12; NSPS for Synthetic Fiber Production Facilities; 40 CFR part 60 subparts A and HHH; was approved on 12/28/2012; OMB Number 2060–0059; expires on 12/31/2015; Approved without change.

EPA ICR Number 0659.12; NSPS for Surface Coating of Large Appliances; 40 CFR part 60 subparts A and SS; was approved on 12/28/2012; OMB Number 2060–0108; expires on 12/31/2015; Approved without change.

EPA ICR Number 1894.07; NESHAP for Secondary Aluminum Production; 40 CFR part 63 subparts A and RRR; was approved on 12/28/2012; OMB Number 2060–0433; expires on 12/31/2015; Approved without change.

EPA ICR Number 2452.02; NESHAP for Pulp and Paper Production; 40 CFR part 63 subparts A and S; was approved on 12/28/2012; OMB Number 2060–0681; expires on 12/31/2015; Approved without change.

EPA ICR Number 1611.10; NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; 40 CFR part 63 subparts A and N; was approved on 12/28/2012; OMB Number 2060–0327; expires on 12/31/2015; Approved without change.

EPA ICR Number 0649.11; NSPS for Metal Furniture Coating; 40 CFR part 60 subparts A and EE; was approved on 12/28/2012; OMB Number 2060–0106; expires on 12/31/2015; Approved without change.

EPA ICR Number 1952.05; NESHAP for Metal Furniture Surface Coating; 40 CFR part 63 subparts A and RRRR; was approved on 12/28/2012; OMB Number 2060–0518; expires on 12/31/2015; Approved without change.

John Moses,

Director, Collections Strategies Division.

[FR Doc. 2013–00865 Filed 1–16–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:14 a.m. on Tuesday, January 15, 2013, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), Director Thomas J. Curry (Comptroller of the Currency), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street NW., Washington, DC.

Dated: January 15, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–01009 Filed 1–15–13; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503.

Final approval under OMB delegated authority of the revision, without extension, of the following reports:

Report title: Consolidated Financial Statements for Bank Holding Companies.

Agency form number: FR Y–9C.

OMB control number: 7100–0128.

Frequency: Quarterly.

Effective Date: March 31, 2013

Reporters: Bank holding companies (BHCs).

Estimated annual reporting hours: 210,808 hours.

Estimated average hours per response: 45.59 hours.

Number of respondents: 1,156.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c)). Confidential treatment is not routinely given to the data in this report. However, confidential treatment for the reporting information, in whole or in part, can be requested in accordance with the instructions to the form, pursuant to sections (b)(4), (b)(6) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4), (b)(6) and (b)(8)).

Abstract: The FR Y–9 family of reports historically has been, and continues to be, the primary source of financial information on BHCs between on-site inspections. Financial information from these reports is used to detect emerging financial problems, to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate BHC mergers and acquisitions, and to analyze a BHC's overall financial condition to ensure safe and sound operations.

The FR Y–9C consists of standardized financial statements similar to the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036) filed by commercial banks. The FR Y–9C collects consolidated data from top-tier BHCs with total consolidated assets of $500 million or more. (Under certain circumstances defined in the General Instructions, BHCs under $500 million may be required to file the FR Y–9C.)

Current Actions: On November 21, 2011, the Federal Reserve published a notice in the **Federal Register** (77 FR 71968) requesting public comment for 60 days on the proposed changes to the FR Y–9C. The comment period expired on January 20, 2012.

The Federal Reserve received comment letters from six entities on proposed revisions to the FR Y–9C: two banking organizations, two bankers' associations, a commercial lending software company, and a news organization. In addition, the Federal Reserve, FDIC, and OCC (the banking agencies) received these six comment letters and two additional comment letters from banking organizations on proposed revisions to the Consolidated Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100–0036), which parallel proposed revisions to the FR Y–9C and were taken into consideration for this proposal.

On March 16, 2012, the Federal Reserve published a final notice in the **Federal Register** (77 FR 15755) announcing the implementation of reporting changes and instructional revisions, effective as of March 31, 2012. The Federal Reserve also announced the implementation of revisions to two existing schedules proposed for implementation as of June 30, 2012. The Federal Reserve further announced the deferred implementation of Schedule HC–U, Loan Origination Activity (in Domestic Offices), and new Schedule HI–C, Disaggregated Data on the Allowance for Loan and Lease Losses (ALLL), both of which were originally proposed to be added to the FR Y–9C report effective June 30, 2012. Three banking organizations and the two bankers' associations addressed proposed Schedule HI–C, and all eight commenters addressed proposed Schedule HC–U. The Federal Reserve announced they were continuing to evaluate these proposed new schedules in light of the comments received. The

Federal Reserve now has completed the evaluation of proposed Schedules HI–C and HC–U.

Detailed Discussion of Public Comments

A. Proposed Schedule HI–C

As proposed, new Schedule HI–C, Disaggregated Data on the Allowance for Loan and Lease Losses, filed by institutions with total assets of $1 billion or more, would collect a breakdown by key loan category of the end-of-period ALLL disaggregated on the basis of impairment method and the end-of-period recorded investment in held-for-investment loans and leases related to each ALLL balance. Commenters expressed the general concern that the proposed disaggregated ALLL data in Schedule HI–C are not aligned with the manner in which institutions estimate and maintain their ALLL. Although Financial Accounting Standards Board (FASB) Accounting Standards Update No. 2010–20, Disclosures about the Credit Quality of Financing Receivables and the Allowance for Credit Losses (ASU 2010–20), requires entities to disclose the ALLL at the portfolio segment level, institutions define segments differently than proposed for Schedule HI–C. According to the commenters, modifying systems to report ALLL information categorized as proposed would be costly and necessitate significant lead time, up to nine months, to implement. One commenter also recommended increasing the asset size threshold for institutions to report this schedule, proposed to be collected from institutions with $1 billion or more in total assets, to $5 billion or $10 billion in total assets.

Two commenters recommended a more streamlined approach requiring disclosure of fewer loan categories, thereby allowing the banking agencies to achieve their stated objective and permit institutions to report data consistently with the business models and methodologies used to estimate their ALLL. One of these commenters recommended collapsing the proposed nine loan categories and collecting ALLL and the related recorded investment amounts by impairment measurement method for only three segments: consumer credit cards, all other consumer loans, and commercial loans. The second commenter recommended reporting ALLL and the related recorded investment amounts by impairment measurement method for five loan categories: commercial real estate, residential real estate, commercial, credit cards, and other consumer. The second commenter also favored retaining the reporting of any unallocated portion of the ALLL as had been proposed. Implicit in both of these commenters' recommendations is the concept that the definitions for the loan categories in Schedule HI–C should be those the reporting institution uses in its ALLL methodology rather than those specified in Schedule HC–C, Loans and Lease Financing Receivables.

After consideration of the comments received on the proposed disaggregation of ALLL information, the Federal Reserve will modify the proposed Schedule HI–C to collect ALLL and the related recorded investment amounts by impairment measurement method for the loan categories (and any unallocated portion of the ALLL) based on the second approach described in the preceding paragraph, but with the addition of a loan category for real estate construction loans. The Federal Reserve considers it appropriate to segregate construction loans from other commercial real estate loans because the risk characteristics of the former differ significantly from those of the latter. The Federal Reserve believes this more streamlined approach to proposed Schedule HI–C, including its use of general loan categories rather than specifically defined categories, would be more consistent with the methodologies institutions currently employ in determining the appropriate level for their overall ALLL and meeting the disclosure requirements of ASU 2010–20. At the same time, the data that would be reported in Schedule HI–C, as modified, should be sufficient to enable the Federal Reserve to more finely focus their analyses related to the composition of an institution's ALLL and the changes therein over time. In this regard, to aid in evaluating the appropriateness of the reported level of an institution's ALLL (for example, in periods between examinations and when planning for examinations), the disaggregated ALLL data by loan category could be reviewed in conjunction with the past due and nonaccrual loan data used in general assessments of the credit quality of an institution's loan portfolio. These credit quality data are currently reported for broadly similar, but not identical, loan categories in Schedule HC–N, Past Due and Nonaccrual Loans, Leases, and Other Assets.

The Federal Reserve will retain the proposed $1 billion total asset threshold for Schedule HI–C, which exempts 51 percent of all FR Y–9C respondents from this reporting requirement. Given that institutions with $1 billion or more in total assets hold 97 percent of the ALLL balances held by all FR Y–9C respondents as of June 30, 2012, retaining this reporting threshold as proposed will enable the Federal Reserve to perform a more comprehensive and decision-useful analysis of the depository institution system, particularly in providing a better understanding of how institutions' ALLL practices and allocations differ for particular loan categories as economic conditions change. Furthermore, all institutions with $1 billion or more in total assets are subject to regulations requiring them to prepare annual financial statements in accordance with U.S. generally accepted accounting principles. Accordingly, such institutions should have processes in place to develop the disaggregated ALLL data required to be disclosed by ASU 2010–20, which are comparable to the data specified by Schedule HI–C as modified in response to comments.

The Federal Reserve will implement new Schedule HI–C as-of the March 31, 2013, report date. Consistent with longstanding practice, for the March 31, 2013, report date, the Federal Reserve will allow institutions to provide reasonable estimates for any Schedule HI–C item for which the requested information is not readily available.

B. Proposed Schedule HC–U

As proposed, new Schedule HC–U, Loan Origination Activity (in Domestic Offices), for institutions with total assets of $500 million or more, would collect, separately for several loan categories, the quarter-end amount of loans (in domestic offices) reported in Schedule HC–C, Loans and Lease Financing Receivables, that was originated during the quarter, and for institutions with total assets of $1 billion or more would also collect for these loan categories the portions of the quarter-end amount of loans originated during the quarter that were (a) originated under a newly established loan commitment and (b) not originated under a loan commitment. As highlighted by the recent financial crisis and its aftermath, the ability to assess credit availability is a key consideration for monetary policy, financial stability, and the supervision and regulation of the banking system. The Federal Reserve proposed to collect this information to more accurately monitor the extent to which depository institutions are providing credit to households and businesses.

Commenters expressed a general concern that their loan reporting systems were not designed to classify gross loan originations in the manner that was proposed, and that it would be extremely burdensome to modify

systems to produce this information. Some commenters also questioned whether the Federal Reserve's Capital Assessments and Stress Testing reports (FR Y–14A, FR Y–14Q, FR Y–14M; collectively the FR Y–14 reports; OMB No. 7100–0341) could be utilized to collect this information. In light of these comments, the Federal Reserve has determined not to pursue implementation of this proposed schedule at this time.

Board of Governors of the Federal Reserve System January 14, 2013.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2013–00928 Filed 1–16–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 1, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Trident SBI Holdings, L.P., Trident SBI GP Holdings, LLC, Trident V, L.P., Trident V Parallel Fund, L.P., Trident V Professionals Fund, L.P., Trident Capital V, L.P., Trident Capital V–PF, L.P., Stone Point Capital LLC, Stone Point GP Ltd, SPC Management Holdings, LLC, CD Trident V, LLC, MH Trident V, LLC, JC Trident V, LLC, DW Trident V, LLC, NZ, Trident V, LLC, Charles A. Davis, all of Greenwich, Connecticut, James D. Carey, Riverside, Connecticut, Meryl D. Hartzband and David J. Wermuth, both of New York, New York, and Nicholas D. Zerbib,* Larchmont, New York; to acquire 10 percent or more of the voting shares of Standard Bancshares, Inc., and thereby indirectly acquire voting shares of Standard Bank and Trust Company, both in Hickory Hills, Illinois.

Board of Governors of the Federal Reserve System, January 14, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–00915 Filed 1–16–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Los Alamos National Laboratory (LANL), in Los Alamos, New Mexico, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 7, 2012, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Los Alamos National Laboratory (LANL) in Los Alamos, New Mexico from January 1, 1976, through December 31, 1995, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on January 6, 2013, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on January 6, 2013, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2013–00925 Filed 1–16–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Nuclear Metals, Inc. facility in West Concord, Massachusetts, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 7, 2012, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked at the facility owned by Nuclear Metals, Inc. (or a subsequent owner) in West Concord, Massachusetts, during the period from October 29, 1958, through December 31, 1979, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation became effective on January 6, 2013, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on January 6, 2013, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2013–00923 Filed 1–16–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from the Mound Plant, in Miamisburg, Ohio, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 7, 2012, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked at the Mound Plant in Miamisburg, Ohio, from September 1, 1972, through December 31, 1972, or from January 1, 1975, through December 31, 1976, for a number of work days aggregating at least 250 work days, occurring either solely under this employment or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on January 6, 2013, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on January 6, 2013, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2013–00920 Filed 1–16–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Final Effect of Designation of a Class of Employees for Addition to the Special Exposure Cohort

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HHS gives notice concerning the final effect of the HHS decision to designate a class of employees from Oak Ridge National Laboratory (X–10), in Oak Ridge, Tennessee, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On December 7, 2012, as provided for under 42 U.S.C. 7384q(b), the Secretary of HHS designated the following class of employees as an addition to the SEC:

All employees of the Department of Energy, its predecessor agencies, and their contractors and subcontractors who worked in any area at the Oak Ridge National Laboratory (X–10) in Oak Ridge, Tennessee, from June 17, 1943, through July 31, 1955, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees in the Special Exposure Cohort.

This designation became effective on January 6, 2013, as provided for under 42 U.S.C. 7384*l*(14)(C). Hence, beginning on January 6, 2013, members of this class of employees, defined as reported in this notice, became members of the SEC.

FOR FURTHER INFORMATION CONTACT: Stuart L. Hinnefeld, Director, Division of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV*.

John Howard,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 2013–00924 Filed 1–16–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10142 and CMS–R–262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by the Centers for Medicare & Medicaid Services (CMS).

Title I of the MMA established a program to offer prescription drug benefits to Medicare enrollees through Prescription Drug Plans. MMA Title II revised several aspects of the Medicare+Choice program (renamed Medicare Advantage), including the payment methodology and the introduction of ''Regional'' MA plans. CMS payments to PDPs and MA plans will be on a market-based competitive approach.

MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The information provided in the BPT is the basis for the plan's enrollee premiums and CMS payments for each contract year. The tool collects data such as medical expense development (from claims data and/or manual rating), administrative expenses, profit levels, and projected plan enrollment information. By statute, completed BPTs are due to CMS by the first Monday of June each year.

CMS reviews and analyzes the information provided on the Bid Pricing Tool. Ultimately, CMS decides whether to approve the plan pricing (i.e., payment and premium) proposed by each organization. CMS is requesting to

continue its use of the BPT for the collection of information for CY2014 through CY2016. *Form Number:* CMS–10142 (OCN: 0938–0944); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 555; *Total Annual Responses:* 4,995; *Total Annual Hours:* 149,850. (For policy questions regarding this collection contact Diane Spitalnic at 410–786–5745. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Plan Benefit Package (PBP) and Formulary Submission for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the Plan Benefit Package (PBP) software, formulary file, and supporting documentation, as necessary. MA and PDP organizations use the PBP software to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. They also generate a formulary to describe their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits. Additionally, CMS uses the PBP and formulary data to review and approve the plan benefit packages proposed by each MA and PDP organization.

After receiving OMB clearance in spring 2000, CMS implemented the PBP as part of the Contract Year (CY) 2001 Adjusted Community Rate Proposal (ACRP) process. In addition, information collected via the PBP and formulary has been used to support the marketing material review process, the National Medicare Education Program, and other program oversight and development activities. For instance, the PBP software automatically generates the standardized sentences for the Summary of Benefits (SB) by using the plan benefit package data entered into the PBP software by the organization's user. These standardized sentences are used by the MA organizations in their SB marketing materials and by CMS to generate plan benefits data for display in the *Medicare & You* handbook and on the *www.medicare.gov* Web site.

CMS is requesting to continue its use of the PBP software and formulary submission for the collection of benefits and related information for CY 2014 through CY 2016. CMS estimates that 578 MA organizations and 63 PDP organizations will be required to submit the plan benefit package information in CY 2014. Based on operational changes and policy clarifications to the Medicare program and continued input and feedback by the industry, CMS has made the necessary changes to the plan benefit package submission. *Form Number:* CMS–R–262 (OCN: 0938–0763); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 641; *Total Annual Responses:* 6,169; *Total Annual Hours:* 56,708. (For policy questions regarding this collection contact Kristy Holtje at 410–786–2209. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on February 19, 2013. OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, *Fax Number:* (202) 395–6974, *Email: OIRA_submission@omb.eop.gov.*

Dated: January 11, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–00858 Filed 1–16–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10437]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Generic Social Marketing & Consumer Testing Research; *Use:* The purpose of this submission is to request an Information Collection Request (ICR) generic clearance for a program of consumer research aimed at a broad audience of those affected by CMS programs including Medicare, Medicaid, Children's Health Insurance Program (CHIP), and health insurance exchanges. This program extends strategic efforts to reach and tailor communications to beneficiaries, caregivers, providers, stakeholders, and any other audiences that would support the Agency in improving the functioning of the health care system, improve patient care and outcomes, and reduce costs without sacrificing quality of care. With the clearance, CMS will create a fast track, streamlined, proactive process for collection of data and utilizing the feedback on service delivery for continuous improvement of communication activities aimed at diverse CMS audiences.

The generic clearance will allow rapid response to inform CMS initiatives using a mixture of qualitative and quantitative consumer research strategies (including formative research studies and methodological tests) to improve communication with key CMS audiences. As new information resources and persuasive technologies are developed, they can be tested and evaluated for beneficiary response to the materials and delivery channels. Results will inform communication development and information architecture as well as allow for continuous quality improvement. The overall goal is to maximize the extent to which consumers have access to useful sources of CMS program information in

a form that can help them make the most of their benefits and options

The activities under this clearance involve social marketing and consumer research using samples of self-selected customers, as well as convenience samples, and quota samples, with respondents selected either to cover a broad range of customers or to include specific characteristics related to certain products or services. All collection of information under this clearance will utilize a subset of items drawn from a core collection of customizable items referred to as the Social Marketing and Consumer Testing Item Bank. This item bank is designed to establish a set of pre-approved generic question that can be drawn upon to allow for the rapid turn-around consumer testing required for CMS to communicate more effectively with its audiences. The questions in the item bank are divided into two major categories. One set focuses on characteristics of individuals and is intended primarily for participant screening and for use in structured quantitative on-line or telephone surveys. The other set is less structured and is designed for use in qualitative one-on-one and small group discussions or collecting information related to subjective impressions of test materials. A Study Initiation Request Form detailing each specific study (description, methodology, estimated burden) conducted under this clearance will be submitted before any testing is initialed. Results will be compiled and disseminated so that future communication can be informed by the testing results. We will use the findings to create the greatest possible public benefit. *Form Number:* CMS–10437 (OCN: 0938–New); *Frequency:* Yearly; *Affected Public:* Individuals. *Number of Respondents:* 41,592. *Number of Responses:* 28,800. *Total Annual Hours:* 21,488. (For policy questions regarding this collection contact Chris Koepke at 410–786–5877. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by March 18, 2013:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ___, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: January 11, 2013.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2013–00860 Filed 1–16–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0007]

Generic Drug User Fee—Active Pharmaceutical Ingredient and Finished Dosage Form Facility Fee Rates for Fiscal Year 2013

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the rate for the generic drug active pharmaceutical ingredient (API) and finished dosage form (FDF) facilities user fees for fiscal year (FY) 2013. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Generic Drug User Fee Amendments of 2012 (GDUFA), enacted the Food and Drug Administration Safety and Innovation Act, as further amended by the FDA User Fee Corrections Act of 2012, authorizes FDA to assess and collect user fees for certain applications and supplements associated with human generic drug products, on applications in the backlog as of October 1, 2012, on finished dosage form (FDF) and active pharmaceutical ingredient (API) facilities, and on Type II API drug master files (DMF) to be made available for reference. GDUFA directs FDA to establish each year the generic drug user fee rates for the upcoming year. In the first year of GDUFA (FY 2013), some rates will be published in separate **Federal Register** notices because of the timing specified in the statute. Each year thereafter the GDUFA fee rates will be published 60 days before the start of the fiscal year. This document establishes the FY 2013 rate for API and FDF facility fees. These fees are due on March 4, 2013.

FOR FURTHER INFORMATION CONTACT: David Miller, Office of Financial Management (HFA–100), Food and Drug Administration, 1350 Piccard Dr., PI50, Rm. 210J, Rockville, MD 20850, 301–796–7103.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 744A and 744B of the FD&C Act, as added by GDUFA (21 U.S.C. 379j–41 and 379j–42), establish user fees associated with human generic drug products. Fees are assessed on: (1) Certain applications in the backlog as of October 1, 2012; (2) certain types of applications and supplements associated with human generic drug products; (3) certain facilities where human generic drug APIs and FDFs are produced; and (4) certain Type II API DMFs associated with human generic drug products. This notice focuses on the API and FDF facility fees.

II. Fee Revenue Amount for FY 2013

The total fee revenue amount for FY 2013 is $299,000,000, as set in the statute. GDUFA directs FDA to use the yearly revenue amount as a starting point to set the fees. GDUFA states that the backlog fee will make up $50,000,000 of the total revenue collected for FY 2013. Therefore, the rest of the fees will make up a percentage of the remaining $249,000,000 of the total fee revenue. For more information about GDUFA, please refer to the FDA Web site (*http://www.fda.gov/gdufa*). The API and FDF facility fee calculations for FY 2013 are described in this document.

III. Foreign Differential

Under GDUFA, the fee for a facility located outside the United States and its territories and possessions shall be not less than $15,000 and not more than $30,000 higher than the amount of the fee for a facility located in the United States and its territories and possessions, as determined by the Secretary. The basis for this differential is the extra cost incurred by conducting an inspection outside the United States and its territories and possessions. For FY 2013 FDA has determined that the differential for foreign facilities will be $15,000. The differential may be adjusted in future years.

IV. FDF Facility Fee

Under GDUFA, the annual FDF facility fee is owed by each person that owns a facility which is identified or intended to be identified, in at least one generic drug submission that is pending or approved, to produce one or more finished dosage forms of the human generic drug. These fees are due no later than 45 days after the publication of this notice. Section 744B(b)(2)(C) of the FD&C Act specifies that the FDF facility fee revenue will make up 56 percent of the remaining $249,000,000, which is $139,440,000.

In order to calculate the FDF fee, FDA has used the data submitted by generic drug facilities through the self-identification process mandated in the GDUFA statute and specified in a Notice of Requirement published on October 2, 2012. The total number of FDF facilities identified through self-identification was 758. Of the total facilities identified as FDF, there were 325 domestic facilities and 433 foreign facilities. The foreign facility differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (433) to determine the total fees that will result from the foreign facility differential. As a result of that calculation the foreign fee differential will make up $6,495,000 of the total FDF fee revenue. Subtracting the foreign facility differential fee revenue ($6,495,000) from the total FDF facility target revenue ($139,440,000) results in a remaining fee revenue balance of $132,945,000. To determine the domestic FDF facility fee, we divide the $132,945,000 by the total number of facilities (758) which gives us a domestic FDF facility fee of $175,389. The foreign FDF facility fee is $15,000 more than the domestic FDF facility fee, or $190,389.

V. API Facility Fee

Under GDUFA, the annual API facility fee is owed by each person that owns a facility which produces, or which is pending review to produce, one or more active pharmaceutical ingredients identified, or intended to be identified, in at least one generic drug submission that is pending or approved or in a Type II active pharmaceutical ingredient drug master file referenced in such generic drug submission. These fees are due no later than 45 days after the publication of this notice. Section 744B(b)(2)(D) of the FD&C Act specifies that the API facility fee will make up 14 percent of the remaining $249,000,000 fee revenue, which is $34,860,000.

In order to calculate the API fee, FDA has used the data submitted by generic drug facilities through the self-identification process. Of the total facilities identified as API, there were 122 domestic facilities and 763 foreign facilities. The foreign facility differential is $15,000. In order to calculate the fee for domestic facilities, we must first subtract the fee revenue that will result from the foreign facility fee differential. We take the foreign facility differential ($15,000) and multiply it by the number of foreign facilities (763) to determine the total fees that will result from the foreign facility differential. As a result of that calculation the foreign fee differential will make up $11,445,000 of the total API fee revenue. Subtracting the foreign facility differential fee revenue ($11,445,000) from the total API facility target revenue ($34,860,000) results in a remaining balance of $23,415,000. To determine the domestic API facility fee, we divide the $23,415,000 by the total number of facilities (885) which gives us a domestic API facility fee of $26,458. The foreign API facility fee is $15,000 more than the domestic API facility fee, or $41,458.

VI. Fee Payment Options and Procedures

To make a payment of the facility fee, you must complete a Generic Drug User Fee Cover Sheet, available on the FDA Web site (*http://www.fda.gov/gdufa*) and generate a user fee payment identification (ID) number. Payment must be made in U.S. currency drawn on a U.S. bank by electronic check, check, bank draft, U.S. postal money order, or wire transfer.

FDA has partnered with the U.S. Department of the Treasury to utilize Pay.gov, a Web-based payment application, for online electronic payment. The Pay.gov feature is available on the FDA Web site after completing the Generic Drug User Fee Cover Sheet, and generating the user fee payment ID number.

Please include the user fee payment ID number on your check, bank draft, or postal money order, and make payable to the order of the Food and Drug Administration. Your payment can be mailed to: Food and Drug Administration, P.O. Box 979108, St. Louis, MO 63197–9000. If checks are to be sent by a courier that requests a street address, the courier can deliver the checks to: U.S. Bank, Attention: Government Lockbox 979108, 1005 Convention Plaza, St. Louis, MO 63101. (**Note:** This U.S. Bank address is for courier delivery only.) Please make sure that the FDA post office box number (P.O. Box 979108) is written on the check, bank draft, or postal money order.

If paying by wire transfer, please reference the user fee payment ID number when completing your transfer. The originating financial institution may charge a wire transfer fee. Please ask your financial institution about the wire transfer fee and include it with your payment to ensure that your facility fee is fully paid. The account information is as follows: New York Federal Reserve Bank, U.S. Department of Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, account number: 75060099, routing number: 021030004, SWIFT: FRNYUS33, Beneficiary: FDA, 1350 Piccard Dr., Rockville, MD, 20850. The tax identification number of the Food and Drug Administration is 53–0196965.

Dated: January 11, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–00851 Filed 1–16–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project Meeting II.

Date: February 4–5, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Majed M. Hamawy, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH,

6116 Executive Boulevard, Room 8135, Bethesda, MD 20892–8328, 301–594–5659 *mh101v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project Meeting I.

Date: February 11–12, 2013.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Caterina Bianco, MD, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8134, Bethesda, MD 20892–8328, 301–496–7011 *biancoc@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI Program Project Meeting IV.

Date: February 28, 2013.

Time: 8:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott at Reagan National Airport, Salon D, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Delia Tang, MD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892–8328, 301–496–2330, *tangd@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; NCI OmniBus Review Meeting.

Date: March 11–12, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Shakeel Ahmad, Ph.D., Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8139, Bethesda, MD 20892–8328, (301) 594–0114, *ahmads@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Early-Stage Innovative Technology Development for Cancer Research (R21)

Date: March 20–21, 2013.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Jeffrey E. DeClue, Ph.D., Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8059, Bethesda, MD 20892–8329, 301–496–7904 *decluej@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel; Cancer Etiology/Genetics and Prevention.

Date: March 28–29, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8146, Bethesda, MD 20892–8329, 301–594–1566, *twinters@mail.nih.gov.*

(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: January 11, 2013.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00881 Filed 1–16–13; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS and Related Research.

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: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: January 11, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00883 Filed 1–16–13; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and Related Research.

Date: January 22, 2013.

Time: 11:00 a.m. to 1:00 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: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, 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: January 13, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00885 Filed 1–16–13; 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 Site Visit M4 (2013/05).

Date: March 6–8, 2013.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree by Hilton Hotel Tarrytown, 455 South Broadway, Tarrytown, NY 10591.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and, Bioengineering, National Institutes of Health, 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 M3 (2013/05).

Date: March 20–22, 2013.

Time: 6:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Affinia Dumont, 150 E 34th Street, New York, NY 10016.

Contact Person: Ruth Grossman, DDS, Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Room 960, Bethesda, MD 20892, 301–496–8775, *grossmanrs@mail.nih.gov.*

Dated: January 10, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00879 Filed 1–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings 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 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 Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: February 13, 2013.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: February 13, 2013.

Open: 1:00 p.m. to 2:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrine and Metabolic Diseases Subcommittee.

Date: February 13, 2013.

Open: 2:30 p.m. to 4:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: February 13, 2013.

Open: 1:00 p.m. to 3:00 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Closed: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Brent B. Stanfield, Ph.D., Director, Division of Extramural Activities, National Institutes of Diabetes and Digestive, and Kidney Diseases, 6707 Democracy Blvd. Room 715, MSC 5452, Bethesda, MD 20892, (301) 594–8843, *stanfibr@niddk.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuttles

will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: January 10, 2013.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00880 Filed 1–16–13; 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: Personality, Health and Cognitive Impairment in Later Life.

Date: February 7, 2013.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Crown Plaza Riverwalk, 111 Pecan Street, San Antonio, TX 78205.

Contact Person: Michael Micklin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Drug Discovery for the Nervous System.

Date: February 8, 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: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Neuroimmunology and Brain Tumors Special Emphasis Panel.

Date: February 11, 2013.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–408–9866, *manospa@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Modeling and Analysis of Biological Systems Study Section.

Date: February 12–13, 2013.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: Craig Giroux, Scientific Review Officer, BST IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, Bethesda, MD 20892, 301–435–2204, *girouxcn@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Societal and Ethical Issues in Research Study Section.

Date: February 14, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Karin F. Helmers, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Baltimore Marriott Waterfront, 700 Aliceanna Street, Baltimore, MD 21202.

Contact Person: Lynn E. Luethke, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 806–3323, *luethkel@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Washington DC, Dupont Circle, 1143 New Hampshire Avenue NW., Washington, DC 20037.

Contact Person: Janet M. Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, 301–806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Brain Injury and Neurovascular Pathologies Study Section.

Date: February 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: Alexander Yakovlev, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Peter B. Guthrie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Drug Discovery for the Nervous System Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21201.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Tumor Microenvironment Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Angela Y. Ng, Ph.D., MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *ngan@mail.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Epidemiology of Cancer Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: February 14, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dianne Camp, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–1044, *campdm@mail.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biomedical Computing and Health Informatics Study Section.

Date: February 15, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: 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.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Biostatistical Methods and Research Design Study Section.

Date: February 15, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Tomas Drgon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Spinal Cord Injury.

Date: February 15, 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: Seetha Bhagavan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov.*

(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: January 11, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00884 Filed 1–16–13; 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; Overflow Panel.

Date: February 12, 2013.

Time: 3:45 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

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 20892–7814, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: February 14, 2013.

Time: 7:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037.

Contact Person: Olga A Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rex, 562 Sutter Street, San Francisco, CA 94102.

Contact Person: Guangyong Ji, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Delvin R Knight, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 4128, Bethesda, MD 20892–7814, 301–435–1850, *knightdr@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Suzan Nadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Cancer Molecular Pathobiology Study Section.

Date: February 14–15, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Torrance Marriott South Bay, 3635 Fashion Way, Torrance, CA 90503.

Contact Person: Manzoor Zarger, Ph.D., Scientific Review Officer, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–2477, *zargerma@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Neurological, Aging and Musculoskeletal Epidemiology Study Section.

Date: February 14–15, 2013.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Riverwalk, 111 East Pecan Street, San Antonio, TX 20892.

Contact Person: Heidi B Friedman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1012A, MSC 7770, Bethesda, MD 20892, 301–435–1721, *hfriedman@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Infectious Diseases and Microbiology.

Date: February 14–15, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892 301–996–5819, *zhengli@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Basic Biology of Neurological Disorders.

Date: February 14, 2013.

Time: 1:00 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: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: February 15, 2013.

Time: 8:00 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina Del Rey Hotel, 13534 Bali Way, Marina Del Rey, CA 90292.

Contact Person: Yuanna Cheng, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Molecular Probes.

Date: February 15, 2013.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Mary Custer, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Cell Biology.

Date: February 15, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@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: January 11, 2013.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–00882 Filed 1–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of a Co-Exclusive License: Adenovirus-Based Controls and Calibrators for Molecular Diagnostics of Infectious Disease Agents

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services (HHS), is contemplating the grant of a worldwide co-exclusive license, to practice the inventions embodied in US patent 6,013,638 (HHS Reference# E–129–1991/0–US–03), issued January 11, 2000 and entitled ''Adenovirus Comprising Deletions on the E1A, E1B And E3 Regions for Transfer of Genes to the Lung'', and US patent 6,136,594 (HHS Reference# E–129–1991/1–US–03), issued October 24, 2000, and entitled ''Replication Deficient Recombinant Adenovirus Vector'' to Life Technologies Corporation (LTC) of Carlsbad, California. The United States of America is an assignee of the rights of the above inventions.

The field of use may be limited to the ''use of adenovirus-based recombinant constructs as controls and calibrators for molecular diagnostics for infectious disease agents.''

DATES: Only written comments and/or applications for a license received by the NIH Office of Technology Transfer on or before February 19, 2013 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Uri Reichman, Ph.D., M.B.A, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–4616; Facsimile: (301) 402–0220; Email: *Reichmau@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The invention relates to recombinant adenovirus vectors containing foreign DNA. Such vectors can be used for gene transfer, therapeutics, and protein expression. The technology can also be utilized to make calibrators and controls for molecular diagnostics (e.g. real time PCR tests).

The prospective co-exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective co-exclusive license may be granted unless, within thirty (30) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Dated: January 11, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–00878 Filed 1–16–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2012–1096]

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 approval for the following collection of information: 1625–NEW, United States Coast Guard Academy Introduction Mission Program Application and Supplemental Forms. Our ICR describe the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before March 18, 2013.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2012–1096] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT). To avoid duplicate submissions, please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251. To ensure your comments are received in a timely manner, mark the fax, to attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), ATTN Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2ND ST SW Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION: Contact Mr. Anthony Smith, Office of Information Management, telephone 202–475–3532, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2012–1096], and must be received by March 18, 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–2012–1096], 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–2012–1096'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2012–1096'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: United States Coast Guard Academy Introduction Mission Program Application and Supplemental Forms.

OMB Control Number: 1625–NEW.

Summary: This collection contains the application and all supplemental forms required to be considered as an applicant to the U.S. Coast Guard Academy Introduction Mission (AIM) Program.

Need: The information is needed to select applicants for participation in a one-week summer recruiting and training program for prospective Cadets interested in attending the U.S. Coast Guard Academy.

Forms: Online Application; High School Transcript; Personal Reference.

Respondents: Approximately 2,000 applicants apply annually to attend the AIM Program and approximately 3,000 individuals will submit letters of recommendation for these applicants.

Frequency: Applicants must apply only once per year.

Burden Estimate: The estimated burden is 9,000 annual hours.

Dated: January 10, 2013.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2013–00888 Filed 1–16–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2011–0008]

Aviation Security Advisory Committee (ASAC) Meeting

AGENCY: Transportation Security Administration, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Transportation Security Administration (TSA) will hold a meeting of the Aviation Security Advisory Committee (ASAC) on February 6, 2013, to discuss reports from its sub-committees. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, February 6, 2013, from 1:00 p.m. to 4:00 p.m. This meeting may end early if all business is completed.

Submit comments by January 30, 2013, on the reports being considered by the committee.

ADDRESSES: The meeting will be held at the Transportation Security Administration Systems Integration Facility, located at 3701 West Post Office Road, Ronald Reagan Washington National Airport (DCA), Arlington, VA 22202.

We invite your comments on the reports listed in the ''Meeting Agenda'' section below. You may submit comments on these reports, identified by the TSA docket number to this action (Docket No. TSA–2011–0008), to the Federal Docket Management System (FDMS), a government-wide, electronic docket management system, using any one of the following methods:

Electronically: You may submit comments through the Federal eRulemaking portal at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail, In Person, or Fax: Address, hand-deliver, or fax your written comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; fax (202) 493–2251. The Department of Transportation (DOT), which maintains and processes TSA's official regulatory dockets, will scan the submission and post it to FDMS.

See **SUPPLEMENTARY INFORMATION** for format and other information about comment submissions.

FOR FURTHER INFORMATION CONTACT: Dean Walter, ASAC Designated Federal Officer, Transportation Security Administration (TSA–28), 601 12th Street South, Arlington, VA 20598–4028, *Dean.Walter@dhs.gov,* 571–227–2645.

SUPPLEMENTARY INFORMATION:

Comments Invited

TSA invites interested persons to submit written comments, data or views on the Recommendation Reports to be considered by the committee as listed in the ''Meeting Summary'' section below. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from this action. See **ADDRESSES** above for information on where to submit comments.

With each comment, please identify the docket number at the beginning of your comments. TSA encourages commenters to provide their names and addresses. The most helpful comments reference a specific portion of the document, explain the reason for any recommended change and include supporting data. You may submit comments and material electronically, in person, by mail or fax as provided under **ADDRESSES**, but please submit your comments and material by only one means. If you submit comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing.

If you would like TSA to acknowledge receipt of comments submitted by mail, include with your comments a self-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

TSA will file all comments related to the sub-committee reports to our docket address, as well as items sent to the address or email under **FOR FURTHER INFORMATION CONTACT**, in the public docket, except for comments containing confidential information and sensitive security information (SSI).[1] Should you wish your personally identifiable information redacted prior to filing in the docket, please so state. TSA will consider all comments that are in the docket on or before the closing date for comments and will consider comments filed late to the extent practicable. The docket is available for public inspection before and after the comment closing date.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Do not submit comments that include trade secrets, confidential commercial or financial information, or SSI to the public regulatory docket. Please submit such comments separately from other comments on the action. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom

[1] ''Sensitive Security Information'' or ''SSI'' is information obtained or developed in the conduct of security activities, the disclosure of which would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the security of transportation. The protection of SSI is governed by 49 CFR part 1520.

of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets by the name of the individual who submitted the comment (or signed the comment, if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://DocketInfo.dot.gov.*

You may review TSA's electronic public docket at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE., Washington, DC 20590.

Availability of Committee Documents

You can get an electronic copy by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;* or

(2) Accessing the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the **Federal Register** by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this action.

Meeting Summary

Notice of this meeting is given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). ASAC operates under the authority of 46 U.S.C. 70112 and provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Administrator of TSA on matters affecting civil aviation security.

This meeting is open to the public, but attendance is limited to 75 people. The meeting will be held at the TSA Systems Integration Facility, which is a secure facility, at 3701 West Post Office Road, DCA Airport, Arlington, VA 22202. Members of the public, and all non-ASAC members and staff must register in advance with their full name and company/association to attend. In addition, members of the public must make advance arrangements to present oral statements on the sub-committee reports being considered by the committee. The public comment period will be held during the meeting from approximately 3:30 p.m. to 4:00 p.m., depending on the meeting progress. Speakers are requested to limit their comments to three minutes. Written statements specifically addressing issues pertaining to the reports listed in the ''Meeting Agenda'' section below may be presented to the Committee. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than January 30, 2013, to register to attend the meeting and/or to speak at the meeting. Written statements shall also be submitted no later than January 30, 2013. Anyone in need of assistance or a reasonable accommodation for the meeting should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Meeting Agenda

The agenda for the meeting is as follows:

- Air Cargo Recommendations Report (document in docket);
- International Aviation Recommendations Report (document in docket);
- Risk-Based Security Sub-committee status update;
- General Aviation Sub-committee status update;
- Passenger Advocacy Sub-committee status update; and
- Public question/comment on the Recommendation Reports listed above.

Issued in Arlington, Virginia, on January 11, 2013.

José M. Ralls,

Acting Assistant Administrator, Security Policy and Industry Engagement.

[FR Doc. 2013–00935 Filed 1–16–13; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2012–N283; FXRS1265030000–134–FF03R06000]

Big Oaks National Wildlife Refuge, IN; Glacial Ridge National Wildlife Refuge, MN; Northern Tallgrass Prairie National Wildlife Refuge, MN; Whittlesey Creek National Wildlife Refuge, WI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce our intent to prepare comprehensive conservation plans (CCP) and associated environmental documents for the Big Oaks, Glacial Ridge, Northern Tallgrass Prairie, and Whittlesey Creek National Wildlife Refuges (Refuge, NWR). In these CCPs we will describe how we propose to manage the refuges for the next 15 years. We also invite public comment on the scope of issues that should be considered during the planning process.

We will hold open house-style meetings to receive comments and provide information on the planning process. In addition, we will use special mailings, newspaper articles, Internet postings, and other media announcements to inform people of opportunities for input.

ADDRESSES: Comments or requests for more information can be sent to the appropriate refuge at the following addresses:

- *Attention:* Refuge Manager, Big Oaks NWR, 1661 West JPG Niblo Road, Madison, IN 47250.
- *Attention:* Refuge Manager, Glacial Ridge NWR, 17788 349th St. SE., Erskine, MN 56535.
- *Attention:* Refuge Manager, Northern Tallgrass Prairie NWR, 44843 687th Avenue, Odessa, MN 56276.
- Refuge Manager, Whittlesey Creek NWR, Northern Great Lakes Visitor Center, 29270 County Highway G, Ashland, WI 54806.

You may also submit comments electronically and find information about the CCP planning process on the planning Web site, at *http://www.fws.gov/midwest/planning*, or you may email comments to *r3planning@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Joe Robb, Big Oaks NWR, 812–273–0783; David Bennett, Glacial Ridge NWR, 218–687–2229; Alice Hanley, Northern Tallgrass Prairie NWR, 320–273–2191;

or Tom Kerr, Whittlesey Creek NWR, 715–246–7784.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate the CCP process for Big Oaks NWR, with headquarters in Madison, IN; Glacial Ridge NWR, with headquarters in Erskine, MN; Northern Tallgrass Prairie NWR, with headquarters in Odessa, MN; and Whittlesey Creek NWR, with headquarters in Ashland, WI.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

We will conduct a comprehensive conservation planning process that provides opportunity for Tribal, State, and local governments; agencies; organizations; and the public to participate in issues scoping and public comment on the future management of Big Oaks NWR, Glacial Ridge NWR, Northern Tallgrass Prairie NWR, and Whittlesey Creek NWR.

The environmental review of these projects will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 et seq.), other appropriate laws and regulations, and our policies and procedures for compliance with those regulations.

Public Availability of Comments

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.

Charles M. Wooley,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–00899 Filed 1–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2012–N261; FXRS1265030000–134–FF03R06000]

Hamden Slough National Wildlife Refuge, Becker County, MN; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for the Hamden Slough National Wildlife Refuge (Refuge, NWR). In this final CCP, we describe how we intend to manage the refuge for the next 15 years.

ADDRESSES: You will find the final CCP, a summary of the final CCP, and the EA/FONSI on the planning Web site at *http://www.fws.gov/midwest/planning/hamdenslough/index.html.* A limited number of hard copies and CD–ROMs are available. You may request one by any of the following methods:

- *Email: r3planning@fws.gov.* Include ''Hamden Slough Final CCP'' in the subject line of the message.
- *U.S. Mail:* Hamden Slough NWR, c/o Detroit Lakes Wetland Management District, 26624 N. Tower Road, Detroit Lakes, MN 56501.

FOR FURTHER INFORMATION CONTACT: Ryan Frohling, 218–847–4431.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we complete the CCP process for Hamden Slough National Wildlife Refuge, which we began by publishing a notice of intent in the **Federal Register** (75 FR 7289) on February 18, 2010. For more about the initial process and the history of this refuge, see that notice. We released the draft CCP and EA to the public, announcing and requesting comments in a notice of availability (77 FR 52346) on August 29, 2012. The 30-day comment period ended on September 28, 2012. A summary of public comments and the agency responses is included in the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for

wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The final CCP may be found at *http://www.fws.gov/midwest/planning/hamdenslough/index.html.* The final CCP includes detailed information about the planning process, refuge, issues, and management alternative selected. The Web site also includes an EA and FONSI, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 et seq.). The EA/FONSI includes discussion of three alternative refuge management options. The Service's selected alternative is reflected in the final CCP.

The selected alternative focuses on increasing the quantity and quality of habitat for wetland and grassland birds. Acquisition and full restoration of Pierce Lake will be emphasized over the next 15 years. The hydrologic regime will better emulate natural seasonal and long-term variability. More diverse, sustainable vegetation patterns will be restored on refuge wetlands and prairies. A detailed description of objectives and actions included in this selected alternative is found in chapter 4 of the final CCP.

Christopher P. Jensen,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–00896 Filed 1–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2012–N259; FXRS1265030000–134–FF03R06000]

Big Stone National Wildlife Refuge, Big Stone and Lac Qui Parle Counties, MN; Final Comprehensive Conservation Plan and Finding of No Significant Impact for Environmental Assessment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a final comprehensive conservation plan (CCP) and finding of no significant impact (FONSI) for the environmental assessment (EA) for Big Stone National Wildlife Refuge (Refuge, NWR). In this final CCP, we describe how we intend to manage the refuge for the next 15 years.

ADDRESSES: You will find the final CCP, a summary of the final CCP, and the EA/FONSI on the planning Web site at *http://www.fws.gov/midwest/planning/BigStoneNWR/index.html.* A limited number of hard copies and CD–ROMs are available. You may request one by any of the following methods:

- *Email: r3planning@fws.gov.* Include ''Big Stone Final CCP'' in the subject line of the message.
- *U.S. Mail:* Big Stone NWR, 44843 County Road 19, Odessa, MN 56276.

FOR FURTHER INFORMATION CONTACT: Alice Hanley, 320–273–2191.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Big Stone National Wildlife Refuge, which we began by publishing a notice of intent in the **Federal Register** (73 FR 76677) on December 17, 2008. For more about the initial process and the history of this refuge, see that notice. We released the draft CCP and EA to the public, announcing and requesting comments in a notice of availability (77 FR 27245) on May 9, 2012. The 30-day comment period ended on June 8, 2012. A summary of public comments and the agency responses is included in the final CCP.

Background

The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) (Administration Act), requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System (NWRS), consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the NWRS was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the NWRS mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives that will ensure the best possible approach to wildlife, plant, and habitat conservation, while providing for wildlife-dependent recreation opportunities that are compatible with each refuge's establishing purposes and the mission of the NWRS.

Additional Information

The final CCP may be found at *http://www.fws.gov/midwest/planning/BigStoneNWR/index.html.* The final CCP includes detailed information about the planning process, refuge, issues, and management alternative selected. The Web site also includes an EA and FONSI, prepared in accordance with the National Environmental Policy Act (NEPA) (43 U.S.C. 4321 et seq.). The EA/FONSI includes discussion of six alternative refuge management options. The Service's selected alternative is reflected in the final CCP.

The selected alternative includes 5 miles of river channel restoration, a focus on water quality improvement, water management improvements to help increase the amount of submerged vegetation in refuge wetlands, increased restoration and management of grasslands, and opportunities for wildlife dependent recreation. A detailed description of objectives and actions included in this selected alternative is found in chapter 4 of the final CCP.

Christopher P. Jensen,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2013–00898 Filed 1–16–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–050–1310–DB]

Notice of Intent To Prepare an Environmental Impact Statement and Possible Amendment to the Casper Resource Management Plan, Fremont, Sweetwater, and Natrona Counties, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Lander Field Office, Rawlins Field Office, and Casper Field Office intend to

prepare an Environmental Impact Statement (EIS) for the proposed Moneta Divide Natural Gas and Oil Development Project, which may include a land use plan amendment to the Casper Resource Management Plan (RMP), and by this notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the EIS and possible land use plan amendment. You may submit written comments on issues until March 4, 2013. The date(s) and location(s) of any scoping meeting will be announced at least 15 days in advance through the local news media, newspapers and the BLM Web site at *www.blm.gov/wy/en/info/NEPA/documents/lfo/moneta-divide.html.* In order to be addressed in the Draft EIS, all comments must be received prior to the close of the scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation upon publication of the Draft EIS.

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

- *Web site: www.blm.gov/wy/en/info/NEPA/documents/lfo/moneta-divide.html.*
- *Email: BLM_WY_LD_Moneta_Divide_EIS@blm.gov.*
- *Fax:* 307–332–8444.
- *Mail:* Moneta Divide Natural Gas and Oil Development Project, Lander Field Office, 1335 Main Street, Lander, WY 82520.

Documents pertinent to this proposal may be examined at the Lander Field Office.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Chris Krassin, Project Coordinator, telephone: 307–332–8400; address: 1335 Main Street, Lander, WY 82520; email: *BLM_WY_LD_Moneta_Divide_EIS@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the Lander Field Office, Rawlins Field Office, and Casper Field Office intend to prepare an EIS to support decision-making regarding the proposed Moneta Divide Natural Gas and Oil Development Project, begin the public scoping period, and seek input on the preliminary issues identified with respect to this Project. In addition, BLM authorization of this proposed project may require amendment of the 2007 Casper RMP. By this notice, the BLM is complying with requirements in 43 CFR 1610.2(c) to notify the public of potential amendments to land use plans, predicated on the findings of the EIS, and to seek public input on preliminary planning issues. If a land use plan amendment is necessary, the BLM will integrate the land use planning process with the NEPA process for this project.

Proponent energy development companies (the companies) propose to develop up to 4,250 natural gas and oil wells within the proposed Moneta Divide Natural Gas and Oil Development Project area. The proposed development project area is located in Fremont and Natrona counties and encompasses approximately 265,000 acres of land, of which 138,000 acres are public land administered by the Lander Field Office. Approximately 31,500 acres of the project area are public lands administered by the Casper Field Office. The southern portion of a proposed pipeline associated with the project is located in Sweetwater County on lands administered by the Rawlins Field Office. The balance of the development project area consists of State and private lands. The Lander Field Office will serve as the lead for this Project.

The companies propose to develop using downhole well spacing of up to 20 acres in select areas within the proposed project area using directional, vertical, and other drilling techniques, and propose to develop infrastructure to support oil and gas production in the project area, including: Well pads; gathering, treating, processing and compression production facilities; water wells, water treatment, water injection and evaporation facilities; electric power lines, roads, gas flow lines, and pipelines. The companies propose to transport gas through pipelines to approximately five field compression and treatment facilities. The companies propose to reinject produced water in some instances, evaporate it in some instances, and treat and dispose of it through the use of surface and subsurface facilities in other instances. The companies also propose to construct gas processing facilities in the project area to separate natural gas liquids from the natural gas stream as well as to construct a new pipeline to transport and deliver natural gas and natural gas liquids to market pipelines located near Wamsutter, Wyoming (approximately 100 miles south of the project area). The southern portion of the pipeline (approximately 42 miles in length) is proposed in Sweetwater County, Wyoming and public lands included within this segment are administered by the Rawlins Field Office.

Anticipated surface disturbance associated with the Moneta Divide Project proposal will include approximately 13,500 acres of initial surface disturbance for the construction of new roads, well pads, pipelines and associated facilities, of which approximately 5,500 acres could remain for the life of the project.

The BLM will evaluate any authorizations and actions within the Casper Field Office administrative area that are proposed for approval in the EIS to determine if they conform to the decisions in the 2007 Casper RMP. At this time, some management actions particularly for surface disturbing activities and wildlife stipulations in the Casper RMP do not match the Lander RMP (1987). In an effort to have consistency in management actions within the Moneta Divide project area and across the Lander and Casper Field Office administrative boundaries, it is anticipated that some management actions may result in a change in terms and conditions or decisions of the Casper RMP, which in turn may require amendment of the RMP. Prior to approval, any proposed actions that would result in a change in the scope of resource uses, terms and conditions, and decisions of the Casper RMP would require amendment of the RMP. If the BLM determines that a plan amendment is necessary, the analysis necessary for the RMP amendment would occur simultaneously with preparation of the Moneta Divide Natural Gas and Oil Development Project EIS. The preliminary planning criteria would include:

- The RMP amendment will comply with NEPA, FLPMA, and other applicable laws, executive orders, regulations and policy;
- The RMP amendment will recognize valid existing rights;
- The BLM would limit the scope of the RMP amendment to the BLM-administered public lands and mineral estate within the project area proposed for the Moneta Divide Natural Gas and Oil Development Project EIS; and
- A collaborative and multi-jurisdictional approach will be used, where possible, to jointly determine the desired future condition and management direction for the public lands. To the extent possible and within

legal and regulatory parameters, the BLM planning and management decisions will complement the planning and management decisions of other agencies, State and local governments, and Native American tribes, with jurisdictions intermingled with, and adjacent to, the planning area.

To provide the public with an opportunity to review the proposed project and the project information, as well as the possible proposed plan amendment, the BLM will host meetings in Riverton and Casper within 45 days of the publication of this notice. The BLM will notify the public of meetings and any other opportunities for the public to be involved in the environmental review for this proposal at least 15 days prior to the event. Meeting dates, locations and times will be announced by a news release to the media, individual mailings and postings on the project Web site.

The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. At present, the BLM has identified the following preliminary issues: Potential impacts to air quality, disposal of produced water, and potential effects of development and production on surface resources including vegetation and wildlife habitat.

The BLM will utilize and coordinate the NEPA commenting process to help fulfill the public involvement process under Section 106 of the National Historic Preservation Act (16 U.S.C. 470f) as provided for in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and Section 106 of the NHPA. Native American tribal consultations will be conducted in accordance with policy, and tribal concerns will be given due consideration, including impacts on Indian trust assets. Federal, State, and local agencies, along with other stakeholders that may be interested or affected by the BLM's decision on this project, are invited to participate in the scoping process and, if eligible, may request or be requested by the BLM to participate as a cooperating agency.

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 may 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.

(Authority: 40 CFR 1501.7, 43 CFR 1610.2)

Donald A. Simpson,

State Director, Wyoming.

[FR Doc. 2013–00853 Filed 1–16–13; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV9230000 L13100000.FI0000 241A; NVN–81212; NVN–81213; 13–08807; MO# 4500044423; TAS: 14x1109]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases NVN–81212 and NVN–81213; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of 1920, and existing BLM regulations, the Bureau of Land Management (BLM) received a petition for reinstatement from Lonewolf Exploration & Production Company, for competitive oil and gas leases NVN–81212 and NVN–81213 on land in Elko County, Nevada. The petition was timely filed and was accompanied by all the rentals due since the leases terminated under the law. No valid leases have been issued affecting the lands.

FOR FURTHER INFORMATION CONTACT: Patricia M. LaFramboise, BLM Nevada State Office, 775–861–6632, or email: *plaframboise@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rental and royalties at rates of $10 per acre or fraction thereof per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee for each lease and has reimbursed the Department $159 for the cost of this **Federal Register** notice. The lessee has met all of the requirements for reinstatement of the leases as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920, 30 U.S.C. 188, and the BLM is proposing to reinstate the leases effective March 1, 2012 under the original terms and conditions of the leases and the increased rental and royalty rates cited above. The BLM has not issued a lease affecting the lands encumbered by these leases to any other interest in the interim.

Authority: 43 CFR 3108.2–3(a).

Gary Johnson,

Deputy State Director, Minerals Management.

[FR Doc. 2013–00927 Filed 1–16–13; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA 43949, LLCA930000, 3810–FF–P]

Public Land Order No. 7807: Withdrawal of Public Lands for the Camp Michael Monsoor Mountain Warfare and Training Facility, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 3,385.89 acres, more or less, of public lands from settlement, sale, location, and entry under the general land laws, including the United States mining laws, for a period of 20 years for use by the Department of the Navy for the Camp Michael Monsoor Mountain Warfare and Training Facility. This withdrawal also transfers administrative jurisdiction of the lands to the Department of the Navy.

DATES: *Effective Date:* January 17, 2013.

FOR FURTHER INFORMATION CONTACT: Heather Fullerton, address: Bureau of Land Management, California State Office, 2800 Cottage Way, Suite–W–1834, Sacramento, CA 95825–1886; telephone: 916–978–4634. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to reach the Bureau of Land Management contact. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This order withdraws 3,385.89 acres of lands, more or less, from public use for the Department of the Navy. The area, known as Camp Michael Monsoor Mountain Warfare Training Facility, is being developed to maintain the operational readiness of Naval Special Warfare Forces.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1714), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, and entry under the general land laws, including the United States mining laws, but not from leasing under the mineral leasing laws, and administrative jurisdiction is transferred to the Department of the Navy for use as a mountain warfare training facility:

San Bernardino Meridian

T. 17 S., R. 5 E.,
Sec. 14, W½;
Sec. 15, SE¼NE¼ and S½SE¼;
Sec. 22, lots 1 and 2, NE¼, E½NW¼, E½SW¼, and W½SE¼;
Sec. 23, lots 1 and 2, N½, E½SW¼, and SE¼;
Sec. 24, lots 4, 5, 20, 22, 24, 26, and SW¼SW¼;
Sec. 25;
Sec. 26, lots 1 and 2, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 27, lots 1, 9, and 10;
Sec. 34, lot 7, and NE¼SE¼;
Sec. 35, lots 2, 3, and 4, NE¼, S½NW¼, N½SW¼, and N½SE¼.
T. 18 S., R. 5 E.,
Sec. 2, NE¼NE¼.

The areas described aggregate 3,385.89 acres, more or less, in San Diego County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than those under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act, (43 U.S.C. 1714(f)), the Secretary determines that the withdrawal shall be extended.

Dated: December 14, 2012.

Rhea S. Suh,

Assistant Secretary—Policy, Management and Budget.

[FR Doc. 2013–00926 Filed 1–16–13; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWRO–KALA–11888; PPPWKALA00; PPMPSPD1Z.YM0000]

Notice of February 1, 2013, Meeting for Kalaupapa Federal Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting Notice.

SUMMARY: This notice sets the date of February 1, 2013, meeting of the Kalaupapa Federal Advisory Commission.

DATES: The public meeting of the Kalaupapa Federal Advisory Commission will be held on Friday, February 1, 2013, at 9:00 a.m. (Hawaii Standard Time).

Location: The meeting will be held at McVeigh Social Hall, Kalaupapa National Historical Park, Kalaupapa, Hawaii 96742.

Agenda

The February 1, 2013, Commission meeting will consist of the following:

1. Approval of Agenda.
2. Approval of June 14, 2012, Minutes.
3. Superintendent's Report.
4. Paschoal Hall Interpretive Exhibits Update.
5. Maintenance of the Cemeteries at Kalaupapa Update.
6. Memorial Update.
7. Public Comments.

FOR FURTHER INFORMATION CONTACT: Further information concerning this meeting may be obtained from the Superintendent, Kalaupapa National Historical Park, P.O. Box 2222, Kalaupapa, Hawaii 96742, telephone (808) 567–6802 x 1100.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days 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: January 3, 2013.

Stephen Prokop,

Superintendent, Kalaupapa National Historical Park.

[FR Doc. 2013–00919 Filed 1–16–13; 8:45 am]

BILLING CODE 4312–FF–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–OIA–11846; PIN00IO14.XI0000]

Submission of U.S. Nomination to the World Heritage List

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior is submitting a nomination to the World Heritage List for the Monumental Earthworks of Poverty Point in West Carroll Parish, Louisiana. This is the third notice required by the National Park Service's World Heritage Program regulations.

DATES: The World Heritage Committee will likely consider the nomination at its 38th annual session in mid-2014.

FOR FURTHER INFORMATION CONTACT: Stephen Morris, Chief, Office of International Affairs at 202–354–1803 or Jonathan Putnam, International Cooperation Specialist at 202–354–1809. Complete information about U.S. participation in the World Heritage Program and the process used to develop the U.S. World Heritage Tentative List is posted on the National Park Service, Office of International Affairs Web site at: *http://www.nps.gov/oia/topics/worldheritage/worldheritage.htm*.

To request paper copies of documents discussed in this notice, please contact April Brooks, Office of International Affairs, National Park Service, 1201 Eye Street NW., (0050) Washington, DC 20005; Email: *April_Brooks@nps.gov*.

SUPPLEMENTARY INFORMATION: This constitutes the official notice of the decision by the United States Department of the Interior to submit a nomination to the World Heritage List for ''Monumental Earthworks of Poverty Point'' in West Carroll Parish, Louisiana, and serves as the Third Notice referred to in 36 CFR 73.7(j) of the World Heritage Program regulations (36 CFR part 73).

The nomination is being submitted through the U.S. Department of State to the World Heritage Centre of the United Nations Educational, Scientific and Cultural Organization (UNESCO) for consideration by the World Heritage

Committee, which will likely occur at the Committee's 38th annual session in mid-2014.

This property has been selected from the U.S. World Heritage Tentative List. The Tentative List consists of properties that appear to qualify for World Heritage status and which may be considered for nomination by the United States to the World Heritage List.

The U.S. World Heritage Tentative List appeared in a **Federal Register** notice on December 14, 2010 (73 FR 77901–77903), with a request for public comment on possible nominations from the 13 sites on the Tentative List. A summary of the comments received, the Department of the Interior's responses to them and the Department's decision to request preparation of this nomination appeared in a subsequent **Federal Register** Notice published on July 14, 2011 (76 FR 41517–41521). These are the First and Second Notices required by 36 CFR 73.7(c) and (f).

In making the decision to submit this U.S. World Heritage nomination, pursuant to 36 CFR 73.7(h) and (i), the Department's Assistant Secretary for Fish and Wildlife and Parks evaluated the draft nomination and the recommendations of the Federal Interagency Panel for World Heritage. She determined that the property meets the prerequisites for nomination by the United States to the World Heritage List that are detailed in 36 CFR part 73. It is nationally significant, having been designated by Congress as a National Monument and by the Department of the Interior as a National Historic Landmark. The owner of the site, the State of Louisiana, has concurred in writing with the nomination, and the property, a State Historic Site, is well protected legally and functionally, as documented in the nomination. It appears to meet at least one of the World Heritage criteria.

The Monumental Earthworks of Poverty Point are nominated under World Heritage cultural criterion (iii) as provided in 36 CFR 73.9(b), as an exceptional testimony to the vanished culture of the people who lived in the Lower Mississippi Valley 2,500–4,000 years ago. Located in northeastern Louisiana on a bayou of the Mississippi, the site is a vast, integrated complex of earthen monuments, constructed 3,100–3,700 years ago. It consists of six enormous, concentric earthen ridges with an outer diameter of more than a half mile, and several large mounds, including one of the largest in North America. This constructed landscape was the largest and most elaborate of its time on the continent; the particular form of the complex is not duplicated anywhere else in the world. Even more significantly and unusually, it was built by a settlement of hunter-gatherers, not agricultural people, which challenges some conventional assumptions about what such a society could achieve.

The World Heritage List is an international list of cultural and natural properties nominated by the signatories to the World Heritage Convention (1972). The United States was the prime architect of the Convention, an international treaty for the preservation of natural and cultural heritage sites of global significance proposed by President Richard M. Nixon in 1972, and the U.S. was the first nation to ratify it. The World Heritage Committee, composed of representatives of 21 nations elected as the governing body of the World Heritage Convention, makes the final decisions on which nominations to accept on the World Heritage List at its annual meeting each summer. The United States has served four terms on the World Heritage Committee, but is not currently a member.

There are 962 World Heritage sites in 157 of the 190 signatory countries. The United States has 21 sites inscribed on the World Heritage List.

U.S. participation and the role of the Department of the Interior are authorized by Section 401 of Title IV of the Historic Preservation Act Amendments of 1980, (16 U.S.C. 470a–1), and conducted by the Department through the National Park Service in accordance with the regulations at 36 CFR part 73 which implement the Convention pursuant to the 1980 Amendments. The Department of the Interior has the lead role for the U.S. Government in the implementation of the Convention; the National Park Service serves as the principal technical agency within the Department for World Heritage matters and manages all or parts of 17 of the 21 U.S. World Heritage Sites.

The World Heritage Committee's *Operational Guidelines* require participating nations to provide tentative lists, which aid in evaluating properties for the World Heritage List on a comparative international basis and help the Committee to schedule its work. The current U.S. Tentative List was transmitted to the UNESCO World Heritage Centre on January 24, 2008.

Neither inclusion in the Tentative List nor inscription as a World Heritage Site imposes legal restrictions on owners or neighbors of sites, nor does it give the United Nations any management authority or ownership rights in U.S. World Heritage Sites, which continue to be subject only to U.S. federal and local laws, as applicable.

Dated: December 12, 2012.

Rachel Jacobson,

Principal Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–00918 Filed 1–16–13; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for the State Regulatory Authority: Inspection and Enforcement, has been forwarded to the Office of Management and Budget (OMB) for review and approval. This information collection request describes the nature of the information collection and its expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection requests but may respond after 30 days. Therefore, public comments should be submitted to OMB by February 19, 2013, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via email at *OIRA_submission@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 203—SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 1029–0051 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783. You may also contact Mr. Trelease at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an

opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted the request to OMB to renew its approval for the collection of information found at 30 CFR part 840. OSM is requesting a 3-year term of approval for this information collection activity.

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 number for this collection of information is 1029–0051, and may be found in OSM's regulations at 30 CFR 840.10. State agencies are required to respond to obtain a benefit.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection was published on October 3, 2012 (77 FR 60459). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR part 840—State Regulatory Authority: Inspection and Enforcement.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures that the State is meeting the requirements for the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once and annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 106,382.

Total Annual Burden Hours: 748,140.

Total Non-wage Costs: $1,440.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the places listed in **ADDRESSES**. Please refer to control number 1029–0051 in all correspondence.

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 27, 2012.

Andrew F. DeVito,

Chief, Division of Regulatory Support.

[FR Doc. 2013–00735 Filed 1–16–13; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–919 (Second Review)]

Certain Welded Large Diameter Line Pipe From Japan; Notice of Commission Determination To Conduct a Full Five-Year Review

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on certain welded large diameter line pipe from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. A schedule for the review will be established and announced at a later date. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* January 4, 2013.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On January 4, 2013, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both the domestic and respondent interested party group responses to its notice of institution (77 FR 59973, October 1, 2012) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: January 14, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–00906 Filed 1–16–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–824]

Certain Blu-Ray Disc Players, Components Thereof and Products Containing the Same; Termination of an Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determinations (''IDs'') (Order Nos. 42–43) terminating the above-captioned investigation as to five respondents on the basis of withdrawal of the complaint (Order No. 42) and as to the two remaining respondents on the basis of a settlement agreement (Order No. 43). Termination as to these last remaining respondents thereby terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the

Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on January 11, 2012, based on a complaint filed by Walker Digital LLC of Stamford, Connecticut (''Walker''), alleging a violation of section 337 by reason of the infringement of certain claims of U.S. Patent No. 6,263,505. 77 FR 1725 (Jan. 11, 2012). The notice of institution named thirty-five respondents. Most respondents have already been terminated from the investigation.

On August 27, 2012, Walker moved to terminate the investigation as to respondents Sony Corporation and Sony Computer Entertainment Inc., both of Tokyo, Japan; Sony Corporation of America of New York, New York; Sony Electronics Inc. of San Diego, California; and Sony Computer Entertainment America of Foster City, California (collectively, ''Sony'') based upon withdrawal of the complaint against Sony. On September 6, 2012, the Commission investigative attorney (''IA'') responded in support of the motion. On December 12, 2012, Walker filed a supplemental memorandum indicating that there are no agreements between Walker and Sony regarding the subject matter of this investigation. *See* 19 CFR 210.21(a)(1). On December 14, 2012, the ALJ granted the motion as an ID. Order No. 42.

On December 6, 2012, Walker and the last two respondents, Toshiba Corporation of Tokyo, Japan; and Toshiba America Information Systems, Inc. of Irvine, California (collectively, ''Toshiba'') moved to terminate the investigation as to Toshiba on the basis of a settlement agreement. On December 17, 2012, the IA responded in support of the motion. On December 18, 2012, the ALJ granted the motion as an ID. Order No. 43. The ALJ determined that termination as to Toshiba is in the public interest. *Id.* at 2; *see* 19 CFR 210.50(b)(2).

No petitions for review of the IDs were filed. The Commission has determined not to review the IDs. Termination as to these last remaining respondents thereby terminates the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42).

Issued: January 14, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–00909 Filed 1–16–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–849]

Certain Rubber Resins & Processes for Manufacturing Same; Commission Determination Not To Review an Initial Determination Granting in Part Complainant's Motion for Leave To File an Amended Complaint and To Amend the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 21) of the presiding administrative law judge granting in part complainant's motion for leave to file an amended complaint and to amend the notice of investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 26, 2012, based on a complaint filed on behalf of SI Group, Inc. of Schenectady, New York (''SI Group'') on May 21, 2012, as supplemented on June 12, 2012. 77 FR 38083 (June 26, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale after importation into the United States of certain rubber resins by reason of misappropriation of trade secrets, the threat or effect of which is to destroy or substantially injure an industry in the United States. The Commission's notice of investigation named as respondents Red Avenue Chemical Corp. of America of Rochester, New York; Thomas R. Crumlish, Jr. of Rochester, New York; Precision Measurement International LLC of Westland, Michigan; Sino Legend (Zhangjiagang) Chemical Co., Ltd. of Zhangjiagang City, China; Sino Legend Holding Group, Inc. c/o Mr. Richard A. Peters of Kowloon, Hong Kong; Sino Legend Holding Group Ltd. of Hong Kong; HongKong Sino Legend Group, Ltd. of North Point, Hong Kong; Red Avenue Chemical Co. Ltd. of Shanghai, China; Ning Zhang of North Vancouver, Canada; Quanhai Yang of Beijing, China; and Shanghai Lunsai International Trading Company of Shanghai City, China.

On October 16, 2012, SI Group filed a motion for leave to file an amended complaint and to amend the notice of investigation. SI Group requested to add the following parties as respondents: Red Avenue Group Limited of Kowloon, Hong Kong (''Red Avenue HK''); Sino Legend Holding Group Inc. of Majuro, Marshall Islands (''Sino Marshall Islands''); Gold Dynasty Limited c/o ATC Trustees (Cayman) Limited of Grand Cayman, Cayman Islands (''Gold Dynasty''); Elite Holding Group Inc. c/o Morgan & Morgan Trust Corporation (Belize) Limited of Belize City, Belize (''Elite''); Western Reserve Chemical Corporation of Stow, Ohio (''Western Chemical''); Biddle Sawyer Corporation of New York, New York (''Biddle Sawyer''). On October 26, 2012, the respondents filed a response in opposition and the Commission investigative attorney filed a response supporting the motion in part and opposing it in part.

On December 17, 2012, the ALJ issued an ID granting in part, and an order denying in part, complainant's motion for leave to file an amended complaint and to amend the notice of investigation. The ALJ granted the motion to amend the complaint and notice of investigation to add Red

Avenue HK, Sino Marshall Islands, Gold Dynasty, and Elite as respondents. The ALJ denied the motion as to Western Chemical and Biddle Sawyer because it would have resulted in delay to the investigation. No petitions for review were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

Issued: January 14, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–00910 Filed 1–16–13; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–13–004]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 23, 2013 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436. Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.

2. Minutes.

3. Ratification List.

4. Vote in Inv. Nos. 701–TA–488 and 731–TA–1199–1200 (Final) (Large Residential Washers from Korea and Mexico). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before February 8, 2013.

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 15, 2013.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2013–00971 Filed 1–15–13; 11:15 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0026]

Revision of Approved Information Collection (Paperwork) Requirements for Office of Management and Budget (OMB) Approval; Regulations Containing Procedures for Handling of Retaliation Complaints

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to revise the information collection requirements currently approved by the Office of Management and Budget (OMB) for handling of retaliation complaints filed with OSHA under various whistleblower protection statutes and the procedural regulations described in this notice. These regulations contain procedures employees must use to file a complaint with OSHA alleging that their employer violated a whistleblower protection provision contained in certain statutes that generally prohibit retaliatory action by employers against employees who engage in activities protected by the statutes. The revised information collection requirements include a new form providing additional methods for employees to submit retaliation complaints to OSHA, including electronic submission.

DATES: Comments must be submitted (postmarked, sent, or received) by March 18, 2013.

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

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger or courier service: When using this method, you must submit your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2012–0026, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2012–0026) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact the Directorate of Whistleblower Protection Programs at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Beth Slavet, Director, Directorate of Whistleblower Protection Programs, OSHA, U.S. Department of Labor, Room N–4624, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–2199.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*e.g.,* an employee filing a retaliation complaint) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate.

The Agency is responsible for investigating alleged violations of ''whistleblower'' provisions contained in a number of statutes. These whistleblower provisions generally prohibit retaliation by employers against employees who report alleged violations

of certain laws or regulations. Accordingly, these provisions prohibit an employer from discharging or taking any other retaliatory action against an employee because the employee engages in any of the protected activities specified by the whistleblower provisions of the statutes. These statutes are covered under the following regulations: 29 CFR part 24, Procedures for the Handling of Retaliation Complaints under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, As Amended (29 CFR part 24 covers the: Safe Drinking Water Act, 42 U.S.C. 300j–9(i); Federal Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; and Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9610); 29 CFR part 1977, Discrimination Against Employees Exercising Rights under the Williams-Steiger Occupational Safety and Health Act (29 CFR part 1977 covers the: Occupational Safety and Health Act, 29 U.S.C. 660; Asbestos Hazard Emergency Response Act, 15 U.S.C. 2651; and International Safe Container Act, 46 U.S.C. 80507); 29 CFR part 1978, Procedures for the Handling of Retaliation Complaints under the Employee Protection Provision of the Surface Transportation Assistance Act of 1982; 29 CFR part 1979, Procedures for Handling Discrimination Complaints Under the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; 29 CFR part 1980, Procedures for Handling of Discrimination Complaints Under Section 806 of the Corporate and Criminal Fraud Accountability Act of 2002 (Title VIII of the Sarbanes-Oxley Act of 2002); 29 CFR part 1981, Procedures for the Handling of Discrimination Complaints under Section 6 of the Pipeline Safety and Improvement Act of 2002; 29 CFR part 1982, Procedures for the Handling of Retaliation Complaints Under the National Transit Systems Security Act and the Federal Railroad Safety Act; and 29 CFR Part 1983, Procedures for the Handling of Retaliation Complaints Under Section 219 of the Consumer Product Safety Improvement Act of 2008.

In addition, OSHA investigates complaints of retaliation filed under the following recently-enacted whistleblower provisions: The Affordable Care Act, 29 U.S.C. 218C; the Consumer Financial Protection Act, Section 1057 of the Dodd Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203; the Seaman's Protection Act, 46 U.S.C. 2114, as amended by Section 611 of the Coast Guard Authorization Act of 2010, Public Law 111–281; Section 402 of the FDA Food Safety and Modernization Act, Public Law 111–353; and Section 31307 of the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. 30171. These statutory provisions are included in the existing ICR. Information collection requirements contained in future regulations promulgated by the Agency with respect to a whistleblower provision of any other Federal law, except those that are assigned to another DOL agency, will be added to this information collection.

OSHA's whistleblower regulations specify the procedures that an employee must use to file a complaint alleging that their employer violated a whistleblower provision for which the Agency has investigative responsibility. Any employee who believes that such a violation occurred may file a complaint, or have the complaint filed on their behalf. Two of these regulations, 29 CFR parts 1979 and 1981, state that complaints must be filed in writing and should include a full statement of the acts and omissions, with pertinent dates, that the employee believes constitute the violation. The other regulations, 29 CFR parts 24, 1977, 1978, 1980, 1982, and 1983, require no particular form of filing for complaints. However, it is OSHA's policy to accept complaints in any form (*i.e.* orally or in writing) under all statutes. This policy helps ensure that employees of all circumstances and education levels will have equal access to the complaint filing process.

OSHA proposes to revise this ICR to include a new form, titled, ''Notice of Whistleblower Complaint'' (OSHA8–60.1), that will provide additional methods for employees to submit complaints of retaliation to OSHA: Either by submitting the form electronically directly through the Internet; or by downloading, completing and submitting the form to OSHA by fax, mail, or hand-delivery. The proposed form will enable workers to electronically submit whistleblower complaints directly to OSHA 24-hours a day, which will provide workers with greater flexibility for meeting statutory filing deadlines. Additionally, by streamlining the Agency's electronic complaint filing process, the form will reduce the Agency's complaint processing time, which will improve the quality of the customer service that the Agency can offer the public.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on individuals who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB approve the proposed revision of the information collection requirements contained in OSHA's statutory authorities and the regulations containing procedures for handling retaliation complaints at 29 CFR parts 24, 1978, 1979, 1980, 1981, 1982, and 1983.[1] Specifically, this revision contains a new information collection instrument, a form, which employees may use to file complaints. In addition, OSHA is requesting an adjustment increase in burden hours from 2,503 burden hours to 2,686 burden hours (a total increase of 183 hours). The adjustment increase is due to updated data showing an increase in the annual number of complaints filed. The Agency will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB.

Type of Review: Revision of a currently approved collection.

Title: Regulations Containing Procedures for Handling Retaliation Complaints.

OMB Number: 1218–0236.

Affected Public: Individuals.

Number of Respondents: 2,686.

Frequency of Response: Once per complaint.

Average Time per Response: 1 hour.

Estimated Total Burden Hours: 2,686.

Estimated Cost (Operation and Maintenance): $0.

[1] Several of these regulations use the term ''discrimination'' or ''discrimination complaints'' in their titles. These terms are synonymous with ''retaliation'' and ''retaliation complaints,'' respectively.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0026). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2013–00866 Filed 1–16–13; 8:45 am]

BILLING CODE 4510–26–P

OFFICE OF NATIONAL DRUG CONTROL POLICY

Information Collection; Paperwork Reduction Act; 60-Day Notice

AGENCY: Office of National Drug Control Policy.

ACTION: 60-Day Notice of Information Collection; Public Comment.

Pursuant to the Paperwork Reduction Act and in accordance with 5 CFR 1320.10, the Office of National Drug Control Policy (ONDCP), Executive Office of the President, submits the following information collection request for review and approval by the Office of Management and Budget.

Overview of the information collection activity:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Arrestee Drug Abuse Monitoring (ADAM II) Program Questionnaire.

(3) ONDCP Form Number 3201–0016. Office of National Drug Control Policy.

(4) *Affected public:* A probability based sample of persons arrested in selected booking facilities in five U.S. counties. Data is collected during a 3-week period in each county. The total effort will be conducted within three months.

Abstract: The ADAM II survey will collect data concerning the personal drug use, drug and alcohol treatment, arrests, and drug market participation of the arrestee. Data will be collected from a sample of 350 arrestees in each of the five counties. Data collected include a personal interview and urine specimen taken within 48 hours of arrest. Participation is voluntary and confidential.

Key study goals are to:

(1) Provide data on drug use in particular areas of the county that is directly comparable to data collected from 2000–20003 in ADAM;

(2) Obtain consistent data collection points to support statistical trend analysis for the use of heroin, cocaine, crack, marijuana and methamphetamine;

(3) Provide data used to support the Office of National Drug Control Policy's efforts to estimate chronic drug use and examine market behavior;

(4) Estimate of the total number of respondents and the average respondent burden: The estimated number of respondents is 1750, 350 per data collection cycle in five sites. Based on the prior ADAM data collection information and estimates of any instrument changes, it is estimated that the survey will take an average of approximately 26 minutes to complete.

Estimate of the total public burden (in hours) associated with this collection: An estimated 765 hours of public burden is associated with this collection.

Written comments and suggestions from the public and affected agencies concerning proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; or

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

You may submit comments to, or request additional information from, Fe Caces, Office of National Drug Control Policy, Washington, DC 20503 or by email to *MCaces@ONDCP.EOP.GOV.*

Submitted January 11, 2013.

Daniel R. Petersen,

Deputy General Counsel.

[FR Doc. 2013–00857 Filed 1–16–13; 8:45 am]

BILLING CODE 3180–02–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received; Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 19, 2013. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Polly A. Penhale at the above address or (703) 292–7420.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:*

Permit Application: 2013–026.

Matthew C. Lamanna, Assistant Curator, Section of Vertebrate Paleontology, Carnegie Museum of Natural History, 4400 Forbes Avenue, Pittsburgh, PA 15213–4080.

Activity for Which Permit Is Requested

Enter Antarctic Specially Protected Areas. The applicant intends to enter Fildes Peninsula (ASPA 125) and Byers Peninsula (ASPA 126) to conduct paleontological and geological fieldwork. The will explore for, discover, and collect vertebrate fossils (primarily those of fishes, marine reptiles, non-avian dinosaurs, birds and mammals) in deposits of Cretaceous through Paleogene age on islands in the vicinity of he Antarctic Peninsula. Depending on the specific discoveries made, significant new light may be shed on the evolution, faunal dynamics, and/or paleobiogeography of such important vertebrate groups as non-avian dinosaurs, crown clad birds, and therian mammals in the critical interval that brackets the Cretaceous-Paleogene boundary.

Location

Antarctic Peninsula including Fildes Peninsula (ASPA 125) and Byers Peninsula (ASPA 126).

Dates

February 11, 2013 to March 31, 2014.

2. *Applicant:*

Permit Application: 2013–027

Paul Koch, Department of Earth and Planetary Sciences, University of California Santa Cruz, Santa Cruz, CA 95064.

Activity for Which Permit Is Requested

Import into the United States. The applicant's project is designed to understand the interactions between marine mammal species, particularly seals, and changing climate and environmental conditions over the Holocene. The applicant will sample large numbers of seal remains dating back to about 7000 years ago to reconstruct population dynamics and seal ecology, and reconstruct oceanographic conditions. The analyses include radiocarbon dating, stable isotopic measurements, and ancient DNA determinations. The collected samples will be imported into the United States for further analyses at the University of California Santa Cruz.

Location

The McMurdo Dry Valleys, Royal Society Range region and adjacent coastal areas.

Dates

February 11, 2013 to February 10, 2014.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 2013–00911 Filed 1–16–13; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 753; NRC–2013–0007]

Proposed Models for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–426, Revision 5, ''Revise or Add Actions To Preclude Entry Into LCO 3.0.3—RITSTF Initiatives 6B & 6C''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comment on the proposed model safety evaluation (SE) for plant-specific adoption of Technical Specifications (TS) Task Force (TSTF) Traveler TSTF–426, Revision 5, ''Revise or Add Actions to Preclude Entry into [Limiting Condition for Operation] LCO 3.0.3—RITSTF Initiatives 6B & 6C.''

The proposed change revises the Standard Technical Specification (STS), NUREG–1432, ''Standard Technical Specifications Combustion Engineering Plants.'' Specifically, the proposed change revises various TSs to add a Condition for loss of redundant features representing a loss of safety function for a system or component included within the scope of the plant TSs. It would replace Required Actions requiring either a default shutdown or explicit LCO 3.0.3 entry with a Required Action based on the risk significance for the system's degraded condition.

DATES: Comment period expires on February 19, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2013–0007. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0007. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mrs. Michelle C. Honcharik, Senior Project Manager, Office of Nuclear Reactor

Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1774 or email at *Michelle.Honcharik@nrc.gov.* For technical questions please contact Mr. Carl Schulten, Senior Reactor Systems Engineer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1192 or email at *Carl.Schulten@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2013–0007 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0007.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. TSTF–426, Revision 5, includes a model application and is available under ADAMS Accession No. ML113260461. The proposed model SE for plant-specific adoption of TSTF–426, Revision 5, is available under ADAMS Accession No. ML12097A596.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2013–0007 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Additional Technical Details

TSTF–426, Revision 5, is applicable to all Combustion Engineering-designed nuclear power plants. The proposed change revises various TSs to add a Condition for loss of redundant features representing a loss of safety function for a system or component included within the scope of the plant TSs. It would replace Required Actions requiring either a default shutdown or explicit LCO 3.0.3 entry with a Required Action based on the risk significance for the system's degraded condition.

This notice provides an opportunity for the public to comment on proposed changes to the STS after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on proposed changes to the STS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the proposed changes and reconsider the changes or announce the availability of the changes for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's SE, and the applicable technical justifications, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

The proposed changes do not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–426, Revision 5. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–426, Revision 5.

Dated at Rockville, Maryland, this 7th day of January 2013.

For the Nuclear Regulatory Commission.

Sheldon D. Stuchell,

Acting Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2013–00912 Filed 1–16–13; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–39; Order No. 1620]

International Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request concerning an additional Global Plus 1C contract. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Comments are due:* January 23, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Contents of Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

Notice of filing. On January 10, 2013, the Postal Service filed a notice announcing that it is entering into an additional Global Plus 1C contract (Agreement).[1] The Postal Service seeks

[1] Notice of the United States Postal Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 10, 2013 (Notice). The Notice was filed in accordance with 39 CFR 3015.5. *Id.* at 1. *See also* Errata to Notice of the United States Postal

to have the Agreement included within the Global Plus 1C product on the grounds of functional equivalence to previously approved baseline agreements. *Id.* at 1–2.

Product history. The Commission added Global Plus 1C to the competitive product list by operation of Order No. 1151.[2] It concurrently designated the agreements filed in companion Docket Nos. CP2012–12 and CP2012–13 as the baseline agreements for purposes of establishing the functional equivalency of other agreements proposed for inclusion with the Global Plus 1C product. *Id.* at 2. The Agreement that is the subject of this filing is the immediate successor to the agreement approved in Docket No. CP2012–12. *Id.* at 4.

Customers for Global Plus 1C contracts are Postal Qualified Wholesalers (PQWs) and other large businesses that offer mailing services to end users for shipping articles via International Priority Airmail, International Surface Air Lift, Global Express Guaranteed, Express Mail International, Priority Mail International, and/or Commercial ePacket service. *Id.* at 5.

II. Contents of Filing

The filing includes the Notice, along with the following attachments:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—a redacted copy of the certification required under 39 CFR 3015.5(c)(2);
- Attachment 3—a redacted copy of Governors' Decision No. 11–6; and
- Attachment 4—an application for non-public treatment of material filed under seal.

The material filed under seal consists of unredacted copies of the Agreement and supporting financial documents. *Id.* at 2. The Postal Service filed redacted versions of the sealed financial documents in public Excel spreadsheets. *Id.* at 3.

Functional equivalency. The Postal Service asserts that the instant Agreement and the baseline agreements are functionally equivalent because they share similar cost and market characteristics. *Id.* at 4. It notes that the pricing formula and classification established in Governors' Decision No. 08–8 ensure that each Global Plus 1C contract meets the criteria of 39 U.S.C. 3633 and related regulations. *Id.* at 4–5. The Postal Service also indicates that the pricing formula relied on for Global Plus 1C contracts is included in Governors' Decision No. 11–6. *Id.* at 5. The Postal Service further asserts that the functional terms of the two agreements are the same and the benefits are comparable. *Id.*

The Postal Service states that prices may differ, depending on when an agreement is signed, due to updated costing information. *Id.* It also identifies other differences in contractual terms, but asserts that the differences do not affect either the fundamental service being offered or the fundamental structure of the Agreement.[3] *Id.* at 6.

Effective date; term. The scheduled effective date of the Agreement is January 27, 2013. *Id.* at 3. The Agreement is expected to be in effect for approximately 1 year. Termination is either the date prior to the date in January 2014 that Canada Post Corporation makes changes to published rates affecting Qualifying Mail[4] or, in the event of inaction, January 31, 2014. *Id* at 4.

III. Commission Action

The Commission establishes Docket No. CP2013–39 for consideration of matters raised in the Notice. Interested persons may submit comments on whether the Agreement is consistent with the requirements of 39 CFR 3015.5 and the policies of sections 3632, 3633, and 3642. Comments are due no later than January 23, 2013. The public portions of the Postal Service's filing can be accessed via the Commission's Web site at *http://www.prc.gov.* Information on how to obtain access to nonpublic material appears at 39 CFR part 3007.

The Commission appoints Curtis E. Kidd to represent the interests of the general public (Public Representative) in this case.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–39 for consideration of matters raised in the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission designates Curtis E. Kidd to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than January 23, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–00862 Filed 1–16–13; 8:45 am]

BILLING CODE 7710–FW–P

Service of Filing a Functionally Equivalent Global Plus 1C Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, January 11, 2013.

[2] Docket Nos. MC2012–6, CP2012–12, and CP2012–13, Order Adding Global Plus 1C to the Competitive Product List and Approving Related Global Plus 1C Agreements, January 19, 2012 (Order No. 1151).

[3] The list includes, among other things, the non-inclusion of a particular service, the addition and revision of articles, and related renumbering of articles. *See id.* at 6–7.

[4] Article 3 of the Agreement outlines the requirements for mail to be considered as Qualifying Mail. *Id.* at 2–3.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the staff of the Securities and Exchange Commission will hold a decimalization roundtable discussion on Tuesday, February 5, 2013, in the Auditorium, Room L–002. The meeting will begin at 10:00 a.m. and will be open to the public. Seating will be on a first-come, first served basis. Doors will be open at 9:30 a.m. Visitors will be subject to security checks. The roundtable will be webcast on the Commission's Web site at *www.sec.gov* and will be archived for later viewing.

On December 28, 2012, the Commission published notice of the roundtable discussion (Release No. 34–68510), indicating that the event is open to the public and inviting the public to submit written comments to the Commission staff. This Sunshine Act notice is being issued because a majority of the Commission may attend the roundtable discussion.

The agenda for the roundtable includes opening remarks followed by three panel discussions. The participants in the first panel will address the impact of tick sizes on small and middle capitalization companies, the economic consequences (including the costs and benefits) of increasing or decreasing minimum tick sizes, and whether other policy alternatives might better address the concerns animating Section 106(b) of the JOBS Act. The participants in the second panel will address the impact of tick sizes on the securities market in general, including what benefits may have been achieved, and what, if any, negative effects have resulted. The participants in the third panel will address potential methods for analysis of the issues, including whether and how to conduct a pilot for alternative minimum tick sizes.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: January 15, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00975 Filed 1–15–13; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68625; File No. SR–BX–2013–003]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce Fees Assessed for Certain Co-Location Services

January 11, 2013.

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 January 2, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 the Substance of the Proposed Rule Change

BX proposes to reduce the fees assessed under BX Rule 7034 for certain co-location services. The Exchange is proposing to implement the proposed fee beginning on January 2, 2013. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III [sic] 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 BX Rule 7034 to reduce the monthly recurring cabinet (''MRC'') fees assessed for the installation of certain new co-location cabinets. The reduced MRC fees will apply to new cabinets ordered by customers using the CoLo Console [3] during the months of January and February of 2013, provided that such cabinets are fully operational by May 31, 2013. The reduced fee shall apply to any cabinet that increases the number of dedicated cabinets beyond the total number dedicated to that customer as of December 31, 2012 (''Baseline Number''), for so long as the total number of dedicated cabinets exceeds that customer's Baseline Number. The reduced MRC fees will apply for a period of 24 months from the date the new cabinet becomes fully operational under BX rules, provided that the customer's total number of cabinets continues to exceed the Baseline Number.

The Exchange proposes to reduce the applicable fees as follows:

Cabinet type	Current ongoing monthly fee	Reduced ongoing monthly fee
Low Density	$4,000	$2,000
Medium Density	5,000	2,500
Medium-High Density	6,000	3,500
High Density	7,000	4,500
Super High Density	13,000	8,000

New cabinets shall be assessed standard installation fees.

BX proposes to reduce colocation cabinet fees by different amounts to maintain a sliding scale of lower fees for higher density cabinets on a per kilowatt basis. The chart below reflects this scale:

Cabinet type	Max kW	Reduced MRC fee	Discount (%)	Fee per KW
Low Density	2.88	$2,000	50.00	$694.44
Medium Density	5	2,500	50.00	500.00
Medium-High Density	7	3,500	41.67	500.00
High Density	10	4,500	35.71	450.00
Super High Density	17	8,000	38.46	470.59

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed reduced fee will be assessed equally on all customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''CoLo Console'' is BX's web-based ordering tool, and it is the exclusive means for ordering colocation services.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

themselves of the designated co-location services.

BX's proposal to reduce fees by differing amounts is fair and equitable because it reflects the economic efficiency of higher density colocation cabinets. First, the underlying costs for co-location cabinets consists [sic] of certain fixed costs for the data center facility (space, amortization, etc.) and certain variable costs (electrical power utilized and cooling required). The variable costs are in total higher for the higher power density cabinets, as reflected in their higher current prices. Second, the higher density cabinets were introduced later than the lower density cabinets (High Density cabinet was introduced in 2009 and the Super High Density cabinet was introduced in 2011). Due to the competitive pressures that existed in 2011 and 2012, the fees for Super High Density cabinets were further reduced in 2012 to be more comparable with the lower fee per kilowatt of the High Density cabinet. As a result of these already-reduced rates on higher density cabinets, BX has greater flexibility to discount fees for lower density cabinets, on a per kilowatt basis.

BX operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. BX believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the BX colocation facility remain competitive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange's voluntary fee reduction is a response to increased competition for colocation services by other exchanges and trading venues. As more venues offer colocation services, competition drives costs lower. The Exchange, in order to retain existing orders and to attract new orders, is forced to offer a lower effective rate for aggregate cabinet demand. This competition benefits users, members. and investors by lowering the average aggregate cost of trading on the Exchange.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[6] the Exchange has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective 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. 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–BX–2013–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2013–003, and should be submitted on or before February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00868 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68632; File No. SR–FINRA–2013–003]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amendments to the Customer and Industry Codes of Arbitration Procedure To Revise the Public Arbitrator Definition

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 4, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the Customer and Industry Codes of Arbitration Procedure (''Codes'') to revise the definition of ''public arbitrator'' to exclude persons associated with a mutual fund or hedge fund from serving as public arbitrators and to require individuals to wait for two years after ending certain affiliations before they may be permitted to serve as public arbitrators. FINRA believes that the proposed amendments to the public arbitrator definition would improve investors' perception about the fairness and neutrality of FINRA's public arbitrator roster.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared 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

Background

FINRA classifies arbitrators under the Codes as either ''non-public'' or ''public'' (non-public arbitrators are often referred to as ''industry'' arbitrators). Non-public arbitrators are affiliated with the securities industry either through their current or former employment in a securities business, or because they provide professional services to securities businesses. Public arbitrators do not have any significant affiliation with the securities industry; nor are they related to anyone with a significant affiliation with the securities industry.

To improve investor confidence in the neutrality of FINRA's public arbitrator roster, FINRA has amended its arbitrator definitions a number of times over the years.

In 2004, FINRA amended the definitions of public arbitrator and non-public arbitrator to:

- Increase from three years to five years the period for transitioning from a non-public to public arbitrator after leaving the securities industry;
- Clarify that the term ''retired'' from the industry includes anyone who spent a substantial part of his or her career in the industry;
- Prohibit anyone who has been associated with the industry for at least twenty years from ever becoming a public arbitrator, regardless of how long ago the association ended;
- Exclude from the public arbitrator roster attorneys, accountants, or other professionals whose firms have derived ten percent or more of their annual revenue in the previous two years from clients involved in securities-related activities; and
- Provide that investment advisers may not serve as public arbitrators, and may only serve as non-public arbitrators if they otherwise qualify as non-public.[3]

In 2007, FINRA revised the public arbitrator definition to exclude individuals who were employed by, or who served as an officer or director of, a company in a control relationship with a broker-dealer. Individuals were also excluded if a spouse or immediate family member served in such a capacity. In this rule change, FINRA also made it clear that people registered through a broker-dealer could not be public arbitrators even if they are employed by a non-broker-dealer (such as a bank).[4]

Finally, in 2008, FINRA revised the public arbitrator definition to add a dollar limit to the 2004 ten-percent rule. This precluded an attorney, accountant, or other professional from serving as a public arbitrator if the individual's firm derived $50,000 or more in annual revenue in the past two years from professional services rendered to certain industry entities relating to customer disputes concerning an investment account or transaction.[5]

Proposal To Amend the Arbitrator Definition

Recently, FINRA investor representatives raised concerns that they do not perceive certain arbitrators on the public roster as public because of their background or experience. To respond to this perception, FINRA is proposing to amend the public arbitrator definition to exclude persons associated with a mutual fund or hedge fund from serving as public arbitrators and to require individuals to wait for two years after ending certain affiliations before FINRA permits them to serve as public arbitrators.

The public arbitrator definition does not expressly prohibit individuals associated with mutual funds and hedge funds from serving as public arbitrators. However, because of their association with the financial services industry, FINRA believes that these individuals should not serve as public arbitrators. Therefore, FINRA's current practice is to exclude these individuals from the public arbitrator roster until they terminate their affiliation with the hedge fund or mutual fund. For example, FINRA removed a public arbitrator from the roster because he was serving as a director of a mutual fund. FINRA is proposing to amend Rules 12100(u)(3) and 13100(u)(3), which exclude investment advisers from serving as public arbitrators, to exclude also persons associated with, including registered through, a mutual fund or hedge fund. The proposed rule change would respond to questions and concerns raised about arbitrator service by persons associated with mutual funds and hedge funds.

FINRA is also proposing to amend the public arbitrator definition to add a two-year ''cooling off'' period before FINRA permits certain individuals to serve as public arbitrators. Currently under the Codes, an individual may not serve as a public arbitrator if he or she is:

- An investment adviser;
- An attorney, accountant, or other professional whose firm derived ten percent or more of its annual revenue in the past two years from certain financial industry entities;
- An attorney, accountant, or other professional whose firm derived $50,000 or more in annual revenue in the past two years from professional

[3] *See* Exchange Act Rel. No. 49573 (April 16, 2004), 69 FR 21871 (Apr. 22, 2004) (File No. SR–NASD–2003–95) (Order Granting Approval to a Proposed Rule Change Relating to Arbitrator Classification and Disclosure in NASD Arbitrations). The changes were announced in Notice to Members 04–49 (June 2004).

[4] *See* Act Rel. No. 54607 (Oct. 16, 2006), 71 FR 62026 (Oct. 20, 2006) (File No. SR–NASD–2005–094)(Order Approving Proposed Rule Change and Amendment No. 1 Thereto Relating to Amendments to the Classification of Arbitrators Pursuant to Rule 10308 of the NASD Code of Arbitration Procedure). The changes were announced in Notice to Members 06–64 (Nov. 2006).

[5] *See* Exchange Act Rel. No. 57492 (Mar. 13, 2008), 73 FR 15025 (Mar. 20, 2008) (File No. SR–NASD–2007–021) (Order Approving Proposed Rule Change To Amend the Definition of Public Arbitrator). The changes were announced in Regulatory Notice 08–22 (May 2008).

services rendered to certain financial industry entities relating to any customer disputes concerning an investment account or transaction;

• Employed by, or is the spouse or an immediate family member of a person who is employed by, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business; or

• A director or officer of, or is the spouse or an immediate family member of a person who is a director or officer of, an entity that directly or indirectly controls, is controlled by, or is under common control with, any partnership, corporation, or other organization that is engaged in the securities business.

However, as soon as the individual ends the affiliation that was the basis for the exclusion from the public roster, the individual may begin serving as a public arbitrator. In one instance, an individual applying to be a public arbitrator had retired one month earlier from a lengthy career at a law firm that represented securities industry clients. Currently, Rule 12100(u)(5) provides that a public arbitrator may not be an attorney, accountant, or other professional whose firm derived $50,000 or more in annual revenue in the past two years from professional services rendered to specified securities industry clients relating to any customer disputes concerning an investment account or transaction. The applicant confirmed that the firm derived revenue of at least $50,000 during the past two years from clients in the securities industry relating to customer disputes. If the individual applied while employed at the firm, FINRA would not have approved the application. However, since the applicant left the firm one month earlier, and the rule does not include a cooling off period, the applicant was permitted to join the public arbitrator roster.

FINRA is proposing to amend Rules 12100(u) and 13100(u) to provide that a person whom FINRA would not designate as a public arbitrator because of an affiliation under subparagraphs (3)–(7) (the exclusions detailed in the bullets above) shall not be designated as a public arbitrator for two calendar years after ending the affiliation. As stated above, FINRA is also proposing to add persons associated with mutual funds and hedge funds to Rules 12100(u)(3) and 13100(u)(3). Therefore, the two-year cooling off period would apply to these individuals as well. FINRA believes that the cooling off period would improve its constituents' perception about the neutrality of the arbitrators on the public roster.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Exchange Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed amendments to the public arbitrator definition would benefit investors by addressing concerns raised about the fairness and neutrality of FINRA's public arbitrator roster. FINRA believes that by prohibiting persons associated with mutual funds or hedge funds from serving on the public roster, the proposed amendments further restrict the professional affiliations that a public arbitrator may have with the securities industry. The proposed two-year cooling off period seeks to ensure that potential arbitrators have sufficient separation from their affiliations with the securities industry. FINRA believes these restrictions would improve investors' perception of fairness and neutrality of the public roster.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2013–003 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2013–003. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2013–003 and should be submitted on or before February 7, 2013.

[6] 15 U.S.C. 78o–3(b)(6).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00874 Filed 1–16–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68629; File No. SR–NASDAQ–2012–059]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Disapproving Proposed Rule Change To Establish ''Benchmark Orders'' Under NASDAQ Rule 4751(f)

January 11, 2013.

I. Introduction

On May 1, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish various ''Benchmark Orders'' under NASDAQ Rule 4751(f). The proposed rule change was published for comment in the **Federal Register** on May 17, 2012.[3] On June 26, 2012, the Commission extended to August 15, 2012, the time period in which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[4]

On August 14, 2012, the Commission instituted proceedings to determine whether to approve or disapprove the proposed rule change.[5] The Commission thereafter received two comment letters on the proposal.[6] On November 9, 2012, the Commission issued a notice of designation of a longer period for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.[7] On December 17, 2012, NASDAQ submitted a response letter to the comments on the proposal.[8] This order disapproves the proposed rule change.

II. Description of the Proposal

As set forth in more detail in the Notice, the Exchange has proposed to offer Benchmark Orders that would seek to achieve the performance of a specified benchmark—Volume Weighted Average Price (''VWAP''), Time Weighted Average Price (''TWAP''), or Percent of Volume (''POV'')—over a specified period of time for a specified security.[9] The entering party would specify the benchmark, period of time, and security, as well as the other order information common to all order types, such as buy/sell side, shares and price.[10]

Benchmark Orders would be received by NASDAQ but by their terms would not be executable by the NASDAQ matching engine upon entry.[11] Rather, NASDAQ would direct them to a system application (''Application'') that is licensed from a third-party provider and dedicated to processing Benchmark Orders.[12] The Application would process Benchmark Orders by generating ''Child Orders'' in a manner designed to achieve the desired benchmark performance, *i.e.,* VWAP, TWAP or POV, in accordance with the member's instructions.[13] Child Orders would be executed within the NASDAQ system under NASDAQ's existing rules, or made available for routing under NASDAQ's current routing rules.[14] The Application would not be capable of executing Child Orders, but instead would send Child Orders, using the proper system protocol, to the NASDAQ matching engine or to the NASDAQ router as needed to complete the Benchmark Order.[15] Child Orders would be processed in an identical manner to orders generated independently of a Benchmark Order.[16] NASDAQ states that the third-party provider of the Application would have no actionable advantage over NASDAQ members with respect to the NASDAQ system.[17]

NASDAQ represents that it would test the Application rigorously and regularly, monitor the Application performance on a real-time and continuous basis, and have access to the technology, employees, books and records of the third-party provider that are related to the Application and its interaction with NASDAQ.[18] NASDAQ states that it considers the Application to be a functional offering of the NASDAQ Stock Market, and that it would be integrated closely with the NASDAQ system and provided to members subject to NASDAQ's obligations and responsibilities as a self-regulatory organization.[19] In addition, NASDAQ represents that it would maintain control of and responsibility for the Application.[20]

III. Discussion

Under Section 19(b)(2)(C) of the Act, the Commission shall 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 that are applicable to such organization.[21] The Commission shall disapprove a proposed rule change if it does not make such a finding.[22] The Commission's Rules of Practice, under Rule 700(b)(3), state that the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder * * * is on the self-regulatory organization that proposed the rule change'' and that a ''mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient.''[23]

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66972 (May 11, 2012), 77 FR 29435 (May 17, 2012) (''Notice'').

[4] *See* Securities Exchange Act Release No. 67258 (June 26, 2012), 77 FR 39314 (July 2, 2012).

[5] *See* Securities Exchange Act Release No. 67655 (August 14, 2012), 77 FR 50191 (August 20, 2012) (''Order Instituting Proceedings'').

[6] *See* Letters to the Commission from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, dated October 5, 2012 (''SIFMA Letter''); and James J. Angel, dated August 16, 2012 (''Angel Letter'').

[7] *See* Securities Exchange Act Release No. 68199 (November 9, 2012), 77 FR 68873 (November 16, 2012).

[8] *See* Letter to the Commission from Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ, dated December 17, 2012 (''NASDAQ Letter'').

[9] *See* proposed NASDAQ Rule 4751(f)(15).

[10] *Id.; see also* Notice, 77 FR at 29436.

[11] *See* proposed NASDAQ Rule 4751(f)(15); *see also* Notice, 77 FR at 29435–36.

[12] *See* Notice, 77 FR at 29436.

[13] *See* proposed NASDAQ Rule 4751(f)(15); *see also* Notice, 77 FR at 29435–36.

[14] *See* Notice, 77 FR at 29435. Child Orders that require routing would be routed by NASDAQ Execution Services, NASDAQ's wholly-owned routing broker-dealer. *Id.* at 29436 n.8. In addition, fees applicable to existing orders and trades would apply to Child Orders. *Id.* at 29436.

[15] *Id.* at 29435–36.

[16] *Id.* at 29436.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.* at 29437.

[21] *See* 15 U.S.C. 78s(b)(2)(C)(i).

[22] *See* 15 U.S.C. 78s(b)(2)(C)(ii).

[23] *See* 17 CFR 201.700. The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. *See id.* Any failure of a self-regulatory organization to provide the information elicited by Form 19b–4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization. *Id.*

After careful consideration, the Commission does not find that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[24] In particular, the Commission does not find that the proposed rule change is consistent with: (i) Section 6(b)(5) of the Act,[25] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and not to permit unfair discrimination between customers, issuers, brokers, or dealers; and (ii) Section 6(b)(8) of the Act,[26] which requires that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the Act.

In the Order Instituting Proceedings, the Commission stressed, among other things, that the application of appropriate risk controls under the Market Access Rule, Rule 15c3–5 under the Act,[27] is critically important to maintaining a robust market infrastructure.[28] The Commission expressed concern as to whether Child Orders, which would be generated solely by the Application and presumably outside the control and supervision of the broker-dealer firm that entered the initial Benchmark Order, would be subject to adequate pre-trade risk checks, and noted that NASDAQ's proposal did not indicate how or whether pre-trade controls would be applied to Child Orders generated by the Application.[29]

The Commission received two comment letters on the proposed rule change and a response from NASDAQ.[30] In its comment letter, SIFMA objects to, and urges the Commission to disapprove, the proposed rule change.[31] SIFMA expresses the belief that NASDAQ's proposed rule change would create a regulatory disparity giving NASDAQ an inappropriate advantage with respect to the Market Access Rule over broker-dealers that provide the same services that NASDAQ proposes.[32] SIFMA notes that NASDAQ is not subject to the Market Access Rule, and its affiliated routing broker-dealer benefits from significant exceptions to the Market Access Rule, whereas broker-dealers unaffiliated with NASDAQ are subject to all of the requirements of the Market Access Rule when they offer similar algorithmic trading services to those NASDAQ proposes to offer, and such requirements are reinforced through regulatory examination and oversight.[33] Accordingly, SIFMA ''urge[s] the Commission to assure that the same regulatory requirements and obligations would apply to Benchmark Orders and Child Orders effected by Nasdaq that would apply to those orders if they were effected by a broker-dealer.'' [34]

SIFMA further states that it shares the concern raised by the Commission in the Order Instituting Proceedings that Child Orders would not be subject to appropriate controls to manage risk, and that NASDAQ has not adequately addressed how or whether the Child Orders would be subject to adequate pre-trade risk controls.[35] SIFMA states that, given that Child Orders would be generated by a third-party Application and outside of the control and supervision of the broker-dealer that submitted the Benchmark Order, Child Orders would not be subject to the risk controls that the entering firm is required to have in place pursuant to the Market Access Rule.[36] SIFMA notes that, while NASDAQ has stated in the proposal that Child Orders will comport with existing NASDAQ rules, including those intended to enforce the Market Access Rule, NASDAQ has provided no details regarding how Child Orders will meet these requirements.[37] According to SIFMA, this lack of detail raises concerns about the potential for market disruptions that NASDAQ's proposed algorithmic functionality could cause.[38] According to the other commenter, Angel, NASDAQ's assurances in the proposal that it will have adequate risk controls are credible.[39]

NASDAQ responds by, among other things, committing to provide additional risk management safeguards for Benchmark Orders.[40] Specifically, NASDAQ states that, unlike existing order types, which are subjected only once to NASDAQ's suite of standardized, system-enforced risk-management checks, including but not limited to duplicative and erroneous order and credit threshold checks, Benchmark Orders will trigger such checks twice—once with respect to the Benchmark Order itself at the time of entry and a second time with respect to each Child Order attributable to the Benchmark Order.[41] In addition, NASDAQ states that it will provide new safeguards, specifically designed for Benchmark Orders, that compare each Child Order to its parent Benchmark Order to ensure that the system cannot mistakenly create excess Child Orders or otherwise ''spray'' orders to the detriment of market participants.[42] According to NASDAQ, if any of these checks fail at any stage in the process, the entire order will be cancelled.[43]

As the Commission noted in the Order Instituting Proceedings, the application of appropriate risk controls under Rule 15c3–5 is critically important to maintaining a robust market infrastructure supporting the protection of investors, investor confidence, and fair, orderly, and efficient markets for all participants.[44] Under the proposal, the risk controls required by Rule 15c3–5 would not be applicable to Child Orders generated by the proposed Application—a facility of NASDAQ—but NASDAQ represents that it would nevertheless impose substantial risk controls to govern its proposed Benchmark Orders, and in particular with respect to the Child Orders to which Rule 15c3–5 would not directly apply. The representations

[24] In disapproving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(8).

[27] 17 CFR 240.15c3–5. Rule 15c3–5 is designed to ensure that broker-dealers appropriately control the risks associated with market access, so as not to jeopardize their own financial condition, that of other market participants, the integrity of trading on the securities markets, or the stability of the financial system. *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 at 69794 (November 15, 2010).

[28] *See* Order Instituting Proceedings, 77 FR at 50192.

[29] *Id.*

[30] *See* SIFMA Letter and Angel Letter, *supra* note 6; NASDAQ Letter, *supra* note 8.

[31] *See* SIFMA Letter, *supra* note 6.

[32] *Id.* at 2.

[33] *Id.* at 5.

[34] *Id.* at 2.

[35] *Id.* at 4.

[36] *Id.* at 4–5.

[37] *Id.* at 5.

[38] *Id.*

[39] *See* Angel Letter, *supra* note 6, at 2.

[40] *See* NASDAQ Letter, *supra* note 8, at 3.

[41] *Id.*

[42] *Id.* According to NASDAQ, there are four such ''comparison'' checks: (i) Child Order limit price cannot violate the Parent Order limit price; (ii) Child Order quantity cannot exceed the original Parent Order quantity; (iii) Child Order quantity cannot exceed the ''leaves'' balance of the Parent Order; and (iv) Child Order quantity cannot be greater than the eligible routing quantity. *Id.* at 3–4. NASDAQ represents that it will conduct these checks at four stages of the Benchmark Order process: (i) at the point of entry; (ii) during the processing of any Child Orders; (iii) after the processing of Child Orders; and (iv) when Child Orders are sent to be booked on NASDAQ or routed to an away destination. *Id.* at 4.

[43] *Id.*

[44] *See* Order Instituting Proceedings, 77 FR at 50192.

made in NASDAQ's response letter, if appropriately developed and reflected in NASDAQ's proposed rule change, could potentially address the concerns regarding the risk controls surrounding Benchmark Orders, and whether in this regard the proposal imposes an undue burden on competition under the Act or whether it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and not to permit unfair discrimination between customers, issuers, brokers, or dealers. NASDAQ, however, has not amended its proposed rule change to address this issue or detail its proposed commitments with respect to the risk controls it proposes to implement with respect to Benchmark Orders. Accordingly, the Commission does not believe that it can make the finding that NASDAQ's proposal is consistent with the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[45]

In the Order Instituting Proceedings, the Commission also expressed concern that NASDAQ's proposed Benchmark Order functionality could permit unfair discrimination or impose an unnecessary burden on competition.[46] In this regard, SIFMA notes, among other things, that the proposed Benchmark Order functionality would compete with algorithms that broker-dealers and other market participants currently use and offer, and questions whether it is appropriate for NASDAQ, as a national securities exchange, to offer that functionality.[47] SIFMA states that NASDAQ's proposal could create regulatory disparities that would give NASDAQ an inappropriate advantage over broker-dealers providing the same services, both in terms of the Market Access Rule [48] and other regulatory requirements that apply to broker-dealers.[49] Specifically, SIFMA observes that NASDAQ has characterized the Benchmark Order as part of its function as a self-regulatory organization, and states that this characterization is cause for concern that NASDAQ would use the doctrine of regulatory immunity to shield the Exchange from any liability that could arise out of the use of the Benchmark Order functionality.[50] SIFMA suggests that the proposed functionality is not part of NASDAQ's role as a market regulator, but rather is a commercial offering of the Exchange that should not enjoy immunity from liability that is not available to broker-dealers providing identical services.[51] SIFMA further opines that ''it would be an incongruous result if NASDAQ were permitted to use regulatory immunity as a shield against liability, while competing algorithm providers offering the same services may assume unlimited liability [without an] arms-length agreement.'' [52] SIFMA believes that exchanges should not enjoy regulatory immunity that is not available to broker-dealers in providing the same services.[53]

NASDAQ's response letter takes the position that, as a self-regulatory organization, the doctrine of regulatory immunity would apply to the services that it proposes to offer.[54] NASDAQ believes that the proposal would not give NASDAQ an inappropriate advantage over broker-dealers, and that the Application would be a functional offering of the NASDAQ Stock Market similar to other functions, including order types, that process member trading interest.[55] NASDAQ states that it has taken steps to ensure that the Application performs to the standards that the Commission sets for all self-regulatory organizations and complies with applicable SEC regulations and NASDAQ rules.[56] According to NASDAQ, it is beyond dispute that NASDAQ is subject to regulation by the Commission in providing access to a facility of the Exchange such as Benchmark Orders and that NASDAQ must regulate its members' use of such facilities.[57] NASDAQ states that, as a national securities exchange under the Act, it is, by definition, a self-regulatory organization, and that SIFMA's contention that NASDAQ, in making the proposal, is not acting as a self-regulatory organization is illogical and inconsistent with the plain language of the Act.[58] Further, according to NASDAQ, common law immunity is not at issue in connection with the Commission's review of the proposal and there is no need for the Commission to discuss such immunity in analyzing the consistency of the proposal with the Act.[59]

NASDAQ also contends that the proposed Benchmark Orders will operate much like NASDAQ's already-approved order types, and that SIFMA has identified no salient feature of Benchmark Orders that distinguish them from NASDAQ's already-approved order types, nor has SIFMA explained how Benchmark Orders would compete with broker systems any differently than certain features of NASDAQ's system that already compete with broker systems, such as routing and order execution.[60] NASDAQ further argues that Benchmark Orders possess no characteristics that the Commission has described as belonging to broker-dealer functions, and that Benchmark Orders bear little or no resemblance to traditional brokerage functions as defined and applied by the Commission.[61]

NASDAQ has acknowledged, however, that Benchmark Orders are designed to compete with services currently offered by broker-dealers, noting that ''the establishment of Benchmark Orders on NASDAQ will enhance NASDAQ's ability to compete with similar functionality that already is widely dispersed in the industry both among members and trading venues.'' [62] In addition, NASDAQ has stated that ''[t]he Benchmark Order will not itself be available for execution, but instead will be used by a sub-system of the trading system to generate a series of 'Child Orders' of the types that already exist in the current NASDAQ rules.'' [63] NASDAQ has further articulated that ''Benchmark Orders will not be executed by the NASDAQ matching engine, but will upon entry be directed

[45] 15 U.S.C. 78f(b)(5) and (b)(8).

[46] *See* Order Instituting Proceedings, 77 FR at 50192.

[47] *See* SIFMA Letter, *supra* note 6, at 2. In addition, SIFMA notes that it shares an additional concern raised by the Commission in the Order Instituting Proceedings regarding whether Benchmark Orders and Child Orders could receive preferential treatment as compared to orders generated by broker-dealers that choose to use a competing algorithm. *See* SIFMA Letter, *supra* note 6, at 3. The other commenter, Angel, opines that there could be a small time advantage from the proximity of the Benchmark Order application to the order entry gateway of NASDAQ's matching engine, but the amount of time gained by such proximity would not likely result in a major advantage. *See* Angel Letter, *supra* note 6, at 3. In response to SIFMA, NASDAQ states that, as a self-regulatory organization, it is not permitted to give and would not give Benchmark Orders any preferential treatment *vis a vis* other orders entered into NASDAQ systems. *See* NASDAQ Letter, *supra* note 8, at 4.

[48] 17 CFR 240.15c3–5.

[49] *See* SIFMA Letter, *supra* note 6, at 2.

[50] *Id.* at 3.

[51] *Id.* at 4.

[52] *Id.* at 3.

[53] *Id.* at 4.

[54] *See* NASDAQ Letter, *supra* note 8, at 8.

[55] *Id.* at 2, 4, 7–8.

[56] *Id.* at 8.

[57] *Id.*

[58] *Id.*

[59] *Id.* at 7.

[60] *Id.* at 2, 4.

[61] *Id.* at 7.

[62] *See* Notice, 77 FR at 29437. In addition, Angel notes that brokerage firms typically offer their clients the ability to place orders designed to match the VWAP, TWAP or POV, and that NASDAQ's proposal represents another example of the blurring borders between exchanges and broker-dealers, and states that there is nothing inherently wrong with competition between the two. *See* Angel Letter, *supra* note 6, at 2.

[63] *See* Notice, 77 FR at 29435.

to [the Application] dedicated to processing Benchmark Orders.'' [64]

The Commission believes that one significant difference between Benchmark Orders and existing NASDAQ or other exchange orders is that the Benchmark Order is not initially directed to the NASDAQ matching engine for potential execution, but instead is directed to the Application for further processing and the generation of Child Orders, to be routed to the NASDAQ matching engine or another trading center. Thus, NASDAQ's proposed Benchmark Order is not an exchange order in the traditional sense, in that it would not immediately enter the Exchange's order book (*i.e.,* NASDAQ Market Center) [65] for potential execution. Instead, it essentially is an instruction that would reside outside of the matching engine and be processed by an Application, which would then route orders to NASDAQ, or another trading venue, using a selected algorithm, over a particular period of time, to achieve a particular objective.

Because NASDAQ is proposing to offer a novel order type designed to compete with services offered by broker-dealers, the Commission must consider, among other things, whether the proposed rule change would impose an unnecessary or inappropriate burden on competition under Section 6(b)(8) of the Act.[66] As noted above, SIFMA is concerned that NASDAQ's proposal could create regulatory disparities that would give NASDAQ an inappropriate advantage over broker-dealers providing the same services, and that NASDAQ ''would use the doctrine of regulatory immunity to protect itself from any liability that arises out of the Benchmark Order functionality, through systems issues or otherwise.'' [67] In addition, the Commission notes that NASDAQ Rule 4626 generally provides that ''Nasdaq and its affiliates shall not be liable for any losses, damages, or other claims arising out of the Nasdaq Market Center or its use.'' [68]

NASDAQ does not respond to concerns raised by SIFMA with any substantive analysis of whether regulatory immunity, or exchange rules limiting liability, in the context of NASDAQ's proposal to offer a service traditionally provided by broker-dealers, would impose an undue burden on competition under the Act. NASDAQ simply responds that this ''judicially recognized doctrine is not at issue in connection with the Commission's review of NASDAQ's Benchmark Order Proposal'' and that ''[t]here is no need for the Commission to discuss immunity in analyzing the consistency of NASDAQ's Proposal with the Exchange Act.'' [69] Accordingly, the Commission does not believe that it can make the finding that NASDAQ's proposal is consistent with the requirements of Section 6(b)(8) of the Act.[70]

As noted above, Rule 700(b)(3) of the Commission's Rules of Practice states that ''[t]he burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder * * * is on the self-regulatory organization that proposed the rule change'' and that a ''mere assertion that the proposed rule change is consistent with those requirements * * * is not sufficient.'' [71] For the reasons set forth above, the Commission does not believe that NASDAQ has met its burden to demonstrate that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Sections 6(b)(5) and 6(b)(8) of the Act.[72]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[73] that the proposed rule change (SR–NASDAQ–2012–059) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

Kevin M. O'Neill,

Deputy Secretary.

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[64] *Id.* at 29436.

[65] The term ''NASDAQ Market Center'' is defined in pertinent part as the ''automated system for order execution and trade reporting owned and operated by The NASDAQ Stock Market LLC * * * [comprising] an order execution service that enables Participants to automatically execute transactions in System Securities; and provides Participants with sufficient monitoring and updating capability to participate in an automated execution environment.'' *See* NASDAQ Rule 4751(a)(1).

[66] 15 U.S.C. 78f(b)(8).

[67] *See* SIFMA Letter, *supra* note 6, at 3.

[68] *See* NASDAQ Rule 4626.

[69] *See* NASDAQ Letter, *supra* note 8, at 7.

[70] 15 U.S.C. 78f(b)(8).

[71] 17 CFR 201.700(b)(3).

[72] 15 U.S.C. 78f(b)(5) and (b)(8).

[73] 15 U.S.C. 78s(b)(2).

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68626; File No. SR–NASDAQ–2012–149]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Modify NASDAQ's Order Execution Rebates and Investor Support Program

January 11, 2013.

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 31, 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 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 is proposing (i) to amend its schedule of execution rebates under Rule 7018(a), and (ii) to modify the Investor Support Program (the ''ISP'') under Rule 7014. While changes pursuant to this proposal are effective upon filing, the Exchange will implement the proposed rule on January 2, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing (i) to amend its schedule of execution rebates under Rule 7018(a), and (ii) to modify the ISP under Rule 7014. As a general matter, the changes are designed to increase and broaden incentives for participation in NASDAQ by liquidity providers.

Execution Rebates

NASDAQ is making a number of changes to its general schedule of rebates for execution of securities priced at $1 or more per share, as set forth in Rule 7018(a). Overall, the changes are aimed at providing greater incentives for the entry of liquidity-providing orders in NASDAQ. Specifically, NASDAQ is proposing to make the following changes:

• Currently, NASDAQ pays a credit of $0.0029 per share executed with respect to displayed quotes/orders for a member with shares of liquidity provided in all securities through one or more of its NASDAQ Market Center market participant identifiers (''MPIDs'') that represent more than 0.50% of Consolidated Volume [3] during the month. NASDAQ is modifying this rebate tier to decrease the threshold to more than 0.45% of Consolidated Volume. This change reverses a price increase made by NASDAQ in September 2012.[4]

• Similarly, NASDAQ is restoring a rebate tier that was eliminated in September 2012.[5] Under the restored tier, NASDAQ will pay a credit of $0.0029 per share executed with respect to displayed quotes/orders for a member with shares of liquidity accessed in all securities through one or more of its MPIDs that represent more than 0.65% of Consolidated Volume during the month, and that provides a daily average of at least 2 million shares of liquidity in all securities through one or more of its NASDAQ Market Center MPIDs during the month.[6]

• NASDAQ currently pays a credit of $0.0029 per share executed with respect to displayed quotes/orders for a member with shares of liquidity provided in all securities through one or more of its NASDAQ Market Center MPIDs representing more than 0.25% of Consolidated Volume during the month, and with an average daily volume during the month of more than 100,000 contracts of liquidity accessed or provided through one or more of its NASDAQ Options Market MPIDs. NASDAQ is proposing to decrease the Consolidated Volume requirement for this tier to shares representing more than 0.15% of Consolidated Volume, thereby reversing another change made in September 2012.[7]

• NASDAQ is also introducing a new rebate tier of $0.00305 per share executed with respect to displayed quotes/orders for a member that either (i) provides shares of liquidity in all securities through one of its MPIDs that represent 1.60% or more of Consolidated Volume during the month, or (ii) provides shares of liquidity in all securities through one or more of its MPIDs that represent 1.60% or more of Consolidated Volume during the month, and provides liquidity through one of its MPIDs that represent 0.75% or more of Consolidated Volume during the month.[8]

• Similarly, NASDAQ is introducing a new rebate tier of $0.0030 per share executed with respect to displayed quotes/orders for a member that either (i) provides shares of liquidity in all securities through one of its MPIDs that represent 1.20% or more of Consolidated Volume during the month, or (ii) provides shares of liquidity in all securities through one or more of its MPIDs that represent 1.20% or more of Consolidated Volume during the month, and provides liquidity through one of its MPIDs that represent 0.75% or more of Consolidated Volume during the month.[9]

Investor Support Program

The ISP enables NASDAQ members to earn a monthly fee credit for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities (''targeted liquidity''). However, in order to partially offset the cost of the broad rebate incentives discussed above, NASDAQ is partially reducing the rebates payable under the ISP.

Participants in the ISP are required to designate specific NASDAQ order entry ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution. Currently, a member that participates in the ISP receives a credit of $0.00005, $0.0001, or $0.000375 per share with respect to the number of shares of displayed liquidity provided by the member that execute at $1 or more per share.[10] The precise credit rate is determined by factors designed to measure the degree of the member's participation in the Nasdaq Market Center and the percentage of orders that it enters that execute—its ''ISP Execution Ratio''—which is seen as indicative of retail or institutional participation. Without making any other modifications to the program, NASDAQ will reduce the credit paid to market participants that currently qualify for a $0.000375 per share credit to $0.0002 per share. The specific requirements for qualifying for the $0.0002 credit are described below.

As provided in Rule 7014(c)(4), NASDAQ will pay a credit of $0.0002 per share [11] with respect to shares of displayed liquidity executed at a price of $1 or more and entered through ISP-designated ports, and $0.00005 per share with respect to all other shares of displayed liquidity executed at a price of $1 or more, if the following conditions are met:

(1) The member's Participation Ratio [12] for the month exceeds its

[3] ''Consolidated Volume'' is defined as ''the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities.''

[4] Securities Exchange Act Release No. 67849 (September 13, 2012), 77 FR 58190 (September 19, 2012) (SR–NASDAQ–2012–103).

[5] *Id.*

[6] Along with the rule language providing for this new rebate tier, NASDAQ is also including language applicable to rebates for midpoint pegged orders and midpoint post-only orders (''midpoint orders''), and non-displayed orders. This language is being added simply to make it clear that existing rebates for these orders apply to members qualifying for the new tier with respect to their displayed orders.

[7] *Supra* n.4.

[8] As discussed in Securities Exchange Act Release No. 64003 (March 2, 2011), 76 FR 12784 (March 8, 2011) (SR–NASDAQ–2011–028), some pricing incentives in NASDAQ's fee and rebate schedule require members to achieve certain volume thresholds through a single MPID to avoid providing excessive encouragement to members to aggregate the activity of several firms to which they provide sponsored access (some of whom may not themselves be members of NASDAQ) for the sole purpose of earning a higher rebate.

Along with the rule language providing for this new rebate tier, NASDAQ is also including language applicable to rebates for midpoint orders and non-displayed orders. This language is being added simply to make it clear that existing rebates for these orders apply to members qualifying for the new tier with respect to their displayed orders. NASDAQ is also making a conforming change to move the location of the definition of ''midpoint orders''.

[9] Along with the rule language providing for this new rebate tier, NASDAQ is also including language applicable to rebates for midpoint orders and non-displayed orders. This language is being added simply to make it clear that existing rebates for these orders apply to members qualifying for the new tier with respect to their displayed orders.

[10] A participant in the ISP must designate specific order-entry ports for use in tabulating certain requirements under the program.

[11] A reduction from $0.000375 per share.

[12] ''Participation Ratio'' is defined as follows: ''[F]or a given member in a given month, the ratio of (A) the number of shares of liquidity provided

Baseline Participation Ratio [13] by at least 0.86%. The requirement reflects the expectation that in order to earn a higher rebate under the program, a member participating in the program must increase its participation in NASDAQ as compared with an historical baseline.

(2) The member's ''ISP Execution Ratio'' for the month must be less than 10. The ISP Execution Ratio is defined as ''the ratio of (A) the total number of liquidity-providing orders entered by a member through its ISP-designated ports during the specified time period to (B) the number of liquidity-providing orders entered by such member through its ISP-designated ports and executed (in full or partially) in the Nasdaq Market Center during such time period; provided that: (i) No order shall be counted as executed more than once; and (ii) no Pegged Orders, odd-lot orders, or MIOC or SIOC orders shall be included in the tabulation.'' [14] Thus, the definition requires a ratio between the total number of orders that post to the NASDAQ book and the number of such orders that actually execute that is low, a characteristic that NASDAQ believes to be reflective of retail and institutional order flow.

(3) The shares of liquidity provided through ISP-designated ports during the month are equal to or greater than 0.2% of Consolidated Volume during the month, reflecting the ISP's goals of encouraging higher levels of liquidity provision.

(4) At least 40% of the liquidity provided by the member during the month is provided through ISP-designated ports. This requirement is designed to mitigate ''gaming'' of the program by firms that do not generally represent retail or institutional order flow but that nevertheless are able to channel a portion of their orders that they intend to execute through ISP-designated ports and thereby receive a credit with respect to those orders.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[15] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[16] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Changes to Rebates

NASDAQ believes that the proposed changes to rebate tiers are reasonable, because they will increase the rebates payable to eligible market participants. NASDAQ further believes that the changes are consistent with an equitable allocation of fees because the modified rebate schedule will provide increased incentives for provision of displayed liquidity that NASDAQ believes benefit all market participants by dampening price volatility and promoting price discovery. Finally, NASDAQ believes that the changes are not unreasonably discriminatory because opportunities for enhanced rebates to liquidity providers will be broadened under the modified schedule. Specifically:

- The changes to the rebate tiers through which members may earn a $0.0029 per share executed rebate are reasonable because they will make it easier for members to receive a rebate at that level, by lowering the volume requirements for existing tiers and by adding a new tier through which members may qualify. In addition, the changes are consistent with an equitable allocation of fees because they reflect an allocation of rebates to liquidity providers designed to encourage beneficial market activity, with greater incentives for market participants to provide liquidity. Finally, the changes are not unreasonably discriminatory because they increase the availability of higher rebates without eliminating any of the other means by which a member may earn a higher rebate under Rule 7018(a).
- The addition of two new rebate tiers focused on members that provide high levels of liquidity is reasonable because it will reduce the costs of market participants that make significant contributions to market quality. The change is consistent with an equitable allocation of fees because NASDAQ believes that it is equitable to provide incentives to members that are capable of providing high levels of liquidity (1.2% to 1.6% of Consolidated Volume) to participate in NASDAQ to a greater extent, because doing so has the potential to increase NASDAQ's market quality to the benefit of all its market participants. Finally, NASDAQ believes that these new rebate tiers are not unreasonably discriminatory because the rebates they would provide are not significantly higher than rebates otherwise available through Rule 7018(a) and Rule 7014, and are being offered to increase the quality of the NASDAQ market.

Changes to the ISP

The ISP encourages members to add targeted liquidity that is executed in the Nasdaq Market Center. NASDAQ believes that the reduction in the rebates paid under the ISP from $0.000375 to $0.0002 with respect to certain tiers of the ISP is reasonable, because it provides a means for NASDAQ to reduce costs during a period of persistently low trading volumes, in addition to partially offsetting the costs of the general increased rebates instituted by this filing, but while still maintaining the overall structure of the ISP for the purpose of providing incentives for retail and institutional investors to provide targeted liquidity at NASDAQ. The change is consistent with an equitable allocation of fees: Although the change maintains the ISP's purpose of paying higher rebates to certain market participants in order to encourage them to benefit all NASDAQ members through the submission of targeted liquidity, the change reduces the disparity between rebates paid to ISP participants and other members for providing liquidity. In conjunction with the other changes made by this filing, this may serve to broaden the availability of enhanced rebates. Similarly, although NASDAQ believes that the price differentiation inherent in the ISP is fair, because it is designed to benefit all market participants by drawing targeted liquidity to the Exchange, the change reduces the level of differentiation between the rebates

in orders entered by the member through any of its Nasdaq ports and executed in the Nasdaq Market Center during such month to (B) the Consolidated Volume.'' ''Consolidated Volume'' is defined as follows: ''[F]or a given member in a given month, the consolidated volume of shares of System Securities in executed orders reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during such month.'' ''System Securities'' means all securities listed on NASDAQ and all securities subject to the Consolidated Tape Association Plan and the Consolidated Quotation Plan.

[13] ''Baseline Participation Ratio'' is defined as follows: ''[W]ith respect to a member, the lower of such member's Participation Ratio for the month of August 2010 or the month of August 2011, provided that in calculating such Participation Ratios, the numerator shall be increased by the amount (if any) of the member's Indirect Order Flow for such month, and provided further that if the result is zero for either month, the Baseline Participation Ratio shall be deemed to be 0.485% (when rounded to three decimal places).'' ''Indirect Order Flow'' is defined as follows: ''[F]or a given member in a given month, the number of shares of liquidity provided in orders entered into the Nasdaq Market Center at the member's direction by another member with minimal substantive intermediation by such other member and executed in the Nasdaq Market Center during such month.''

[14] These terms have the meanings assigned to them in Rule 4751. MIOC and SIOC orders are forms of ''immediate or cancel'' orders and therefore cannot be liquidity-providing orders.

[15] 15 U.S.C. 78f.

[16] 15 U.S.C. 78f(b)(4) and (5).

paid to ISP participants and those paid to other liquidity providers.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. These competitive forces help to ensure that NASDAQ's fees are reasonable, equitably allocated, and not unfairly discriminatory since market participants can largely avoid fees to which they object by changing their trading behavior.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, NASDAQ believes that the change, which will generally result in an increase in the rebates paid to encourage market participants to use NASDAQ, reflects the high degree of competition in the cash equities markets and will further enhance that competition by lowering fees and possibly encouraging NASDAQ's competitors to make competitive responses. Moreover, the decreased ISP rebate contained in the proposed rule change will not burden competition because the market for order execution is extremely competitive and members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. Accordingly, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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.[17] 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–2012–149 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–2012–149. 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–NASDAQ–2012–149 and should be submitted on or before February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

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[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68627; File No. SR–ISE–2013–01]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 2, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'') [4] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5]

The purpose of this proposed rule change is to 1) increase the rebate levels for complex orders in options on the Select Symbols, on SPY—a Select Symbol which has a distinct rebate amount, on the Non-Select Penny Pilot Symbols and on the Non-Penny Pilot Symbols, 2) increase the maker fee for complex orders that trade against Priority Customer complex orders in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, and 3) increase the taker fee for complex orders in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols.

Complex Order Rebates

The Exchange currently provides volume-based tiered rebates for Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols when these orders trade with non-Priority Customer orders in the complex order book.

In the Select Symbols, the Exchange currently provides a base rebate of $0.34 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain average daily volume (ADV) thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.34 per contract applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000—74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.36 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.37 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.38 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.38 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.39 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.39 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.40 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In SPY, the Exchange currently provides a base rebate of $0.36 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.36 per contract applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000—74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.38 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.38 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.39 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.39 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.40 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.40 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.41 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In the Non-Select Penny Pilot Symbols, the Exchange currently provides a base rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.33 per contract applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72); and 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38); and 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR–ISE–2012–63).

the second tier is 40,000–74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.34 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.35 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.36 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.37 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.37 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.38 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.38 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.39 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

In the Non-Penny Pilot Symbols, the Exchange currently provides a base rebate of $0.66 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members can earn a higher rebate amount by achieving certain ADV thresholds on a month-to-month basis. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.66 per contract applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000–74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.70 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.72 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.74 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.75 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.76 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.77 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.77 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.78 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

Further, the Exchange currently provides a base rebate of $0.06 per contract, per leg, for Priority Customer complex orders in all symbols traded on the Exchange (excluding SPY) when these orders trade against quotes or orders in the regular orderbook. In order to enhance the Exchange's competitive position and to incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange, the Exchange has volume-based tiers similar to the volume-based tiers currently in place for complex orders that trade with non-Priority Customer complex orders in the complex order book. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.06 per contract, per leg, applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000–74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.07 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.08 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.08 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.09 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.09 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.10 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.10 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.11 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex orders that trade against quotes or orders in the regular orderbook during such calendar month.

For SPY, the Exchange currently provides a base rebate of $0.07 per contract, per leg, for Priority Customer complex orders traded on the Exchange when these orders trade against quotes or orders in the regular orderbook. The current ADV threshold for the base tier is 0–39,999 Priority Customer complex contracts and the base rebate of $0.07 per contract, per leg, applies to this tier. The Exchange is not proposing any change to the rebate for this tier. The current ADV threshold for the second tier is 40,000–74,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.08 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.09 per contract, per leg. The current ADV threshold for the third tier is 75,000–124,999 Priority Customer complex contracts. The rebate amount for this tier is currently $0.09 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.10 per contract, per leg. The current ADV threshold for the fourth tier is 125,000–224,999 Priority Customer complex orders. The rebate amount for this tier is currently $0.10 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.11 per contract, per leg. Finally, the current ADV threshold for the fifth tier is 225,000 or more Priority Customer complex contracts. The rebate amount for this tier is currently $0.11 per contract, per leg. The Exchange proposes to increase the rebate for this tier to $0.12 per contract, per leg. The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex orders that trade against quotes or orders in the regular orderbook during such calendar month.

Further, to incentivize members to trade in the Exchange's various auction mechanisms, the Exchange currently provides a per contract rebate to those contracts that do not trade with the contra order in the Exchange's Facilitation Mechanism and Solicited Order Mechanism, except when they trade against pre-existing orders and quotes, and to those contracts that do not trade with the contra order in the Price Improvement Mechanism. For the Facilitation and Solicited Order Mechanisms, the rebate is currently $0.15 per contract. For the Price

Improvement Mechanism, the rebate is currently $0.25 per contract. These rebates will continue to apply.

The Exchange believes this proposed change will enhance the Exchange's competitive position and incentivize Members to increase the amount of Priority Customer complex orders that they send to the Exchange.

Complex Order Maker Fees

The purpose of this proposed rule change is also to amend the complex order maker fees charged by the Exchange for certain complex orders executed on the Exchange. Specifically, the Exchange proposes to amend the complex order maker fees for orders that trade against Priority Customer [6] complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols.

For complex orders that trade against Priority Customer orders in the Select Symbols (excluding SPY), the Exchange currently charges a maker fee of:

- $0.37 per contract for Market Maker [7] orders;
- $0.39 per contract for Firm Proprietary/Broker-Dealer, Professional Customer [8] and Non-ISE Market Maker [9] orders;
- $0.00 per contract for Priority Customer orders.

For complex orders that trade against Priority Customer complex orders in SPY, the Exchange currently charges a maker fee of:

- $0.38 per contract for Market Maker orders;
- $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 per contract for Priority Customer orders.

For complex orders that trade against Priority Customer complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a maker fee of:

- $0.37 per contract for Market Maker orders;
- $0.39 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 per contract for Priority Customer orders.

For orders that trade against Priority Customer complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a maker fee of:

- $0.80 per contract for Market Maker orders;
- $0.83 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 per contract for Priority Customer orders.

The Exchange now proposes to increase the complex order maker fees for orders that trade against Priority Customer complex orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, as follows:

For complex orders that trade against Priority Customer orders in the Select Symbols (excluding SPY), the Exchange proposes to increase the maker fee to:

- $0.39 per contract for Market Maker orders;
- $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order maker fee for Priority Customer orders that trade against other Priority Customer orders in the Select Symbols (excluding SPY).

For complex orders that trade against Priority Customer complex orders in SPY, the Exchange proposes to increase the maker fee to:

- $0.39 per contract for Market Maker orders;
- $0.41 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order maker fee for Priority Customer orders that trade against other Priority Customer orders in SPY.

For complex orders that trade against Priority Customer complex orders in the Non-Select Penny Pilot Symbols, the Exchange proposes to increase the maker fee to:

- $0.39 per contract for Market Maker orders;
- $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order maker fee for Priority Customer orders that trade against other Priority Customer orders in the Non-Select Penny Pilot Symbols.

For orders that trade against Priority Customer complex orders in the Non-Penny Pilot Symbols, the Exchange proposes to increase the maker fee to:

- $0.82 per contract for Market Maker orders;
- $0.84 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order maker fee for Priority Customer orders that trade against other Priority Customer orders in the Non-Penny Pilot Symbols.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer complex orders that are preferenced to them. This discount is currently applicable when Market Makers add or remove liquidity in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols from the complex order book. Accordingly, Market Makers that add liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) $0.37 per contract in the Select Symbols, in SPY, and in the Non-Select Penny Pilot Symbols; and (ii) $0.80 per contract in the Non-Penny Pilot Symbols.

Complex Order Taker and Other Fees

The purpose of this proposed rule change is also to amend the complex order taker fees charged by the Exchange for certain complex orders executed on the Exchange. Specifically, the Exchange proposes to amend the complex order taker fees for orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols.

For complex orders in the Select Symbols (excluding SPY), the Exchange currently charges a taker fee of:

- $0.37 per contract for Market Maker orders;
- $0.39 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 per contract for Priority Customer orders.

For complex orders in SPY, the Exchange currently charges a taker fee of:

- $0.38 per contract for Market Maker orders;
- $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional

[6] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[7] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[8] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[9] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, registered in the same options class on another options exchange.

Customer and Non-ISE Market Maker orders;

• $0.00 per contract for Priority Customer orders.

For complex orders in the Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of:

• $0.37 per contract for Market Maker orders;

• $0.39 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;

• $0.00 per contract for Priority Customer orders.

For complex orders in the Non-Penny Pilot Symbols, the Exchange currently charges a taker fee of:

• $0.80 per contract for Market Maker orders;

• $0.83 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;

• $0.00 per contract for Priority Customer orders.

The Exchange now proposes to increase the complex order taker fees for orders in the Select Symbols (excluding SPY), in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, as follows:

For complex orders in the Select Symbols (excluding SPY), the Exchange proposes to increase the taker fee to:

• $0.39 per contract for Market Maker orders;

• $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Select Symbols (excluding SPY).

For complex orders in SPY, the Exchange proposes to increase the taker fee to:

• $0.39 per contract for Market Maker orders;

• $0.41 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in SPY.

For complex orders in the Non-Select Penny Pilot Symbols, the Exchange proposes to increase the taker fee to:

• $0.39 per contract for Market Maker orders;

• $0.40 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Non-Select Penny Pilot Symbols.

For complex orders in the Non-Penny Pilot Symbols, the Exchange proposes to increase the taker fee to:

• $0.82 per contract for Market Maker orders;

• $0.84 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders.

The Exchange is not proposing any change to the complex order taker fee for Priority Customer orders in the Non-Penny Pilot Symbols.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is applicable when Market Makers add or remove liquidity in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols from the complex order book. Accordingly, Market Makers that remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) $0.37 per contract in the Select Symbols, in SPY and in the Non-Select Penny Pilot Symbols; and (ii) $0.80 per contract in the Non-Penny Pilot Symbols Select Symbols.

Finally, for Responses to Crossing Orders [10] in the Non-Penny Pilot Symbols, ISE currently charges a fee of $0.80 per contract for Market Maker complex orders and $0.83 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders. The Exchange now proposes to increase the fee for Responses to Crossing Orders for Non-Penny Pilot Symbols to $0.82 per contract for Market Maker complex orders, and to $0.84 per contract to Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders.

The Exchange is not proposing any other changes in this filing.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Act'') [11] in general, and furthers the objectives of Section 6(b)(4) of the Act [12] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in options overlying the Select Symbols, SPY, the Non-Select Penny Pilot Symbols and the Non-Penny Pilot Symbols.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange has already established a volume-based incentive program, and is now merely proposing to increase the rebate amounts in that program. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange also believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade against quotes or orders in the regular orderbook. Again, the Exchange has already established a volume-based incentive program, and is now merely proposing to increase the rebate amounts in that program. The Exchange believes paying these rebates would also attract additional order flow to the Exchange.

The Exchange believes that the proposed fee change will generally allow the Exchange and its Members to better compete for order flow and thus enhance competition. Specifically, the Exchange believes that its proposal, which, among other things, increases rebate amounts, so Members can qualify for larger rebates, is reasonable as it will encourage Members to increase the amount of Priority Customer complex orders that they send to the Exchange instead of sending this order flow to a

[10] A Response to a Crossing Order (other than Regular Orders in Non-Select Symbols) is any contra-side interest submitted after the commencement of an auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. A Response to a Crossing Order (for Regular Orders in Non-Select Symbols) is any response message entered with respect to a specific auction in the Exchange's Facilitation Mechanism, Solicited Order Mechanism, Block Order Mechanism or PIM. *See* ISE Schedule of Fees, Preface. *See also* Securities Exchange Act Release No. 67973 (October 3, 2012), 77 FR 61645 (October 10, 2012) (SR–ISE–2012–73).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

competing exchange. The Exchange believes that with the proposed rebate levels, Members are now likely to qualify for larger rebates.

The Exchange believes it is reasonable and equitable to charge a maker fee of $0.39 per contract for Market Maker complex orders that trade against Priority Customer interest in the Select Symbols and in the Non-Select Penny Pilot Symbols and $0.40 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer complex orders that trade against Priority Customer interest in the Select Symbols and in the Non-Select Penny Pilot Symbols. The Exchange believes it is reasonable and equitable to charge a maker fee of $0.39 per contract for Market Maker complex orders that trade against Priority Customer interest in SPY and $0.41 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer complex orders that trade against Priority Customer interest in SPY. The Exchange believes it is reasonable and equitable to charge a maker fee of $0.82 per contract for Market Maker complex orders that trade against Priority Customer interest in the Non-Penny Pilot Symbols and $0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer complex orders that trade against Priority Customer interest in the Non-Penny Pilot Symbols. The Exchange believes the proposed fees are reasonable and equitably allocated because the Exchange is seeking to recoup the cost associated with paying a higher per contract rebate to Priority Customers. The proposed fees are also within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the Chicago Board Options Exchange, Inc. (''CBOE'') currently charges $0.25 per contract plus a payment for order flow fee (PFOF) of $0.25 per contract (applicable to customer orders), as well as a $0.10 per contract surcharge, when trading against Priority Customer orders for a total of $0.60 per contract for executing market maker complex orders in SPY and charges $0.45 per contract, as well as the $0.10 per contract surcharge, when trading against Priority Customer orders, for a total of $0.55 per contract for executing Broker-Dealer and non-CBOE market maker complex orders in SPY.[13] Therefore, while ISE is proposing a fee increase for Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders, in SPY, for example, the resulting fee will remain lower than the fee currently charged by CBOE for similar orders in that symbol.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that charging distinct maker fees for orders that trade against Priority Customer orders in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols will continue to attract additional business to the Exchange. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive.

The Exchange believes that its proposal to assess a $0.39 per contract taker fee for Market Maker complex orders in the Select Symbols (including SPY) and in the Non-Select Penny Pilot Symbols, and $0.40 per contract ($0.41 per contract in SPY) for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders in the Select Symbols and in the Non-Select Penny Pilot Symbols is reasonable and equitably allocated because the Exchange is seeking to recoup the cost associated with paying increased rebates for Priority Customer complex orders. The Exchange believes the proposed fees are also reasonable and equitably allocated because they are within the range of fees assessed by other exchanges employing similar pricing schemes and in some cases, is lower that the fees assessed by other exchanges. For example, NASDAQ OMX PHLX, Inc. (''PHLX'') currently charges $0.25 per contract plus a payment for order flow fee of $0.25 per contract (applicable to customer orders), for a total rate of $0.50 per contract for removing liquidity in complex orders in SPY for Specialist and Market Maker orders and charges $0.50 per contract for Firm, Broker-Dealer and Professional orders.[14] Therefore, while ISE is proposing a fee increase for Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders, the resulting fee will remain lower than the fee currently charged by PHLX for similar orders.

The Exchange believes its proposal to increase the taker fee to $0.82 per contract for Market Maker complex orders and $0.84 per contract for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker complex orders in the Non-Penny Pilot Symbols is reasonable and equitably allocated because the proposed fees are within the range of fees assessed by other exchanges employing similar pricing schemes. For example, the fee for similar orders at CBOE is between $0.60 per contract and $1.00 per contract for Market Makers and other non-Priority Customer orders when considering surcharges and PFOF rates of $0.65 applicable to Market Makers on top of regular transaction fees. Further, the Exchange is seeking to recoup the cost associated with paying a higher per contract rebate to Priority Customer orders.

The Exchange believes that the price differentiation between the various market participants is justified because Market Makers have obligations to the market that the other market participants do not. The Exchange believes that, in this instance, it is equitable to assess a higher fee to market participants that do not have the quoting requirements that Exchange Market Makers have. Therefore, the Exchange believes it is appropriate and not unfairly discriminatory to assess a higher transaction fee on these other market participants because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members. [sic]

While ISE is proposing fee increases for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders in the Select Symbols, in SPY, in the Non-Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols, the resulting fees generally remain lower than the fees currently charged by CBOE and PHLX for similar orders.

The Exchange believes it is reasonable and equitable to charge a fee of $0.82 per contract for Market Maker orders ($0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer

[13] *See* CBOE Fee Schedule at *http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf.*

[14] *See* PHLX Pricing Schedule at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp_1_4&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx-rulesbrd%2F.*

and Professional Customer orders) when such members are responding to crossing orders because a response to a crossing order is akin to taking liquidity, thus the Exchange is proposing to adopt an identical fee for Responses to Crossing Orders in the Non-Penny Pilot Symbols as the Exchange currently charges for taking liquidity in these symbols.

The Exchange believes that it is reasonable and equitable to provide a two cent discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. Accordingly, Market Makers who add or remove liquidity in the Select Symbols, the Non-Select Penny Pilot Symbols, the Non-Penny Pilot Symbols and SPY from the complex order book will be charged $0.02 less per contract when trading with Priority Customer orders that are preferenced to them. ISE notes that with this proposed fee change, the Exchange will continue to maintain a two cent differential that was previously in place.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that this proposed rule change will continue to attract additional complex order business in the symbols that are subject of this proposed rule change.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE believes that the proposed rule change, which will maintain fees that are competitive and are within the range of fees charged by other exchanges for similar orders, will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Indeed, the Exchange believes that the proposed changes will promote competition, as they are designed to allow ISE to better compete for order flow and improve the Exchange's competitive position.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[15] and subparagraph (f)(2) of Rule 19b–4 thereunder,[16] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2013–01 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–2013–01. 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–ISE–2013–01 and should be submitted on or before February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00870 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68636; File No. SR–NASDAQ–2013–009]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify an Optional Historical Research and Administrative Report Fee and Related NASDAQ Rule 7022 Revisions

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on January 10, 2013, The NASDAQ Stock Market LLC (''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to separate out and re-categorize certain Historical Research and Administrative Reports into their own subsection under NASDAQ Rule 7022, as well as to modify the fees for such reports. The proposed rule change also deletes references to a particular report no longer available. NASDAQ will charge the revised fee beginning January 2013 for any purchaser who has access to these reports during the month. The text that is being added is *italicized* and text that is being removed is [bracketed].

* * * * *

7022. Historical Research and Administrative Reports

(a) The charge to be paid by the purchaser of an Historical Research Report regarding a Nasdaq security through the NasdaqTrader.com Web site shall be determined in accordance with the following schedule:

	Number of fields of information in the report		
	1–10	11–15	16 or more
A. Market Summary Statistics			
For a day	$10	$15	$20
For a month, quarter, or year	$15	$20	$25
B. *Reserved* [Index Weighting Information			
For a day	$15	$30	$45]
C. Nasdaq Issues Summary Statistics			
For a security for a day	$10	$15	$20
For a security for a month, quarter, or year	$20	$30	$40
For all issues for a day	$50	$75	$100
For all issues for a month, quarter or year	$100	$150	$200
D. Intra-Day Quote and Intra-Day Time and Sales Data			
For a security and/or a market participant for a day	$15	$25	$35
For all market participants for a day or for all securities for a day	$30	$40	$50
E. Member Trading Activity Reports			
For a security and a market participant for a day	$15	$25	$50
For all securities for a market participant for a day	$30	$50	$75

F. Nasdaq may, in its discretion, choose to make a report that purchasers wish to obtain every trading day available on a subscription discount basis. In such cases, the price for a subscription to receive a report every trading day in a month shall be the applicable rate to receive the report for a day times 20; the price for a subscription to receive a report every trading day in a quarter shall be the applicable rate to receive the report for a day times 60; and the price for a subscription to receive a report every trading day in a year shall be the applicable rate to receive the report for a day times 240.

(b) The charge to be paid by the purchaser of an Historical Research Report regarding a Nasdaq security that wishes to obtain a license to redistribute the information contained in the report to subscribers shall be determined in accordance with the following schedule:

	Number of subscribers				
	1–500	501–999	1,000–4999	5,000–9,999	10,000+
A. Market Summary Statistics					
More often than once a month	$250	$350	$450	$550	$750
Once a month, quarter, or year	$125	$175	$225	$275	$375
B. *Reserved* [Index Weighting Information					
More often than once a month	$300	$1,500	$2,500	$3,500	$5,000
Once a month, quarter, or year]	$275	$550	$600	$750	$1,000
C. Nasdaq Issues Summary Statistics					
More often than once a month	$500	$600	$700	$800	$1,000
Once a month, quarter, or year	$250	$300	$350	$400	$500
D. Intra-Day Quote and Intra-Day Time and Sales Data					
For a security and/or a market participant for a day	$200	$300	$400	$500	$700
For all market participants for a day or for all securities for a day	$1,000	$1,500	$2,500	$3,500	$5,000

(c) No change.

(d) The charge to be paid by the purchaser for a license to receive Daily List and Fundamental Data information is $1,500 per month for any purchaser who has access to these reports during the month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to separate out and re-categorize certain Historical Research and Administrative Reports into their own subsection under NASDAQ Rule 7022, as well as to modify the fees for such reports. Specifically, the historical research and administrative reports categorized as Nasdaq Issues Summary Statistics under NASDAQ Rule 7022(b) C. would be modified by removing the Daily List and Fundamental Data components from inclusion within this category. The Daily List and Fundamental Data components now will be offered to purchasers that opt to pay a license fee under new subsection (d) to NASDAQ Rule 7022. NASDAQ will charge the revised fee beginning January 2013 for any purchaser who has access to these reports during the month.

The pricing for any other reports contained within the Nasdaq Issues Summary Statistics category will remain unchanged and will continue to include short interest information and in the future may also include other information that properly falls within the category of Nasdaq Issues Summary Statistics. The current pricing schedule for Nasdaq Issues Summary Statistics reports reflects the price for each component report (Short Interest, Daily List and Fundamental Data) and not the aggregate price to receive all of the reports. The pricing for the historical research reports (Daily List and Fundamental Data) covered by new NASDAQ Rule 7022(d) will total $1,500 per month for Subscribers and will include both the Daily List and Fundamental Data component reports. The Daily List and Fundamental Data reports will not be offered separately.

The purchase of historical research and administrative reports is completely optional and customers may choose to receive this information through an industry vendor rather than directly from NASDAQ. NASDAQ has not made a pricing change affecting the Daily List and Fundamental Data component reports for over ten years. During this time, NASDAQ has enhanced the Daily List and Fundamental Data component reports through the provision of additional access options, the improvement of web functionality and the inclusion of supplementary equity information, but has not increased the associated fee for such reports.

In addition, the re-categorization will reduce the customer's administrative burden through the elimination of the current pricing tier for the Daily List and Fundamental Data reports. Subscribers that previously needed to report the number of users would no longer need to count the specific number of users receiving access to this data and NASDAQ would no longer need to audit and approve the reporting of the tiers for these reports. Instead, Subscribers would now simply pay a flat fee without the need to count.

Separating out the Daily List and Fundamental Data reports from the Nasdaq Issues Summary Statistics reports will result in a price increase for most purchasers of this new Daily List and Fundamental Data entitlement, but will enable certain purchasers to see a price decrease. In certain circumstances, firms pay upwards of $2,000 for both reports if distributed to a large enough audience. However, a firm distributing monthly to 501 Subscribers for Fundamental Data and 10,000 Subscribers for Daily List would see a price decrease. The fee to receive the Short Interest report under NASDAQ Rule 7022(b) C. remains unchanged.

Additionally, NASDAQ Rule 7022(a) B. and NASDAQ Rule 7022(b) B. will be deleted because such index data information is no longer required to be included in the NASDAQ rulebook. The Commission has agreed that this data is not an exchange service or product, but rather a service provided by a NASDAQ data subsidiary acting as a vendor.[3]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among Subscribers and recipients of NASDAQ data and is not designed to permit unfair discrimination between them. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public.

The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

On July 21, 2010, President Barack Obama signed into law H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all self-regulatory organization (''SRO'') rule proposals establishing or changing dues, fees, or other charges are immediately effective upon filing regardless of whether such dues, fees, or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, 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 this title. If the Commission takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date

[3] *See* Securities Exchange Act Release No. 58897 (Nov. 3, 2008), 73 FR 66952 (Nov. 3, 2008). [sic]

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' '' *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323).

For the reasons stated above, NASDAQ believes that the allocation of the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, the proposed fee is based on pricing conventions and distinctions that exist in NASDAQ's current fee schedule, and the fee schedules of other exchanges. These distinctions are each based on principles of fairness and equity that have helped for many years to maintain fair, equitable, and not unreasonably discriminatory fees, and that apply with equal or greater force to the current proposal.

As described in greater detail below, if NASDAQ has calculated improperly and the market deems the proposed fees to be unfair, inequitable, or unreasonably discriminatory, firms can discontinue the use of their data because the proposed product is entirely optional to all parties. Firms are not required to purchase data and NASDAQ is not required to make data available or to offer specific pricing alternatives for potential purchases. NASDAQ can discontinue offering a pricing alternative (as it has in the past) and firms can discontinue their use at any time and for any reason (as they often do), including due to their assessment of the reasonableness of fees charged. NASDAQ continues to establish and revise pricing policies aimed at increasing fairness and equitable allocation of fees among Subscribers.

NASDAQ believes that periodically it must adjust prices to reflect more accurately the value of its products and the investments made to enhance them. NASDAQ has reviewed the underlying reports (Daily List and Fundamental Data) in the Historical Research and Administrative Reports with this in mind. Given that these particular fees have not been increased for over ten years, NASDAQ believes it is an appropriate time to adjust the fee for the Daily List and Fundamental Data reports to more accurately reflect their value, as well as the investments made to enhance them through improved data access and the addition of supplementary security data.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. NASDAQ believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. Data products are valuable to many end Subscribers only insofar as they provide information that end Subscribers expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the broker-dealer will choose not to buy it. Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to that broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, an increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of after-market alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including thirteen SRO markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated Trade Reporting Facilities (''TRFs'') compete to attract internalized transaction reports. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC, NYSE Arca LLC, and BATS Exchange, Inc. (''BATS'').

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end Subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end Subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The vigor of competition for information is significant. NASDAQ has made a determination to adjust the fees associated with this product in order to reflect more accurately the value of its products and the investments made to enhance them, as well as to keep pace with changes in the industry and evolving customer needs. This product is entirely optional and is geared towards attracting new customers, as well as retaining existing customers.

The Exchange has witnessed competitors creating new products and innovative pricing in this space over the course of the past year. NASDAQ continues to see firms challenge its pricing on the basis of the Exchange's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, firms make decisions on how much and what types of data to consume on the basis of the total cost of interacting with NASDAQ or other exchanges. Of course, the explicit data fees are but one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[7] 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–2013–009 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–2013–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–009 and should be submitted on or before February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00922 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68624; File No. SR–NASDAQ–2013–002]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees for Certain Co-Location Services

January 11, 2013.

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 January 2, 2013, 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 the Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to reduce the fees assessed under NASDAQ Rule 7034 for certain co-location services. While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on January 2, 2013.

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

The Exchange proposes to amend NASDAQ Rule 7034 to reduce the monthly recurring cabinet (''MRC'') fees assessed for the installation of certain new co-location cabinets. The reduced MRC fees will apply to new cabinets ordered by customers using the CoLo Console [3] during the months of January and February of 2013, provided that such cabinets are fully operational by May 31, 2013. The reduced fee shall apply to any cabinet that increases the number of dedicated cabinets beyond the total number dedicated to that customer as of December 31, 2012 (''Baseline Number''), for so long as the total number of dedicated cabinets exceeds that customer's Baseline Number. The reduced MRC fees will apply for a period of 24 months from the date the new cabinet becomes fully operational under NASDAQ rules, provided that the customer's total number of cabinets continues to exceed the Baseline Number.

The Exchange proposes to reduce the applicable fees as follows:

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The ''CoLo Console'' is NASDAQ's web-based ordering tool, and it is the exclusive means for ordering colocation services.

Cabinet type	Current ongoing monthly fee	Reduced ongoing monthly fee
Low Density	$4,000	$2,000
Medium Density	5,000	2,500
Medium-High Density	6,000	3,500
High Density	7,000	4,500
Super High Density	13,000	8,000

New cabinets shall be assessed standard installation fees.

NASDAQ proposes to reduce colocation cabinet fees by different amounts to maintain a sliding scale of lower fees for higher density cabinets on a per kilowatt basis. The chart below reflects this scale:

Cabinet type	Max kW	Reduced MRC fee	Discount (%)	Fee per KW
Low Density	2.88	$2,000	50.00	$694.44
Medium Density	5	2,500	50.00	500.00
Medium-High Density	7	3,500	41.67	500.00
High Density	10	4,500	35.71	450.00
Super High Density	17	8,000	38.46	470.59

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed reduced fee will be assessed equally on all customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services.

NASDAQ's proposal to reduce fees by differing amounts is fair and equitable because it reflects the economic efficiency of higher density colocation cabinets. First, the underlying costs for co-location cabinets consists [sic] of certain fixed costs for the data center facility (space, amortization, etc.) and certain variable costs (electrical power utilized and cooling required). The variable costs are in total higher for the higher power density cabinets, as reflected in their higher current prices. Second, the higher density cabinets were introduced later than the lower density cabinets (High Density cabinet was introduced in 2009 and the Super High Density cabinet was introduced in 2011). Due to the competitive pressures that existed in 2011 and 2012, the fees for Super High Density cabinets were further reduced in 2012 to be more comparable with the lower fee per kilowatt of the High Density cabinet. As a result of these already-reduced rates on higher density cabinets, NASDAQ has greater flexibility to discount fees for lower density cabinets, on a per kilowatt basis.

NASDAQ operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the NASDAQ colocation facility remain competitive.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the Exchange's voluntary fee reduction is a response to increased competition for colocation services by other exchanges and trading venues. As more venues offer colocation services, competition drives costs lower. The Exchange, in order to retain existing orders and to attract new orders, is forced to offer a lower effective rate for aggregate cabinet demand. This competition benefits users, members. [sic] and investors by lowering the average aggregate cost of trading on the Exchange.

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

Pursuant to Section 19(b)(3)(A)(ii) of the Act,[6] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge imposed by the self-regulatory organization on any person, whether or not the person is a member of the self-regulatory organization, which renders the proposed rule change effective 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. 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.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2013–002 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–2013–002. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–002, and should be submitted on or before February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00867 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68630; File No. SR–NYSEMKT–2013–01]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Price List With Respect to Regulatory Fees Related to the Central Registration Depository, Which Are Collected by the Financial Industry Regulatory Authority, Inc.

January 11, 2013.

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 January 2, 2013, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Price List (the ''Price List'') with respect to regulatory fees related to the Central Registration Depository (''CRD system''), which are collected by the Financial Industry Regulatory Authority, Inc. (''FINRA''). The Exchange proposes to implement the fee changes on January 2, 2013. 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 Price List with respect to regulatory fees related to the CRD system, which are collected by FINRA.[4] The Exchange proposes to implement the fee changes on January 2, 2013.

Certain of the regulatory fees provided in the Price List are collected and retained by FINRA via the CRD system for the registration of employees of member organizations of the Exchange that are not FINRA members (''Non-FINRA Member Organizations''). The Exchange originally adopted fees for use of the CRD system in 2003.[5] FINRA recently amended certain of the fees assessed for use of the CRD system, and those amendments will become effective January 2, 2013.[6]

The CRD system fees are user-based and there is no distinction in the cost incurred by FINRA if the user is a FINRA member or a Non-FINRA Member Organization. Accordingly, the Exchange is proposing to amend the fees in the Price List to mirror those assessed by FINRA, which will be implemented concurrently with the amended FINRA fees on January 2, 2013.[7] The proposed changes are as follows: [8]

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The CRD system is the central licensing and registration system for the U.S. securities industry. The CRD system enables individuals and firms seeking registration with multiple states and self-regulatory organizations to do so by submitting a single form, fingerprint card and a combined payment of fees to FINRA. Through the CRD system, FINRA maintains the qualification, employment and disciplinary histories of registered associated persons of broker-dealers.

[5] *See* Securities Exchange Act Release No. 48066 (June 19, 2003), 68 FR 38409 (June 27, 2003) (SR–Amex–2003–49).

[6] *See* Securities Exchange Act Release No. 67247 (June 25, 2012), 77 FR 38866 (June 29, 2012) (SR–FINRA–2012–030).

[7] The Exchange notes that it has only adopted the CRD system fees charged by FINRA to Non-FINRA Member Organizations when such fees are applicable. In this regard, certain FINRA CRD system fees and requirements are specific to FINRA members, but do not apply to NYSE MKT-only member organizations.

[8] The Exchange is proposing to delete the current fees and descriptions in their entirety and replace them with the updated fees and descriptions in a separate table that will include all the fees applicable to Non-FINRA Member Organizations, as discussed further below (corresponding footnotes in the Price List would also be designated as ''reserved''). In this regard, the Exchange is proposing a new subheading in the ''Regulatory Fees'' section of the Price List to differentiate between those fees that are applicable to all member organizations and those fees that are applicable

Continued

• Increasing the disclosure processing fee from $95 to $110; [9] and

• Increasing the manual fingerprint processing fee from $13 to $30.[10]

In addition to increasing the existing CRD system fees, FINRA adopted a new fee for the additional processing of each initial or amended Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.[11] Broker-dealers use Form BD to, among other things, report disclosure matters in which they or a control affiliate have been involved. Prior to the adoption of the new fee, FINRA did not have a fee designed to cover the costs associated with the review of Form BD, notwithstanding that the review is similar to that performed of broker-dealers' Forms U4 and U5. Such reviews include confirming that the matter is properly reported, reviewing any documentation submitted and determining whether additional documentation is required, conducting any necessary independent research and, depending on the matter reported, analyzing whether the event or proceeding subjects the individual or firm to a statutory disqualification pursuant to Section 3(a)(39) of the Act.[12] FINRA adopted a $110 fee for the review of a Form BD, which mirrors the increased fee adopted for the review of Forms U4 and U5. As such, the Exchange is adopting the identical fee for FINRA's review of a Form BD submitted by Non-FINRA Member Organizations.[13]

The Exchange also proposes to include in its Price List certain other fees that are charged by FINRA to FINRA members as well as Non-FINRA Member Organizations. These fees are as follows: [14]

• $100 for each initial Form U4 filed for the registration of a representative or principal; [15]

• $15 for processing and posting to the CRD system each set of fingerprints submitted electronically to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints;[16]

• $30 for processing and posting to the CRD system each set of fingerprint cards submitted in non-electronic format to FINRA, plus any other charge that may be imposed by the U.S. Department of Justice for processing each set of fingerprints; [17] and

• $45 annually for system processing for each registered representative and principal.[18]

The Exchange notes that the proposed change is not otherwise intended to address any other issues surrounding regulatory fees and that the Exchange is not aware of any problems that member organizations 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 Act,[19] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[20] 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 believes that the change is reasonable because the proposed fees are identical to those adopted by FINRA for use of the CRD system for disclosure and the registration of FINRA members and their associated persons. As FINRA noted in amending its fees, it believed that the fees are reasonable based on the increased costs associated with operating and maintaining the CRD system, and listed a number of enhancements made since the last fee increase, including (1) Incorporation of various uniform registration form changes; (2) electronic fingerprint processing; (3) Web EFT™, which allows subscribing firms to submit batch filings to the CRD system; and (4) increases in the number and types of reports available through the CRD system. These increased costs are similarly borne by FINRA when a Non-FINRA Member Organization uses the CRD system. FINRA further noted its belief that the proposed fees are reasonable because they help to ensure the integrity of the information in the CRD system, which is very important because the Commission, FINRA, other self-regulatory organizations and state securities regulators use the CRD system to make licensing and registration decisions, among other things.

The Exchange also believes that the change is reasonable because it will provide greater specificity regarding the CRD system fees that are applicable to Non-FINRA Member Organizations. All similarly situated member organizations are subject to the same fee structure, and every member organization must use the CRD system for registration and disclosure. Accordingly, the Exchange believes that the fees collected for such use should likewise increase in lockstep with the fees assessed to FINRA members, as is proposed by the Exchange. The proposed change, like FINRA's proposal, is equitable and not unfairly discriminatory because it will result in the same regulatory fees being charged to all member organizations required to report information to the CRD system and for services performed by FINRA, regardless of whether or not such member organizations are FINRA members.

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. Specifically, the Exchange believes that the proposed change will result in the same regulatory fees being charged to all member organizations required to report information to the CRD system and for

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only to Non-FINRA Member Organizations. The Exchange notes that member organizations that are also FINRA members are charged CRD system fees according to Section (4) of Schedule A to the FINRA By-laws.

[9] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Price List for this fee would be ''additional processing of each initial or amended Form U4, Form U5 or Form BD that includes the initial reporting, amendment, or certification of one or more disclosure events or proceedings.'' As noted below, this would incorporate the applicability of the fee to Form BD processing.

[10] *See* Section (4)(b)(6) of Schedule A to the FINRA By-laws effective on January 2, 2013. The updated description in the Price List for this fee would be ''processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted to FINRA.'' The Exchange also proposes to permanently remove the current $35 fee in the Price List for fingerprint processing. The fee for fingerprint processing by FINRA is addressed via the other fingerprint processing fees described herein and in the proposed changes to the Price List.

[11] *See* Section (4)(b)(3) of Schedule A to the FINRA By-laws effective on January 2, 2013.

[12] 15 U.S.C. 78c(a)(39).

[13] *See supra* note 9.

[14] Non-FINRA Member Organizations have been charged CRD system fees since 2003. *See supra* note 5.

[15] *See* Section (4)(b)(1) of Schedule A to the FINRA By-laws effective on January 2, 2013. This fee is assessed when a Non-FINRA Member Organization submits its first Initial, Transfer, Relicense, or Dual Registration Form U4 filing on behalf of a registered person. The current applicable fee is $85.

[16] *See* Section (4)(b)(4) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[17] *See* Section (4)(b)(5) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $13.

[18] *See* Section (4)(b)(7) of Schedule A to the FINRA By-laws effective on January 2, 2013. The current applicable fee is $30. The proposed system processing fee would become effective for the 2013 Renewal Program. In this regard, as part of FINRA's 2013 Renewal Program, Preliminary Renewal Statements reflecting the proposed $45 system processing fee will be made available in the fourth quarter of 2012.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4) and (5).

services performed by FINRA, regardless of whether or not such member organizations are FINRA members.

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) [21] of the Act and subparagraph (f)(2) of Rule 19b–4 [22] 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. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [23] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–01 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–2013–01. 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 NYSE's principal office and on its 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–2013–01, and should be submitted on or before February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00872 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68634; File No. SR–CFE–2013–001]

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Minor Rule Violations

January 11, 2013.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 7, 2013, CBOE Futures Exchange, LLC (''CFE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in Items II and III below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (''CFTC''). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (''CEA'') [2] on January 7, 2013.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

CFE Rule 714 currently provides that there are no types of Exchange rule violations that are considered minor rule violations for purposes of CFE Rule 714. The rule change would (i) Identify ten categories of rules which primarily involve reporting and recordkeeping for which the Exchange may impose summary fines for violations of the applicable rule(s), (ii) enumerate the specific rule(s) within each category, (iii) set forth a summary fine schedule for violations of the rule(s) within each category; and (iv) provides examples of when the Exchange may aggregate violations as a single offense for purposes of CFE Rule 714. The rule change would apply to conduct in relation to all contracts listed and traded on the Exchange, including both security futures and non-security futures. The scope of this filing is limited solely to the application of the rule changes to security futures traded on CFE. The only security futures currently traded on CFE are traded under Chapter 16 of CFE's Rulebook which is applicable to Individual Stock Based and Exchange-Traded Fund Based Volatility Index (''Volatility Index'') security futures. The text of the proposed rule change is available on the Exchange's Web site at *http://www.cfe.cboe.com,* on the Commission's Web site at *http://www.sec.gov,* 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, CFE 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

[1] 15 U.S.C. 78s(b)(7).

[2] 7 U.S.C. 7a–2(c).

in Item IV below. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend CFE Rule 714 (Imposition of Fines for Minor Rule Violations), referred to herein sometimes as ''Minor Rule Violation Rule.'' CFE Rule 714 currently provides that there are no types of Exchange rule violations that are considered minor rule violations for purposes of CFE Rule 714. This Amendment would (i) Identify ten categories of rules which primarily involve reporting and recordkeeping for which the Exchange may impose summary fines for violations of the applicable rule(s), (ii) enumerate the specific rule(s) within each category, (iii) set forth a summary fine schedule for violations of the rule(s) within each category [3], and (iv) provide examples of when the Exchange may aggregate violations as a single offense for purposes of CFE Rule 714. Below are general descriptions of areas covered by the ten categories:

- Order Entry Operator ID Designation and Recordkeeping
- Account Type Identification
- Front-End Audit Trail Information
- Exchange of Contract for Related Position Transaction Recordkeeping and Authorized Reporter Designation
- Block Trade Recordkeeping and Authorized Reporter Designation
- Responsible Trader Designation

The Exchange will have the ability to impose fines for violations of the rules covered in the Minor Rule Violation Rule both for matters that are currently pending for which a statement of charges has not yet been issued under CFE Rule 704(b) (Charges) and for future matters. The Exchange believes that these violations are suitable for incorporation into the Exchange's Minor Rule Violation Rule because they are generally technical in nature. Further, CFE will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into its Minor Rule Violation Rule. CFE may, whenever it determines that any violation of a rule covered in the Minor Rule Violation Rule is intentional, egregious or otherwise not minor in nature, proceed under the Exchange's formal disciplinary rules.[4]

CFE is proposing to make the following modifications to CFE Rule 714 with the number of offenses being calculated on a rolling twelve (12) month period:

Order Entry Operator ID Designation and Recordkeeping

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Order Entry Operator ID Designation and Recordkeeping requirements.

First, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 303A(a) to the Minor Rule Violation Rule, which requires that each Trading Privilege Holder (''TPH'') include an Order Entry Operator ID with every order and quote from that TPH this is submitted to the CBOE System (*i.e.,* CFE's trading system). A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $2,500 fine. The third offense will be subject to a $10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.[5]

Second, the Exchange is proposing to modify CFE Rule 714 to add CFE Rules 303A(b) and 303A(c) to the Minor Rule Violation Rule, which require that every order and quote from a TPH that is submitted to the CBOE system include an Order Entry Operator ID that represents:

- The natural person physically responsible for entering an order or quote into the CBOE System (if a natural person entered the order or quote into the CBOE System); or
- The natural person physically responsible for entering the order or quote directly or indirectly into a system of or used by a TPH that interfaces with the CBOE System (if no natural person entered the order or quote into the CBOE System and instead a natural person entered the order or quote directly or indirectly into a system of or used by a THP that interfaces with the CBOE System); or
- The Automated Trading System (which is a system that automates the generation and routing of orders or quotes) that generated the order and quote.

CFE Rules 303(A)(b) and 303A(c) also require that: (i) An Order Entry Operator ID issued for a natural person may only be used by that natural person; (ii) an Order Entry Operator ID issued for a natural person may not be used by any other natural person or entity and may not be used as the Order Entry Operator ID for an Automated Trading System; (iii) an Order Entry Operator ID issued for an Automated Trading System may only be used for that Automated Trading System; and (iv) an Order Entry Operator ID issued for an Automated Trading System may not be used for any other Automated Trading System and may not be used as the Order Entry Operator ID for any natural person or entity.

A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $2,500 fine. The third offense will be subject to a $10,000 fine. Subsequent offenses will be referred to the Business Conduct Committee.

Third, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 303A(d) to the Minor Rule Violation Rule, which sets forth issuance, recordkeeping and reporting requirements related to Order Entry Operator IDs. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $2,500 fine. The third offense will be subject to a $10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Account Type Identification

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Account Type Identification requirements. Specifically, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 403(a)(vii) to the Minor Rule Violation Rule, which requires that each Order must contain information about account type. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $2,500 fine. The third offense will be subject to a $5,000 fine. The fourth offense will be subject to a $7,500 fine. The fifth offense will be subject to a $10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Front-End Audit Trail Information

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Front-End Audit Trail Information requirements. Specifically, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 403(c) to the Minor Rule Violation Rule, which requires that each TPH maintain front-end audit trail information for all electronic orders entered into the CBOE System, including order modifications

[3] The proposed number of offenses leading up to a CFE Business Conduct Committee referral and the proposed fine amounts vary depending on the nature of the underlying violative conduct. This is because CFE regards violations of certain rule provisions under the Minor Rule Violation Rule to be more serious relative to violations of other rule provisions under the Minor Rule Violation Rule.

[4] *See* CFE Rule 714(d).

[5] A referral to CFE's Business Conduct Committee would result in the initiation of a regular disciplinary proceeding.

and cancellations. The audit trail must contain all order entry, modification, cancellation and response receipt time(s) as well as Financial Information Exchange interface (FIX) tag information and fields or CBOE Market Interface (CMi) order structure, as applicable. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $2,500 fine. The third offense will be subject to a $10,000 fine. Subsequent offenses will be referred to the Business Conduct Committee.

Exchange of Contract for Related Position (''ECRP'') Transaction Recordkeeping and Authorized Reporter Designation

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of ECRP Transactions Recordkeeping and Authorized Reporter Designation requirements.

First, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 414(g) to the Minor Rule Violation Rule, which sets forth record keeping requirements relating to a TPH's compliance with CFE Rule 414 (which governs ECRP transactions) or ability to obtain such records from its customer involved in the ECRP. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $2,500 fine. The third offense will be subject to a $10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Second, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 414(h) to the Minor Rule Violation Rule, which requires each TPH executing an ECRP transaction to have at least one designated Person that is either a TPH or a Related Party of a TPH and is pre-authorized by a Clearing Member to report ECRP transactions on behalf of the TPH. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Block Trade Recordkeeping and Authorized Reporter Designation

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Block Trade Recordkeeping and Authorized Reporter Designation requirements.

First, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 415(e) to the Minor Rule Violation Rule, which sets forth order ticket requirements for Block Trades and recordkeeping requirements evidencing a TPH's compliance with CFE Rule 415 (which governs Block Trades). A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $2,500 fine. The third offense will be subject to a $10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Second, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 415(f) to the Minor Rule Violation Rule, which requires each TPH executing a side of a Block Trade to have at least one designated Person that is either a TPH or a Related Party of a TPH and is pre-authorized by a Clearing Member to report Block Trades on behalf of the TPH. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Responsible Trader Designation

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Account Responsible Trader Designation requirements. Specifically, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 513(a) to the Minor Rule Violation Rule, which requires that each TPH have at all times at least one employee or agent (''Responsible Trader'') designated by its administrator with respect to the use of the CBOE System by such TPH (including its Authorized Traders).[6] A first offense will result in the issuance of a letter of caution. The second offense will be subject to a $10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Reorganization of Aggregation Provisions and Examples

Current CFE Rule 714(a), among other things, currently permits the Exchange to aggregate individual violations of particular CFE rules that are covered by the Minor Rule Violation Rule to and treat those violations as a single offense. In other instances, the Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors or the violations resulted from a single problem or cause that has been corrected.

CFE is proposing to bolster the aggregation provisions of CFE Rule 714 by setting forth two additional examples of when aggregation may be appropriate. Specifically, the Exchange proposes to amend CFE Rule 714 to state that the Exchange may aggregate all similar violations found in an audit trail exam and may separately aggregate all similar violations found in a single review of exception report output. The Exchange proposes to reorganize the existing aggregation provisions in CFE Rule 714(a) and restate them, along with the above aggregation examples, in new subparagraph (e) to CFE Rule 714.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Sections 6(b)(5)[8] and 6(b)(6)[9] 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, and
- To provide a fair procedure for the disciplining of members.

The Exchange believes that the proposed rule change will strengthen its ability to carry out its responsibilities as a self-regulatory organization by adding violations to its Minor Rule Violation Rule. CFE also believes that these changes will serve as an effective deterrent to future violative conduct and as an effective and efficient means of disciplining for infractions that do not warrant a regular disciplinary proceeding. CFE additionally believes that the proposed changes will promote consistent application of sanctions by the Exchange for minor rule violations, establish a fair procedure for the disciplining of TPHs for minor rule violations and reinforce its surveillance and enforcement functions. Finally, the Exchange believes that the reorganization of the aggregation provisions of CFE Rule 714 and the addition of examples in which minor rule violations may be aggregated will benefit market participants because those provisions will now be contained in a single subparagraph for easier reference and those provisions will also substantively improve market

[6] CFE Rule 105 defines ''Authorized Trader'' to mean any natural person who is a TPH or who is authorized by a TPH to access the CBOE System on behalf of the TPH.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(6).

participants' understanding of how the aggregation provisions of the Minor Rule Violation Rule will operate and be applied.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE 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.[10]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective on January 23, 2013.

At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[11]

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–CFE–2013–001 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–CFE–2013–001. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CFE–2013–001, and should be submitted on or before February 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. 2013–00875 Filed 1–16–13; 8:45 am]

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[10] 15 U.S.C. 78a *et seq.*

[11] 15 U.S.C. 78s(b)(1).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68631; File No. SR–ISE–2013–03]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in 190 options classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols. The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'')[4] and in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[5]

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] *See* Exchange Act Release Nos. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72); 66597 (March 14, 2012), 77 FR 16295 (March 20, 2012) (SR–ISE–2012–17); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38); 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR–ISE–2012–71); and 68034 (October 11, 2012), 77 FR 63911 (October 17, 2012) (SR–ISE–2012–85).

[5] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016

The purpose of this proposed rule change is to amend the list of Select Symbols. Specifically, the Exchange proposes to add the following 39 symbols to the list of Select Symbols: Aetna, Inc. (''AET''), Amgen, Inc. (''AMGN''), Amarin Corp. PLC (''AMRN''), Celgene Corporation (''CELG''), CF Industries Holdings, Inc. (''CF''), Comcast Corporation (''CMCSA''), Costco Wholesale Corporation (''COST''), Cree, Inc. (''CREE''), Electronic Arts, Inc. (''EA''), Express Scripts, Inc. (''ESRX''), Facebook, Inc. (''FB''), Fifth Third Bancorp. (''FITB''), The Gap, Inc. (''GPS''), Groupon, Inc. (''GRPN''), Starwoods Hotels and Resorts (''HOT''), Interoil Corporation (''IOC''), JDS Uniphase Corporation (''JDSU''), Juniper Networks, Inc. (''JNPR''), Knight Capital Group, Inc. (''KCG''), Keycorp. (''KEY''), Lennar Corporation (''LEN''), Eli Lilly & Company (''LLY''), Cheniere Energy, Inc. (''LNG''), LinkedIn Corporation (''LNKD''), Macys, Inc. (''M''), Marathon Oil (''MRO''), Noble Drilling Corporation (''NE''), Annaly Mortgage Management (''NLY''), Occidental Petroleum Corporation (''OXY''), MetroPCS Communications, Inc. (''PCS''), Pulte Group, Inc. (''PHM''), Philip Morris International, Inc. (''PM''), Suntech Power Holdings (''STP''), Seagate Technology (''STX''), Direxion Small Cap Bull 3X (''TNA''), Vringo, Inc. (''VRNG''), Consumer Discretionary Select Sector SPDR Fund (''XLY''), SPDR S&P Metals & Mining ETF (''XME'') and Xerox Corporation (''XRX'') (''Additional Select Symbols'').[6]

With the addition of the Additional Select Symbols to Select Symbols, the fees currently applicable to regular and complex orders in the Select Symbols will now be applied to regular and complex orders in the Additional Select Symbols.

Regular Order Fees and Rebates

The Exchange currently applies transaction fees to regular orders in the Additional Select Symbols, as follows:[7]

➢ for Market Maker[8] orders, a fee of $0.18 per contract[9];

➢ for Market Maker (for orders sent by Electronic Access Members), Firm Proprietary/Broker-Dealer and Professional Customer[10] orders, a fee of $0.20 per contract;

➢ for Non-ISE Market Maker[11] orders, a fee of $0.45 per contract;

➢ for Priority Customer[12] orders, a fee of $0.00 per contract.

The Exchange currently charges a fee of $0.20 per contract to all market participants (except for Market Makers, this fee is currently $0.18 per contract,[13] and for Priority Customers, this fee is $0.00 per contract) for regular Crossing Orders in the Non-Select Symbols (this fee currently applies to the Additional Select Symbols as they are a subset of Non-Select Symbols). The Exchange also currently charges a fee of $0.20 per contract to all market participants (except for Non-ISE Market Makers, this fee is currently $0.45 per contract, and for Market Makers, this fee is $0.18 per contract[14]) for regular Responses to Crossing Orders in the Non-Select Symbols (this fee currently applies to the Additional Select Symbols as they are a subset of Non-Select Symbols).

With this proposed rule change, the Additional Select Symbols will now be subject to the maker/taker fees and rebates applicable to Regular orders in the Select Symbols.[15] The Exchange currently charges the following maker fees and rebates for Select Symbols: (i) for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders, $0.10 per contract; (ii) for Priority Customer orders, $0.00 per contract; and (iii) for Market Maker Plus[16] orders, a rebate of $0.10 per contract. The Exchange also currently charges the following taker fees for Select Symbols: (i) For Market Maker and Market Maker Plus orders, $0.32 per contract; (ii) for Non-ISE Market Maker orders, $0.36 per contract; (iii) for Firm Proprietary/Broker-Dealer and Professional Customer orders, $0.33 per contract; and iv) for Priority Customer orders, $0.25 per contract.

The Exchange currently charges Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customers a fee of $0.20 per contract ($0.00 per contract for Priority Customers) for regular Crossing Orders in the Select Symbols, and a fee of $0.40 per contract to all market participants for regular Responses to Crossing Orders in the Select Symbols. With this proposed rule change, the fee for regular Crossing Orders in the Additional Select Symbols will remain at $0.20 per contract for most market participants. For Priority Customers, this fee will remain at $0.00 per contract, and for Market Makers, this fee will increase, from $0.18 per contract[17] to $0.20 per contract. With this proposed rule change, the fee for regular Responses to Crossing Orders will increase for most market participants, from $0.20 per contract to $0.40 per contract, with the exception of Non-ISE Market Makers who will now pay a lower fee of $0.40 per contract as opposed to $0.45 per contract.

The Exchange also currently provides a rebate of $0.25 per contract for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order in the Select Symbols, and a rebate of $0.15

(February 21, 2012) (SR–ISE–2012–06); 66962 (May 10, 2012), 77 FR 28917 (May 16, 2012) (SR–ISE–2012–35); 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR–ISE–2012–63); 67628 (August 9, 2012), 77 FR 49049 (August 15, 2012) (SR–ISE–2012–71); and 68034 (October 11, 2012), 77 FR 63911 (October 17, 2012) (SR–ISE–2012–85).

[6] The following 9 of the Additional Select Symbols were added to the Penny Pilot Program on January 3, 2013: AMRN, FB, GRPN, KCG, LNG, LNKD, PCS, TNA and VRNG (''New Penny Pilot Symbols''). The New Penny Pilot Symbols are a subset of the Additional Select Symbols.

[7] Additional Select Symbols are currently subject to the standard transaction fee listed in the table titled Non-Select Symbols. *See* Schedule of Fees, Section I, Regular Order Fees and Rebates.

[8] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[9] The Exchange provides a volume-based discount to fees to ISE Market Maker contracts for regular orders in Non-Select Symbols. *See* Schedule of Fees, Section IV, C. ISE Market Maker Discount Tiers.

[10] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[11] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 registered in the same options class on another options exchange.

[12] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[13] The volume-based discount to fees to ISE Market Maker contracts also applies to regular Crossing Orders. *See supra,* note 9.

[14] The volume-based discount to fees to ISE Market Maker contracts also applies to regular Responses to Crossing Orders. *See supra,* note 9.

[15] *See* Schedule of Fees, Section I, Regular Order Fees and Rebates.

[16] In order to promote and encourage liquidity in the Select Symbols, the Exchange currently offers a $0.10 per contract rebate to Market Makers if the quotes they sent to the Exchange qualify the Market Maker to become a Market Maker Plus. A Market Maker Plus is a Market Maker who is on the National Best Bid or National Best Offer 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium in each of the front two expiration months and 80% of the time for series trading between $0.03 and $5.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $5.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium for all expiration months in that symbol during the current trading month. A Market Maker's single best and single worst overall quoting days each month, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this rebate, if doing so will qualify a Market Maker for the rebate.

[17] The volume-based discount to fees to ISE Market Maker contracts also applies. *See supra,* note 9.

per contract for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order in the Select Symbols except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbook. With this proposed rule change, market participants trading in the Additional Select Symbols will now be eligible for rebates that were not previously available for this group of symbols. Specifically, market participants will now receive a rebate of $0.25 per contract for contracts that are submitted to the Price Improvement Mechanism that do not trade with their contra order in the Additional Select Symbols. Further, market participants will now also receive a rebate of $0.15 per contract for contracts that are submitted to the Facilitation and Solicited Order Mechanisms that do not trade with their contra order in the Additional Select Symbols except when those contracts trade against pre-existing orders and quotes on the Exchange's orderbook.

Further, the Exchange currently charges Primary Market Makers (PMMs) a transaction fee of $0.18 per contract [18] in the Additional Select Symbols when they trade report a Priority Customer or Professional Customer order in accordance with their obligation to provide away market price protection. PMMs in Select Symbols do not receive a maker rebate nor pay a taker fee when trade reporting.[19] With this proposed rule change, PMMs in the Additional Select Symbols will also not receive a maker rebate nor pay a taker fee when trade reporting.

Finally, for the New Penny Pilot Symbols (prior to their inclusion to the Penny Pilot Program), the Exchange charged a payment for order flow (PFOF) fee of $0.70 per contract, applicable to Market Makers when trading against Priority Customer orders, and for the remaining Additional Select Symbols, the Exchange currently charges a PFOF fee of $0.25 per contract, applicable to Market Makers when trading against Priority Customer orders. With this proposed rule change, the Exchange will no longer charge a PFOF fee for trading in the Additional Select Symbols.

Complex Order Fees and Rebates

With this proposed rule change, the maker fee for complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges the same maker fee for complex orders in the Select Symbols, in the Penny Pilot Symbols and in the Non-Penny Pilot Symbols.[20] Specifically, for Select Symbols, Penny Pilot Symbols and Non-Penny Pilot Symbols, the Exchange currently charges a complex order maker fee of: (i) $0.10 per contract for Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; (ii) $0.20 per contract for Non-ISE Market Maker orders; and (iii) $0.00 per contract for Priority Customer orders.

With this proposed rule change, the maker fee for complex orders in the Additional Select Symbols (except for the New Penny Pilot Symbols) when trading against Priority Customers will remain unchanged because the Exchange currently charges the same maker fee for complex orders in the Select Symbols (excluding SPY) when trading against Priority Customers and in the Non-Select Penny Pilot Symbols when trading against Priority Customers.[21] Specifically, for complex orders in the Select Symbols (excluding SPY) when trading against Priority Customer and for complex orders in the Non-Select Penny Pilot Symbols when trading against Priority Customers, the Exchange currently charges a maker fee of: (i) $0.39 per contract for Market Maker orders; (ii) $0.40 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.00 per contract for Priority Customer orders. Thus, these fees will remain unchanged.

Prior to their inclusion to the Penny Pilot Program, the New Penny Pilot Symbols, which are a subset of the Additional Select Symbols, were charged a higher maker fee when trading against Priority Customer complex orders. Specifically, for complex orders in the New Penny Pilot Symbols when trading against Priority Customer complex orders, the Exchange charged a maker fee of: (i) $0.82 per contract for Market Maker orders; (ii) $0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.00 per contract for Priority Customer orders.[22] With this proposed rule change, the New Penny Pilot Symbols will now be subject to the same maker fee as the remaining Additional Select Symbols, as noted above, which is lower (except for Priority Customer orders which fee will remain the same) than those the Exchange charged for the New Penny Pilot Symbols when trading against Priority Customer complex orders.

With this proposed rule change, the taker fee for complex orders in the Additional Select Symbols (except for the New Penny Pilot Symbols) will remain unchanged because the Exchange currently charges the same taker fee for complex orders in the Select Symbols (excluding SPY) and in the Non-Select Penny Pilot Symbols.[23] Specifically, for complex orders in the Select Symbols (excluding SPY) and in the Non-Select Penny Pilot Symbols, the Exchange currently charges a taker fee of: (i) $0.39 per contract for Market Maker orders; (ii) $0.40 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.00 per contract for Priority Customer orders. Thus, these fees will remain unchanged.

Prior to their inclusion to the Penny Pilot Program, the New Penny Pilot Symbols, which are a subset of the Additional Select Symbols, were charged a higher taker fee for trading complex orders. Specifically, for complex orders in the New Penny Pilot Symbols, the Exchange charged a taker fee of: (i) $0.82 per contract for Market Maker orders; (ii) $0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders; and (iii) $0.00 per contract for Priority Customer orders.[24] With this proposed rule change, the New Penny Pilot Symbols will now be subject to the same taker fee as the remaining Additional Select Symbols, as noted above, which is lower (except for Priority Customer orders which fee will remain the same) than

[18] The volume-based discount to fees to ISE Market Maker contracts also applies. *See supra,* note 9.

[19] *See* Schedule of Fees, Section I, Regular Order Fees and Rebates, footnote 9.

[20] The New Penny Pilot Symbols were subject to the fee listed in the Column titled Maker Fee for Non-Penny Pilot Symbols. The remaining Additional Select Symbols are currently subject to the fee listed in the column titled Maker Fee for Select Symbols and Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[21] The New Penny Pilot Symbols were subject to the fee listed in the Column titled Maker Fee for Non-Penny Pilot Symbols when trading against Priority Customer. The remaining Additional Select Symbols are currently subject to the fee listed in the column titled Maker Fee for Non-Select Penny Pilot Symbols when trading against Priority Customer. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[22] The per contract fees noted reflect changes proposed by the Exchange in an earlier filing. *See* SR–ISE–2013–01.

[23] The New Penny Pilot Symbols were subject to the fee listed in the Column titled Taker Fee for Non-Penny Pilot Symbols. The remaining Additional Select Symbols are currently subject to the fee listed in the column titled Taker Fee for Non-Select Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[24] The per contract fees noted reflect changes proposed by the Exchange in an earlier filing. *See* SR–ISE–2013–01.

those the Exchange charged for the New Penny Pilot Symbols.

With this proposed rule change, the Fee for Crossing Orders when trading complex orders in the Additional Select Symbols will remain unchanged because the Exchange currently charges $0.20 per contract (for largest leg only) for complex Crossing Orders in all symbols, except for Priority Customers who are currently charged $0.00 per contract.

With this proposed rule change, the Fee for Responses to Crossing Orders when trading complex orders in the Additional Select Symbols will remain unchanged (except for the New Penny Pilot Symbols) because the Exchange currently charges $0.40 per contract for Responses to Crossing Orders when trading complex orders in the Select Symbols and in the Penny Pilot Symbols. The Fee for Responses to Crossing Orders when trading complex orders in the New Penny Pilot Symbols will, however, decrease because the Exchange currently charges $0.82 per contract for Market Maker orders and $0.84 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders.[25] The New Penny Pilot Symbols, which are a subset of the Additional Select Symbols, will now be charged $0.40 per contract for Market Maker, Non-ISE Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer orders.[26]

With this proposed rule change, the rebate levels payable for Priority Customer complex orders in the Additional Select Symbols (except for the New Penny Pilot Symbols) will increase because the rebate levels payable for Priority Customer complex orders in the Select Symbols are higher than the rebate levels currently payable for Priority Customer complex orders in Non-Select Penny Pilot Symbols, as described below.

For the Additional Select Symbols (except for the New Penny Pilot Symbols), the Exchange currently provides a base rebate of $0.33 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book.[27] Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.35 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.37 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.38 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.39 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts.[28] The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

For Select Symbols (excluding SPY), the Exchange currently provides a base rebate of $0.34 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.37 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.38 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.39 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.40 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts.[29] The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

With this proposed rule change, the increased rebate levels currently payable for Priority Customer complex orders in Select Symbols will now apply to Priority Customer complex orders in the Additional Select Symbols.

With this proposed rule change, the rebate levels payable for Priority Customer complex orders in the New Penny Pilot Symbols will, however, decrease because the these symbols will now be subject to much lower maker and taker fees and thus receive lower rebates, as described below.

For the New Penny Pilot Symbols (prior to their inclusion to the Penny Pilot Program), the Exchange provided a base rebate of $0.66 per contract, per leg, for Priority Customer complex orders when these orders traded with non-Priority Customer complex orders in the complex order book.[30] Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.72 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.75 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.77 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.78 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts.[31] The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month.

For Select Symbols (excluding SPY), the Exchange currently provides a base rebate of $0.34 per contract, per leg, for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book. Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a

[25] *Id.*

[26] The New Penny Pilot Symbols were subject to the fee listed in the Column titled Fee for Responses to Crossing Orders for non-Penny Pilot Symbols. The remaining Additional Select Symbols are currently subject to the fee listed in the column titled Fee for Responses to Crossing Orders for Select Symbols and Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[27] Additional Select Symbols (except for the New Penny Pilot Symbols) are currently subject to the rebate listed in the column titled Rebate for non-Select Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[28] The per contract rebates noted reflect changes proposed by the Exchange in an earlier filing. *See* SR–ISE–2013–01.

[29] *Id.*

[30] The New Penny Pilot Symbols were subject to the rebate listed in the column titled Rebate for non-Select non-Penny Pilot Symbols. *See* Schedule of Fees, Section II, Complex Order Fees and Rebates.

[31] The per contract rebates noted reflect changes proposed by the Exchange in an earlier filing. *See* SR–ISE–2013–01.

calendar month are provided a rebate of $0.37 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.38 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.39 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.40 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts.[32] The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. With this proposed rule change, the lower rebate levels currently payable for Priority Customer complex orders in the Select Symbols will now apply to Priority Customer complex orders in the New Penny Pilot Symbols.

Further, the Exchange currently provides a base rebate of $0.06 per contract, per leg, for Priority Customer complex orders in all symbols traded on the Exchange (excluding SPY) when these orders trade against quotes or orders in the regular orderbook. Additionally, Members who achieve a certain level of average daily volume (ADV) of executed Priority Customer complex order contracts across all symbols during a calendar month are provided a rebate of $0.08 per contract, per leg, in these symbols, if a Member achieves an ADV of 40,000 Priority Customer complex order contracts; $0.09 per contract, per leg, in these symbols, if a Member achieves an ADV of 75,000 Priority Customer complex order contracts; $0.10 per contract, per leg, in these symbols, if a Member achieves an ADV of 125,000 Priority Customer complex order contracts; and $0.11 per contract, per leg, in these symbols, if a Member achieves an ADV of 225,000 Priority Customer complex order contracts.[33] The highest rebate amount achieved by the Member for the current calendar month applies retroactively to all Priority Customer complex order contracts that trade with non-Priority Customer complex orders in the complex order book executed by the Member during such calendar month. This rebate is currently applicable to the Additional Select Symbols and with this proposed rule change, will continue to apply at the current rates.

Additionally, the Exchange currently provides Market Makers with a discount when trading against Priority Customer orders that are preferenced to them.[34] This discount is applicable when Market Makers add or remove liquidity in, among other symbols, Select Symbols, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols. The Additional Select Symbols are currently a part of the Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols and therefore the discount which currently applies to these symbols will continue to apply to these symbols when they become Select Symbols.

Further, the Exchange currently provides a $0.20 per contract fee credit to PMMs for execution of Priority Customer orders in the Non-Select Symbols—for classes in which it serves as a PMM—that send an Intermarket Sweep Order to other exchanges. This credit is applied regardless of the transaction fee charged by a destination market. For PMMs in the Select Symbols, this credit is equal to the fee charged by the destination market. With this proposed rule change, PMMs in the Additional Select Symbols will now be provided with a credit that that is equal to the fee charged by the destination market.

The Exchange also currently provides a $0.20 per contract credit for responses to flash orders in the Non-Select Symbols when trading against Professional Customers. For Select Symbols, the per contract fee credit for responses to flash orders is (i) $0.10 per contract when trading against Priority Customers; (ii) $0.12 per contract when trading against Preferenced Priority Customers; and (iii) $0.10 per contract when trading against Professional Customers. Market participants trading in the Additional Select Symbols will now be provided the rebate at levels that are currently in place for Select Symbols, as described above.

With this proposed rule change, the Exchange expects to attract additional order flow of regular and complex orders in the Additional Select Symbols. The Exchange's maker/taker fees and rebates have been effective in attracting order flow of regular and complex orders in the Select Symbols and increasing its market share in these symbols. The Exchange believes that applying its maker/taker fees and rebates to the Additional Select Symbols will result in the Exchange increasing its market share for regular and complex orders in these symbols.

With this proposed rule change, the maker and taker fees and the Fee for Responses to Crossing Orders for the New Penny Pilot Symbols will decrease because these symbols will now be charged the fees currently in place for Select Symbols, which are considerably lower. While the fees for the New Penny Pilot Symbols will decrease, the rebates payable for Priority Customer complex orders in these symbols will also correspondingly decrease. Further, Market Makers will now be eligible for the Market Maker Plus rebate, which was previously not applicable to the Additional Select Symbols. This proposed rule change does not propose any change to the maker and taker fees for complex orders in the Additional Select Symbols (except the New Penny Pilot Symbols, as noted above) as those fees remain unchanged. The rebate levels payable for Priority Customer complex orders in the Additional Select Symbols will increase compared to the current rebate levels for this group of symbols, except as noted above, for the New Penny Pilot Symbols, whose rebate levels will decrease.

Since the rate changes to the Schedule of Fees pursuant to this proposal will be effective upon filing, for the transactions occurring in January 2013 prior to the effective date of this filing, members will be assessed the rates in effect immediately prior to those proposed by this filing. For transactions occurring in January 2013 on and after the effective date of this filing, members will be assessed the rates proposed by this filing.

2. Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Act[35] in general, and furthers the objectives of Section 6(b)(4) of the Act[36] 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 it is reasonable to add the Additional Select Symbols to the current list of Select Symbols. The Exchange believes that applying the fees and rebates applicable to Select Symbols to the Additional Select Symbols will attract additional order flow to the Exchange. Select Symbol pricing has proven beneficial for the Exchange and its participants and the Exchange believes that moving

[32] *Id.*

[33] *Id.*

[34] The Exchange has submitted a separate filing to increase the discount from $0.02 per contract to $0.05 per contract. *See* SR–ISE–2013–02.

[35] 15 U.S.C. 78f(b).

[36] 15 U.S.C. 78f(b)(4).

the Additional Select Symbols to Select Symbols pricing would enhance liquidity and participation in those symbols.

The Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to add the Additional Select Symbols because the fees and rebates for Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade options in the Select Symbols would be uniformly subject to the fees and rebates applicable to those symbols.

The Exchange believes the proposed rule change is reasonable and equitable because it generally lowers the maker fees applicable to market participants (and considerably lowers the maker fees for the New Penny Pilot Symbols) and believes that the lower maker fees will attract additional maker liquidity and size to the Exchange in the Additional Select Symbols. Additionally, while this proposed rule change proposes to increase the taker fees applicable to market participants (except for the New Penny Pilot Symbols, whose taker fees will become considerably lower), the Exchange believes the benefits of better market quality will outweigh the taker fee increases based on the Exchange's experience with trading in the Select Symbols. Further, the Exchange believes this proposed rule change is reasonable and equitable because it will result in market participants receiving higher rebates for Priority Customer complex orders when these orders trade with non-Priority Customer complex orders in the complex order book as the current rebate payable for these orders in Select Symbols is higher than the current rebate payable for these orders in Additional Select Symbols. The Exchange notes, however, that the rebates payable to the New Penny Pilot Symbols will be decreased to correspond with the lower maker and taker fees these symbols will now be subject to.

The Exchange believes that it is reasonable and equitable to provide rebates for Priority Customer complex orders when these orders trade with Non-Priority Customer complex orders in the complex order book because paying a rebate would continue to attract additional order flow to the Exchange and create liquidity in the symbols that are subject to the rebate, which the Exchange believes ultimately will benefit all market participants who trade on ISE. The Exchange already provides these rebates, and is now merely proposing to adjust the rebate amounts applicable to the Additional Select Symbols. With this proposed rule change, Market Makers will also now be eligible to receive the Market Maker Plus rebate which was not previously applicable to the Additional Select Symbols. The Exchange believes that the proposed rebates are competitive with rebates provided by other exchanges and are therefore reasonable and equitably allocated to those members that direct orders to the Exchange rather than to a competing exchange.

The Exchange believes that it is reasonable and equitable to provide a discount to Market Makers on preferenced orders as an incentive for them to quote in the complex order book. ISE notes that with this proposed rule change, the Exchange will continue to maintain the differential that was previously in place for the Additional Select Symbols.

The Exchange believes that the proposed changes are non-discriminatory because the proposal simply moves the Additional Select Symbols from one category of fees into another category thereby applying fees currently in effect. Further, the Exchange believes that it is equitable and not unfairly discriminatory to amend its list of Select Symbols to add the Additional Select Symbols to the Select Symbols because the fees applicable to the Select Symbols would apply uniformly to all categories of participants in the same manner. All market participants who trade the Select Symbols would be uniformly subject to the fees and rebates applicable to those symbols.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE 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. This rule change, which proposes to move a group of symbols to an existing category of symbols, does not impose any burden on competition. With this proposed rule change, the Additional Select Symbols will be subject to fees that are already in place on the Exchange and therefore, do not impose any additional burden on competition that is not necessary or appropriate in furthering the purposes of the Act. The Exchange believes that the proposed changes promote competition, as they are designed to allow the Exchange to better compete for order flow and improve the Exchange's competitive position.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[37] and subparagraph (f)(2) of Rule 19b–4 thereunder,[38] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an Email to *rule-comments@sec.gov.* Please include File No. SR–ISE–2013–03 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–03. 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

[37] 15 U.S.C. 78s(b)(3)(A)(ii).

[38] 17 CFR 240.19b–4(f)(2).

post all comments on the Commissions 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. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–2013–03 and should be submitted by February 7, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00873 Filed 1–16–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68635; File No. SR–NYSE–2012–54]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Amending the Listed Company Manual Section 204.00 To Create a Uniform Method for a Company To Provide Notice to the Exchange When Required Pursuant to Sections 204.06, 204.12, 204.17, 204.21, 204.22, 311.01, 401.02, and 601.00 of the Listed Company Manual, and To Make Conforming Changes

January 11, 2013.

I. Introduction

On November 8, 2012, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 204.00 of the Listed Company Manual, which sets forth the required procedures that listed companies must follow to notify the Exchange upon the occurrence of certain events, and to amend related provisions of the Manual to make clear which provisions trigger the reporting procedures set forth in amended Section 204.00. The proposed rule changes were published for comment in the **Federal Register** on November 27, 2012.[3] The Commission did not receive any comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposals

Companies that list their securities on the Exchange are subject to a number of reporting requirements set forth in the Exchange's Listed Company Manual (''Manual''). The Exchange proposes to amend the methods by which listed companies give notice to the Exchange of matters or events where timely notification is essential to the ability of investors to arrange to be holders of a security by a certain date for a distribution or shareholder meeting. These events are: Closing of transfer books; notice of dividend action or action relating to a stock distribution; meetings of shareholders, notice of the fixing of a date for the taking of a record of shareholders or for the closing of transfer books; redemption of listed securities; notice of corporate action which will result in, or which looks toward, either the partial or full call for redemption of a listed security; notice of dates set in connection with the calling of any meeting of shareholders; and notice by transfer agents of the number of shares outstanding at the end of each calendar quarter.

Currently, the Manual contains sections governing the notice that listed companies are required to provide the Exchange in case of each of these events; however, these sections set forth either different or no precise method for providing such notice. The following chart summarizes how these various notification provisions currently are addressed in the Manual.

Section	Current method
204.00 Notice to and Filings with the Exchange (notice in connection with certain actions or events as specified in Sections 204.01 through 204.25).	Notice methods include fax, telephone, telegram, and letter.
204.06 Closing of Transfer Books	No method specified.
204.12 Dividends and Stock Distributions (notice of dividend action or action relating to a stock distribution).	Notice methods include fax, telephone, telegram, and letter.
204.17 Meetings of Shareholders	No method specified.
204.21 Record Date (notice of the fixing of a date for the taking of a record of shareholders or for the closing of transfer books).	Notice methods include fax, telephone, telegram, and letter.
204.22 Redemption of Listed Securities	No method specified.
311.01 Publicity and Notice to the Exchange of Redemption (notice of corporate action which will result in, or which looks toward, either the partial or full call for redemption of a listed security).	Notice methods include fax and telephone.
401.02 Notice to the Exchange (notice of dates set in connection with the calling of any meeting of shareholders, including changes in record date).	Notice methods include telephone and writing or fax.
601.00 Services to be Provided by Transfer Agents and Registrars (notice by transfer agents of the number of shares outstanding at the end of each calendar quarter).	Notice methods include fax and email.

[39] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68276 (November 20, 2012), 77 FR 70868 (November 27, 2012) (''Notice'').

The Exchange proposes to create a uniform method that listed companies will use to notify the Exchange of the events identified in the chart above. To do so, the Exchange proposes to set forth the new, uniform method of notification in Section 204.00, and to amend the remaining Sections in the chart above to include an explicit direction to listed companies to follow the amended notification procedures of Section 204.00.

Specifically, the Exchange proposes to amend Section 204.00[4] to provide that, when a provision of the Listed Company Manual requires a company to give notice to the Exchange pursuant to Section 204.00, the company shall provide such notice through a web-based communication system—either a web portal or email address—specified by the Exchange in a prominent position on its Web site.[5] Should the Exchange ever change the web-based communication system it uses to receive notifications pursuant to Section 204.00, the proposed text of Section 204.00 would require the Exchange to promptly update and display the applicable information on its Web site.[6]

The Exchange also proposes to amend Section 204.00 to address several other scenarios that impact the notifications that companies must provide to the Exchange. First, the amended Section 204.00 would say that, in emergency situations—for instance, lack of computer or Internet access, technical problems at the Exchange or company, or incompatibility between Exchange and company systems—companies may provide notifications required pursuant to the Section by telephone and confirmed by facsimile, as specified by the Exchange on its Web site.[7] Second, amended Section 204.00 would require that, in cases where a material event or a statement dealing with a rumor which calls for immediate release is made shortly before the opening or during market hours, companies must notify the Exchange using the telephone alert procedures set forth in Section 202.06(B) of the Manual.[8] Finally, amended Section 204.00 would clarify that for the remaining notification provisions in the Manual that do not direct companies specifically to follow the Section's revised notification methods, companies may use the methods provided for in Section 204.00 or any other reasonable method.

The Exchange explained in its filing the reason why the remaining notification provisions contained in the Manual—the ones not specified in the chart above and subject to the proposed amendments—would not require companies to follow the notification methods set forth in 204.00. According to the Exchange, these remaining provisions found in Sections 204.01 through 204.25 relate to matters about which the Exchange needs to be informed promptly, such as a change in transfer agent or trustee (Section 204.02) or change in auditors (Section 204.03), but a company's failure to notify the Exchange immediately in the case of these events would not significantly disadvantage investors. As a result, the Exchange does not propose to amend these remaining provisions to require notification pursuant to 204.00; instead, the Exchange believes it is reasonable to afford listed companies more flexibility with respect to how they comply with the remaining notification provisions that do not specifically direct a company to Section 204.00.

In connection with the proposed amendments to the notification methods prescribed in Section 204.00, the Exchange also proposes to revise the ''Guide to Requirements for Submitting Data to the Exchange'' (''Guide'') which appears in the Introduction to the Listed Company Manual.[9] The Exchange proposes to amend the portion of the Guide summarizing the submission requirements relating to press releases disclosing material corporate events. This part of the Guide is meant to summarize the requirements of the telephone alert policy found in Section 202.06(B), but as it stands now, it states incorrectly that the text of certain written announcements should be conveyed to the Exchange after an announcement is released. The Exchange's proposed amendment to this portion of the Guide would conform the summary language used in the Guide to the language of the actual requirement found in Section 202.06(B), which states that the text of certain written announcements must be conveyed to the Exchange at least ten minutes prior to release.

The Exchange also proposes several administrative changes to the Guide. First, it proposes to amend from six to three the number of copies of a proxy statement that a listed company must submit to the Exchange. The reason for the change is that the Exchange has determined that three copies of the proxy statement is sufficient for the Exchange's review purposes, and that the proposed amendment would lessen an administrative burden on listed companies. Second, the Exchange proposes to make changes to the portion of the Guide summarizing the notification requirements for shareholder meetings. The Exchange proposes to change the name of this Item in the Guide from ''Shareholders' Meeting/Notice'' to ''Shareholders' Meeting/Notice of Record Date or Change of Record Date.'' The Exchange also proposes to revise the description of the ''Due Date'' for this Item in the Guide, by rewording the description to require notice ''[a]t least ten days in advance of record date,'' instead of ''[n]ot later than the tenth day prior to the record date.''

Finally, the Exchange proposes to amend Section 311.01 to clarify what method of notification is required when a company's corporate action (or any action of which the company has knowledge) will result in, or looks toward, either the partial or full call for redemption of a listed security. Currently, Section 311.01 contains language in two different places setting forth methods of notification in cases of redemptions, and the language in these two places is potentially in conflict. In the first instance where Section 311.01

[4] In addition to the proposed substantive amendments to Section 204.00 described in the text, the Exchange proposes to delete the word ''written'' from the heading for Section 204.00 and from the first sentence of the section. In its filing, the Exchange stated that this technical change is meant to eliminate any potential confusion as to whether notices provided through a web-based communication system constitute ''written'' notices.

[5] The Exchange noted in its submission that if the filing is approved, it plans to commence receiving the web-based notifications pursuant to Section 204.00 through *www.egovdirect,* a web portal operated by the Exchange, or through an email address designated by the Exchange.

[6] Additionally, proposed Section 204.00 encourages listed companies to contact their Exchange representatives if they have any questions about the appropriate method of providing notification under applicable Exchange rules.

[7] Again, the Exchange notes that companies are encouraged to contact their Exchange representatives if they have any questions about how to comply with applicable notification requirements.

[8] The telephone alert procedures in Section 202.06(B) require that, when the announcement of news of a material event or a statement dealing with a rumor which calls for immediate release is made shortly before the opening or during market hours, a company must give notice to their Exchange representatives by telephone at least ten minutes prior to the release of the announcement. Section 202.06(B) further requires that when such announcement is in written form, a company must also provide the text of such written announcement to the Exchange at least ten minutes prior to its release. The Exchange proposes to amend Section 202.06(B) to specify that companies should now use the web-based communication system specified in Section 204.00—*i.e.,* the web portal or designated email address—to transmit the written form of the announcement.

[9] In addition to the substantive changes to the Guide described in the text, the Exchange proposes to revise cross-references contained in the Guide so that they refer to a ''Section'' of the Manual rather than a ''Paragraph,'' as the Manual is organized in ''Sections,'' not ''Paragraphs.''

prescribes a method of notification, it says that companies must follow the timely disclosure/telephone alert procedures found in Sections 202.05 and 202.06(B).[10] Later in Section 311.01, there is a second notification directive that requires companies to notify the Exchange of redemptions in writing, delivered by hand if possible, and if immediate hand delivery is not possible, than the company must notify the Exchange of a redemption action by telephone, no later than simultaneously with the release of the information to the newspapers and news wire services, confirmed promptly by fax. The Exchange proposes to delete the paragraph containing the second directive. As a result of the proposed change, the only notification directive in Section 311.01 would be the first one that requires companies to follow the timely disclosure and telephone alert procedures.

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it consistent with the requirements of the Act.[11] Specifically, the Commission believes it is consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed changes are intended to simplify and clarify the provisions of the Manual relating to the methods by which listed companies must notify the Exchange when certain events occur. By creating a uniform method of notification by web portal or email for the Sections that specifically refer to Section 204.00, identified in the chart above, the Exchange may reduce the likelihood that companies make a mistake when trying to notify the Exchange of important events. As explained by the Exchange, the Sections that will require notice by web portal or email pursuant to Section 204.00 all relate to matters where timely notification is critical to allow investors time to make arrangements to be holders of a security by a certain date for a distribution or shareholder meeting. In such cases, it makes sense to require listed companies to give notice to the Exchange using current, efficient electronic methods that more easily lend themselves to accurate recordkeeping than manual or written methods.[13] The Commission therefore believes that the proposed rule change is consistent with the Act, as more clear, easy to follow, and easily recorded notification methods should facilitate the transmission of information and promote transparency for the benefit of investors consistent with Section 6(b)(5) of the Act.[14]

Likewise, with respect to the remaining notification provisions in the Manual where timely notification is less critical, it is reasonable to allow companies more flexibility to determine what method of notification best suits a particular situation. The Commission notes that, even in such cases, the Exchange is offering to allow companies to use the electronic web-based notification methods of 204.00 if they would like to use such methods.

The Commission also finds that the remaining clarifying, conforming, administrative, and technical changes are consistent with the Act. The changes to the Guide make it consistent with language used elsewhere in the Guide and Manual. For instance, the revision of the Item in the Guide dealing with press releases conforms the language used in that Guide entry with the corresponding language in Section 202.06(B). The same is true of the change to the Due Date description associated with Shareholders' Meeting/Notice of Record Date or Change of Record Date, which is meant to mirror language used in the Due Date description of the Guide entry associated with Dividend Notification. Because these changes conform the Guide's language to what is used elsewhere in the Manual, they promote consistency and transparency and reduce the potential for confusion. Similarly, in Section 311.01, the Exchange's deletion of a second, potentially conflicting method of notification of redemption actions should reduce listed companies' confusion as to how to comply with the provision, and ultimately, this should promote transparency and protect investors by ensuring better and more accurate notification. Lastly, the change to Section 402.01 that reduces the number of copies of proxy material that listed companies must provide to the Exchange lessens the administrative burden imposed on issuers without, as the Exchange represents, threatening the Exchange's review of such material for the benefit and protection of investors.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rules change (SR–NYSE–2012–54) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00876 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

[10] The Exchange proposed several additional technical and non-substantive changes to Section 311.01. *See* Notice, *supra* note 3.

[11] 15 U.S.C. 78f. In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] The Commission also notes that the Exchange provides for alternative methods of notification should electronic communications systems be unavailable. *See supra* note 7 and accompanying text.

[14] The Commission notes that the Exchange has committed in its rule text to displaying prominently on its Web site the specific electronic web-based communication system that listed companies must use to give notice in accordance with Section 204.00. Accordingly, the Commission believes that the proposed rule change should facilitate listed companies' means of providing notice of certain events while ensuring that all listed companies should be able to determine how they must comply with such notification requirements.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68621; File No. SR–NSCC–2012–810]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Advance Notice To Eliminate the Offset of Its Obligations With Institutional Delivery Transactions That Settle at The Depository Trust Company for the Purpose of Calculating Its Clearing Fund Under Procedure XV of Its Rules & Procedures

January 10, 2013.

Pursuant to Section 806(e)(1) of the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] thereunder, notice is hereby given that on December 18, 2012, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'')

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(i).

the advance notice described in Items I, II and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the advance notice from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Advance Notice

NSCC proposes to modify its Rules & Procedures (''Rules'') to eliminate the offset of NSCC obligations with institutional delivery (''ID'') transactions that settle at the Depository Trust Company (''DTC'') for the purpose of calculating the NSCC clearing fund (''Clearing Fund'') under Procedure XV of the Rules.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Advance Notice

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the advance notice and discussed any comments it received on the advance notice. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A) and (B) below, of the most significant aspects of these statements.[3]

(A) Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Description of Change

Background

A primary objective of NSCC's Clearing Fund is to have on deposit from each applicable clearing member (''Member'') assets sufficient to satisfy losses that may otherwise be incurred by NSCC as the result of the default of the Member and the resultant close out of that Member's unsettled positions under NSCC's trade guaranty. Each Member's Clearing Fund required deposit is calculated daily pursuant to a formula set forth in Procedure XV of the Rules designed to provide sufficient funds to cover this risk of loss. The Clearing Fund formula accounts for a variety of risk factors through the application of a number of components, each described in Procedure XV.[4]

The Value-at-Risk component, or ''VaR,'' is a core component of this formula and is designed to calculate the amount of money that may be lost on a portfolio over a given period of time assumed necessary to liquidate the portfolio, within a given level of confidence.[5] The Market Maker Domination component, or ''MMDOM,'' is charged to Market Makers,[6] or firms that clear for them. In calculating the MMDOM, if the sum of the absolute values of net unsettled positions in a security for which the firm in question makes a market is greater than that firm's excess net capital, NSCC may then charge the firm an amount equal to such excess or the sum of each of the absolute values of the affected net unsettled positions, or a combination of both. MMDOM operates to identify concentration within a given CUSIP.

Pursuant to Procedure XV of the Rules, NSCC may calculate the VaR and MMDOM components of a Member's Clearing Fund requirement after taking into account any offsetting pending (i.e., non-fail) ID transactions that have been confirmed and/or affirmed through an institutional delivery system acceptable to NSCC (typically Omgeo LLC (''Omgeo''), a joint venture of the Depository Trust and Clearing Corporation and Thomson Reuters) (''ID Offset'').[7] NSCC is proposing to eliminate the ID Offset from its Clearing Fund calculations in order to eliminate the market risk that, in the event NSCC ceases to act for a Member with pending ID transactions, it may be unable to complete those pending ID transactions in the time frame contemplated by its current Clearing Fund calculations and, as a result, may have insufficient margin in its Clearing Fund.

ID Transactions

The parties involved in an institutional trade include the institutional investor (such as mutual funds, insurance companies, hedge funds, bank trust departments, and pension funds), the investment manager (who enters trade orders on behalf of institutional investors), the buying broker and the selling broker, and custodian banks.[8] Trades between the buying broker and the selling broker are typically settled through NSCC's Continuous Net Settlement system (''CNS'').[9]

Before ID trades are sent to DTC, where they settle delivery versus payment, the trade allocation details are matched between the executing broker and the institutional investor. After an executing broker has provided a final notice of execution associated with the client's order, most institutional clients will provide trade allocation details to the executing broker using a service provided by Omgeo. When the executing broker accepts and processes the trade allocations, an electronic confirmation is provided through Omgeo's TradeSuite service to the institutional investor or its agent (typically the institutional client's custodian bank) for affirmation. Omgeo links with the various parties to institutional trades to provide real-time central matching capabilities, electronically comparing trade details and notifying parties of any exceptions. After the trade allocation details are affirmed, the trade is considered matched and institutional delivery details are sent to DTC for settlement.

Completion of the money and securities settlement of institutional trades occurs at DTC. Because

[3] The Commission has modified the text of the summaries prepared by NSCC.

[4] In addition to those described in this filing, Clearing Fund components also include (i) A mark-to-market component which, with certain exclusions, takes into account any difference between the contract price and market price for net positions of each security in a Member's portfolio through settlement; (ii) a ''special charge'' in view of price fluctuations in or volatility or lack of liquidity of any security; (iii) an additional charge relating to a Member's outstanding fail positions; (iv) a ''specified activity charge'' for transactions scheduled to settle on a shortened settlement cycle (i.e., less than T+3 or T+3 for ''as-of'' transactions); (v) an additional charge that NSCC may require of Members on surveillance status; and (vi) an ''Excess Capital Premium'' that takes into account the degree to which a Member's collateral requirement compares to the Member's excess net capital by applying a charge if a Member's Required Deposit, minus any amount applied from the charges described in (ii) and (iii) above, is above its required capital.

[5] NSCC's equity VaR model assumes a 99% confidence interval, uses a 150-day historical look-back period, and assumes a three-day liquidation period. In effect, NSCC assumes the market conditions observed over the past 150 days are predictive of the market conditions expected over the course of the next three business days. Pursuant to Procedure XV, NSCC may exclude from the VaR charge ''Net Unsettled Positions in classes of securities whose volatility is (x) less amendable to statistical analysis, such as OTC Bulletin Board or Pink Sheet issues or issues trading below a designated dollar threshold, or (y) amendable to generally accepted statistical analysis in a complex manner, such as municipal or corporate bonds.'' The charge for such positions is determined by multiplying the absolute value of the positions by a pre-determined percentage.

[6] As used in Procedure XV, the term Market Maker means a firm that is registered by FINRA as a Market Maker.

[7] The changes proposed by this advance notice will not impact NSCC's ID Net Service.

[8] Prime broker ID transactions settling at NSCC are not included in the ID Offset, as they are included in the Member's NSCC activity once such transactions are affirmed, and, therefore, are not addressed in this filing. The ID transactions included in the ID Offset and described in this advance notice are activity that is held in custody at a bank.

[9] CNS is NSCC's core netting and allotting system, where all eligible compared and recorded transactions for a particular settlement date are netted by issue into one net long (buy) or net short (sell) position, and NSCC becomes the contra-party for settlement purposes, assuming the obligation of its Members that are receiving securities to receive and pay for those securities, and the obligation of Members that are delivering securities to make the delivery.

investment managers are not participants of and do not have direct accounts at DTC, their securities are held in custodial accounts with banks who are participants at DTC. Therefore, when the institutional delivery details for confirmed and affirmed ID trades are sent to DTC from Omgeo, the delivering investment manager's custodian bank or broker, as the case may be, must authorize the delivery, generating a deliver order that will settle in accordance with DTC's rules.

NSCC Risk Management receives a daily feed from Omgeo, including both ID trades that have only been confirmed as well as those that have also been affirmed. For purposes of the ID Offset, NSCC includes ID trades that are confirmed and/or affirmed on trade date (T) and those ID trades which have been affirmed on T+1 and remain affirmed through settlement date (SD).

ID Offset

Procedure XV currently allows for a Member's net unsettled NSCC position in a particular CUSIP to be compared to any pending ID transactions settling at DTC for potential offset for purposes of calculating the VaR and the MMDOM components of a Member's Clearing Fund requirement, defined as the ID Offset. The ID Offset is based on the assumption that, in the event of a Member insolvency, NSCC will be able to close out any trades for which there is a corresponding ID transaction settling at DTC by completing that ID transaction. Therefore, the VaR and the MMDOM components are calculated after taking into account any offsetting pending (i.e., non-fail) ID transactions that have been confirmed and/or affirmed, reducing the Clearing Fund requirement for those Members with ID transactions. ID transactions are included in the ID Offset only if they are on the opposite side of the market from the Member's net NSCC position (i.e., only if they reduce that net position).

Potential Inability To Complete ID Transactions

Generally, when NSCC ceases to act for a Member, it is obligated, for those transactions to which the trade guaranty has attached, to pay for deliveries made by non-defaulting Members that are due, through CNS, to the failed Member on the day of insolvency and the days following. As described above, the current calculation of the VaR and MMDOM components of NSCC's Clearing Fund are based on the assumption that, in the event of a Member default, NSCC will be able to complete the pending ID transactions that were used to offset that Member's unsettled NSCC position. If NSCC is unable to complete the ID transactions as contemplated by this calculation, then NSCC may need to liquidate a portfolio that could be substantially different than the portfolio that NSCC collected Clearing Fund for, leaving NSCC potentially under collateralized and exposed to market risk, because when it calculated the Clearing Fund requirement, NSCC assumed, under its current rules, a portfolio that included Member positions to be offset by ID transactions.

There are a number of reasons why NSCC may not be able to complete an insolvent Member's open ID transactions. First, NSCC does not guarantee ID transactions and completion of these transactions by the counterparty of the ID transaction, which is not a Member of NSCC, is voluntary. Further, the institutional customer is not a Member of NSCC, is not bound by NSCC's Rules, and is not party to any legally binding contract with NSCC that requires the institutional customer or its custodian to complete the transaction. Finally, based on news that a Member may be in distress or insolvent, the institutional customer or its investment advisor may feel compelled to take immediate market action with respect to the institutional buy or sell transaction, in order to reduce its market risk; this effectively eliminates the option for NSCC to complete these transactions, either entirely or on the timetable assumed by the Clearing Fund calculation.

While NSCC's Risk Management systems net ID transactions by CUSIP across all settlement days for the purposes of the ID Offset, ID transactions settle trade by trade between the executing broker and the custodian. As a result, the netted ID position used to offset the NSCC position could potentially be comprised of thousands of individual trades with hundreds of different counterparties. It would be time consuming for NSCC to contact each counterparty individually to get their agreement to complete ID transactions, which would delay the determination of the portfolio requiring liquidation in the event of a cease to act, and thus hold up the prompt close out of the defaulter's open positions, exposing NSCC to additional market risk not covered by the margin collected.

Implementation Time Frame

Following Commission approval, in order to mitigate the impact of this advance notice, NSCC proposes to implement the changes set forth in this filing on over an 18-month period. On a date no earlier than 10 days following notice to Members by Important Notice (''Initial Implementation Date''), NSCC proposes to eliminate the ID Offset from ID transactions that have only been confirmed, but have not yet been affirmed. At this time, NSCC will continue to apply the ID Offset to ID transactions that have been affirmed. During the 12-month period following the Initial Implementation Date, NSCC will discuss with Members, whose business will be affected by the elimination of the ID Offset, mechanisms to mitigate this impact.

Beginning on a date approximately 12 months from the Initial Implementation Date, and no earlier than 10 days following notice to Members by Important Notice, NSCC will eliminate from the ID Offset all affirmed ID transactions that have reached settlement date at the time the Clearing Fund calculations are run. Three months later, or approximately 15 months following the Initial Implementation Date, and on a date no earlier than 10 days following notice to Members by Important Notice, NSCC will eliminate from the ID Offset all affirmed ID transactions that have reached either settlement date or the day prior to settlement date. Finally, on a date approximately 18 months following the Initial Implementation Date, and no earlier than 10 days following notice to Members by Important Notice, NSCC will eliminate the ID Offset entirely for all ID transactions. Members will be advised of each proposed implementation date through issuance of NSCC Important Notices, which are publically available at *www.dtcc.com.*

The table below illustrates this proposed implementation schedule:

PROPOSED IMPLEMENTATION SCHEDULE FOR ELIMINATION OF ID OFFSETS

Action	Scheduled implementation
Eliminate from ID Offset those ID transactions that have *only* been confirmed, but have not yet been affirmed.	Following approval of rule filing, and on a date no earlier than 10 days following notice to Members by Important Notice (''Initial Implementation Date'').
Eliminate from ID Offset all affirmed ID transactions that have reached Settlement Date (''SD'').	12 months following the Initial Implementation Date, and on a date no earlier than 10 days following notice to Members by Important Notice.
Eliminate from ID Offset all affirmed ID transactions that have reached SD and the day prior to SD (SD–1).	15 months following the Initial Implementation Date, and on a date no earlier than 10 days following notice to Members by Important Notice.
Eliminate from ID Offset all ID transactions	18 months following the Initial Implementation Date, and on a date no earlier than 10 days following notice to Members by Important Notice.

Proposed Rule Changes

NSCC proposes to amend Procedure XV to eliminate the ID Offset from calculation of the VaR and MMDOM components of a Member's Clearing Fund requirement as currently provided for in, with respect to CNS transactions, Section I(A)(1)(a)(i) and Section I(A)(1)(d), and, with respect to Balance Order transactions, Section I(A)(2)(a)(i) and Section I(A)(2)(c).

Anticipated Effect on and Management of Risk

As a central counterparty, NSCC occupies an important role in the securities settlement system by interposing itself between counterparties to financial transactions and thereby reducing the risk faced by participants and contributing to global financial stability. In this role, however, NSCC is necessarily subject to certain risks in the event of the default or failure of a Member.

NSCC reviews its risk management processes against federal securities laws and rulemaking promulgated by the Commission, and applicable regulatory and industry guidelines, including but not limited to the Principles for Financial Market Infrastructures (''PFMI'') of the Committee on Payment and Settlement Systems and the Technical Committee of the International Organization of Securities Commissions (''CPSS–IOSCO'').[10] In accordance with Commission rules,[11] specifically Rule 17Ad–22(b)(1) addressing measurement and management of credit exposures, Rule 17Ad–22(b)(2) addressing margin requirements, and Rule 17Ad–22(d)(11) addressing default procedures, and also in accordance with the PFMIs, this advance notice should enhance NSCC's ability to more effectively manage its credit exposures to participants, help ensure that it is able to cover its credit exposures to its participants for all products through an effective, risk-based margin system, limit NSCC's exposures and losses, and enhance protections against market risk that may arise when NSCC ceases to act for a Member with open ID transaction activity.

(B) Clearing Agency's Statement on Comments on the Advance Notice Received From Members, Participants, or Others

While written comments relating to the advance notice have not yet been solicited, NSCC has received a letter on behalf of certain Members seeking further review of the impact of the proposed changes contained in the advance notice and consideration of alternatives. NSCC notified the Commission of the contents of the letter and promptly delivered a response to those Members addressing their concerns. A Member working group has been established to discuss mechanisms for impacted Members to mitigate the potential impact of the rule changes described in this filing.

III. Date of Effectiveness of the Advance Notice and Timing for Commission Action

The clearing agency may implement the proposed change pursuant to Section 806(e)(1)(G) of the Clearing Supervision Act[12] if it has not received an objection to the proposed change within 60 days of the later of (i) the date that the Commission received the advance notice or (ii) the date the Commission receives any further information it requested for consideration of the notice. The clearing agency shall not implement the proposed change if the Commission has any objection to the proposed change.

The Commission may extend the period for review by an additional 60 days if the proposed change raises novel or complex issues, subject to the Commission providing the clearing agency with prompt written notice of the extension. A proposed change may be implemented in less than 60 days from the date of receipt of the advance notice, or the date the Commission receives any further information it requested, if the Commission notifies the clearing agency in writing that it does not object to the proposed change and authorizes the clearing agency to implement the proposed change on an earlier date, subject to any conditions imposed by the Commission. The clearing agency shall post notice on its Web site of proposed changes that are implemented.

The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the advance notice is consistent with the Clearing Supervision Act. Comments may be submitted by any of the following methods:

[10] CPSS–IOSCO PFMI (April 2012), available at *http://www.bis.org/publ/cpss101a.pdf.*

[11] Securities and Exchange Commission Release No. 34–68080 (October 22, 2012), 77 FR 66219 (November 2, 1012; File No. S7–08–11 (available at *http://www.sec.gov/rules/final/2012/34-68080.pdf*), effective on January 2, 2013.

[12] 12 U.S.C. 5465(e)(1)(G).

[13] NSCC also filed the proposals contained in this advance notice as a proposed rule change under Section 19(b)(1) of the Act and Rule 19b–4 thereunder. 15 U.S.C. 78s(b)(1); 17 CFR 240.19b–4. Pursuant to Section 19(b)(2) of the Act, within 45 days of the date of publication of the proposed rule change in the Federal Register or within such longer period up to 90 days if the Commission designates or the self-regulatory organization consents the Commission will either: (i) By order approve or disapprove the proposed rule change or (ii) institute proceedings to determine whether the proposed rule change should be disapproved. 17 U.S.C. 78s(b)(2)(A). *See* Release No. 34–68549 (December 28, 2012), 78 FR 792 (January 4, 2013).

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–NSCC–2012–810 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–NSCC–2012–810. 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 advance notice that are filed with the Commission, and all written communications relating to the advance notice between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://dtcc.com/downloads/legal/rule_filings/2012/nscc/SR-NSCC-2012-10.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–NSCC–2012–810 and should be submitted on or before February 7, 2013.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00772 Filed 1–16–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Request for Public Comment, Raleigh County Memorial Airport, Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The Federal Aviation Administration is requesting public comment on the proposed release of 154.0957 acres of land currently owned by the Raleigh County Commission, Sponsor for the Raleigh County Memorial Airport, Beckley, West Virginia. The parcel is located off the north end of the airport and descends in to ''Piney Creek Gorge'' to a depth in excess of 600ft below the airport elevation and has no aeronautical benefit. The land is dormant, no infrastructure exists and land has no practical use. Due to terrain, no future development opportunities exist for the airport. Once released, the land will be sold and placed in a Conservation Easement, with restriction of no future development. Proposed buyer would be placing the area of request in a conservation easement for wildlife enhancement, with no adverse impact to the airport. Land will remain as compatible use to the airport. Land will be sold as surface rights only, no conveyance of mineral rights. The airport land being released is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value has been determined based upon an appraisal of the Property.

DATES: Comments must be received on or before February 19, 2013.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Connie Boley-Lilly, Program Specialist, Federal Aviation Administration, Beckley Airports Field Office, 176 Airport Circle, Room 101, Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Tom Cochran, Airport Manager of the Raleigh County Memorial Airport at the following address: Thomas Cochran, Airport Manager, Raleigh County Memorial Airport, 176 Airport Circle, Room 105, Beaver, West Virginia 25813.

FOR FURTHER INFORMATION CONTACT: Connie Boley-Lilly, Program Specialist, Beckley Airport Field Office, (304) 252–6216 ext. 125, Fax (304) 253–8028. Email: *Connie.Boley-Lilly@FAA.GOV.*

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Raleigh County Memorial Airport, Beckley, WV. Under the provisions of AIR 21(49 U.S.C. 47108(h)(2)).

The Raleigh County Memorial Airport is proposing the release of approximately 154.0957 acres of a 'surface rights only' property to be sold and then placed in a Conservation Easement with restriction of no future development. The release and sale of this property will allow the Sponsor to take advantage of un-useable land and use the proceeds for that sale, for the future development of the airport.

Issued in Beckley, West Virginia, on January 8, 2013.

Matthew P. DiGiulian,

Manager, Beckley Airport Field Office, Eastern Region.

[FR Doc. 2013–00854 Filed 1–16–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2013–0001]

Establishment of an Emergency Relief Docket for Calendar Year 2013

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of establishment of public docket.

SUMMARY: This Notice announces the establishment of FRA's emergency relief docket (ERD) for calendar year 2013. The designated ERD for calendar year 2013 is docket number FRA–2013–0001.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for further information regarding submitting petitions and/or comments to Docket No. FRA–2013–0001.

SUPPLEMENTARY INFORMATION: On May 19, 2009, FRA published a direct final rule addressing the establishment of ERDs and the procedures for handling petitions for emergency waivers of safety rules, regulations, or standards during an emergency situation or event. 74 FR 23329. That direct final rule became effective on July 20, 2009 and made minor modifications to § 211.45 to the FRA's Rules of Practice published at 49 CFR part 211. Paragraph (b) of § 211.45 provides that each calendar year FRA will establish an ERD in the publicly accessible DOT docket system (available on the Internet at *http://www.regulations.gov).* Paragraph (b) of § 211.45 further provides that FRA will publish a notice in the **Federal Register** identifying by docket number the ERD

for that year. As noted in the rule, FRA's purpose for establishing the ERD and emergency waiver procedures is to provide an expedited process for FRA to address the needs of the public and the railroad industry during emergency situations or events. This Notice announces that the designated ERD for calendar year 2013 is docket number FRA–2013–0001.

As detailed § 211.45, if the FRA Administrator determines that an emergency event as defined in 49 CFR 211.45(a) has occurred, or that an imminent threat of such an emergency occurring exists, and public safety would benefit from providing the railroad industry with operational relief, the emergency waiver procedures of 49 CFR 211.45 will go into effect. In such an event, the FRA Administrator will issue a statement in the ERD indicating that the emergency waiver procedures are in effect and FRA will make every effort to post the statement on its Web site *http://www.fra.dot.gov/.* Any party desiring relief from FRA regulatory requirements as a result of the emergency situation should submit a petition for emergency waiver in accordance with 49 CFR 211.45(e) and (f). Specific instructions for filing petitions for emergency waivers in accordance with 49 CFR 211.45 are found at 49 CFR 211.45(f). Specific instructions for filing comments in response to petitions for emergency waivers are found at 49 CFR 211.45(h).

Privacy

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 document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC on January 14, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–00934 Filed 1–16–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0096]

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 December 12, 2012, DPS Electronics, Inc. (DPS) 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–2012–0096.

DPS seeks relief with respect to the application of certain provisions of 49 CFR Part 232, specifically, Section 232.409(d)—*Inspection and testing of end-of-train devices.* DPS's end-of-train (EOT) devices use a transceiver manufactured by Ritron, Inc. DPS requests clarification that the previous waiver granted to Ritron, Inc. (see Docket Number FRA–2009–0015) for relief from the annual calibration for EOT devices may be considered to apply to DPS's entire EOT product; or alternately, that DPS receive a complete waiver or its equivalent for DPS's entire EOT product, which includes the Ritron, Inc. transceiver.

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 February 19, 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.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on January 14, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–00932 Filed 1–16–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Actions on Special Permit Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of Actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given of the actions on special permits applications in (December to December 2012). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying

aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on January 10, 2013.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P. No.	Applicant	Regulation(s)	Nature of special permit thereof
		MODIFICATION SPECIAL PERMIT GRANTED	
14227–M	Aluminum Tank Industries, Inc. Winter Haven, FL.	49 CFR 177.834(h), 178.700 ..	To modify the special permit to authorize pumps and hoses attached to discharge outlets during transportation if certain requirements are met.
		NEW SPECIAL PERMIT GRANTED	
15671–N	Formulated Solutions Largo, FL.	49 CFR 173.306(a)(3)(v)	To authorize construction of DOT 2P or DOT 2Q non-refillable aerosol container using an alternative leak test in lieu of the hot water bath. (modes 1, 2, 3, 4)
15690–N	Duke Energy Corp. Charlotte, NC.	49 CFR 171.8; 172.300; 172.400; 172.500; 173.6; 177.817; Part 178.	To authorize the transportation in commerce of test kits containing minor amounts of alkali metal dispersed in mineral oil. (mode 1)
		EMERGENCY SPECIAL PERMIT GRANTED	
15766–N	Gateway Pyrotechnic Production, LLC, dba Gateway Fireworks Displays St. Louis, MO.	49 CFR 172.301, 172.320 and 173.56.	To authorizes the one-time, one-way transportation in commerce of approximately 46,000 pounds gross weight of unapproved fireworks from Dayton, OH to an approved storage bunker in Illiopolis, IL by motor vehicle. (mode 1)
		NEW SPECIAL PERMIT WITHDRAWN	
15675–N	The Boeing Company St. Louis, MO.	49 CFR 172.101 Column (9B)	To authorize the one-time transportation in commerce of certain explosives that are forbidden for transportation by cargo only aircraft. (mode 4)
15684–N	Pratt & Whitney Rocketdyne, Inc Canoga Park, CA.	49 CFR 173.185(a)(4)	To authorize the transportation in commerce of power systems that consist of lithium ion battery assemblies. (mode 1)
		DENIED	
14912–M	Request by ITW Sexton Decatur, AL December 20, 2012. To authorize the addition of a Division 2.1 material and require burst pressure of containers to not be below 480 psig.		
15719–N	Request by Ameripak Pontiac, MI December 20, 2012. To authorize the manufacture, mark, sale and use of UN5OD plywood box for the transportation in commerce of lithium batteries.		

[FR Doc. 2013–00704 Filed 1–16–13; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before February 1, 2013.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 8, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		MODIFICATION SPECIAL PERMITS		
13112–M	.....	Conax Florida Corporation St. Petersburg, FL.	49 CFR 173.302a	To modify the special permit to change a drawing number; replace the fully assembled pressure vessel with a representative pyrotechnic primer; increase the required temperature per minute for gas relief; require a nominal operating pressure; reduce the testing frequency; and remove the flattening test.
13355–M	.....	C L Smith Company Saint Louis, MO.	49 CFR 173.13(a), 173.13(b), 173.13(c)(1)(ii), 173.13(c)(1)(iv), 173.13(d).	To modify the special permit to authorize new packaging requirements for Division 6.1 PG II and III materials.
15389–M	.....	AMETEK Ameron LLC d/b/a MASS Systems Baldwin Park, CA.	49 CFR 173.301(a)(1), 173.301(a)(1), 173.302a(a)(1), and 173.304a(a)(1).	To modify the special permit to authorize new pressure test requirements.

[FR Doc. 2013–00707 Filed 1–16–13; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PIIMSA), DOT.

ACTION: List of Applications for Special Permits

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before February 19, 2013.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

For Further Information: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on January 9, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		NEW SPECIAL PERMITS		
15773–N	.....	Roche Molecular Systems, Inc. Branchburg, NJ.	49 CFR 173.242(e)(1)	To authorize the transportation in commerce of PG II corrosive materials described as Potassium Hydroxide Solution, UN 1814 and Sodium Hydroxide Solution, UN 1824 in a UN 50G Fiberboard Large Packaging. (modes 1, 2, 3)
15775–N	.....	PHI, Inc. Lafeyette, LA	49 CFR 175.75(e)(3)(i), (ii), and (iii); 175.700(a).	To authorize the use of aircraft requiring more than one pilot to remote oil and gas drilling platforms. (mode 4)
15778–N	.....	Northwest Helicopters, LLC Olympia, WA.	49 CFR § 172.101 Column (9B), § 172.204(c)(3), § 173.27(b)(2), § 175.30(a)(1), §§ 172.200, 172.300, 172.400, 173.302(f)(3) and § 175.75.	To authorize the transportation in commerce of certain hazardous materials by Part 133 Rotorcraft External Load Operations, attached to or suspended from an aircraft, in remote areas of the US without meeting certain hazard communication and stowage requirements. (mode 4)
15779–N	.....	Patterson Logistics Service, Inc. Boone, IA.	49 CFR 173.304a	To authorize the transportation in commerce of approximately 254 non-DOT Specification non-refillable metal reeptacles containing a flammable gas that meet DOT 2Q but are not marked with the specification. (modes 1, 3)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15788–N	.....	Amtrol-Alfa, Metalomecanica SA Portugal.	49 CFR 173.302a(a)(1), 180.205.	To authorize the manufacture, marking, sale, and use of non-DOT specification fully-wrapped carbon fiber reinforced welded steel liner cylinders that meets all requirements of ISO 11119–2. (modes 1, 2, 3, 4, 5)

[FR Doc. 2013–00706 Filed 1–16–13; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Delays In Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
R—Renewal Request
P—Party To Exemption Request

Issued in Washington, DC, on January 10, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay of	Estimated date completion
NEW SPECIAL PERMIT APPLICATIONS			
15650–N	JL Shepherd & Associates, San Fernando, CA	3	30–31–2013

[FR Doc. 2013–00702 Filed 1–16–13; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Information Collection Activities

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Surface Transportation Board (Board), as part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), gives notice that the Board will seek from the Office of Management and Budget (OMB) an extension of approval for the currently approved collection, system diagram maps, described below. The Board is seeking comments regarding this collection concerning (1) Whether the collection is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology when appropriate. Comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: System Diagram Maps (or, in the case of Class III carriers, the alternative narrative description of rail system).

OMB Control Number: 2140–0003.

Form Number: None.

Type of Review: Extension without change.

Respondents: Common carrier freight railroads that are either new or reporting changes in the status of one or more of their rail lines.

Number of Respondents: 3.

Estimated Time per Response: 7.1 hours, based on average time reported in informal survey of respondents.

Frequency of Response: 1.

Total Annual Burden Hours: 21 hours.

Total Annual ''Non-Hour Burden'' Cost: None have been identified.

Needs and Uses: Under 49 CFR 1152.10–1152.13, all railroads subject to the Board's jurisdiction are required to keep current system diagram maps on file, or alternatively, in the case of a Class III carrier (a carrier with assets of not more than $34,656,908 in 2011 dollars), to submit the same information in narrative form. The information sought in this collection identifies all lines in a particular railroad's system, categorized to indicate the likelihood that service on a particular line will be abandoned and/or whether service on a line is currently provided under the financial assistance provisions of 49 U.S.C. 10904. Carriers are obligated to amend these maps as the need to change the category of any particular line arises. The Board uses this information to facilitate informed decision making, and this information, which is available to the public from the carrier by request, 49 CFR 1152.12(c)(3), may serve as notice to the shipping public of the carrier's intent to abandon or retain a line.

Deadline: Persons wishing to comment on this information collection

should submit comments by March 18, 2013.

ADDRESSES: Direct all comments to Marilyn R. Levitt, Office of the General Counsel, Surface Transportation Board, 395 E Street SW., Suite 1260, Washington, DC 20423, *levittm@stb.dot.gov,* or by fax at (202) 245–0460). When submitting comments, refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: Marilyn Levitt at (202) 245–0269 or *levittm@stb.dot.gov.* The regulations governing this collection may be viewed at *http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div6&view=text&node=49:8.1.1.2.67.2&idno=49.* A copy of the regulations pertaining to this information collection may be obtained by contacting Christine Glaab, STB Librarian at (202) 245–0406 or *STBLibrary@stb.dot.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. Collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required to provide a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval.

Dated: January 11, 2013.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–00855 Filed 1–16–13; 8:45 am]

BILLING CODE 4915–01–P

FEDERAL REGISTER

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No. 12 January 17, 2013

Part II

Federal Trade Commission

16 CFR Part 312
Children's Online Privacy Protection Rule; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 312

RIN 3084–AB20

Children's Online Privacy Protection Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Final rule amendments.

SUMMARY: The Commission amends the Children's Online Privacy Protection Rule (''COPPA Rule'' or ''Rule''), consistent with the requirements of the Children's Online Privacy Protection Act, to clarify the scope of the Rule and strengthen its protections for children's personal information, in light of changes in online technology since the Rule went into effect in April 2000. The final amended Rule includes modifications to the definitions of *operator, personal information,* and *Web site or online service directed to children.* The amended Rule also updates the requirements set forth in the notice, parental consent, confidentiality and security, and safe harbor provisions, and adds a new provision addressing data retention and deletion.

DATES: The amended Rule will become effective on July 1, 2013.

ADDRESSES: The complete public record of this proceeding will be available at *www.ftc.gov.* Requests for paper copies of this amended Rule and Statement of Basis and Purpose (''SBP'') should be sent to: Public Reference Branch, Federal Trade Commission, 600 Pennsylvania Avenue NW., Room 130, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Marcus or Mamie Kresses, Attorneys, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2854 or (202) 326–2070.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Overview and Background

A. Overview

This document states the basis and purpose for the Commission's decision to adopt certain amendments to the COPPA Rule that were proposed and published for public comment on September 27, 2011 (''2011 NPRM''),[1] and supplemental amendments that were proposed and published for public comment on August 6, 2012 (''2012 SNPRM'').[2] After careful review and consideration of the entire rulemaking record, including public comments submitted by interested parties, and based upon its experience in enforcing and administering the Rule, the Commission has determined to adopt amendments to the COPPA Rule. These amendments to the final Rule will help to ensure that COPPA continues to meet its originally stated goals to minimize the collection of personal information from children and create a safer, more secure online experience for them, even as online technologies, and children's uses of such technologies, evolve.

The final Rule amendments modify the definitions of *operator* to make clear that the Rule covers an operator of a child-directed site or service where it integrates outside services, such as plug-ins or advertising networks, that collect personal information from its visitors; *Web site or online service directed to children* to clarify that the Rule covers a plug-in or ad network when it has actual knowledge that it is collecting personal information through a child-directed Web site or online service; *Web site or online service directed to children* to allow a subset of child-directed sites and services to differentiate among users, and requiring such properties to provide notice and obtain parental consent only for users who self-identify as under age 13; *personal information* to include geolocation information and persistent identifiers that can be used to recognize a user over time and across different Web sites or online services; and *support for internal operations* to expand the list of defined activities.

The Rule amendments also streamline and clarify the direct notice requirements to ensure that key information is presented to parents in a succinct ''just-in-time'' notice; expand the non-exhaustive list of acceptable methods for obtaining prior verifiable parental consent; create three new exceptions to the Rule's notice and consent requirements; strengthen data security protections by requiring operators to take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security, and integrity of such information; require reasonable data retention and deletion procedures; strengthen the Commission's oversight of self-regulatory safe harbor programs; and institute voluntary pre-approval mechanisms for new consent methods and for activities that support the internal operations of a Web site or online service.

B. Background

The COPPA Rule, 16 CFR part 312, issued pursuant to the Children's Online Privacy Protection Act (''COPPA'' or ''COPPA statute''), 15 U.S.C. 6501 *et seq.,* became effective on April 21, 2000. The Rule imposes certain requirements on operators of Web sites or online services directed to children under 13 years of age, and on operators of other Web sites or online services that have actual knowledge that they are collecting personal information online from a child under 13 years of age (collectively, ''operators''). Among other things, the Rule requires that operators provide notice to parents and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under 13 years of age.[3] The Rule also requires operators to keep secure the information they collect from children, and prohibits them from conditioning children's participation in activities on the collection of more personal information than is reasonably necessary to participate in such activities.[4] The Rule contains a ''safe harbor'' provision enabling industry groups or others to submit to the Commission for approval self-regulatory guidelines that would implement the Rule's protections.[5]

The Commission initiated review of the COPPA Rule in April 2010 when it published a document in the **Federal Register** seeking public comment on whether the rapid-fire pace of technological changes to the online environment over the preceding five years warranted any changes to the Rule.[6] The Commission's request for public comment examined each aspect of the COPPA Rule, posing 28 questions for the public's consideration.[7] The Commission also held a public roundtable to discuss in detail several of the areas where public comment was sought.[8]

The Commission received 70 comments from industry representatives, advocacy groups, academics, technologists, and

[1] 2011 NPRM, 76 FR 59804, *available at http://ftc.gov/os/2011/09/110915coppa.pdf.*

[2] 2012 SNPRM, 77 FR 46643, *available at http://ftc.gov/os/2012/08/120801copparule.pdf.*

[3] *See* 16 CFR 312.3.

[4] *See* 16 CFR 312.7 and 312.8.

[5] *See* 16 CFR 312.10.

[6] *See* Request for Public Comment on the Federal Trade Commission's Implementation of the Children's Online Privacy Protection Rule (''2010 FRN''), 75 FR 17089 (Apr. 5, 2010).

[7] *Id.*

[8] Information about the June 2010 public roundtable is located at *http://www.ftc.gov/bcp/workshops/coppa/index.shtml.*

individual members of the public in response to the April 5, 2010 request for public comment.[9] After reviewing the comments, the Commission issued the 2011 NPRM, which set forth several proposed changes to the COPPA Rule.[10] The Commission received over 350 comments in response to the 2011 NPRM.[11] After reviewing these comments, and based upon its experience in enforcing and administering the Rule, in the 2012 SNPRM, the Commission sought additional public comment on a second set of proposed modifications to the Rule.

The 2012 SNPRM proposed modifying the definitions of both *operator* and *Web site or online service directed to children* to allocate and clarify the responsibilities under COPPA when independent entities or third parties, *e.g.,* advertising networks or downloadable software kits (''plug-ins''), collect information from users through child-directed sites and services. In addition, the 2012 SNPRM proposed to further modify the definition of *Web site or online service directed to children* to permit Web sites or online services that are directed both to children and to a broader audience to comply with COPPA without treating all users as children. The Commission also proposed modifying the definition of *screen or user name* to cover only those situations where a screen or user name functions in the same manner as *online contact information.* Finally, the Commission proposed to further modify the revised definitions of *support for internal operations* and *persistent identifiers.* The Commission received 99 comments in response to the 2012 SNPRM.[12] After reviewing these additional comments, the Commission now announces this final amended COPPA Rule.

II. Modifications to the Rule

A. Section 312.2: Definitions

1. Definition of Collects or Collection

a. Collects or Collection, Paragraph (1)

In the 2011 NPRM, the Commission proposed amending paragraph (1) to change the phrase ''requesting that children submit personal information online'' to ''requesting, prompting, or encouraging a child to submit personal information online.'' The proposal was to clarify that the Rule covers the online collection of personal information both when an operator requires it to participate in an online activity, and when an operator merely prompts or encourages a child to provide such information.[13] The comments received divided roughly equally between support of and opposition to the proposed change to paragraph (1). Those in favor cited the increased clarity of the revised language as compared to the existing language.[14]

Several commenters opposed the revised language of paragraph (1). For example, the National Cable and Telecommunications Association (''NCTA'') expressed concern that the revised language suggests that ''COPPA obligations are triggered even without the actual or intended collection of personal information.'' [15] NCTA asked the Commission to clarify that ''prompting'' or ''encouraging'' does not trigger COPPA unless an operator *actually* collects personal information from a child.[16]

The Rule defines *collection* as ''the gathering of any personal information from a child by any means,'' and the terms ''prompting'' and ''encouraging'' are merely exemplars of the means by which an operator gathers personal information from a child.[17] This change to the definition of *collects or collection* is intended to clarify the longstanding Commission position that an operator that provides a field or open forum for a child to enter personal information will not be shielded from liability merely because entry of personal information is not mandatory to participate in the activity. It recognizes the reality that such an operator must have in place a system to provide notice to and obtain consent from parents to deal with the moment when the information is ''gathered.'' [18] Otherwise, once the child posts the personal information, it will be too late to obtain parental consent.

After reviewing the comments, the Commission has decided to modify paragraph (1) of the definition of *collects or collection* as proposed in the 2011 NPRM.

b. Collects or Collection, Paragraph (2)

Section 312.2(b) of the Rule defines ''collects or collection'' to cover enabling children to publicly post personal information (*e.g.,* on social networking sites or on blogs), ''except where the operator deletes *all* individually identifiable information from postings by children before they are made public, and also deletes such information from the operator's records.'' [19] This exception, often referred to as the ''100% deletion standard,'' was designed to enable sites and services to make interactive content available to children, without providing parental notice and obtaining consent, provided that all personal information was deleted prior to posting.[20]

The 2010 FRN sought comment on whether to change the 100% deletion standard, whether automated systems used to review and post child content could meet this standard, and whether

[9] Public comments in response to the Commission's 2010 FRN are located at *http://www.ftc.gov/os/comments/copparulerev2010/index.shtm.* Comments cited herein to the **Federal Register** Notice are designated as such, and are identified by commenter name, comment number, and, where applicable, page number.

[10] *See supra* note 1.

[11] Public comments in response to the 2011 NPRM are located at *http://www.ftc.gov/os/comments/copparulereview2011/.* Comments cited herein to the 2011 NPRM are designated as such, and are identified by commenter name, comment number, and, where applicable, page number.

[12] Public comments in response to the 2012 SNPRM are available online at *http://ftc.gov/os/comments/copparulereview2012/index.shtm.* Comments cited herein to the SNPRM are designated as such, and are identified by commenter name, comment number, and, where applicable, page number.

[13] One commenter, Go Daddy, expressed concern that the definition of *collects or collection* is silent as to personal information acquired from children offline that is uploaded, stored, or distributed to third parties by operators. Go Daddy (comment 59, 2011 NPRM), at 2. However, Congress limited the scope of COPPA to information that an operator collects *online* from a child; COPPA does not govern information collected by an operator offline. *See* 15 U.S.C. 6501(8) (defining the personal information as ''individually identifiable information about an individual collected online * * *.''); 144 Cong. Rec. S11657 (Oct. 7, 1998) (Statement of Sen. Bryan) (''This is an online children's privacy bill, and its reach is limited to information collected online from a child.'').

[14] *See* Institute for Public Representation (comment 71, 2011 NPRM), at 19; kidSAFE Seal Program (comment 81, 2011 NPRM), at 5; Alexandra Lang (comment 87, 2011 NPRM), at 1.

[15] NCTA (comment 113, 2011 NPRM), at 17–18.

[16] *Id.*

[17] *See* 16 CFR 312.2: ''*Collects* or *collection* means the gathering of any personal information from a child by any means, including but not limited to * * *''

[18] Several other commenters raised concern that the language ''prompting, or encouraging'' could make sites or services that post third-party ''Like'' or ''Tweet This'' buttons subject to COPPA. *See* Association for Competitive Technology (comment 5, 2011 NPRM), at 6; Direct Marketing Association (''DMA'') (comment 37, 2011 NPRM), at 6; *see also* American Association of Advertising Agencies (comment 2, 2011 NPRM), at 2–3; Interactive Advertising Bureau (''IAB'') (comment 73, 2011 NPRM), at 12. The collection of personal information by plug-ins on child-directed sites is addressed fully in the discussion regarding changes to the definition of *operator. See* Part II.A.4.a., *infra.*

[19] Under the Rule, operators who offered services such as social networking, chat, and bulletin boards and who did not pre-strip (*i.e.,* completely delete) such information were deemed to have ''disclosed'' personal information under COPPA's definition of *disclosure. See* 16 CFR 312.2.

[20] *See* P. Marcus, Remarks from *COPPA's Exceptions to Parental Consent* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online 310 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.*

the Commission had provided sufficient guidance on the deletion of personal information.[21] In response, several commenters urged a new standard, arguing that the 100% deletion standard, while well-intentioned, was an impediment to operators' implementation of sophisticated automated filtering technologies that may actually aid in the detection and removal of personal information.[22]

In the 2011 NPRM, the Commission stated that the 100% deletion standard set an unrealistic hurdle to operators' implementation of automated filtering systems that could promote engaging and appropriate online content for children, while ensuring strong privacy protections by design. To address this, the Commission proposed replacing the 100% deletion standard with a ''reasonable measures'' standard. Under this approach, an operator would not be deemed to have collected personal information if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public, and also to delete such information from its records.''[23]

Although the Institute for Public Representation raised concerns about the effectiveness of automated filtering techniques,[24] most comments were resoundingly in favor of the ''reasonable measures'' standard. For example, one commenter stated that the revised language would enable the use of automated procedures that could provide ''increased consistency and more effective monitoring than human monitors,''[25] while another noted that it would open the door to ''cost-efficient and reliable means of monitoring children's communications.''[26] Several commenters noted that the proposed reasonable measures standard would likely encourage the creation of more rich, interactive online content for children.[27] Another commenter noted that the revised provision, by offering greater flexibility for technological solutions, should help minimize the burden of COPPA on children's free expression.[28]

The Commission is persuaded that the 100% deletion standard should be replaced with a reasonable measures standard. The reasonable measures standard strikes the right balance in ensuring that operators have effective, comprehensive measures in place to prevent public online disclosure of children's personal information and ensure its deletion from their records, while also retaining the flexibility operators need to innovate and improve their mechanisms for detecting and deleting such information. Therefore, the final Rule amends paragraph (2) of the definition of *collects or collection* to adopt the reasonable measures standard proposed in the 2011 NPRM.

c. Collects or Collection, Paragraph (3)

In the 2011 NPRM, the Commission proposed to modify paragraph (3) of the Rule's definition of *collects or collection* to clarify that it includes all means of passively collecting personal information from children online, irrespective of the technology used. The Commission sought to accomplish this by removing from the original definition the language ''or use of any identifying code linked to an individual, such as a cookie.''[29]

The Commission received several comments supporting,[30] and several comments opposing,[31] this proposed change. Those opposing the change generally believed that this change somehow expanded the definition of *personal information.* As support for their argument, these commenters also referenced the Commission's proposal to include persistent identifiers within the definition of *personal information.*

The Commission believes that paragraph (3), as proposed in the 2011 NPRM, is sufficiently understandable. The paragraph does nothing to alter the fact that the Rule covers only the collection of *personal information.* Moreover, the final Rule's exception for the limited use of persistent identifiers to support internal operations—312.5(c)(7)—clearly articulates the specific criteria under which an operator will be exempt from the Rule's notice and consent requirements in connection with the passive collection of a persistent identifier.[32] Accordingly, the Commission adopts the definition of *collects or collection* as proposed in the 2011 NPRM.

2. Definition of Disclose or Disclosure

In the 2011 NPRM, the Commission proposed making several minor modifications to Section 312.2 of the Rule's definition of *disclosure,* including broadening the title of the definition to *disclose or disclosure* to clarify that in every instance in which the Rule refers to instances where an operator ''disclose[s]'' information, the definition of *disclosure* shall apply.[33] In addition, the Commission proposed moving the definitions of *release of personal information* and *support for the internal operations of the Web site or online service* contained within the definition of *disclosure* to make them stand-alone definitions within Section 312.2 of the Rule.[34]

One commenter asked the Commission to modify paragraph (2) of the proposed definition by adding an opening clause linking it to the definition of *collects or collection.*[35] While this commenter did not state its reasons for the proposed change, the Commission believes that the language of paragraph (2) is sufficiently clear so as not to warrant making the change suggested. Therefore, the Commission modifies the definition of *disclosure or disclosure* as proposed in the 2011 NPRM.

3. Definition of Online Contact Information

Section 312.2 of the Rule defines *online contact information* as ''an email address or any other substantially similar identifier that permits direct contact with a person online.'' The 2011 NPRM proposed clarifications to the definition to flag that the term broadly covers all identifiers that permit direct

[21] *See* 75 FR at 17090, Question 9.

[22] *See* Entertainment Software Association (''ESA'') (comment 20, 2010 FRN), at 13–14; R. Newton (comment 46, 2010 FRN), at 4; Privo, Inc. (comment 50, 2010 FRN), at 5; B. Szoka (comment 59, 2010 FRN), at 19; *see also* Wired Safety (comment 68, 2010 FRN), at 15.

[23] *See* 76 FR at 59808.

[24] *See* Institute for Public Representation (comment 71, 2011 NPRM), at 19.

[25] *See* NCTA (comment 113, 2011 NPRM), at 8.

[26] DMA (comment 37, 2011 NPRM), at 7.

[27] *See* DMA *id.;* Institute for Public Representation (comment 71, 2011 NPRM), at 3; kidSAFE Seal Program (comment 81, 2011 NPRM), at 5; NCTA (comment 113, 2011 NPRM), at 8; Toy Industry Association (comment 163, 2011 NPRM), at 8.

[28] *See* TechFreedom (comment 159, 2011 NPRM), at 6.

[29] 76 FR at 59808.

[30] Privacy Rights Clearinghouse indicated its belief that this change would give operators added incentive to notify parents of their information collection practices, particularly with regard to online tracking and behavioral advertising. *See* Privacy Rights Clearinghouse (comment 131, 2011 NPRM), at 2; *see also* Consumers Union (comment 29, 2011 NPRM), at 2; kidSAFE Seal Program (comment 81, 2011 NPRM), at 6.

[31] *See* DMA (comment 37, 2011 NPRM), at 9–10; IAB (comment 73, 2011 NPRM), at 12; NCTA (comment 113, 2011 NPRM), at 17–18; National Retail Federation (comment 114, 2011 NPRM), at 2–3; TechAmerica (comment 157, 2011 NPRM), at 5–6.

[32] *See* Part II.C.10.g., *infra.*

[33] *See* 2011 NPRM, 76 FR at 59809.

[34] The Commission intended this change to clarify what was meant by the terms *release of personal information* and *support for the internal operations of the Web site or online service,* where those terms are referenced elsewhere in the Rule and are not directly connected with the terms *disclose or disclosure.*

[35] *See* kidSAFE Seal Program (comment 81, 2011 NPRM), at 8 (''[P]aragraph (b) under the definition of ''disclose or disclosure'' should have the following opening clause: Subject to paragraph (b) under the definition of ''collects or collection,'' making personal information collected by an operator from a child publicly available * * *.'').

contact with a person online and to ensure consistency between the definition of *online contact information* and the use of that term within the definition of *personal information.*[36] The proposed revised definition identified commonly used online identifiers, including email addresses, instant messaging (''IM'') user identifiers, voice over Internet protocol (''VOIP'') identifiers, and video chat user identifiers, while also clarifying that the list of identifiers was non-exhaustive and would encompass other substantially similar identifiers that permit direct contact with a person online.[37] The Commission received few comments addressing this proposed change.

One commenter opposed the modification, asserting that IM, VOIP, and video chat user identifiers do not function in the same way as email addresses. The commenter's rationale for this argument was that not all IM identifiers reveal the IM system in use, which information is needed to directly contact a user.[38] The Commission does not find this argument persuasive. While an IM address may not reveal the IM program provider in every instance, it very often does. Moreover, several IM programs allow users of different messenger programs to communicate across different messaging platforms. Like email, instant messaging is a communications tool that allows people to communicate one-to-one or in groups B sometimes in a faster, more real-time fashion than through email. The Commission finds, therefore, that IM identifiers provide a potent means to contact a child directly.

Another commenter asked the Commission to expand the definition of *online contact information* to include mobile phone numbers. The commenter noted that, given the Rule's coverage of mobile apps and web-based text messaging programs, operators would benefit greatly from collecting a parent's mobile phone number (instead of an email address) in order to initiate contact for notice and consent.[39] The Commission recognizes that including mobile phone numbers within the definition of *online contact information* could provide operators with a useful tool for initiating the parental notice process through either SMS text or a phone call. It also recognizes that there may be advantages to parents for an operator to initiate contact via SMS text B among them, that parents generally have their mobile phones with them and that SMS text is simple and convenient.[40] However, the statute did not contemplate mobile phone numbers as a form of online contact information, and the Commission therefore has determined not to include mobile phone numbers within the definition.[41] Thus, the final Rule adopts the definition of *online contact information* as proposed in the 2012 SNPRM.

4. Definitions of Operator and Web Site or Online Service Directed to Children

In the 2012 SNPRM, the Commission proposed modifying the definitions of both *operator* and *Web site or online service directed to children* to allocate and clarify the responsibilities under COPPA when independent entities or third parties, *e.g.,* advertising networks or downloadable plug-ins, collect information from users through child-directed sites and services. Under the proposed revisions, the child-directed content provider would be strictly liable for personal information collected by third parties through its site. The Commission reasoned that, although the child-directed site or service may not own, control, or have access to the personal information collected, such information is collected on its behalf due to the benefits it receives by adding more attractive content, functionality, or advertising revenue. The Commission also noted that the primary-content provider is in the best position to know that its site or service is directed to children, and is appropriately positioned to give notice and obtain consent.[42] By contrast, if the Commission failed to impose obligations on the content providers, there would be no incentive for child-directed content providers to police their sites or services, and personal information would be collected from young children, thereby undermining congressional intent. The Commission also proposed imputing the child-directed nature of the content site to the entity collecting the personal information only if that entity knew or had reason to know that it was collecting personal information through a child-directed site.[43]

Most of the comments opposed the Commission's proposed modifications. Industry comments challenged the Commission's statutory authority for both changes and the breadth of the language, and warned of the potential for adverse consequences. In essence, many industry comments argued that the Commission may not apply COPPA where independent third parties collect personal information through child-directed sites,[44] and that even if the Commission had some authority, exercising it would be impractical because of the structure of the ''online ecosystem.''[45] Many privacy and children's advocates agreed with the 2012 SNPRM proposal to hold child-directed content providers strictly liable, but some expressed concern about holding plug-ins and advertising networks to a lesser standard.[46]

For the reasons discussed below, the Commission, with some modifications to the proposed Rule language, will retain the strict liability standard for child-directed content providers that allow other online services to collect personal information through their sites. The Commission will deem a plug-in or other service to be a covered co-operator only where it has actual knowledge that it is collecting information through a child-directed site.

a. Strict Liability for Child-Directed Content Sites: Definition of Operator

Implementing strict liability as described above requires modifying the current definition of *operator.* The Rule, which mirrors the statutory language, defines *operator* in pertinent part, as

[36] The Rule's definition of *personal information* included the sub-category ''an email address or other online contact information, including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's email address.'' The 2011 NPRM proposed replacing that sub-category of personal information with *online contact information.*

[37] 76 FR at 59810.

[38] *See* DMA (comment 37, 2011 NPRM), at 11.

[39] kidSAFE Seal Program (comment 81, 2011 NPRM), at 7. Acknowledging the Commission's position that cell phone numbers are outside of the statutory definition of *online contact information,* kidSAFE advocates for a statutory change, if needed, to enable mobile app operators, in particular, to reach parents using contact information ''relevant to their ecosystem.''

[40] At the same time, the Commission believes it may be impractical to expect children to correctly distinguish between mobile and land-line phones when asked for their parents' mobile numbers.

[41] Moreover, given that the final Rule's definition of *online contact information* encompasses a broad, non-exhaustive list of online identifiers, operators will not be unduly burdened by the Commission's determination that cell phone numbers are not online contact information.

[42] 2012 SNPRM, 77 FR at 46644. The Commission acknowledged that this decision reversed a previous policy choice to place the burden of notice and consent entirely upon the information collection entity.

[43] In so doing, the Commission noted that it believed it could hold the information collection entity strictly liable for such collection because, when operating on child-directed properties, that portion of an otherwise general audience service could be deemed *directed to children.* 2012 SNPRM, 77 FR at 46644–46645.

[44] *See, e.g.,* Facebook (comment 33, 2012 SNPRM), at 3–4.

[45] *See* Microsoft (comment 66, 2012 SNPRM), at 6; IAB (comment 49, 2012 SNPRM), at 5; DMA (comment 28, 2012 SNPRM), at 5.

[46] *See, e.g.,* Institute for Public Representation (comment 52, 2012 SNPRM), at 20; Common Sense Media (comment 20, 2012 SNPRM), at 6.

''any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such Web site or online service, or on whose behalf such information is collected or maintained, where such Web site or online service is operated for commercial purposes, including any person offering products or services for sale through that Web site or online service, involving commerce * * *'' [47]

In the 2012 SNPRM, the Commission proposed adding a proviso to that definition stating that personal information is *collected or maintained on behalf of* an operator where it is collected in the interest of, as a representative of, or for the benefit of, the operator.

Industry, particularly online content publishers, including app developers, criticized this proposed change.[48] Industry comments argued that the phrase ''on whose behalf'' in the statute applies only to agents and service providers,[49] and that the Commission lacks the authority to interpret the phrase more broadly to include any incidental benefit that results when two parties enter a commercial transaction.[50] Many commenters pointed to an operator's post-collection responsibilities under COPPA, *e.g.,* mandated data security and affording parents deletion rights, as evidence that Congress intended to cover only those entities that control or have access to the personal information.[51]

Commenters also raised a number of policy objections. Many argued that child-directed properties, particularly small app developers, would face unreasonable compliance costs and that the proposed revisions might choke off their monetization opportunities,[52] thus decreasing the incentive for developers to create engaging and educational content for children.[53] They also argued that a strict liability standard is impractical given the current online ecosystem, which does not rely on close working relationships and communication between content providers and third parties that help monetize that content.[54] Some commenters urged the Commission to consider a safe harbor for content providers that exercise some form of due diligence regarding the information collection practices of plug-ins present on their site.[55]

Privacy organizations generally supported imposing strict liability on content providers. They agreed with the Commission's statement in the 2012 SNPRM that the first-party content provider is in a position to control which plug-ins and software downloads it integrates into its site and that it benefits by allowing information collection by such third parties.[56] They also noted how unreasonable it would be for parents to try to decipher which entity might actually be collecting data through the child-directed property.[57]

Finally, many commenters expressed concern that the language describing ''on whose behalf'' reaches so broadly as to cover not only child-directed content sites, but also marketplace platforms such as Apple's iTunes App Store and Google's Android market (now Google Play) if they offered child-directed apps on their platforms.[58] These commenters urged the Commission to revise the language of the Rule to exclude such platforms.

After considering the comments, the Commission retains a strict liability standard for child-directed sites and services that allow other online services to collect personal information through their sites.[59] The Commission disagrees with the views of commenters that this is contrary to Congressional intent or the Commission's statutory authority. The Commission does not believe Congress intended the loophole advocated by many in industry: Personal information being collected from children through child-directed properties with no one responsible for such collection.

Nor is the Commission persuaded by comments arguing that the phrase ''on whose behalf'' must be read extremely narrowly, encompassing only an agency relationship. Case law supports a broader interpretation of that phrase.[60] Even some commenters opposed to the Commission's interpretation have

[47] 15 U.S.C. 6501(2). The Rule's definition of *operator* reflects the statutory language. *See* 16 CFR 312.2.

[48] *See, e.g.,* Application Developers Alliance (comment 5, 2012 SNPRM), at 3–4; Association of Competitive Technology (comment 7, 2012 SNPRM), at 4–5; IAB (comment 49, 2012 SNPRM), at 5–6; Online Publishers Association (comment 72, 2012 SNPRM), at 10–11; Magazine Publishers of America (comment 61, 2012 SNPRM), at 3–5; The Walt Disney Co. (comment 96, 2012 SNPRM), at 4–5; S. Weiner (comment 97, 2012 SNPRM), at 1–2; WiredSafety (comment 98, 2012 SNPRM), at 3.

[49] *See* DMA (comment 28, 2012 SNPRM), at 12; Internet Commerce Coalition (comment 53, 2012 SNPRM), at 5; TechAmerica (comment 87, 2012 SNPRM), at 2–3.

[50] *See, e.g.,* Gibson, Dunn & Crutcher (comment 39, 2012 SNPRM), at 7–9; Facebook (comment 33, 2012 SNPRM), at 6 (entities acting primarily for their own benefit not considered to be acting on behalf of another party).

[51] *See, e.g.,* Business Software Alliance (comment 12, 2012 SNPRM), at 2–4; Internet Commerce Coalition (comment 53, 2012 SNPRM), at 5; *see also, e.g.,* IAB (comment 49, 2012 SNPRM), at 5; DMA (comment 28, 2012 SNPRM), at 6; Online Publishers Association (comment 72, 2012 SNPRM), at 10–11; The Walt Disney Co. (comment 96, 2012 SNPRM), at 3–5.

[52] *See* Center for Democracy & Technology (''CDT'') (comment 15, 2012 SNPRM), at 4–5; DMA (comment 28, 2012 SNPRM), at 5; Google (comment 41, 2012, SNPRM), at 3–4; Lynette Mattke (comment 63, 2012 SNPRM).

[53] *See* Google (comment 41, 2012 SNPRM), at 3; Application Developers Alliance (comment 5, 2012 SNPRM), at 5; Association for Competitive Technology (comment 6, 2012 SNPRM), at 5; The Walt Disney Co. (comment 96, 2012 SNPRM), at 4; ConnectSafely (comment 21, 2012 SNPRM), at 2.

[54] *See* Application Developers Alliance (comment 5, 2012 SNPRM), at 3; Online Publishers Association (comment 72, 2012 SNPRM), at 11; The Walt Disney Co. (comment 96, 2012 SNPRM), at 4; DMA (comment 28, 2012 SNPRM), at 4.

[55] *See, e.g.,* Online Publishers Association (comment 72, 2012 SNPRM), at 11 (publisher should be entitled to rely on third party's representations about its information practices); The Walt Disney Co. (comment 96, 2012 SNPRM), at 5 (operator of a site directed to children should be permitted to rely on the representations made by third parties regarding their personal information collection practices, as long as the operator has undertaken reasonable efforts to limit any unauthorized data collection); Internet Commerce Coalition (comment 53, 2012 SNPRM), at 6 (the Commission should state that operators whose sites or services are targeted to children should bind third party operators whom they know are collecting personal information through their sites or services to comply with COPPA with regard to that information collection).

[56] *See* Institute for Public Representation (comment 52, 2012 SNPRM), at 18–19; Common Sense Media (comment 20, 2012 SNPRM), at 4–6; EPIC (comment 31, 2012 SNPRM), at 5–6; Catholic Bishops (comment 92, 2012 SNPRM), at 3; CDT (comment 15, 2012 SNPRM), at 3.

[57] *See* Institute for Public Representation (comment 52, 2012 SNPRM), at 19; Common Sense Media (comment 20, 2012 SNPRM), at 5.

[58] *See* CDT (comment 15, 2012 SNPRM), at 5; Apple (comment 4, 2012 SNPRM), at 3–4; Assert ID (comment 6, 2012 SNPRM), at 5.

[59] Although this issue is framed in terms of child-directed content providers integrating plug-ins or other online services into their sites because that is by far the most likely scenario, the same strict liability standard would apply to a general audience content provider that allows a plug-in to collect personal information from a specific user when the provider has actual knowledge the user is a child.

[60] *National Organization for Marriage v. Daluz,* 654 F.3d 115, 121 (1st Cir. 2011) (statute requiring expenditure reports by independent PAC to the treasurer of the candidate ''on whose behalf'' the expenditure was made meant to the candidate who stands to benefit from the independent expenditure's advocacy); *accord American Postal Workers Union* v. *United States Postal Serv.,* 595 F. Supp 1352 (D.D.C. 1984) (Postal Union's activities held to be ''on behalf of'' a political campaign where evidence showed union was highly politicized, with goal of electing a particular candidate); *Sedwick Claims Mgmt. Servs.* v. *Barrett Business Servs., Inc.,* 2007 WL 1053303 (D. Or. 2007) (noting that 9th Circuit has interpreted the phrase ''on behalf of'' to include both ''to the benefit of'' *and* in a representative capacity); *United States* v. *Dish Network, LLC,* 2010 U.S. Dist. LEXIS 8957, 10 (C.D. Ill. Feb. 3, 2010) (reiterating the court's previous opinion that the plain meaning of the phrases ''on whose behalf'' or ''on behalf of'' is an act by a representative of, or an act for the benefit of, another).

acknowledged that the Commission's proposal is based on ''an accurate recognition that online content monetization is accomplished through a complex web of inter-related activities by many parties,'' and have noted that to act on behalf of another is to do what that person would ordinarily do herself if she could.[61] That appears to be precisely the reason many first-party content providers integrate these services. As one commenter pointed out, content providers ''have chosen to devote their resources to develop great content, and to let partners help them monetize that content. In part, these app developers and publishers have made this choice because collecting and handling children's data internally would require them to take on liability risk and spend compliance resources that they do not have.'' [62] Moreover, content-providing sites and services often outsource the monetization of those sites ''to partners'' because they do not have the desire to handle it themselves.[63]

In many cases, child-directed properties integrate plug-ins to enhance the functionality or content of their properties or gain greater publicity through social media in an effort to drive more traffic to their sites and services. Child-directed properties also may obtain direct compensation or increased revenue from advertising networks or other plug-ins. These benefits to child-directed properties are not merely incidental; as the comments point out, the benefits may be crucial to their continued viability.[64]

The Commission recognizes the potential burden that strict liability places on child-directed content providers, particularly small app developers. The Commission also appreciates the potential for discouraging dynamic child-directed content. Nevertheless, when it enacted COPPA, Congress imposed absolute requirements on child-directed sites and services regarding restrictions on the collection of personal information; those requirements cannot be avoided through outsourcing offerings to other operators in the online ecosystem. The Commission believes that the potential burden on child-directed sites discussed by the commenters in response to the 2012 SNPRM will be eased by the more limited definition of persistent identifiers, the more expansive definition of *support for internal operations* adopted in the Final Rule, and the newly-created exception to the Rule's notice and parental consent requirements that applies when an operator collects only a persistent identifier and only to support the operator's internal operations.[65]

The Commission considered including the ''due-diligence'' safe harbor for child-directed content providers that many of the comments proposed.[66] Nevertheless, as many other comments pointed out, it cannot be the responsibility of parents to try to pierce the complex infrastructure of entities that may be collecting their children's personal information through any one site.[67] For child-directed properties, one entity, at least, must be strictly responsible for providing parents notice and obtaining consent when personal information is collected through that site. The Commission believes that the primary-content site or service is in the best position to know which plug-ins it integrates into its site, and is also in the best position to give notice and obtain consent from parents.[68] Although the Commission, in applying its prosecutorial discretion, will consider the level of due diligence a primary-content site exercises, the Commission will not provide a safe harbor from liability.

When it issued the 2012 SNPRM, the Commission never intended the language describing ''on whose behalf'' to encompass platforms, such as Google Play or the App Store, when such stores merely offer the public access to someone else's child-directed content. In these instances, the Commission meant the language to cover only those entities that designed and controlled the content, *i.e.,* the app developer or site owner. Accordingly, the Commission has revised the language proposed in the 2012 SNPRM to clarify that personal information will be deemed to be collected on behalf of an operator where it benefits by allowing another person to collect personal information *directly from* users of such operator's site or service, thereby limiting the provision's coverage to operators that design or control the child-directed content.[69] Accordingly, the Final Rule shall state that personal information is *collected or maintained on behalf of* an operator when it is collected or maintained by an agent or service provider of the operator; or the operator benefits by allowing another person to collect personal information directly from users of such operator's Web site or online service.

b. Operators Collecting Personal Information Through Child-Directed Sites and Online Services: Moving to an Actual Knowledge Standard

In the 2012 SNPRM, the Commission proposed holding responsible as a co-operator any site or online service that ''knows or has reason to know'' it is collecting personal information through a host Web site or online service directed to children. Many commenters criticized this standard. Industry comments contended that such a standard is contrary to the statutory mandate that general audience services be liable only if they have actual knowledge they are collecting information from a child.[70] They further

[61] Application Developers Alliance (comment 5, 2012 SNPRM), at 2; *see also* Gibson, Dunn & Crutcher (comment 39, 2012 SNPRM), at 7.

[62] Application Developers Alliance (comment 5, 2012 SNPRM), at 4.

[63] *Id.; see also* Association for Competitive Technology (comment 7, 2012 SNPRM), at 5; *see generally* DMA (comment 28, 2012 SNPRM), at 5; Facebook (comment 33, 2012 SNPRM), at 3; Online Publishers Association (comment 72, 2012 SNPRM), at 11.

[64] *Id.*

[65] *See* Part II.A.5.b., *infra* (discussion of persistent identifiers and support of internal operations).

[66] The type of due diligence advocated ranged from essentially relying on a plug-in or advertising network's privacy policy to requiring an affirmative contract. *See, e.g.,* The Walt Disney Co. (comment 96, 2012 SNPRM), at 5 (operator should be able to rely on third party's representations about its information collection practices, if operator makes reasonable efforts to limit unauthorized data collection); Gibson, Dunn & Crutcher (comment 39, 2012 SNPRM), at 23–24 (provide a safe harbor for operators that certify they do not receive, own, or control any personal information collected by third parties; alternatively, grant a safe harbor for operators that also certify they do not receive a specific benefit from the collection, or that obtain third party's certification of COPPA compliance); Internet Commerce Coalition (comment 53, 2012 SNPRM), at 6–7 (provide a safe harbor for operators whose policies prohibit third party collection on their sites).

[67] *See* Common Sense Media (comment 20, 2012 SNPRM), at 4–5; EPIC (comment 31, 2012 SNPRM), at 6; Institute for Public Representation (comment 52, 2012 SNPRM), at 18–19.

[68] Some commenters, although not conceding the need to impose strict liability on any party, noted that if the burden needed to fall on either the primary content provider or the plug-in, it was better to place it on the party that controlled the child-directed nature of the content. *See, e.g.,* CTIA (comment 24, 2012 SNPRM), at 8–9; CDT (comment 15, 2012 SNPRM), at 4–5. Not surprisingly, industry members primarily in the business of providing content did not share this view. *See, e.g.,* Association for Competitive Technology (comment 7, 2012 SNPRM), at 4–5; Business Software Alliance (comment 12, 2012 SNPRM), at 2–4; Entertainment Software Association (comment 32, 2102 SNPRM), at 9; Online Publishers Association (comment 72, 2012 SNPRM), at 10–11; The Walt Disney Co. (comment 96, 2012 SNPRM), at 6.

[69] This clarification to the term ''on behalf of'' is intended only to address platforms in instances where they function as an conduit to someone else's content. Platforms may well wear multiple hats and are still responsible for complying with COPPA if they themselves collect personal information directly from children.

[70] *See* Business Software Alliance (comment 12, 2012 SNPRM), at 4–5; Digital Advertising Alliance (comment 27, 2012 SNPRM), at 2; Google (comment 41, 2012 SNPRM), at 4; Internet Commerce Coalition (comment 53, 2012 SNPRM), at 7; Magazine Publishers of America (comment 61, 2012

Continued

argued that the standard is vague because it is impossible to determine what type of notification would provide a ''reason to know.'' Thus, the commenters argued that the standard triggers a duty to inquire.[71] In addition, commenters stated that even after inquiring, it might be impossible to determine which sites are truly directed to children (particularly in light of the Commission's revised definition of *Web site directed to children* to include those sites that are likely to attract a disproportionate percentage of children under 13).[72] Conversely, many privacy advocates believed it is necessary to impose some duty of inquiry, or even strict liability, on the entity collecting the personal information.[73]

After considering the comments, the Commission has decided that while it is appropriate to hold an entity liable under COPPA for collecting personal information on Web sites or online services directed to children, it is reasonable to hold such entity liable only where it has *actual knowledge* that it is collecting personal information directly from users of a child-directed site or service. In striking this balance by moving to an actual knowledge standard, the Commission recognizes that this is still contrary to the position advocated by many industry comments: That a plug-in or advertising network that collects personal information from users of both general audience and child-directed sites must be treated monolithically as a general audience service, liable only if it has actual knowledge that it is collecting personal information from a specific child.[74] However, the COPPA statute also defines *Web site or online service directed to children* to include ''that portion of a commercial Web site or online service that is targeted to children.'' Where an operator of an otherwise general audience site or online service has actual knowledge it is collecting personal information directly from users of a child-directed site, and continues to collect that information, then, for purposes of the statute, it has effectively adopted that child-directed content as its own and that portion of its service may appropriately be deemed to be directed to children.[75]

Commenters urged that, whatever standard the Commission ultimately adopts, it provide guidance as to when a plug-in or advertising network would be deemed to have knowledge that it is collecting information through a child-directed site or service.[76] Knowledge, by its very nature, is a highly fact-specific inquiry. The Commission believes that the actual knowledge standard it is adopting will likely be met in most cases when: (1) A child-directed content provider (who will be strictly liable for any collection) directly communicates the child-directed nature of its content to the other online service; or (2) a representative of the online service recognizes the child-directed nature of the content. The Commission does not rule out that an accumulation of other facts would be sufficient to establish actual knowledge, but those facts would need to be analyzed carefully on a case-by-case basis.

5. Definition of Personal Information

a. Screen or User Names

The Rule defines *personal information* as including ''a screen name that reveals an individual's email address.'' [77] In the 2011 NPRM, the Commission proposed to modify this definition to include ''a screen or user name where such screen or user name is used for functions other than or in addition to support for the internal operations of the Web site or online service.'' [78] The Commission intended this change to address scenarios in which a screen or user name could be used by a child as a single credential to access multiple online properties, thereby permitting him or her to be directly contacted online, regardless of whether the screen or user name contained an email address.[79]

Some commenters expressed concern that the Commission's screen-name proposal would unnecessarily inhibit functions that are important to the operation of child-directed Web sites and online services.[80] In response to this concern, the 2012 SNPRM proposed covering screen names as *personal information* only in those instances in which a screen or user name rises to the level of *online contact information.* In such cases, the Commission reasoned, a screen or user name functions much like an email address, an instant messaging identifier, or ''any other substantially similar identifier that permits direct contact with a person online.'' [81]

The Commission received a number of comments in support of this change from industry associations and advocacy groups.[82] Commenters recognized the change as providing operators with the flexibility to use screen or user names both for internal administrative purposes and across affiliated sites, services, or platforms without requiring prior parental notification or verifiable parental consent.[83]

A number of commenters, however, despite clear language otherwise in the 2012 SNPRM, continued to express concern that the Commission's proposed revision would limit operators' use of anonymized screen names in place of children's real names in filtered chat, moderated interactive forums, or as log-in credentials providing users with seamless access to content across multiple platforms and devices.[84] Some of these commenters

SNPRM), at 8; Toy Industry Association (comment 89, 2012 SNPRM), at 10–11; *see also* ACLU (comment 3, 2012 SNPRM), at 2–3; TechAmerica (comment 87, 2012 SNPRM), at 3.

[71] *See* CDT (comment 15, 2012 SNPRM), at 2; CTIA (comment 24, 2012 SNPRM), at 10; Entertainment Software Association (comment 32, 2012 SNPRM), at 9; Marketing Research Association (comment 62, 2012 SNPRM), at 2; Tangman (comment 85, 2012 SNPRM).

[72] *See* DMA (comment 28, 2012 SNPRM), at 9; Magazine Publishers of America (comment 61, 2012 SNPRM), at 8; Menessec (comment 65, 2012 SNPRM); Privo (comment 76, 2012 SNPRM), at 8.

[73] *See* Common Sense Media (comment 20, 2012 SNPRM), at 6; Institute for Public Representation (comment 52, 2012 SNPRM), at 20–22.

[74] *See* Digital Advertising Alliance (comment 27, 2012 SNPRM), at 2; DMA (comment 28, 2012 SNPRM), at 8–9; Entertainment Software Association (comment 32, 2012 SNPRM), at 13–14.

[75] Similarly, when a behavioral advertising network offers age-based advertising segments that target children under 13, that portion of its service becomes an *online service directed to children. Contra* DMA (comment 28, 2012 SNPRM), at 12. The Commission also believes that narrowing the definition of persistent identifiers and further revisions to the definition of *Web site or online service directed to children* ease (although not entirely eliminate) many of the concerns expressed in industry comments. *See, e.g.,* CDT (comment 15, 2012 SNPRM), at 3; Digital Advertising Alliance (comment 27, 2012 SNPRM), at 2; Entertainment Software Association (comment 32, 2012 SNPRM), at 14 (combination of reason to know standard and expanded definition of persistent identifiers creates an unworkable result).

[76] *See* Microsoft (comment 66, 2012 SNPRM), at 2; TRUSTe (comment 90, 2012 SNPRM), at 4; *see also* Association for Competitive Technology (comment 7, 2012 SNPRM), at 3–4; Google (comment 41, 2012 SNPRM), at 4; DMA (comment 28, 2012 SNPRM), at 7; Viacom (comment 95, 2012 SNPRM), at 8–9.

[77] *See* 16 CFR 312.2 (paragraph (n), definition of *personal information*).

[78] 2011 NPRM, 76 FR at 59810.

[79] *Id.*

[80] *See* DMA (comment 37, 2011 NPRM), at 15–16; ESA (comment 47, 2011 NPRM), at 9; NCTA (comment 113, 2011 NPRM), at 12; Scholastic (comment 144, 2011 NPRM), at 12; A. Thierer (comment 162, 2011 NPRM), at 6; TRUSTe (comment 164, 2011 NPRM), at 3; The Walt Disney Co. (comment 170, 2011 NPRM), at 21.

[81] *See* 2011 NPRM, 76 FR at 59810 (proposed definition of *online contact information*).

[82] *See* Common Sense Media (comment 20, 2012 SNPRM), at 7; Information Technology Industry Council (comment 51, 2012 SNPRM), at 2; Marketing Research Association (comment 62, 2012 SNPRM), at 3; Promotion Marketing Association (comment 77, 2012 SNPRM), at 8; TechAmerica (comment 87, 2012 SNPRM), at 5–6.

[83] *See, e.g.,* Promotion Marketing Association, *id.*

[84] *See* DMA (comment 28, 2012 SNPRM), at 16; ESA (comment 32, 2012 SNPRM), at 5; kidSAFE Seal Program (comment 56, 2012 SNPRM), at 5; NCTA (comment 69, 2012 SNPRM), at 4–5; Online

urged the Commission to refine the definition further, for example, by explicitly recognizing that the use of screen names for activities such as moderated chat will not be deemed as permitting ''direct contact'' with a child online and therefore will not require an operator using anonymous screen names to notify parents or obtain their consent.[85] Others suggested a return to the Commission's original definition of screen or user names, *i.e.,* only those that reveal an individual's online contact information (as newly defined).[86] Yet others hoped to see the Commission carve out from the definition of screen or user name uses to support an operator's internal operations (such as using screen or user names to enable moderated or filtered chat and multiplayer game modes).[87]

The Commission sees no need to qualify further the proposed description of *screen or user name.* The description identifies precisely the form of direct, private, user-to-user contact the Commission intends the Rule to cover—*i.e.,* ''online contact [that] can now be achieved via several methods besides electronic mail.'' [88] The Commission believes the description permits operators to use anonymous screen and user names in place of individually identifiable information, including use for content personalization, filtered chat, for public display on a Web site or online service, or for operator-to-user communication via the screen or user name. Moreover, the definition does not reach single log-in identifiers that permit children to transition between devices or access related properties across multiple platforms. For these reasons, the Commission modifies the definition of *personal information,* as proposed in the 2012 SNPRM, to include ''a screen or user name where it functions in the same manner as *online contact information,* as defined in this Section.''

b. *Persistent Identifiers* and *Support for Internal Operations*

Persistent identifiers have long been covered by the COPPA Rule, but only where they are associated with individually identifiable information.[89] In the 2011 NPRM, and again in the 2012 SNPRM, the Commission proposed broader Rule coverage of persistent identifiers.

First, in the 2011 NPRM, the Commission proposed covering persistent identifiers in two scenarios—(1) where they are used for functions other than or in addition to support for the internal operations of the Web site or online service, and (2) where they link the activities of a child across different Web sites or online services.[90] After receiving numerous comments on the proposed inclusion of persistent identifiers within the definition of *personal information,*[91] the Commission refined its proposal in the 2012 SNPRM.

In the Commission's refined proposal in the 2012 SNPRM, the definition of *personal information* would include a persistent identifier ''that can be used to recognize a user over time, or across different Web sites or online services, where such persistent identifier is used for functions other than or in addition to support for the internal operations of the Web site or online service.'' [92] The Commission also proposed to set forth with greater specificity the types of permissible activities that would constitute *support for internal operations.*[93] The proposed revision to this latter definition was intended to accomplish three goals: (1) To incorporate into the Rule text many of the types of activities—user authentication, maintaining user preferences, serving contextual advertisements,[94] and protecting against fraud or theft—that the Commission initially discussed as permissible in the 2011 NPRM; (2) to specifically permit the collection of persistent identifiers for functions related to site maintenance and analysis, and to perform network communications that many commenters viewed as crucial to their ongoing operations;[95] and (3) to make clear that none of the information collected may be used or disclosed to contact a specific individual, including through the use of behavioral advertising.[96]

Most of the commenters who responded to the 2012 SNPRM opposed the Commission's refinement. Many continued to argue, as they had done in response to the 2011 NPRM, that because persistent identifiers only permit contact with a device, not a specific individual, the Commission was exceeding its statutory authority by defining them as *personal information.*[97] Others argued strenuously for the benefits to children, parents, operators, and commerce of collecting anonymous information on, and delivering advertisements to, unknown or unnamed users.[98] Some commenters maintained that, to comply with COPPA's notice and consent requirements in the context of persistent identifiers, sites would be forced to collect more personal information on their users, contrary to COPPA's goals of data minimization.[99]

Because the proposed definition of persistent identifiers ran hand-in-hand with the proposed carve-out for

Publishers Association (comment 72, 2012 SNPRM), at 12; Toy Industry Association (comment 89, 2012 SNPRM), at 13; TRUSTe (comment 90, 2012 SNPRM), at 5–6.

[85] *See* Online Publishers Association (comment 72, 2012 SNPRM), at 12; TRUSTe TRUSTe (comment 90, 2012 SNPRM), at 5–6.

[86] *See* kidSAFE Seal Program (comment 56, 2012 SNPRM), at 5.

[87] *See* ESA (comment 32, 2012 SNPRM), at 5.

[88] *See* Common Sense Media (comment 20, 2012 SNPRM), at 7.

[89] *See* 16 CFR 312.2 of the existing Rule (paragraph (f), definition of *personal information*).

[90] *See* 2011 NPRM, 76 FR at 59812 (proposed definition of *personal information,* paragraphs (g) and (h)).

[91] Those comments are discussed in the 2012 SNPRM, 77 FR at 46647.

[92] *Id.*

[93] The proposed definition of *support for internal operations* was published at 77 FR 46648.

[94] Contextual advertising is ''the delivery of advertisements based upon a consumer's current visit to a Web page or a single search query, without the collection and retention of data about the consumer's online activities over time.'' *See* Preliminary FTC Staff Report, ''Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers,'' (Dec. 2010), at 55 n.134, *available at http://ftc.gov/os/2010/12/101201privacyreport.pdf.* Such advertising is more transparent and presents fewer privacy concerns as compared to the aggregation and use of data across sites and over time for marketing purposes. *See id.*

[95] For example, the term ''personalize the content on the Web site or online service'' was intended to permit operators to maintain user-driven preferences, such as game scores, or character choices in virtual worlds.

[96] *Id.*

[97] 15 U.S.C. 6501(8)(F) defines personal information to include ''any other identifier that the Commission determines permits the physical or online contacting of a specific individual.'' *See, e.g.,* Gibson Dunn & Crutcher (comment 39, 2012 SNPRM), at 20 (''This expansion of the definition of 'personal information' is inconsistent with the text of COPPA, which limits 'personal information' to categories of information that *by themselves* can be used to identify and contact a specific individual. Every category of information that COPPA enumerates—name, physical address, email address, telephone number, and Social Security number—as well as the catch-all for 'any other identifier that the Commission determines permits the physical or online *contacting* of a specific individual,' 15 U.S.C. § 6501(8)(A)–(F)—is information that makes it possible to identify and contact a specific individual''); *see also* Business Software Alliance (comment 12, 2012 SNPRM), at 5–6; CTIA (comment 24, 2012 SNPRM), at 14–17; Chappell (comment 18, 2012 SNPRM), at 1; DMA (comment 28, 2012 SNPRM), at 10; Facebook (comment 33, 2012 SNPRM), at 9; Information Technology Industry Council (comment 51, 2012 SNPRM), at 2; Internet Commerce Coalition (comment 53, 2012 SNPRM), at 11–13; Microsoft (comment 66, 2012 SNPRM), at 3; NetChoice (comment 70, 2012 SNPRM), at 7; TechFreedom (comment 88, 2012 SNPRM), at 5–6.

[98] *See* Application Developers Alliance (comment 5, 2012 SNPRM), at 6; Business Software Alliance (comment 12, 2012 SNPRM), at 6); Information Technology and Innovation Foundation (comment 50, 2012 SNPRM), at 6–7; NetChoice (comment 70, 2012 SNPRM), at 6.

[99] Facebook (comment 33, 2012 SNPRM), at 9–10; Google (comment 41, 2012 SNPRM), at 5; J. Holmes (comment 47, 2012 SNPRM).

permissible activities, most commenters also opined on the proposed scope of the definition of *support for internal operations.*[100] Unsurprisingly, these commenters urged the Commission to broaden the definition either to make the list of permissible activities non-exhaustive,[101] or to clarify that activities such as ensuring legal and regulatory compliance, intellectual property protection, payment and delivery functions, spam protection, statistical reporting, optimization, frequency capping, de-bugging, market research, and advertising and marketing more generally would not require parental notification and consent on COPPA-covered sites or services.[102] Other commenters expressed confusion about which entities operating on or through a property could take advantage of the *support for internal operations* exemption.[103] Children's advocacy groups, by contrast, expressed fear that the proposed definition was already ''so broad that it could exempt the collection of many persistent identifiers used to facilitate targeted marketing.''[104]

Several commenters supported the Commission's premise that the collection of certain persistent identifiers permits the physical or online contacting of a specific individual, but asked the Commission to take a different tack to regulating such identifiers. Rather than cover all persistent identifiers and then carve out permissible uses, these commenters suggested a simpler approach: the Commission should apply the Rule only to those persistent identifiers used for the purposes of contacting a specific child, including through online behavioral advertising.[105]

The Commission continues to believe that persistent identifiers permit the online contacting of a specific individual. As the Commission stated in the 2011 NPRM, it is not persuaded by arguments that persistent identifiers only permit the contacting of a device.[106] This interpretation ignores the reality that, at any given moment, a specific individual is using that device. Indeed, the whole premise underlying behavioral advertising is to serve an advertisement based on the perceived preferences of the individual user.[107]

Nor is the Commission swayed by arguments noting that multiple individuals could be using the same device. Multiple people often share the same phone number, the same home address, and the same email address, yet Congress still classified these, standing alone, as ''individually identifiable information about an individual.'' [108] For these reasons, and the reasons stated in the 2011 NPRM, the Commission will retain persistent identifiers within the definition of personal information.

However, the Commission recognizes that persistent identifiers are also used for a host of functions that have little or nothing to do with contacting a specific individual, and that these uses are fundamental to the smooth functioning of the Internet, the quality of the site or service, and the individual user's experience. It was for these reasons that the Commission proposed to expand the definition of *support for internal operations* in the 2012 SNPRM.

The Commission has determined to retain the approach suggested in the 2011 NPRM and refined in the 2012 SNPRM, with certain revisions. First, the final Rule modifies the proposed definition of *persistent identifier* to cover ''a persistent identifier that can be used to recognize a user over time *and* across different Web sites or online services.'' This modification takes into account concerns several commenters raised that using a persistent identifier within a site or service over time serves an important function in conducting site performance assessments and supporting intra-site preferences.[109] However, in this context, not every Web site or service with a tangential relationship will be exempt—the term ''different'' means either sites or services that are unrelated to each other, or sites or services where the affiliate relationship is not clear to the user.[110]

Second, the Commission has determined that the carve-out for use of a persistent identifier to provide support for the internal operations of a Web site or online service is better articulated as a separate exception to the Rule's requirements. For this reason, it has amended Section 312.5(c) (''*Exceptions to prior parental consent*'') to add a new exception providing that where an operator collects only a persistent identifier for the sole purpose of providing support for its internal operations, the operator will have no notice or consent obligations under the Rule. This is a change in organization, rather than a substantive change, from the Commission's earlier proposals.

In addition, in response to the arguments made in a number of comments, the Commission has further modified the 2012 SNPRM proposed definition of *support for internal operations* to add frequency capping of advertising and legal or regulatory compliance to the permissible uses

[100] Association for Competitive Technology (comment 7, 2012 SNPRM), at 5; Business Software Alliance (comment 12, 2012 SNPRM), at 6–7; CTIA (comment 24, 2012 SNPRM), at 17–18; DMA (comment 28, 2012 SNPRM), at 10–12; Internet Commerce Coalition (comment 53, 2012 SNPRM), at 12; Microsoft (comment 66, 2012 SNPRM), at 3–5; NetChoice (comment 70, 2012 SNPRM), at 8–9.

[101] *See* DMA (comment 28, 2012 SNPRM), at 11 (warning that an exhaustive list is likely to have unintended consequences if companies are not afforded flexibility as technologies evolve); Digital Advertising Alliance (comment 27, 2012 SNPRM), at 3; Internet Commerce Coalition (comment 53, 2012 SNPRM), at 3–4, 12 (''[T]he definition of 'support for the internal operations' of a Web site is too narrow. * * * This list of 'exempt' collections is incomplete and risks quickly becoming outmoded.''); Magazine Publishers of America (comment 61, 2012 SNPRM), at 11; Online Publishers Association (comment 72, 2012 SNPRM), at 8; Promotion Marketing Association (comment 77, 2012 SNPRM), at 7; Computer and Communications Industry Association (comment 27, 2011 NPRM), at 4 (the exceptions are narrow and ''immobile short of another rulemaking'').

[102] *See, e.g.,* Association for Competitive Technology (comment 7, 2012 SNPRM), at 5; IAB (comment 49, 2012 SNPRM), at 4; TechFreedom (comment 88, 2012 SNPRM), at 11; Toy Industry Association (comment 89, 2012 SNPRM), at 15; Viacom Inc. (comment 95, 2012 SNPRM), at 13.

[103] CDT (comment 15, 2012 SNPRM), at 6–7; Google (comment 41, 2012 SNPRM), at 5; Toy Industry Association (comment 89, 2012 SNPRM), at 14.

[104] Institute for Public Representation (comment 52, 2012 SNPRM), at 13.

[105] *See* CDT (comment 15, 2012 SNPRM), at 6 (''We do, however, agree with the Commission that behavioral targeting of children using unique identifiers should trigger COPPA compliance obligations''); Internet Commerce Coalition (comment 53, 2012 SNPRM), at 12; *see also* AT&T (comment 8, 2011 NPRM), at 7; Future of Privacy Forum (comment 55, 2011 NPRM), at 2; WiredTrust (comment 177, 2011 NPRM), at 9; Visa Inc. (comment 168, 2011 NPRM), at 2.

[106] *See* 2011 NPRM, 76 FR at 59811.

[107] *See* J. Bowman, ''Real-time Bidding—How It Works and How To Use It,'' Warc Exclusive (Feb. 2011), *available at http://www.improvedigital.com/en/wp-content/uploads/2011/09/Warc-RTB-Feb11.pdf* (''With real-time bidding, advertisers can decide to put a specific ad in front of a specific individual web user on a given site, bid for that impression and—if they win the bid—serve the ad, all in the time it takes for a page to load on the target consumer's computer.''); L. Fisher, ''eMarketer's Guide to the Digital Advertising Ecosystem: Mapping the Display Advertising Purchase Paths and Ad Serving Process'' (Oct. 2012), *available at http://www.emarketer.com/Corporate/reports* (media buyers can deliver personalized, impression-by-impression, ads based on what is known about individual viewer attributes, behaviors, and site context).

[108] 15 U.S.C. 6501(8).

[109] *See* Toy Industry Association (comment 89, 2012 SNPRM), at 14; *see also* ESA (comment 32, 2012 SNPRM), at 8; NetChoice (comment 70, 2012 SNPRM), at 7–8.

[110] This interpretation of affiliate relationships is consistent with prior Commission articulations. *See* FTC Report, *Protecting Consumer Privacy in an Era of Rapid Change* (March 2012), at 41–42, *available at http://ftc.gov/os/2012/03/120326privacyreport.pdf* (''The Commission maintains the view that affiliates are third parties, and a consumer choice mechanism is necessary unless the affiliate relationship is clear to consumers''); *see also* kidSAFE Seal Program (comment 56, 2012 SNPRM), at 5 (asking the Commission to clarify what is meant by the phrase '' 'across *different* Web sites or online services' in the context of persistent identifiers'').

enumerated therein.[111] The Commission declines to add certain other language proposed by commenters, such as intellectual property protection, payment and delivery functions, spam protection, optimization, statistical reporting, or de-bugging, because it believes that these functions are sufficiently covered by the definitional language permitting activities that ''maintain or analyze'' the functions of the Web site or service, or protect the ''security or integrity'' of the site or service. Under this revised definition, most of the activities that commenters cite to as important to permitting the smooth and optimal operation of Web sites and online services will be exempt from COPPA coverage.

The Commission also is cognizant that future technical innovation may result in additional activities that Web sites or online services find necessary to support their internal operations. Therefore, the Commission has created a voluntary process—new Section 312.12(b)—whereby parties may request Commission approval of additional activities to be included within the definition of *support for internal operations.* Any such request will be placed on the public record for notice and comment, and the Commission will act on it within 120 days.

The final amended language makes clear that operators may only engage in activities ''necessary'' to support the covered functions. The Commission agrees with commenter EPIC that ''[t]he presence of the word 'necessary' [in the statute] * * * indicates that the use of persistent identifiers is to be limited to the above activities, and that these activities are to be narrowly construed.'' [112] Moreover, operators may not use persistent identifiers that fall within the Rule's definition of *personal information* for any purposes other than those listed within the definition of *support for internal operations.* Accordingly, the Rule will require operators to obtain parental consent for the collection of persistent identifiers where used to track children over time and across sites or services. Without parental consent, operators may not gather persistent identifiers for the purpose of behaviorally targeting advertising to a specific child. They also may not use persistent identifiers to amass a profile on an individual child user based on the collection of such identifiers over time and across different Web sites in order to make decisions or draw insights about that child, whether that information is used at the time of collection or later.[113]

Several commenters sought clarification of whether a party's status as a first party or a third party would affect its ability to rely upon the *support for internal operations* definition.[114] To the extent that a child-directed content site or service engages service providers to perform functions encompassed by the definition of *support for internal operations,* those functions will be covered as support for the content-provider's internal operations. If a third party collecting persistent identifiers is deemed an *operator* under the Rule (*e.g.,* because it has actual knowledge it is collecting personal information from users of a child-directed site or service, or it has actual knowledge it is collecting personal information from a child through a general audience site or service), that operator may rely on the Rule's *support for internal operations* definition when it uses persistent identifier information for functions that fall within it.

c. Photographs, Videos, and Audio Files

The Rule's existing definition of *personal information* includes photographs only when they are combined with ''other information such that the combination permits physical or online contacting.'' Given the prevalence and popularity of posting photos, videos, and audio files online, in the 2011 NPRM, the Commission reevaluated the privacy and safety implications of such practices as they pertain to children. The Commission determined that the inherently personal nature of photographs, and the fact that they may contain information such as embedded geolocation data, or can be paired with facial recognition technology, makes them identifiers that ''permit the physical or online contacting of a specific individual.'' [115] The Commission found the same risks attendant with the online uploading of video and audio files.[116] Accordingly, the Commission proposed creating a new category within the definition of *personal information* covering a photograph, video, or audio file where such file contains a child's image or voice.

Some commenters supported this proposal. For example, the Institute for Public Representation, on behalf of a group of children's privacy advocates, stated that ''[b]ecause photographs, videos, and audio files can convey large amounts of information about children that can make them more vulnerable to behavioral advertising, and possibly put their personal safety at risk as well, these types of information should be included in the definition of personal information.''[117]

Several commenters criticized the Commission's proposal, claiming that the effect would limit children's participation in online activities involving ''user-generated content.'' [118] Several commenters issued blanket statements that photos, videos, and audio files, in and of themselves, do not permit operators to locate or contact a child.[119] Other commenters stated that the Commission's proposal is premature, arguing that facial recognition technologies are only in their nascent stages.[120] Finally, several commenters argued that the Commission should narrow the scope of its proposal, exempting from coverage photos, videos, or audio files that have been prescreened to remove any metadata or other individually identifiable information.[121] Others asked the Commission to carve out from coverage photos or videos where used to

[111] *See, e.g.,* Digital Advertising Alliance (comment 27, 2012 SNPRM), at 3; DMA (comment 28, 2012 SNPRM), at 11; IAB (comment 73, 2011 NPRM), at 10–11; Magazine Publishers of America (comment 61, 2012 SNPRM), at 11; Microsoft (comment 66, 2012 SNPRM), at 5; Online Publishers Association (comment 123, 2011 NPRM), at 4–5; Viacom Inc. (comment 95, 2012 SNPRM), at 14.

[112] *See* EPIC (comment 31, 2012 SNPRM), at 9. The Commission disagrees with the contention by certain commenters that the word ''necessary'' is confusing and unduly restrictive. *See* Online Publishers Association (comment 72, 2012 SNPRM), at 9. In this context, the term means that an operator may collect a covered persistent identifier if it uses it for the purposes listed in the definition of *support for internal operations.* The operator need not demonstrate that collection of the identifier was the only means to perform the activity.

[113] 144 Cong. Rec. S8482 (Statement of Sen. Bryan (1998)).

[114] *See, e.g.,* Association for Competitive Technology (comment 7, 2012 SNPRM), at 5; IAB (comment 73, 2011 NPRM), at 11.

[115] *See* 2011 NPRM, 76 FR at 59813.

[116] *Id.*

[117] Institute for Public Representation (comment 71, 2011 NPRM), at 33; Privacy Rights Clearinghouse (comment 131, 2011 NPRM), at 2.

[118] *See* DMA (comment 37, 2011 NPRM), at 17; Promotion Marketing Association (comment 133, 2011 NPRM), at 12; NCTA (comment 113, 2011 NPRM), at 16. Certain commenters interpreted the Commission's proposal as inapplicable to user-generated content, but applicable to an operator's own use of children's images or voices. *See* CTIA (comment 32, 2011 NPRM), at 12; National Retail Federation (comment 114, 2011 NPRM), at 4; F. Page (comment 124, 2011 NPRM).

[119] *See* American Association of Advertising Agencies (comment 2, 2011 NPRM), at 4; Internet Commerce Coalition (comment 74, 2011 NPRM), at 5; Promotion Marketing Association (comment 133, 2011 NPRM), at 12; *see also* DMA (comment 37, 2011 NPRM), at 17.

[120] *See* Intel Corp. (comment 72, 2011 NPRM), at 6–7; Motion Picture Association of America (''MPAA'') (comment 109, 2011 NPRM), at 13.

[121] *See* Privo (comment 76, 2012 SNPRM), at 7; DMA (comment 37, 2011 NPRM), at 17–18; Promotion Marketing Association (comment 133, 2011 NPRM), at 12; WiredSafety (comment 177, 2011 NPRM), at 10.

support internal operations of a site or service.[122] Commenter WiredSafety urged the Commission to adopt a standard that would permit operators to blur images of children before uploading them, thereby reducing the risks of exposure.[123]

The Commission does not dispute that uploading photos, videos, and audio files can be entertaining for children. Yet, it is precisely the very personal nature of children's photographic images, videos, and voice recordings that leads the Commission to determine that such files meet the standard for ''personal information'' set forth by Congress in the COPPA statute. That is, in and of themselves, such files ''*permit* the physical or online contacting of a specific individual.'' [124] As the Privacy Rights Clearinghouse stated, ''[a]s facial recognition advances, photos and videos have the potential to be analyzed and used to target and potentially identify individuals.'' [125] Given these risks, the Commission continues to believe it is entirely appropriate to require operators who offer young children the opportunity to upload photos, videos, or audio files containing children's images or voices to obtain parental consent beforehand.[126] Therefore, the Commission adopts the modification of the definition of *personal information* regarding photos, videos, and audio files as proposed in the 2011 NPRM, without qualification.

d. Geolocation Information

In the 2011 NPRM, the Commission stated that, in its view, existing paragraph (b) of the definition of *personal information* already covered any geolocation information that provides precise enough information to identify the name of a street and city or town.[127] However, because geolocation information can be presented in a variety of formats (*e.g.,* coordinates or a map), and in some instances can be more precise than street name and name of city or town, the Commission proposed making geolocation information a stand-alone category within the definition of *personal information.*[128]

Similar to the comments raised in response to the 2010 FRN, a number of commenters opposed this change. These commenters argued that anonymous, technical geolocation information, without the addition of any other identifier, was insufficient to contact an individual child.[129] The Internet Commerce Coalition stated that in identifying geolocation information ''sufficient to identify a street name and name of city or town'' as personal information, the Commission has missed the key to what makes an address ''personal,'' namely the street number.[130] Accordingly, such commenters asked the Commission to clarify that geolocation information will only be deemed personal information if, when combined with some other information or identifier, it would permit contacting an individual.[131]

These commenters overlook that the COPPA statute does not require the submission of a street number to make address information ''personal.'' Nor is it limited to home address, primary residence, or even a static address. Rather, Congress chose to use the words ''or other physical address, including street name and name of city or town.'' [132] This word choice not only permits the inclusion of precise mobile (*i.e.,* moving) location information, it may very well mandate it.[133] As commenter Consumers Union stated, ''[s]ince a child's physical address is already considered personal information under COPPA, geolocation data, which provides precise information about a child's whereabouts at a specific point in time, must also necessarily be covered.'' [134]

In addition, the Commission disagrees with those commenters who state that geolocation information, standing alone, does not permit the physical or online contacting of an individual within the meaning of COPPA.[135] Just as with persistent identifiers, the Commission rejects the notion that precise geolocation information allows only contact with a specific device, not the individual using the device. By that same flawed reasoning, a home or mobile telephone number would also only permit contact with a device.

Several commenters asked the Commission to refine the Rule's coverage of geolocation so that it targets particular uses. Commenter CTIA, citing photo-sharing services as an example, asked that geolocation information embedded in metadata (as often is the case with digital photographs) be excluded from the Rule's coverage.[136] Arguing that there should be a legal difference between using geolocation information for convenience or to protect a child's safety and to market to a child, commenter kidSAFE Seal Program suggested that geolocation data only be considered ''personal information'' when it is being used for marketing purposes.[137] Finally, commenter TRUSTe asked that the Commission amend the definition to cover ''precise geolocation data that can be used to identify a child's actual physical location at a given point in time.''[138]

The Commission sees no basis for making the suggested revisions. With respect to excluding geolocation

[122] ESA (comment 47, 2011 NPRM), at 14 n.21; kidSAFE Seal Program (comment 81, 2011 NPRM), at 11.

[123] *See* WiredSafety (comment 177, 2011 NPRM), at 10 (''the risk of using a preteen's clear image in still photos or in video formats is obvious''); *see also* Intel (comment 72, 2011 NPRM), at 7 (''we propose limiting the Commission's new definition to 'a photograph, video or audio file where such file contains a child's image or voice *which may reasonably allow identification of the child*' ''). The Commission believes that operators who choose to blur photographic images of children prior to posting such images would not be in violation of the Rule.

[124] 15 U.S.C. 6501(8)(F) (italics added).

[125] Privacy Rights Clearinghouse (comment 131, 2011 NPRM), at 2; *see also* TRUSTe (comment 164, 2011 NPRM), at 7 (''biometrics such as those provided in a photo, video or audio recording are personal information and greater protections need to be provided'').

[126] The Commission notes that this amendment would not apply to uploading photos or videos on general audience sites such as Facebook or YouTube, absent actual knowledge that the person uploading such files is a child.

[127] 76 FR at 59813.

[128] *Id.* Adding new paragraph (10) to the definition of *personal information* in 16 CFR 312.2.

[129] *See* AT&T (comment 8, 2011 NPRM), at 5; *see also* American Association of Advertising Agencies (comment 2, 2011 NPRM), at 4; CTIA (comment 32, 2011 NPRM), at 9; DMA (comment 37, 2011 NPRM), at 17; Promotion Marketing Association (comment 133, 2011 NPRM), at 13; Software & Information Industry Association (''SIIA'') (comment 150, 2011 NPRM), at 8; Verizon (comment 167, 2011 NPRM), at 6.

[130] *See* Internet Commerce Coalition (comment 74, 2011 NPRM), at 5; *see also* AT&T (comment 8, 2011 NPRM), at 5–6.

[131] *See, e.g.,* CTIA (comment 32, 2011 NPRM), at 9; Future of Privacy Forum (comment 55, 2011 NPRM), at 5; Verizon (comment 167, 2011 NPRM), at 6 (''Consistent with Congressional intent, geolocation information should be treated as personal information only when the data is tied to a specific individual.'').

[132] 15 U.S.C. 6501(8)(B).

[133] For this reason, the Commission finds those comments focusing on the potential to capture a large geographic area to be inapposite. *See* IAB (comment 73, 2011 NPRM), at 6 (''without an address or other additional data to identify a household or individual, a street name and city could encompass a large geographic area and as many as 1,000 households. For example, Sepulveda Boulevard, in the Los Angeles area, is over 40 miles long'').

[134] *See* Consumers Union (comment 29, 2011 NPRM), at 3; *see also* EPIC (comment 41, 2011 NPRM), at 8–9 (''As with IP addresses and user names, geolocation information can be used to track a particular device, which is usually linked to a particular individual.'').

[135] *See* American Association of Advertising Agencies (comment 2, 2011 NPRM), at 4; AT&T (comment 8, 2011 NPRM), at 6; DMA (comment 37, 2011 NPRM), at 17; Promotion Marketing Association (comment 133, 2011 NPRM), at 13; Verizon (comment 167, 2011 NPRM), at 6.

[136] CTIA (comment 32, 2011 NPRM), at 9.

[137] kidSAFE Seal Program (comment 81, 2011 NPRM), at 11.

[138] TRUSTe (comment 164, 2011 NPRM), at 3.

information in metadata, the Commission notes that in the 2011 NPRM, it specifically cited such geolocation metadata as one of the bases for including photographs of children within the definition of *personal information*.[139] With respect to the comment from kidSAFE Seal Program, the statute does not distinguish between information collected for marketing as opposed to convenience; therefore, the Commission finds no basis for making such a distinction for geolocation information. Finally, the Commission sees little to no practical distinction between ''geolocation data that can be used to identify a child's actual physical location at a given point in time'' and geolocation information ''sufficient to identify street name and name of a city or town,'' and it prefers to adhere to the statutory language. Accordingly, the Commission modifies the definition of *personal information* as proposed in the 2011 NPRM, and covered operators will be required to notify parents and obtain their consent prior to collecting geolocation information from children.

6. Definition of Release of Personal Information

In the 2011 NPRM, the Commission proposed to define the term *release of personal information* separately from the definition of *disclosure,* since the term applied to provisions of the Rule that did not solely relate to disclosures.[140] The Commission also proposed technical changes to clarify that the term ''release of personal information'' addresses business-to-business uses of personal information, not public disclosures, of personal information.[141] The Commission received little comment on this issue and therefore adopts the proposed changes.

7. Definition of Web Site or Online Service Directed to Children

In the 2012 SNPRM, the Commission proposed revising the definition of Web site or online service directed to children to allow a subset of sites falling within that category an option not to treat all users as children. The proposed revision was sparked by a comment from The Walt Disney Company that urged the Commission to recognize that sites and services directed to children fall along a continuum and that those sites targeted to both children and others should be permitted to differentiate among users. Noting that Disney's suggestion in large measure reflected the prosecutorial discretion already applied by the Commission in enforcing COPPA, the Commission proposed revisions to implement this concept. The Commission received numerous comments on this proposal. Although many commenters expressed support for the concept, the proposed implementing language was criticized.

Paragraphs (a) and (b) of the SNPRM's proposed revisions sought to define the subset of sites directed to children that would still be required to treat all users as children: those that knowingly target children under 13 as their primary audience, and those that, based on the overall content of the site, are likely to attract children under 13 as their primary audience. Paragraph (c) sought to describe those child-directed sites that would be permitted to age-screen to differentiate among users—namely those sites that, based on overall content, are likely to draw a disproportionate number of child users.

Although most commenters concurred that operators intentionally targeting children as their primary audience should be covered as Web sites directed to children,[142] some worried about the precise contours of the term ''primary audience'' and sought guidance as to percentage thresholds.[143] Some commenters also opposed any interpretation of COPPA that required child-directed Web sites to presume all users are children.[144]

Many commenters argued that the Commission exceeded its authority by defining *Web site or online service directed to children* based on criteria other than the sites' intent to target children. These commenters argued that Congress, by defining Web sites directed to children as those ''targeted'' to children, was imposing a subjective intent requirement.[145] The Commission disagrees. The Commission believes that if Congress had wanted to require subjective intent on the part of an operator before its site or service could be deemed *directed to children,* it would have done so explicitly.[146] Intent cannot be the only scenario envisioned by Congress whereby a site would be deemed directed to children.[147] Certainly, a Web site or online service that has the attributes, look, and feel of a property targeted to children under 13 will be deemed to be a site or service directed to children, even if the operator were to claim that was not its intent.

Paragraph (c) sought to describe those child-directed sites that would be permitted to age-screen to differentiate among users, namely those sites that, based on overall content, are likely to draw a disproportionate number of child users. While a handful of comments supported this definition,[148] for the most part, it was criticized by a spectrum of interests. On one side were advocates such Common Sense Media, EPIC, and the Institute for Public Representation. These advocates argued that recognizing a category of sites and services directed to mixed-audiences, targeted both to young children and others, would undercut the other revisions the Commission has proposed, thereby lessening privacy protections for children.[149] Such advocates also argued that the proposed category might create incentives, or loopholes, for operators that currently provide child-directed Web sites or services to claim their online properties are covered by paragraph (c) of the definition and become exempt from COPPA by age-gating.[150]

On the other side were a number of commenters who feared that the proposal would significantly expand the range of Web sites and online services that fall within the ambit of COPPA's coverage, including both teen-oriented and general-audience sites and services that incidentally appeal to children as well as adults. Much of this fear appears

[139] *See* 76 FR at 59813 n.87.

[140] *See* 2011 NPRM, 76 FR at 59804, 59809. The Commission originally proposed to define *release of personal information* as ''the sharing, selling, renting, or any other means of providing personal information to any third party.'' The Commission's revised definition removes the phrase ''or any other means of providing personal information'' to avoid confusion and overlap with the second prong of the definition of *disclosure* governing an operator making personal information collected from a child publicly available, *e.g.,* through a social network, a chat room, or a message board. *See* 16 CFR 312.2 (definition of *disclosure*).

[141] *Id.*

[142] *See* ACLU (comment 3, 2012 SNPRM), at 3; Online Publishers Association (comment 72, 2012 SNPRM), at 4.

[143] *See* DMA (comment 28, 2012 SNPRM), at 13–14; Institute for Public Representation (comment 52, 2012 SNPRM), at 25–27; Privo (comment 76, 2012 SNPRM), at 3; TechFreedom (comment 88, 2012 SNPRM), at 3; Toy Industry Association (comment 89, 2012 SNPRM), at 12; WiredTrust and WiredSafety (comment 98, 2012 SNPRM), at 3–4.

[144] *See* Facebook (comment 33, 2012 SNPRM), at 10; Viacom Inc. (comment 95, 2012 SNPRM), at 5.

[145] *See, e.g.,* Online Publishers Association (comment 72, 2012 SNPRM), at 4 (''The plain meaning of 'targeted' in this context requires a deliberate selection of an audience of children.'').

[146] *See* 15 U.S.C. 6501(10)(A) (''The term 'Web site or online service directed to children' means—(i) a commercial Web site or online service that is targeted to children; or (ii) that portion of a commercial Web site or online service that is targeted to children.'').

[147] *See* ACLU (comment 3, 2012 SNPRM), at 4 (''paragraphs (a) and (b) of the proposed definition are largely noncontroversial'').

[148] *See, e.g.,* U.S. Conference of Catholic Bishops (comment 92, 2012 SNPRM), at 4.

[149] Institute for Public Representation (comment 52, 2012 SNPRM), at (i).

[150] Common Sense Media (comment 20, 2012 SNPRM), at 9; EPIC (comment 31, 2012 SNPRM), at 4–5; Institute for Public Representation, *supra* note 149, at 27–28.

to have been driven by the specific language the Commission proposed; that is, sites or services that, based on their overall content, were ''likely to attract an audience that includes a disproportionately large percentage of children under age 13 as compared to the percentage of such children in the general population.'' Some argued that the use of the term ''disproportionate'' is vague,[151] potentially unconstitutional,[152] unduly expansive,[153] or otherwise constitutes an unlawful shift from the statute's actual knowledge standard for general audience sites to one of constructive knowledge.[154] Many worried that the Commission's proposal would lead to widespread age-screening, or more intensive age-verification, across the entire body of Web sites and online services located on the Internet.[155] Other commenters suggested that the Commission implement this approach through a safe harbor, not by revising a definition.[156]

The comments reflect a misunderstanding of the purpose and effect of the change proposed in the 2012 SNPRM. The Commission did not intend to expand the reach of the Rule to additional sites and services, but rather to create a new compliance option for a subset of Web sites and online services already considered *directed to children* under the Rule's totality of the circumstances standard.

To make clear that it will look to the totality of the circumstances to determine whether a site or service is directed to children (whether as its primary audience or otherwise), the Commission has revised and reordered the definition of *Web site or online service directed to children* as follows. Paragraph (1) of the definition contains the original Rule language setting forth several factors the Commission will consider in determining whether a site or service is directed to children. In addition, paragraph (1) amends this list of criteria to add musical content, the presence of child celebrities, and celebrities who appeal to children, as the Commission originally proposed in the 2011 NPRM.[157] Although some commenters expressed concern that these additional factors might capture general audience sites,[158] produce inconsistent results,[159] or be overly broad (since musicians and celebrities often appeal both to adults and children),[160] the Commission believes that these concerns are unfounded. The Commission reiterates that these factors are some among many that the Commission will consider in assessing whether a site or service is *directed to children,* and that no single factor will predominate over another in this assessment.

Paragraph (2) of the definition sets forth the actual knowledge standard for plug-ins or ad networks, as discussed in Part II.A.4.b herein, whereby a plug-in, ad network, or other property is covered as a Web site or online service directed to children under the Rule when it has actual knowledge that it is collecting personal information directly from users of a child-directed Web site or online service.

The Commission amends paragraph (3) of the definition to clarify when a child-directed site would be permitted to age-screen to differentiate among users. This paragraph codifies the Commission's intention to first apply its ''totality of the circumstances'' standard to determine whether any Web site or online service falling under paragraph (3) is *directed to children.* The Commission then will assess whether children under age 13 are the primary audience for the site or service. Paragraph (3) codifies that a site or service that is directed to children, but that does not target children as its primary audience, may use an age screen in order to apply all of COPPA's protections only to visitors who self-identify as under age 13. As the Commission stated in the 2012 SNPRM, at that point, the operator will be deemed to have actual knowledge that such users are under 13 and must obtain appropriate parental consent before collecting any personal information from them and must also comply with all other aspects of the Rule.[161]

The Commission retains its longstanding position that child-directed sites or services whose primary target audience is children must continue to presume all users are children and to provide COPPA protections accordingly.[162] Some commenters contend that the Commission should permit this presumption to be rebutted, even on sites primarily targeting children, by the use of a simple age screen that distinguishes child users from other users.[163] Although the Commission is now permitting this on sites or services that target children only as a secondary audience or to a lesser degree, the Commission believes adopting this standard for *all* child-directed sites would virtually nullify the statutory distinction between ''actual knowledge'' sites and those directed to children, creating a *de facto* actual knowledge standard for all operators.[164]

Finally, paragraph (4) of the definition restates the statutory proviso that a site or service will not be deemed to be child-directed where it simply links to a child-directed property.

B. Section 312.4: Notice

1. Direct Notice to a Parent

In the 2011 NPRM, the Commission proposed refining the Rule requirements for the direct notice to ensure a more effective ''just-in-time'' message to parents about an operator's information practices.[165] As such, the Commission proposed to reorganize and standardize the direct notice requirement to set forth the precise items of information that must be disclosed in each type of direct notice the Rule requires. The proposed revised language of § 312.4 specified, in each instance where the Rule requires direct notice, the precise information that operators must provide to parents regarding the items of personal information the operator already has obtained from the child (generally, the

[151] *See, e.g.,* P. Aftab (comment 1, 2012 SNPRM), at 6–7; NCTA (comment 69, 2012 SNPRM), at 14; Marketing Research Association (comment 62, 2012 SNPRM), at 2; NetChoice (comment 70, 2012 SNPRM), at 4–5; SIIA (comment 84, 2012 SNPRM), at 10.

[152] *See, e.g.,* CDT (comment 15, 2012 SNPRM), at 7–10; Family Online Safety Institute (comment 34, 2012 SNPRM), at 3; Internet Commerce Coalition (comment 53, 2012 SNPRM), at 9; T. Mumford (comment 68, 2012 SNPRM); Online Publishers Association (comment 72, 2012 SNPRM), at 6; Viacom (comment 95, 2012 SNPRM), at 5.

[153] *See, e.g.,* DMA (comment 28, 2012 SNPRM), at 14; Magazine Publishers of America (comment 61, 2012 SNPRM), at 6–7.

[154] *See* CDT (comment 15, 2012 SNPRM), at 7.

[155] *See* ACLU (comment 3, 2012 SNPRM), at 5; DMA (comment 28, 2012 SNPRM), at 14–15; Magazine Publishers of America (comment 61, 2012 SNPRM), at 8; Toy Industry Association (comment 89, 2012 SNPRM), at 7, 11.

[156] Entertainment Software Association (comment 32, 2012 SNPRM), at 2; Online Publishers Association (comment 72, 2012 SNPRM), at 7–8; Viacom Inc. (comment 95, 2012 SNPRM), at 6.

[157] 2011 NPRM, 76 FR at 59814.

[158] *See* DMA (comment 37, 2011 NPRM), at 18–19; MPAA (comment 109, 2011 NPRM), at 19.

[159] *See* Verizon (comment 167, 2011 NPRM), at 10.

[160] *See* SIIA (comment 150, 2011 NPRM), at 9.

[161] *See* 2012 SNPRM, 77 FR at 46646.

[162] The Commission intends the word ''primary'' to have its common meaning, *i.e.,* something that stands first in rank, importance, or value. This must be determined by the totality of the circumstances and not through a precise audience threshold cut-off. *See* definition of ''primary.'' *Merriam-Webster.com* (2012), *available at http://www.merriam-webster.com* (last accessed Nov. 5, 2012).

[163] P. Aftab (comment 1, 2012 SNPRM), at 5; Facebook (comment 33, 2012 SNPRM), at 12–13; Future of Privacy Forum (comment 37, 2012 SNPRM), at 8.

[164] *See* DMA (comment 28, 2012 SNPRM), at 8 (an operator's choice of content serves as a proxy for knowledge that its users are primarily children under 13).

[165] *See* 2011 NPRM, 76 FR at 59816.

parent's online contact information either alone or together with the child's online contact information); the purpose of the notification; action that the parent must or may take; and what use, if any, the operator will make of the personal information collected. The proposed revisions also were intended to make clear that each form of direct notice must provide a hyperlink to the operator's online notice of information practices.[166]

In general, commenters supported the Commission's proposed changes as providing greater clarity and simplicity to otherwise difficult-to-understand statements.[167] These changes were viewed as especially important in an era of children's intense engagement with mobile applications accessed through a third-party app store and where an online notice might not be as readily accessible.[168] Only one commenter objected to the concept of placing greater emphasis on the direct, rather than the online, notice, stating that the changes would unduly necessitate lengthy direct notices and would prove overwhelming for parents and challenging to implement in the mobile environment.[169]

The Commission also proposed adding a paragraph setting out the contours of a new direct notice in situations where an operator voluntarily chooses to collect a parent's online contact information from a child in order to provide parental notice about a child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information. The Commission's proposal for a voluntary direct notice in situations where an operator does not otherwise collect, use, or disclose personal information from a child garnered very little attention. Only one commenter sought clarification of the specific language the Commission proposed.[170]

Several commenters urged the Commission to use the occasion of the Rule review to develop a model COPPA direct notice form that operators voluntarily could adopt,[171] to mandate that such notifications be optimized for the particular devices on which they are displayed,[172] or to implement a Web site rating system.[173] The Commission believes that these suggestions are better suited as ''best practices'' [174] rather than as additions to the text of the Rule.

The Commission has determined to retain in the final Rule the modifications proposed in the 2011 NPRM. However, the Commission has reorganized the paragraphs to provide a better flow and guidance for operators, and has clarified that the voluntary direct notice provision described above is, indeed, voluntary for operators who choose to use it.[175]

2. Notice on the Web Site or Online Service

In the 2011 NPRM, the Commission proposed several changes to the Rule's online notice requirement. First, the Commission proposed requiring all operators collecting, using, or disclosing information on a Web site or online service to provide contact information, including, at a minimum, the operator's name, physical address, telephone number, and email address.[176] This proposal marked a change from the existing Rule's proviso that such operators could designate one operator to serve as the point of contact.

With the exception of the Institute for Public Representation,[177] commenters who spoke to the issue opposed mandating that the online notice list all operators. Some objected to the sheer volume of potentially confusing information this would present to parents,[178] and stated that the proposal provided no additional consumer benefit to parents, given that the existing Rule implies that the single operator designee should be prepared to ''respond to all inquiries from parents concerning the operators' privacy policies and use of children's information.'' [179] Some also spoke to the burden on the primary operator of having to maintain a current list of all applicable operators' contact information,[180] and expressed confusion as to which operators needed to be listed.[181]

The Commission believes that a requirement for the primary operator to provide specific, current, contact information for every operator that collects information on or through its Web site or service has the potential to confuse parents, for whom such online notices are intended to be accessible and useful. After considering the comments, the Commission has determined to retain the Rule's ''single operator designee'' proviso; that is, an operator will be required to list all operators collecting or maintaining personal information from children through the Web site or online service, but need only list the contact information for the one operator who will be responsible for responding to parents' inquiries.

In the 2011 NPRM, the Commission also proposed eliminating the Rule's current lengthy—yet potentially under-inclusive—recitation of an operator's information collection, use, and disclosure practices in favor of a simple statement of: (1) What information the operator collects from children, including whether the Web site or online service enables a child to make personal information publicly available; (2) how the operator uses such information; and (3) the operator's disclosure practices for such information.[182] As a part of this revision, the Commission proposed removing the required statement that the operator may not condition a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.[183] This proposal was opposed by the Institute for Public Representation, which views the statement as a way to educate parents as to whether or not the operator actually complies with data minimization principles.[184] This organization also asked the Commission to require operators to disclose information to parents on how the data they collect is secured from potential breaches.[185] The Commission has considered this input but nevertheless adopts both of these changes in the final Rule.

The Commission sees great value for parents of streamlined online notices and continues to believe that the removal of extraneous information from such notices will further this goal.[186]

[166] *Id.*

[167] *See* EPIC (comment 41, 2011 NPRM), at 9; Institute for Public Representation (comment 71, 2011 NPRM), at 40–41; kidSAFE Seal Program (comment 81, 2011 NPRM), at 12; NCTA (comment 113, 2011 NPRM), at 22.

[168] AssertID (comment 6, 2012 SNPRM), at 2.

[169] IAB (comment 73, 2011 NPRM), at 13.

[170] N. Savitt (comment 142, 2011 NPRM), at 2.

[171] H. Valetk (comment 166, 2011 NPRM), at 3.

[172] TRUSTe (comment 164, 2011 NPRM), at 10.

[173] Lifelock (comment 93, 2011 NPRM), at 1.

[174] For example, to be considered by the various Commission-approved COPPA safe harbor programs.

[175] N. Savitt (comment 142, 2011 NPRM), at 2.

[176] *Id.*

[177] Institute for Public Representation (comment 71, 2011 NPRM), at 38–39.

[178] *See* Facebook (comment 50, 2011 NPRM), at 9; NCTA (comment 113, 2011 NPRM), at 22; Toy Industry Association (comment 89, 2012 SNPRM), at 6.

[179] IAB (comment 73, 2011 NPRM), at 12.

[180] DMA (comment 37, 2011 NPRM), at 20.

[181] kidSAFE Seal Program (comment 81, 2011 NPRM), at 12 (''Would this rule apply to one-time joint sponsors of a promotion who co-collect information on a Web site?'').

[182] 76 FR at 59815.

[183] *Id.*

[184] Institute for Public Representation (comment 71, 2011 NPRM), at 40.

[185] *Id.*

[186] *See* 2011 NPRM, 76 FR at 59815 (''In the Commission's experience, this blanket statement,

Continued

Accordingly, the Commission modifies the Rule as proposed in the 2011 NPRM to remove an operator's recitation in its online notice that it will not condition a child's participation on the provision of more information than is necessary. Again, however, the substantive requirement of § 312.7 remains in place.[187] In addition, and again in the interest of streamlining the online notices, the Commission declines to require operators to explain the measures they take to protect children's data. Nevertheless, the Rule's enhanced provisions on confidentiality and data security will help protect data collected from children online.

Finally, focusing on the part of the Commission's proposal that would require operators of general audience sites or services that have separate children's areas to post links to their notices of children's information practices on the home *or landing page or screen* of the children's area, the Toy Industry Association asked the Commission to forgo mandating links in any location where mobile apps can be purchased or downloaded because, in their view, changing commercial relationships may make it difficult to frequently update privacy policies in apps marketplaces.[188] The final amended Rule does not mandate the posting of such information at the point of purchase but rather on the app's home or landing screen. However, the Commission does see a substantial benefit in providing greater transparency about the data practices and interactive features of child-directed apps at the point of purchase and encourages it as a best practice.[189]

C. Section 312.5: Parental Consent

A central element of COPPA is its requirement that operators seeking to collect, use, or disclose personal information from children first obtain verifiable parental consent.[190] ''Verifiable parental consent'' is defined in the statute as ''any reasonable effort (taking into consideration available technology), including a request for authorization for future collection, use, and disclosure, described in the notice.'' [191] Accordingly, the Rule requires that operators must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated in light of available technology to ensure that the person providing consent is the child's parent. § 312.5(b)(1).

The Rule sets forth a non-exhaustive list of methods that meet the standard of verifiable parental consent.[192] Specifically, paragraph (b)(2) states that methods to obtain verifiable parental consent that satisfy the requirements of the paragraph include: Providing a consent form to be signed by the parent and returned to the operator by postal mail or facsimile; requiring a parent to use a credit card in connection with a transaction; having a parent call a toll-free telephone number staffed by trained personnel; using a digital certificate that uses public key technology; and using email accompanied by a PIN or password obtained through one of the verification methods listed in the paragraph.[193]

Participants at the Commission's June 2, 2010 COPPA roundtable [194] and commenters to the 2010 FRN generally agreed that, while no one method provides complete certainty that the operator has reached and obtained consent from a parent, the methods listed in the Rule continue to have utility for operators and should be retained.[195]

A number of commenters urged the Commission to expand the list of acceptable mechanisms to incorporate newer technologies, or to otherwise modernize or simplify the Rule's mechanisms for parental consent.[196] Suggested methods of obtaining parental consent included sending a text message to the parent's mobile phone number,[197] offering online payment services other than credit cards,[198] offering parental controls in gaming consoles,[199] offering a centralized parental consent mechanism or parental opt-in list,[200] and permitting electronic signatures.[201]

In the 2011 NPRM, the Commission announced its determination that the record was sufficient to justify certain proposed mechanisms, but insufficient to adopt others. The 2011 NPRM proposed several significant changes to the mechanisms of verifiable parental consent set forth in paragraph (b) of § 312.5, including: Adding several newly recognized mechanisms for parental consent; eliminating the sliding scale approach to parental consent; and adding two new processes for evaluation and pre-clearance of parental consent mechanisms.

1. Electronic Scans and Video Verification

In the 2011 NPRM, the Commission proposed including electronically scanned versions of signed parental consent forms and the use of video verification methods among the Rule's non-exhaustive list of acceptable consent mechanisms. The proposal received support from several commenters, including Yahoo!, the DMA, kidSAFE Seal Program, the

often parroted verbatim in operators' privacy policies, detracts from the key information of operators' actual information practices, and yields little value to a parent trying to determine whether to permit a child's participation.'').

[187] *Id.*

[188] Toy Industry Association (Comment 163, 2011 NPRM), at 4.

[189] FTC Staff Report, ''Mobile Apps for Kids: Disclosures Still Not Making the Grade'' (Dec. 2012), at 7 (''Mobile Apps for Kids II Report''), *available at http://www.ftc.gov/os/2012/12/121210mobilekidsappreport.pdf* (noting that ''information provided prior to download is most useful in parents' decision-making since, once an app is downloaded, the parent already may have paid for the app and the app already may be collecting and disclosing the child's information to third parties'').

[190] Paragraph (a) of § 312.5 states that an operator is required to obtain verifiable parental consent before any collection, use, and/or disclosure of personal information from children, including consent to any material change in the collection, use, and/or disclosure practices to which the parent has previously consented. An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

[191] 15 U.S.C. 6501(9).

[192] *See* 16 CFR 312.5(b).

[193] Paragraph (b)(2) also sets out the sliding scale ''email plus'' method for obtaining parental consent in the instance where an operator collects a child's personal information only for *internal use.* The Commission's determination to retain the email plus method is discussed in Part II.C.7, *infra.*

[194] *See* Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 195, 208–71 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf.*

[195] *See* DMA (comment 17, 2010 FRN), at 10, 12; Microsoft (comment 39, 2010 FRN), at 7; Toy Industry Association, Inc. (comment 63, 2010 FRN), at 3; WiredSafety.org. (comment 68, 2010 FRN), at 18.

[196] *See, e.g.,* BOKU (comment 5, 2010 FRN); DMA (comment 17, 2010 FRN), at 11–12; EchoSign, Inc. (comment 18, 2010 FRN); ESA (comment 20, 2010 FRN), at 7–9; Facebook (comment 22, 2010 FRN), at 2; J. Hiller (comment 27, 2010 FRN), at 447–50; M. Hoal (comment 30, 2010 FRN); Microsoft (comment 39, 2010 FRN), at 4; MPAA (comment 42, 2010 FRN), at 12; RelyID (comment 53, 2010 FRN), at 3; TRUSTe (comment 64, 2010 FRN), at 3; H. Valetk (comment 66, 2010 FRN), at 6; WiredSafety.org (comment 68, 2010 FRN), at 7; S. Wittlief (comment 69, 2010 FRN).

[197] *See* BOKU (comment 5, 2010 FRN); ESA (comment 20, 2010 FRN), at 11–12; TRUSTe (comment 64, 2010 FRN), at 3; H. Valetk (comment 66, 2010 FRN), at 6–7.

[198] *See* WiredSafety.org (comment 68, 2010 FRN), at 24 (noting that operators are considering employing online financial accounts, such as iTunes, for parental consent).

[199] *See* ESA (comment 20, 2010 FRN), at 9–10; Microsoft (comment 39, 2010 FRN), at 7.

[200] *See* ESA (comment 20, 2010 FRN), at 12; Janine Hiller (comment at 27, 2010 FRN), at 447.

[201] *See* DMA (comment 17, 2010 FRN), at 12; EchoSign (comment 18, 2010 FRN); ESA (comment 20, 2010 FRN), at 10; Toy Industry Association (comment 63, 2010 FRN), at 11.

NCTA, and Facebook.[202] Other commenters expressed reservations about whether these new methods would offer practical, economical, or scalable solutions for operators.[203]

As stated in the 2011 NPRM, the Commission finds that electronic scans and video conferencing are functionally equivalent to the written and oral methods of parental consent originally recognized by the Commission in 1999. It does not find the concerns of some commenters, that operators are not likely to widely adopt these methods, a sufficient reason to exclude them from the Rule. The list of consent mechanisms is not exhaustive and operators remain free to choose the ones most appropriate to their individual business models. Therefore, Section 312.5(b) of the final Rule includes electronic scans of signed consent forms and video-conferencing as acceptable methods for verifiable parental consent.

2. Government-Issued Identification

The Commission also proposed in the 2011 NPRM to allow operators to collect a form of government-issued identification—such as a driver's license, or a segment of the parent's Social Security number—from the parent, and to verify the parent's identity by checking this identification against databases of such information, provided that the parent's identification is deleted from the operator's records promptly after such verification is complete. Some operators already use this method of obtaining parental consent, and it is one of several available verification methods offered by the COPPA safe harbor program Privo.[204] In the NPRM, the Commission stated its recognition that information such as Social Security number, driver's license number, or another record of government-issued identification is sensitive data.[205] In permitting operators to use government-issued identification as an approved method of parental verification, the Commission emphasized the importance of limiting the collection of such identification information to only those segments of information needed to verify the data.[206] For example, the Commission noted that the last four digits of a person's Social Security number are commonly used by verification services to confirm a person's identity.[207] The Commission also stated its belief that the requirement that operators immediately delete parents' government-issued identification information upon completion of the verification process provides further protection against operators' unnecessary retention, use, or potential compromise of such information. Commenters in favor of adding this mechanism pointed out that using available technology to check a driver's license number or partial Social Security number reasonably ensures that the person providing consent is the parent.[208]

Other commenters expressed concern that allowing operators to collect sensitive government identification information from parents raises serious privacy implications.[209] Many commenters opined that the serious risks to parents' privacy outweighed the benefits of the proposal.[210] Some further argued that normalizing the use of this sensitive data for such a purpose would diminish users' alertness against identity theft schemes and other potentially nefarious uses.[211]

As the federal agency at the forefront of improving privacy protections for consumers, the Commission is sensitive to the privacy concerns raised by the comments. The Commission is also aware that both operators and parents benefit from having a choice of several acceptable methods for verifiable parental consent. Moreover, the Commission is not compelling any operator to use this method. The Commission believes that, on balance, government-issued ID provides a reliable and simple means of verifying that the person providing consent is likely to be the parent, and that the requirement that operators delete such data immediately upon verification substantially minimizes the privacy risk associated with that collection. Therefore, the Commission adopts this method among the Rule's non-exhaustive list of acceptable consent methods.[212]

3. Credit Cards

The 2011 NPRM also proposed including the term ''monetary'' to modify ''transaction'' in connection with use of a credit card to verify parental consent. This added language was intended to make clear the Commission's long-standing position that the Rule limits use of a credit card as a method of parental consent to situations involving actual monetary transactions.[213] The Commission received one comment specifically addressing this proposed language; EPIC supported the change as correctly limiting the circumstances under which

[202] *See* Yahoo! (comment 80, 2011 NPRM), at 4; DMA (comment 37, 2011 NPRM), at 23; kidSAFE Seal Program (comment 81, 2011 NPRM), at 16; NCTA (comment 113, 2011 NPRM), at 9; Facebook (comment 50, 2011 NPRM), at 8–9.

[203] *See* K. Dennis (comment 34, 2011 NPRM), at 2; A. Thierer (comment 162, 2011 NPRM), at 9; R. Newton (comment 118, 2011 NPRM).

[204] *See* application of Privo, Inc. to become a Commission-approved COPPA safe harbor program (Mar. 2004), *available at http://www.ftc.gov/os/2004/04/privoapp.pdf*, at 25.

[205] The COPPA statute itself lists Social Security number among the items considered to be personal information. *See* 16 CFR 312.2. In other contexts, driver's licenses and social security numbers, among other things, have traditionally been considered by Commission staff to be personal, or sensitive, as well. *See* FTC Staff Report, ''Self-Regulatory Principles for Online Behavioral Advertising'' (Feb. 2009), at 20 n.47, 42, 44, *available at http://www.ftc.gov/os/2009/02/P085400behavadreport.pdf*.

[206] The use of a driver's license to verify a parent, while not specifically enumerated in the Final Rule as an approved method of parental consent, was addressed in the Statement of Basis and Purpose in connection with a discussion of the methods to verify the identity of parents who seek access to their children's personal information under § 312.6(a)(3) of the Rule. *See* 1999 Statement of Basis and Purpose, 64 FR at 59905. There, the Commission concluded that the use of a driver's license was an acceptable method of parental verification.

[207] *See, e.g.,* Privo, Inc., ''Request for Safe Harbor Approval by the Federal Trade Commission for Privo, Inc.'s Privacy Assurance Program under Section 312.10 of the Children's Online Privacy Protection Rule,'' 25 (Mar. 3, 2004), *available at http://www.ftc.gov/os/2004/04/privoapp.pdf*.

[208] For instance, Facebook commented that this mechanism achieves the delicate balance of making it easy for the parent to provide consent, while making it difficult for the child to pose as the parent; when combined with responsible data disposal practices, this method also protects the parent's information against unauthorized use or disclosure. *See* Facebook (comment 50, 2011 NPRM), at 9; *see also* kidSAFE Seal Program (comment 81, 2011 NPRM), at 16.

[209] Intel and the Marketing Research Association cautioned the Commission to avoid sending mixed messages about using such sensitive information while at the same time advising operators to adhere to principles of data minimization. Intel (comment 72, 2011 NPRM), at 7; Marketing Research Association (comment 97, 2011 NPRM), at 3.

[210] *See* Institute for Public Representation (comment 71, 2011 NPRM), at 42; *see also* TechFreedom (comment 159, 2011 NPRM), at 8 (requiring users to go through an age verification process would lead to a loss of personal privacy); New York Intellectual Property Law Association (comment 117, 2011 NPRM), at 3 (parents' privacy rights should not needlessly be put at risk in order to protect their children's privacy).

[211] *See* CDT (comment 17, 2011 NPRM), at 9; A. Thierer (comment 162, 2011 NPRM), at 8.

[212] kidSAFE Seal Program asked the Commission to consider whether operators can retain parents' verification information as proof that the verification occurred. *See* kidSAFE Seal Program (comment 81, 2011 NPRM), at 16. With regard to credit card information or government-issued identifiers, the Commission would consider whether an operator had retained a sufficiently truncated portion of the data as to make it recognizable to the parent but unusable for any other purpose.

[213] *See* 71 FR at 13247, 13253, 13254 (Mar. 15, 2006) (requirement that the credit card be used in connection with a transaction provides extra reliability because parents obtain a transaction record, which is notice of the purported consent, and can withdraw consent if improperly given); Fed. Trade Comm'n, Frequently Asked Questions about the Children's Online Privacy Protection Rule, Question 33, *available at http://www.ftc.gov/privacy/coppafaqs.shtm#consent*.

credit cards can be used as verification. The final Rule incorporates this change, stating ''credit card in connection with a monetary transaction.'' [214]

4. Alternative Online Payment Systems

At the outset of the Rule review, the Commission sought comment on whether to consider modifying the Rule to include alternative online payment systems, in addition to credit cards, as an acceptable means of verifying parental consent in connection with a monetary transaction. The Commission stated in the 2011 NPRM that, at such time, the record was insufficient to support a proposal to permit the use of alternative online payment systems for this purpose. The NPRM also indicated that the Commission was mindful of the potential for children's easy access to, and use of, alternative forms of payments (such as gift cards, debit cards, and online accounts). Thus, the Commission welcomed further discussion of the risks and benefits of using electronic payment methods as a consent mechanism.

Several commenters to the 2011 NPRM asked the Commission to reconsider its position that online payment systems are not yet reliable enough to provide verifiable parental consent, arguing that certain online payment options can meet the same stringent criteria as credit cards.[215] In particular, Scholastic stressed the importance to operators, particularly in the context of digital apps and other downloadable content, of providing customers the flexibility to use various convenient electronic payment methods. Scholastic urged the Commission to amend the Rule to provide that payment methods other than credit cards, such as debit cards and electronic payment systems, can satisfy the Rule's consent mechanism requirements if they provide separate notification of each discrete monetary transaction to the primary account holder.[216]

The Commission, upon review of all of the relevant comments, is persuaded that it should allow the use of other payment systems, in addition to credit cards, provided that any such payment system can meet the same stringent criteria as a credit card. As Scholastic articulated in its comment, the Rule should allow operators to use any electronic or online payment system as an acceptable means of obtaining verifiable parental consent in connection with a monetary transaction where (just as with a credit card) the payment system is used in conjunction with a direct notice meeting the requirements of § 312.4(c) and the operator provides notification of each discrete monetary transaction to the primary account holder. Accordingly, § 312.5(b)(2) of the final Rule includes the following language ''requiring a parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder.''

5. Electronic or Digital Signatures

In response to the 2010 FRN, several commenters recommended that the Commission accept electronic or digital signatures as a form of verifiable consent.[217] In the 2011 NPRM, the Commission concluded that the term ''electronic signature'' has many meanings, ranging from ''an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record,'' [218] to an electronic image of the stylized script associated with a person. The Commission determined that electronic signatures, without more indicia of reliability, were problematic in the context of COPPA's verifiable parental consent requirement.[219] The NPRM welcomed further comment on how to enhance the reliability of these convenient methods.

In commenting on the 2011 NPRM, several commenters asked the FTC to reconsider the utility of electronic signatures in the online world.[220] The Commission has determined not to include electronic or digital signatures within the non-exhaustive list of acceptable consent mechanisms provided for in § 312.5, given the great variability in the reliability of mechanisms that may fall under this description. For instance, the Commission believes that simple digital signatures, which only entail the use of a finger or stylus to complete a consent form, provide too easy a means for children to bypass a site or service's parental consent process, and thus do not meet the statutory standard of ''reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.'' [221] However, the Rule would not prohibit an operator's acceptance of a digitally signed consent form where the signature provides other indicia of reliability that the signor is an adult, such as an icon, certificate, or seal of authenticity that accompanies the signature. At the same time, the Commission does not seek to limit or proscribe other types of digital signatures that may also meet the statutory standard. For these reasons, digital or electronic signatures are not included within the Rule's non-

[214] *But see* Part II.C.4., *infra.* Several comments note that some alternative payment systems, such as the use of a username and password in the iTunes store, afford equal notice and protections to parents for both paid and unpaid transactions by providing the primary account holder with a separate, contemporaneous notification of each discrete transaction.

[215] *See, e.g.,* Association for Competitive Technology (comment 5, 2011 NPRM), at 7; DMA (comment 37, 2011 NPRM), at 23; eBay (comment 40, 2011 NPRM), at 3–4; kidSAFE (comment 81, 2011 NPRM), at 16; Scholastic (comment 144, 2011 NPRM), at 9–10.

[216] Other commenters similarly urged that the Rule permit the use of alternate payment systems, where such systems are tied to a valid credit card account, require the user to enter a password, and provide the primary account holder with clear notification of each transaction through email confirmation. *See* Association for Competitive Technology (comment 5, 2011 NPRM), at 7; kidSAFE (comment 81, 2011 NPRM), at 16; *see also* eBay (comment 40, 2011 NPRM), at 3–4 (indicating its interest in leveraging PayPal business model to implement a youth account program directly linking children's accounts to verified parent accounts).

[217] *See* DMA (comment 17, 2010 FRN), at 12; EchoSign (comment 18, 2010 FRN); ESA (comment 20, 2010 FRN), at 10; Toy Industry Association (comment 63, 2010 FRN), at 11. For instance, the ESA proposed that the Commission incorporate a ''sign and send'' method, given that numerous commonly available devices allow users to input data by touching or writing on the device's screen.

[218] *See* Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7006(5).

[219] *See* 2011 NPRM at 59818. (The Commission indicated several concerns about allowing electronic signatures, including that, given the proliferation of mobile devices among children and the ease with which children could sign and return an on-screen consent, such mechanisms may not ''ensure that the person providing consent is the child's parent.'' The Commission also noted that, although the law recognizes electronic signatures for the assertion that an individual signed a document, they do not necessarily confirm the underlying identity of the individual signing the document).

[220] *See, e.g.,* DMA (comment 37, 2011 NPRM), at 23 (Congress passed ESIGN Act over a decade ago and consumers prefer completing transactions online with digital signatures over using cumbersome offline processes); ESA (comment 47, 2011 NPRM), at 22–23 (electronic sign-and-send method meets the statutory standard of ''reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent,'' while accommodating parents' use of tablet, mobile device, and small-screen technologies lacking computer peripherals such as printers or scanners); TechFreedom (comment 159, 2011 NPRM), at 8 (urging Commission to promote development of solutions such as electronic signatures now, rather than wait for next Rule revision).

[221] While the Commission recognizes that some children also may circumvent the Rule's parental notice and consent mechanisms by signing and sending parental consent forms through mail, fax, or electronic scan, it believes these methods clearly are not as simple for the child as using a computer or handheld device to instantly pen and send a signature.

exhaustive list of parental consent mechanisms.

6. Platform Methods of Parental Consent

In response to the 2010 FRN, several commenters asked the Commission to consider whether, and in what circumstances, parental control features in game consoles, and presumably other devices, could be used to provide notice to parents and obtain verified consent under COPPA.[222] In the 2011 NPRM, the Commission acknowledged that parental control features can offer parents a great deal of control over a child's user experience and can serve as a *complement* to COPPA's parental consent requirements. However, the Commission concluded that, at that time, it did not appear that any such systems were adequately designed to comply with COPPA, and that the record was insufficient for it to determine whether a hypothetical parental consent mechanism would meet COPPA's verifiable parental consent standard. The Commission, in the 2011 NPRM, encouraged continued exploration of the concept of using parental controls in gaming consoles and other devices to notify parents and obtain their prior verifiable consent.[223]

In response to both the 2011 NPRM and the 2012 SNPRM, numerous stakeholders, including several platform providers, Web site and app developers, and child and privacy advocates, asked the Commission to consider modifications to the Rule to make clear that operators can choose to use a common mechanism—administered by a platform, gaming console, device manufacturer, COPPA safe harbor program,[224] or other entity—for the purpose of providing notice and obtaining parental consent for multiple operators simultaneously.[225]

Commenters offered a variety of proposals. For instance, several commenters envisioned that platform providers could provide a general notice and obtain consent to collect personal information for those purposes specified in the general notice, and that app developers wanting to collect or use information in ways differing from the general notice would need to independently provide a second separate notice to parents and obtain their consent.[226] Facebook proposed that operators may also use such common consent mechanisms to meet other COPPA obligations, such as providing parental access to children's data collected by operators.[227] The Walt Disney Company proposed two possible mechanisms: a '' 'Kids Privacy Portal'—through which parents can express privacy preferences in one place for multiple online activities,'' or a joint agreement between the platform operator and application providers ''that determines how data will be collected and used, and how parents exercise control.'' [228] The Entertainment Software Association (''ESA'') proposed a similar program for video game platforms whereby consoles or hand-held device makers could leverage their existing parental controls technologies.[229]

Commenters cited several potential benefits of common consent mechanisms, including: (1) Encouraging the development of interactive content for children by easing the burden individualized notice and consent places on operators, especially in the context of mobile apps [230]; (2) focusing parental attention on one streamlined notice rather than on multiple, confusing, notices [231]; and (3) promoting privacy by eliminating the need for each of these other operators to separately collect online contact information from the child in order to obtain parental consent.[232] The Center for Democracy and Technology acknowledges that, while not all parents may want to delegate to platforms the authority to get consent on behalf of individual operators, ''others may want to empower their kids to share and obtain information through certain applications without being forced to sign off on every interaction with a new web service.'' [233]

The Commission believes that common consent mechanisms, such as a platform, gaming console, or a COPPA safe harbor program, hold potential for the efficient administration of notice and consent for multiple operators. A well-designed common mechanism could benefit operators (especially smaller ones) and parents alike if it offers a proper means for providing notice and obtaining verifiable parental consent, as well as ongoing controls for parents to manage their children's accounts.[234] The Commission believes

[222] *See* ESA (comment 20, 2010 FRN), at 4; Microsoft (comment 39, 2010 FRN), at 7.

[223] 2011 NPRM, 76 FR 59818 (Sept. 27, 2011), *available at http://ftc.gov/os/2011/09/110915coppa.pdf.*

[224] The Commission notes that Privo, Inc., one of the approved COPPA safe harbors, offers the option to its members to have Privo administer notice and consent programs for member operators.

[225] *See, e.g.,* P. Aftab (comment 1, 2012 SNPRM), at 7; Association for Competitive Technology (comment 5, 2011 NPRM), at 7–8 and (comment 7, 2012 SNPRM), at 8; Computer and Communications Industry Association (''CCIA'') (comment 27, 2011 NPRM), at 7–8; CDT (comment 15, 2012 SNPRM), at 5–6; Connect Safely (comment 21, 2012 SNPRM), at 3; ESA (comment 47, 2011 NPRM), at 21–26; Facebook (comment 33, 2012 SNPRM), at 18–20; Future of Privacy Forum (comment 55, 2011 NPRM), at 5–6 and (comment 37, 2012 SNPRM), at 3–6; Microsoft (comment 107, 2011 NPRM), at 13–15 and (comment 66, 2012 SNPRM), at 6; Novachi, Inc. (comment 119, 2011 NPRM); SIIA (comment 150, 2011 NPRM), at 10–12; TechFreedom (comment159, 2011 NPRM), at 7 and (comment 88, 2012 SNPRM), at 13; The Walt Disney Co. (comment 170, 2011 NPRM), at 17–19.

[226] *See, e.g.,* Association for Competitive Technology (comment 5, 2011 NPRM), at 7–8 and (comment 7, 2012 SNPRM), at 8; CCIA (comment 27, 2011 NPRM), at 7–8; Facebook (comment 33, 2012 SNPRM), at 18–20; Future of Privacy Forum (comment 55, 2011 NPRM), at 5–6 and (comment 37, 2011 SNPRM), at 3–6; Microsoft (comment 107, 2011 NPRM), at 13–15 and (comment 66, 2012 SNPRM), at 13; SIIA (comment 150, 2011 NPRM), at 10–12. Future of Privacy Forum's 2012 comment included proposed Rule language. *See also* NetChoice (comment 70, 2012 SNPRM), at 12 (proposing Rule language to clarify that COPPA allows for the use of common consent mechanisms).

[227] Facebook (comment 33, 2012 SNPRM), at 18–19.

[228] The Walt Disney Co. (comment 170, 2011 NPRM), at 18.

[229] ESA contemplates that the platforms would provide a notice ''that makes it clear that the child's personal information will be disclosed to third-party game publishers and application providers who may collect, use, and disclose such information through the console or handheld in order to provide a joint or related service,'' and that parental consent ''might be effective across any of the console or handheld maker's related video game platforms and Web sites clearly referenced in the console or handheld maker's privacy policy.'' ESA (comment 47, 2011 NPRM), at 26. Other proposals for common consent mechanisms included outsourcing the process to identity management services, which operators could access through open technology standards. *See* Novachi (comment 119, 2011 NPRM). CDT acknowledged the potential utility of platform-based outsourcing notice and consent, provided that the Commission required additional safeguards for common consent mechanisms, including parental controls for the *ongoing* management of consent. CDT (comment 15, 2012 SNPRM), at 5–6.

[230] *See, e.g.,* CCIA (comment 27, 2011 NPRM), at 7–8 (stating that platform-based consent programs would ''promote COPPA's goals'' by encouraging developers ''who do not have the resources to independently acquire verifiable parental consent'' to create content and services for children; *see also* ConnectSafely.org (comment 21, 2012 SNPRM), at 3; P. Aftab (comment 1, 2012 SNPRM), at 7; Tech Freedom (comment 159, 2011 NPRM), at 7.

[231] For example, Microsoft stated that common consent mechanisms ''would benefit parents because requiring each third party separately to obtain parental consent could be confusing, overwhelming, and costly for parents.'' Microsoft (comment 66, 2012 SNPRM), at 6.

[232] Microsoft, *id.; see also* CCIA (comment 27, 2011 NPRM), at 8; Facebook (comment 33, 2012 SNPRM), at 19 (''A rule that enables operators to leverage a common platform for notice and consent would substantially advance the Commission's goal of ensuring that parents receive clear, understandable, and manageable information; it would also minimize the practical and economic costs to parents as a result of multiple consent requests.''); TechAmerica (comment 87, 2012 SNPRM), at 8.

[233] CDT (comment 15, 2012 SNPRM), at 6.

[234] Under the system proposed by the Future of Privacy Forum, parents would be apprised of a common set of information practices to which they could consent on an aggregate basis, then would

Continued

that such methods could greatly simplify operators' and parents' abilities to protect children's privacy.

Despite the potential benefits, the Commission declines, at this time, to adopt a specific provision for the following reasons. First, even without an express reference in the Rule to such a process, nothing forecloses operators from using a common consent mechanism so long as it meets the Rule's basic notice and consent requirements.[235] Second, the Commission did not specifically seek comment on this precise issue; nor has it proposed any language in either the NPRM or the SNPRM to address this point. Accordingly, the Commission is reluctant to adopt specific language without the benefit of notice and comment on such language to explore all potential legal and practical challenges of using a common consent mechanism.[236] Finally, the Commission believes that parties interested in using a common consent mechanism have the option to participate in the voluntary Commission approval process set forth in Section 312.5(3) of the final Rule.[237] That process would enable the Commission to evaluate, and other interested parties to publicly comment upon, such proposals in an effort to bring to market sound and practical solutions that will serve a broad base of operators.

7. The Sliding Scale (''Email Plus'') Method

In conducting the Rule review, the Commission sought comment on whether the sliding scale set forth in § 312.5(b)(2) remains a viable approach to verifiable parental consent.[238] Under the sliding scale, an operator, when collecting personal information only for its *internal* use, may obtain verifiable parental consent through an email from the parent, so long as the email is coupled with an additional step.[239] Such an additional step has included obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call, or sending a delayed confirmatory email to the parent after receiving consent.[240] The purpose of the additional step is to provide greater assurance that the person providing consent is, in fact, the parent. This consent method is often called ''email plus.'' [241]

In adopting the sliding scale approach in 1999, the Commission recognized that the email plus method was not as reliable as the other enumerated methods of verifiable parental consent.[242] However, it believed that this lower cost option was acceptable as a temporary option, in place until the Commission determined that more reliable (and affordable) consent methods had adequately developed.[243] In 2006, the Commission extended use of the sliding scale indefinitely, stating that the agency would continue to monitor technological developments and modify the Rule should an acceptable electronic consent technology develop.[244]

Email plus has enjoyed wide appeal among operators, who credit its simplicity.[245] The Commission sought comment in response to the 2010 FRN and at the June 2010 public roundtable on whether to retain email plus in the final Rule. Numerous commenters to the 2010 FRN, including associations who represent operators, supported the continued retention of this method as a low-cost means to obtain parents' consent.[246] At the same time, several commenters, including safe harbor programs and proponents of new parental consent mechanisms, challenged the method's reliability, given that operators have no real way of determining whether the email address a child provides is that of the parent, and there is no requirement that the parent's email response to the operator contain any additional information providing assurance that it is from a parent.[247]

In the 2011 NPRM, the Commission proposed eliminating email plus as a means of obtaining parental consent. The Commission considered whether operators' continued reliance on email plus may have inhibited the development of more reliable methods of obtaining verifiable parental consent. The Commission also made clear that, although internal uses may pose a lower risk of misuse of children's personal information than the sharing or public disclosure of such information, all collections of children's information merit strong verifiable parental consent.

Several commenters supported the Commission's proposal to eliminate email plus. These commenters opined that children can easily circumvent email plus and thus, that it is not

receive individualized notices for additional practices that go beyond those outlined in the common notice. The platform would also ensure that parents have access to easy mechanisms through which to retract their consent to the child's use of any particular site or service. Future of Privacy Forum (comment 37, 2012 SNPRM), at 4–6.

[235] As noted in note 219, *supra,* one such common consent mechanism is currently provided by an approved COPPA safe harbor, and there may be others already in operation as well.

[236] The Commission would want to explore further the difficulties of making sure the notice accurately reflects each individual operator's information practices; how to provide parents with a means to access the operator's privacy policy with regard to information collected from children; and giving parents controls sufficient to refuse to permit an operator's further use or future collection of their child's personal information, and to direct the operator to delete the child's personal information and or disable the child's account with that operator.

[237] *See* Part II.C.8., *infra.*

[238] *See* 2010 Rule Review, *supra* note 6, at 17091.

[239] The sliding scale approach was adopted in the Rule in response to comments that stated that internal uses of information, such as marketing to children, presented less risk than external disclosures of the information to third parties or through public postings. *See* 1999 Statement of Basis and Purpose, 64 FR at 59901. Other internal uses of children's personal information may include sweepstakes, prize promotions, child-directed fan clubs, birthday clubs, and the provision of coupons.

[240] The Commission notes that, assuming an operator has obtained a parent's mobile phone number from the parent in response to the first email, confirmation of a parent's consent may done via an SMS or MMS text to the parent.

[241] By contrast, for uses of personal information that involve disclosing the information to the public or third parties, the Rule requires operators to use more reliable methods of obtaining verifiable parental consent, including but not limited to those identified in § 312.5(b)(1).

[242] 64 FR at 59902 (''[E]mail alone does not satisfy the COPPA because it is easily subject to circumvention by children.'').

[243] *See id.* at 59901 (''The Commission believes it is appropriate to balance the costs imposed by a method against the risks associated with the intended uses of the information collected. Weighing all of these factors in light of the record, the Commission is persuaded that temporary use of a ''sliding scale'' is an appropriate way to implement the requirements of the COPPA until secure electronic methods become more available and affordable.'').

[244] *See* 71 FR at 13247, 13255, 13254 (Mar. 15, 2006).

[245] *See* WiredSafety.org (comment 68, 2010 FRN), at 21 (''We all assumed [email plus] would be phased out once digital signatures became broadly used. But when new authentication models and technologies failed to gain in parental adoption, it was continued and is in broad use for one reason—it's simple.'').

[246] *See* R. Newton, Remarks from *Emerging Parental Verification Access and Methods* Panel at the Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 211–13 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf;* DMA (comment 17, 2010 FRN), at 10; IAB (comment 34, 2010 FRN), at 2; R. Newton (comment 46, 2010 FRN), at 3; PMA (comment 51, 2010 FRN), at 4–5; Toy Industry Association, Inc. (comment 63, 2010 FRN), at 8.

[247] *See* Privo, Inc. (comment 50, 2010 FRN), at 5 (''the presentation of a verified email is much less reliable if there is virtually no proofing or analyzing that goes on to determine who the email belongs to''); RelyId (comment 53, 2010 FRN), at 3 (''The email plus mechanism does not obtain verifiable parental consent at all. It simply does not ensure that a parent 'authorizes' anything required by the COPPA statute. The main problem with this approach is that the child can create an email address to act as the supposed parent's email address, send the email from that address, and receive the confirmatory email at that address.''); *see also* D. Tayloe and P. Spaeth, Remarks from Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online, at 215–17 (email plus is very unreliable).

sufficiently effective to meet the statutory requirement of being reasonably calculated to ensure that it is the parent providing consent.[248] Some of these commenters also echoed the Commission's concern that operators' continued reliance on email plus is a disincentive to innovation.[249]

A majority of the comments, however, strongly urged the Commission to retain email plus.[250] Several commenters indicated that email plus remains a widely used and valuable tool for communicating with parents and obtaining consent. These commenters maintained that email plus is easy for companies and parents to use, easy to understand, effective, and affordable.[251] In addition, several commenters expressed concern that other approved methods for obtaining consent would impose significant burdens on operators and parents.[252] Commenters also questioned whether other methods for verifiable parental consent are any more reliable than email plus.[253] Finally, several commenters challenged the FTC's assumption that eliminating email plus would spur further innovation in parental consent mechanisms.[254]

The Commission is persuaded by the weight of the comments that email plus, although imperfect, remains a valued and cost-effective consent mechanism for certain operators. Accordingly, the final Rule retains email plus as an acceptable consent method for operators collecting personal information only for *internal* use. Nevertheless, the Commission continues to believe that email plus is less reliable than other methods of consent, and is concerned that, twelve years after COPPA became effective, so many operators rely upon what was supposed to be a temporary option. The Commission is also concerned about perpetuating for much longer a distinction between internal and external uses of personal information that the COPPA statute does not make. Thus, the Commission strongly encourages industry to innovate to create additional useful mechanisms as quickly as possible.

8. Voluntary Process for Commission Approval of Parental Consent Mechanisms

Under the Rule, methods to obtain verifiable parental consent ''must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent.'' [255] The Rule thus provides operators with the opportunity to craft consent mechanisms that meet this standard but otherwise are not enumerated in paragraph (b)(2) of § 312.5. Nevertheless, the recent Rule review process revealed that, whether out of concern for potential liability, ease of implementation, or lack of technological developments, operators have been reluctant to utilize consent methods other than those specifically set forth in the Rule.[256] As a result, little technical innovation in the area of parental consent has occurred.

To encourage the development of new consent mechanisms, and to provide transparency regarding consent mechanisms that may be proposed, the Commission in the 2011 NPRM proposed establishing a process in the Rule through which parties may, on a voluntary basis, seek Commission approval of a particular consent mechanism. Applicants who seek such approval would be required to present a detailed description of the proposed parental consent mechanism, together with an analysis of how the mechanism meets the requirements of § 312.5(b)(1) of the Rule. The Commission would publish the application in the **Federal Register** for public comment, and approve or deny the applicant's request in writing within 180 days of its filing.

The NPRM stated the Commission's belief that this new approval process, aided by public input, would allow the Commission to give careful consideration, on a case-by-case basis, to new forms of obtaining consent as they develop in the marketplace. The Commission also noted that the new process would increase transparency by publicizing approvals or rejections of particular consent mechanisms, and

[248] *See* K. Dennis, AssertID (comment 34, 2011 NPRM), at 2; AssertID (comment 6, 2012 SNPRM), at 1; TRUSTe (comment 164, 2011 NPRM), at 11; EPIC (comment 41, 2011 NPRM), at 9; Institute for Public Representation (comment 71, 2011 NPRM), at 41; S. Leff, WhooGoo (comment 60, 2012 SNPRM).

[249] *See* AssertID, *supra* note 248; Institute for Public Representation, *supra* note 248.

[250] *See, e.g.,* American Association of Advertising Agencies (comment 2, 2011 NPRM); Association of Educational Publishers (comment 7, 2011 NPRM); ATT (comment 8, 2011 NPRM); d. boyd (comment 13, 2011 NPRM); DMA (comment 37, 2011 NPRM); ESA (comment 47, 2011 NPRM); Internet Commerce Coalition (comment 74, 2011 NPRM); kidSAFE Seal Program (comment 81, 2011 NPRM); Magazine Publishers of America (comment 61, 2012 SNPRM); Marketing Research Association (comment 97, 2011 NPRM); R. Newton (comment 118, 2011 NPRM); N. Savitt (comment 142, 2011 NPRM); Scholastic (comment 144, 2011 NPRM).

[251] *See, e.g.,* Association of Educational Publishers (comment 7, 2011 NPRM), at 1 (email plus is effective way to balance parental involvement with children's freedom to pursue educational experiences online); Scholastic (comment 144, 2011 NPRM), at 3 (email plus strikes a balance between the ease of getting consent and low safety risk to children from internal use of their data); Toy Industry Association (comment 163, 2011 NPRM), at 4–5 (similar cost-effective and efficient technologies to replace this method have not yet been developed); NCTA (comment 113, 2011 NPRM), at 20 (termination of email plus will have negative consequences and leave operators with no viable alternative); Privo (comment 132, 2011 NPRM), at 2 (email plus is a reasonable approach that can be understood by all constituents); d. boyd (comment 13, 2011 NPRM), at 5–6 (email plus imposes fewer burdens on families, particular low-income and immigrant families, than other available mechanisms); DMA (comment 37, 2011 NPRM), at 21 (elimination of email plus would create economic challenges in a difficult economic time).

[252] *See* Association for Competitive Technology (comment 7, 2012 SNPRM), at 6 (FTC should not remove easy to understand email plus without finding ways to make parental consent simpler); Toy Industry Association (comment 89, 2012 SNPRM), at 15 (the alternatives to email plus are not likely to be useful, effective, or cost-effective); *see also* American Association of Advertising Agencies (comment 2, 2011 NPRM), at 2 (this could result in a major reduction in parental consents obtained, solely due to burdensomeness of process); Association of Educational Publishers (comment 7, 2011 NPRM), at 2 (methods such as print, fax, or scan impede timely access to online resources; requiring credit cards or identification imposes barriers that may alienate parents; and other mechanisms impose financial costs on operators that may result in less free content); ESA (comment 47, 2011 NPRM), at 17–18 (requiring other methods of consent will make it harder to offer children robust content; no public benefit in requiring operators to make the costly changeover to other mechanisms); Scholastic (comment 144, 2011 NPRM), at 5–6 (credit card use is not an option for Scholastic, which offers free services; existing options are cumbersome and slow for parents and operators, and newly proposed options are less privacy protective, affordable, or accessible than email plus); TechFreedom (comment 159, 2011 NPRM), at 7–8 (making parental consent more difficult to obtain would disproportionately burden smaller players in the market and retard new entry); Wired Trust (comment 177, 2011 NPRM), at 5 (eliminating email plus will likely result in reduction in innovative and valuable online features for children).

[253] *See* d. boyd (comment 13, 2011 NPRM), at 6 (no data to suggest that children are evading email plus more than other consent mechanisms); Scholastic (comment 144, 2011 NPRM), at 8 (no evidence that proposed methods are significantly more reliable); *see also* kidSAFE Seal Program (comment 81, 2011 NPRM), at 13–14 (the Commission has not shown any harm to children due to use of email plus); SIIA (comment 150, 2011 NPRM), at 12–13 (proposing that only a small percentage of children are likely to falsify parental consent).

[254] *See, e.g.,* ACT (comment 7, 2012 SNPRM), at 6; Internet Commerce Coalition (comment 74, 2011 NPRM), at 5; Marketing Research Association (comment 97, 2011 NPRM), at 3; A. Thierer (comment 162, 2011 NPRM), at 7; WiredTrust (comment 177, 2011 NPRM), at 5.

[255] *See* 16 CFR 312.5(b)(1).

[256] The June 2, 2010 Roundtable and the public comments reflect a tension between operators' desire for new methods of parental verification and their hesitation to adopt consent mechanisms other than those specifically enumerated in the Rule. *See* Remarks from Federal Trade Commission's Roundtable: Protecting Kids' Privacy Online at 226–27 (June 2, 2010), *available at http://www.ftc.gov/bcp/workshops/coppa/COPPARuleReview_Transcript.pdf;* CDT (comment 8, 2010 FRN), at 3 (''innovation in developing procedures to obtain parental consent has been limited as Web sites choose to use the methods suggested by the FTC out of fear that a more innovative method could lead to liability'').

should encourage operators who may previously have been tentative about exploring technological advancements to come forward and share them with the Commission and the public.

The Commission received several comments expressing support for the concept of a voluntary Commission approval process for new consent mechanisms.[257] At the same time, several commenters that supported the concept also opined that the 180-day approval period was too lengthy and would likely to discourage use of the program.[258] Commenters also expressed concerns that applications for approval would be subject to public comment.[259] One commenter asked the Commission instead to consider publicly releasing a letter explaining the Commission's decision to approve or disapprove a mechanism and thereby signaling what is an acceptable consent mechanism, without causing undue delay or risking the disclosure of proprietary information.[260]

One commenter opposed to the voluntary approval process asserted that it would be *ultra vires* to the COPPA statute and would create a *de facto* requirement for FTC approval of any new consent mechanisms, thereby discouraging operators from developing or using new means not formally approved by the Commission.[261] The Commission does not believe that offering operators the opportunity to apply for a voluntary approval process will either *de facto* create an additional COPPA requirement or chill innovation. This is just one more option available to operators.

The Commission also is persuaded by the comments requesting that it shorten the 180-day approval period. Accordingly, the final Rule's provision for Commission approval of parental consent mechanisms provides that the Commission shall issue a written determination within 120 days of the filing of the request. The Commission anticipates that some commenters will find that this time period also is longer than desired; however, it sets a reasonable time frame in which to solicit public comment and carefully determine whether a consent mechanism is sufficiently well-designed to fulfill the Rule's requirements.

The Commission has determined not to alter the requirement that the proposed mechanisms undergo public review and comment. This is an important component of the approval process. Moreover, just as the Commission has done for COPPA safe harbor applicants, it would permit those entities that voluntarily seek approval of consent mechanisms to seek confidential treatment for those portions of their applications that they believe warrant trade secret protection. In the event an applicant is not comfortable with the Commission's determination as to which materials will be placed on the public record, it will be free to withdraw the proposal from the approval process.

Accordingly, the Commission has amended the Rule to institute this voluntary approval process. For ease of organization, the Commission has created a new section—312.12 (''Voluntary Commission Approval Processes'')—to encompass both this approval process and the process for approval of additional activities under the *support for internal operations* definition.

9. Safe Harbor Approval of Parental Consent Mechanisms

Several commenters urged the Commission to permit Commission-approved safe harbor programs to serve as laboratories for developing new consent mechanisms.[262] The Commission stated its agreement in the 2011 NPRM that establishing such a system may aid the pace of development in this area. The Commission also stated that, given the measures proposed to strengthen Commission oversight of safe harbor programs, allowing safe harbors to approve new consent mechanisms would not result in the loosening of COPPA's standards for parental consent. Thus, the 2011 NPRM included a proposed Rule provision stating that operators participating in a Commission-approved safe harbor program may use any parental consent mechanism deemed by the safe harbor program to meet the general consent standard set forth in § 312.5(b)(1). Although one commenter expressed concern that this would lead to a ''race to the bottom'' by safe harbor programs,[263] most of the comments were favorable.[264] Moreover, the Commission believes its added oversight will prevent any ''race to the bottom'' efforts. Accordingly, the Commission adopts this provision unchanged from its September 2011 proposal.

10. Exceptions to Prior Parental Consent

The COPPA Act and the Rule address five fact patterns under which an operator may collect limited pieces of personal information from children prior to, or sometimes without, obtaining parental consent.[265] These exceptions permit operators to communicate with the child to initiate the parental consent process, respond to the child once or multiple times, and protect the safety of the child or the integrity of the Web site.[266] The 2011 NPRM proposed minor changes to the Rule to add one new exception.

a. Section 312.5(c)(1)

The Rule's first exception, § 312.5(c)(1), permits an operator to collect ''the name or online contact information of a parent or child'' to be used for the sole purpose of obtaining parental consent. In view of the limited purpose of the exception—to reach *the parent* to initiate the consent process—the Commission proposed in the 2011 NPRM to limit the information

[257] *See* CCIA (comment 27, 2011 NPRM), at 6 (voluntary approval mechanism is an ''excellent step'' to encourage innovation, provide assurance to potential operators, and ensure parents' participation); Yahoo! (comment 180, 2011 NPRM), at 4 (streamlined approval process for new mechanisms is critical to encouraging innovation); *see also* Consumers Union (comment 29, 2011 NPRM), at 5; FOSI (comment 51, 2011 NPRM), at 7; kidSAFE Seal Program (comment 81, 2011 NPRM), at 16.

[258] *See, e.g.,* CCIA (comment 27, 2011 NPRM), at 6 (process must be completed more quickly in order to be useful to industry); Facebook (comment 50, 2011 NPRM), at 14 (Commission's extensive experience with COPPA should enable its more expeditious approval or disapproval of new mechanisms).

[259] *See, e.g.,* CCIA (comment 27, 2011 NPRM), at 6 (while public comment is important, the Commission should consider ''an alternate private track'' for consent mechanisms involving proprietary technology or a competitive advantage); Facebook (comment 50, 2011 NPRM), at 15 (public comment requirement could negatively affect economic incentives for innovation where rival operators might be able to copy the mechanism).

[260] Facebook (comment 50, 2011 NPRM), at 15.

[261] DMA (comment 37, 2011 NPRM), at 24.

[262] *See* MPAA (comment 42, 2010 FRN), at 12; Rebecca Newton (comment 46, 2010 FRN), at 2; Privo (comment 50, 2010 FRN), at 2; PMA (comment 51, 2010 FRN), at 5; B. Szoka (comment 59, 2010 FRN), Szoka Responses to Questions for the Record, at 56; TRUSTe (comment 64, 2010 FRN), at 3; *see also generally* WiredSafety.org (comment 68, 2010 FRN), at 31–32.

[263] CommonSense Media (comment 26, 2011 NPRM), at 16 (raising concern that safe harbor providers may ''race to the bottom'' to offer operators low-cost consent programs with low standards of verifiable consent, unless the Commission requires safe harbors to publicly disclose their approvals and report them to the FTC).

[264] *See, e.g.,* eBay (comment 40, 2011 NPRM), at 4; kidSAFE Seal Program (comment 81, 2011 NPRM), at 16; TRUSTe (comment 164, 2011 NPRM), at 11 (noting cost benefit to operators to get early review of mechanism at design or wireframe stage).

[265] *See* 15 U.S.C. 6502(b)(2); 16 CFR 312.5(c).

[266] The Act and Rule currently permit the collection of limited personal information for the purposes of: (1) Obtaining verified parental consent; (2) providing parents with a right to opt-out of an operator's use of a child's email address for multiple contacts of the child; and (3) to protect a child's safety on a Web site or online service. *See* 15 U.S.C. 6502(b)(2); 16 CFR 312.5(c)(1)–(5).

collection under this exception to the parent's online contact information only. However, as one commenter pointed out,[267] the COPPA statute expressly provides that, under this exception, an operator can collect ''the name or online contact information of a parent or child.'' [268]

Accordingly, the Commission retains § 312.5(c)(1) allowing for the collection of the name or online contact information of the parent or child in order to initiate the notice and consent process.[269]

b. Section 312.5(c)(2)

The 2011 NPRM proposed adding one additional exception to parental consent in order to give operators the option to collect a parent's online contact information for the purpose of providing notice to, or updating, the parent about a child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information.[270] The proposed exception, numbered 312.5(c)(2), provided that the parent's online contact information may not be used for any other purpose, disclosed, or combined with any other information collected from the child. The Commission indicated its belief that collecting a parent's online contact information for the limited purpose of notifying the parent of a child's online activities in a site or service that does not otherwise collect personal information is reasonable and should be encouraged.

The few comments addressing this proposed additional exception generally supported it.[271] Certain commenters recommended minor clarifications, such as adding language to indicate that the notice is voluntary and that operators can link a parent's email address to the child's account.[272] Upon consideration of the commenters' suggestions, the Commission has made minor changes to the language of this exception to clarify that its use is voluntary and that operators can use the exception to provide notice and subsequent updates to parents. The Commission did not find that clarification is needed to enable operators to link the parent's email to the child's account. Therefore, § 312.5(c)(2) of the final Rule permits the collection of a parent's online contact information to provide voluntary notice to, and subsequently update the parent about, the child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information, where the parent's contact information is not used or disclosed for any other purpose.[273]

c. Section 312.5(c)(3) (One-Time Use Exception)

Section 312.5(c)(2) of the Rule provides that an operator is not required to provide notice to a parent or obtain consent where the operator has collected *online contact information from a child* for the sole purpose of responding on a one-time basis to a child's request, and then deletes the information. The 2011 NPRM proposed a minor change to the language of the one-time use exception, stating that the exception would apply where the operator collected *a child's online contact information* for such purpose. One commenter pointed out that the Rule language, ''online contact information from a child,'' is taken directly from the COPPA statute. The commenter also expressed concern that the Commission's proposed change to the language may prevent operators from offering several popular one-time use activities under this exception.[274] In proposing this minor change, the Commission did not intend to further constrict the permissible uses of online contact information under the one-time-use exception (such as notifications regarding a contest or sweepstakes, homework help, birthday messages, forward-to-a-friend emails, or other similar communications). The Commission is persuaded, therefore, to retain the existing language in § 312.5(c)(3) permitting the collection of *online contact information from a child.*

d. Section 312.5(c)(4) (Multiple Use Exception)

The Rule provides that an operator may notify a parent via email or postal address that it has collected a child's online contact information to contact a child multiple times (for instance, to provide the child with a newsletter or other periodic communication).[275] The 2011 NPRM proposed revising the multiple contacts exception to allow for the collection of a child's and a parent's online contact information; and to strike the collection of postal address on the basis that it is now outmoded for this use. Although one commenter argued that postal address continues to provide a reasonable means of contacting the parent,[276] the Commission believes that the revised provision provides operators with a sufficient and practical means of contacting a parent in connection with the multiple use exception. The Commission also notes that the collection of postal address for the purpose of providing notice to a parent is not specifically provided for in the COPPA statute [277] or elsewhere in the Rule's notice requirements. Therefore, the language of § 312.5(4), as proposed in the 2011 NPRM, is hereby adopted in the final Rule.

e. Section 312.5(c)(5) (Child Safety Exception)

The 2011 NPRM proposed minor changes to the language of the child safety exception to state the purpose of the exception up-front, and to make clear that the operator can collect both the child's and the parent's online contact information where it is necessary to protect the safety of the child and where the information is not used for any other purpose. The Commission received one comment recommending that the Rule also allow for the collection of the parent's name, which the commenter believes may aid in contacting the parent, if necessary.[278] The Commission recognizes that the circumstances under which the child-safety exception becomes important may vary significantly. As such, the Commission is persuaded to further modify this exception to allow for collection of the parent's name, given that the exception is available only

[267] N. Savitt (comment 142, 2011 NPRM), at 2; *see also* kidSAFE Seal Program (comment 81, 2011 NPRM), at 17 (this exception should also allow the collection of a child's online contact information to enable the operator to notify the child that the parent has consented).

[268] 15 U.S.C. 6502(b)(2)(B).

[269] *See* Part II.B.1., *supra* (discussing the parallel correction to § 312.4(c)(1) (direct notice to a parent required under § 312.5(c)(1)).

[270] At least a few online virtual worlds directed to very young children already follow this practice. Because the Rule did not include such an exception, these operators technically were in violation of COPPA.

[271] *See, e.g.,* DMA (comment 37, 2011 NPRM), at 26; kidSAFE Seal Program (comment 81, 2011 NPRM), at 17–18; N. Savitt (comment 142, 2011 NPRM), at 2.

[272] *See* N. Savitt (comment 142, 2011 NPRM), at 2 (proposing that the exception clearly indicate that providing such notice is optional); kidSAFE (comment 81, 2011 NPRM), at 18 (seeking clarification that parent's online contact information is linkable to child's account for updating purposes).

[273] Section 312.4(c)(2) of the final Rule sets out the direct notice requirements under this exception. *See* Part II.B.1., *supra.*

[274] *See* Promotion Marketing Association (comment 133, 2011 NPRM), at 5–6.

[275] Under this exception, the Rule requires the operator only to provide the parent the opportunity to *opt-out* of granting consent, rather than requiring it to obtain opt-in consent.

[276] *See* DMA (comment 37, 2011 NPRM), at 25–26.

[277] *See* 15 U.S.C. 6502(b)(2)(C) (statute requires operator to ''use reasonable efforts to provide a parent notice'').

[278] kidSAFE Seal Program (comment 81, 2011 NPRM), at 18.

where necessary to protect the safety of a child and where such information is not used or disclosed for any purpose unrelated to the child's safety. Section 312.5(c)(5) of the final Rule therefore provides that an operator can collect a child's and a parent's name and online contact information, to protect the safety of a child, where such information is not used or disclosed for any purpose unrelated to the child's safety.

f. Section 312.5(c)(6) (Security of the Site or Service Exception)

The final Rule incorporates the language of the Rule, with only minor, non-substantive changes to sentence structure.

g. Section 312.5(c)(7) (Persistent Identifier Used To Support Internal Operations Exception)

As described in Section II.C.5.b. above, the final Rule creates an exception for the collection of a persistent identifier, and no other personal information, where used solely to provide *support for the internal operations of the Web site or online service.* Where these criteria are met, the operator will have no notice or consent obligations under this exception.

h. Section 312.5(c)(8) (Operator Covered Under Paragraph (2) of Definition of Web Site or Online Service Directed to Children Collects a Persistent Identifier From a Previously Registered User)

Paragraph (2) of the definition of *Web site or online service directed to children* sets forth the actual knowledge standard for plug-ins under the Rule. The Commission is providing for a new, narrow, exception to the Rule's notice and consent requirements for such an operator where it collects a persistent identifier, and no other personal information, from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child. The Commission has determined that, in this limited circumstance where an operator has already age-screened a user on its own Web site or online service, and such user has self-identified as being over the age of 12, the burden of requiring that operator to assume that this same user is a child outweighs any benefit that might come from providing notice and obtaining consent before collecting the persistent identifier in this instance. This exception only applies if the user affirmatively interacts with the operator's online service (*e.g.,* by clicking on a plug-in), and does not apply if the online service otherwise passively collects *personal information* from the user while he or she is on another site or service.

D. Section 312.8: Confidentiality, Security, and Integrity of Personal Information Collected From Children

In the 2011 NPRM, the Commission proposed amending § 312.8 to strengthen the provision requiring operators to maintain the confidentiality, security, and integrity of personal information collected from children. Specifically, the Commission proposed adding a requirement that operators take reasonable measures to ensure that any *service provider* or *third party* to whom they release children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information.[279]

The Commission received a number of comments in support of its proposal. EPIC asserted, ''[third-party data collectors] are the ''least cost avoiders'' and can more efficiently protect the data in their possession than could the data subjects who have transferred control over their personal information.'' [280] The CDT found the proposal to be a ''sensible requirement that third-party operators put in place reasonable security procedures.'' [281] And the Privacy Rights Clearinghouse stated, ''the proposed revision * * * would enhance consumer trust and reduce the likelihood that data will be mishandled when disclosed to an outside party.'' [282]

Several commenters opposed the Commission's proposal outright, finding it to be unduly onerous on small businesses [283] or *ultra vires* to the statute.[284] The Commission finds this opposition unpersuasive. The requirement that operators take reasonable care to release children's personal information only to entities that will keep it secure flows directly from the statutory requirement that covered operators ''establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.'' [285]

Several commenters asked the Commission to consider narrowing the proposal so that it applies only to third parties with whom the operator has a contractual relationship, rather than to all third parties, given the breadth of the Rule's definition of *third party.*[286] These concerns are obviated by the Commission's proposal in the 2011 NPRM to narrow the definition of *release* to include only business-to-business disclosures, and not the sort of open-to-the-public disclosures that worry the commenters.[287]

Other commenters expressed concern with the Commission's use of the words ''reasonable measures'' and ''ensure'' in the proposed revised language, stating that such phrases are too subjective to be workable and set an impossible-to-reach standard.[288] Requiring operators to use ''reasonable measures'' both to establish their own data protection programs and to evaluate the programs of others has long been the standard the Commission employs in the context of its data security actions, and provides companies with the flexibility necessary to effectuate strong data privacy programs.[289] Importantly, the

[279] *See* 2011 NPRM, 76 FR at 59821. The Rule was silent on the data security obligations of third parties. However, the online notice provision in the Rule required operators to state in their privacy policies whether they disclose personal information to third parties, and if so, whether those third parties have agreed to maintain the confidentiality, security, and integrity of the personal information they obtain from the operator. *See* § 312.4(b)(2)(iv) of the Rule.

[280] EPIC (comment 41, 2011 NPRM), at 10–11; *see also* H. Valetk (comment 166, 2011 NPRM), at 2.

[281] CDT (comment 17, 2011 NPRM), at 2.

[282] Privacy Rights Clearinghouse (comment 131, 2011 NPRM), at 2.

[283] Marketing Research Association (comment 97, 2011 NPRM), at 4.

[284] DMA (comment 37, 2011 NPRM), at 26.

[285] 15 U.S.C. 6502(b)(1)(D).

[286] *See* Facebook (comment 50, 2011 NPRM), at 15–16 (''The current definition of *third party* in Section 312.1 sweeps so broadly that it also encompasses other users who can view content or receive communications from the child—including, for example, the child's relatives or classmates. Under the proposed amendment, operators would be obligated to take reasonable measures to ensure that these relatives and classmates have 'reasonable procedures' in place to protect the child's personal information''); CDT (comment 17, 2011 NPRM), at 2 (''consistent with the Commission's goal of addressing business-to-business data sharing, the Commission should make it clear that these additional data security requirements apply only to other FTC-regulated entities with which the operator has a contractual relationship'').

[287] *See* 2011 NPRM, 76 FR at 59809.

[288] IAB (comment 73, 2011 NPRM), at 14 (''The IAB is concerned that these requirements, if finalized, would create a risk of liability to companies based on highly subjective standards and on third party activities ''); MPAA (comment 109, 2011 NPRM), at 16–17 (''the proposed requirement that operators take measures sufficient to *ensure* compliance by vendors and other third parties might be misapplied to make operators the effective guarantors of those measures. As a practical matter, no business is in a position to exercise the same degree of control over another, independent business as it can exercise over its own operations.'').

[289] *See, e.g.,* In the Matter of Compete, Inc., FTC File No. 102 3155 (proposed consent order) (Oct. 29, 2012), *available at http://www.ftc.gov/os/caselist/1023155/121022competeincagreeorder.pdf;* In the Matter of Franklin's Budget Car Sales, Inc., FTC Docket No. C–4371 (consent order) (Oct. 3, 2012), *available at http://ftc.gov/os/caselist/1023094/121026franklinautomalldo.pdf;* In the Matter of EPN, Inc., FTC Docket No. C–4370 (consent order) (Oct. 3, 2012), *available at http://ftc.gov/os/caselist/1123143/121026epndo.pdf;* In

reasonable measures standard is the one set by Congress for operators' confidentiality, security, and integrity measures in the COPPA statute.[290]

The Commission finds merit, however, in the concerns expressed about the difficulty operators may face in ''ensuring'' that any service provider or any third party to whom it releases children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of children's personal information.[291] The Motion Picture Association of America (''MPAA'') urged the Commission to take the approach adopted in the Safeguards Rule implemented under the Gramm-Leach-Bliley Act. Entities covered by the Safeguards Rule are required to take ''reasonable steps to select and retain service providers that are capable of maintaining appropriate safeguards for the customer information at issue'' and to ''requir[e] service providers by contract to implement and maintain such safeguards.'' [292]

After reviewing these comments, the Commission has decided to modify the standard required when an operator releases children's personal information to service providers and third parties. Operators must inquire about entities' data security capabilities and, either by contract or otherwise, receive assurances from such entities about how they will treat the personal information they receive. They will not be required to ''ensure'' that those entities secure the information absolutely.

Accordingly, the revised confidentiality, security, and integrity provision (§ 312.8) states that the operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must also take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner.

E. Section 312.10: Data Retention and Deletion Requirements

In the 2011 NPRM, the Commission proposed adding a data retention and deletion provision (new Section 312.10).[293] The general tenet of data security, that deleting unneeded information is an integral part of any reasonable data security strategy (discussed in the Commission's 1999 COPPA Rulemaking), informed the Commission's rationale for this new provision.[294] In addition, the new proposed provision flowed from the statutory authority granted in COPPA for regulations requiring operators to establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.[295]

The Commission received support for its data retention and deletion proposal from several consumer groups and an individual commenter.[296] The Institute for Public Representation stated that, without such a provision, operators have no incentive to eliminate children's personal information and may retain it indefinitely.[297] Other supporters mentioned that a requirement to retain and eliminate data works in tandem with the Rule's requirement that data be kept confidential and secure, and has the added benefit of reducing the risk and impact of data breaches.[298]

Other commenters, primarily industry members, opposed the addition of a data retention and deletion provision, stating that it was unnecessary, vague, and unduly prescriptive.[299] These commenters especially objected to the combination of the data retention and deletion provision with the proposed expansion of the definition of *personal information* to include persistent identifiers. They asserted that the proposed deletion requirement would require companies to delete non-personally identifiable information, such as data used for Web site and marketing analytics.[300]

The Commission chose the phrases ''for only as long as is reasonably necessary'' and ''reasonable measures'' to avoid the very rigidity about which commenters opposing this provision complain.[301] Such terms permit operators to determine their own data retention needs and data deletion capabilities, without the Commission dictating specific time-frames or data destruction practices.[302]

While this new provision may require operators to give additional thought to notions of data retention and deletion, it should not add significantly to operators' burden. The existing Rule already prohibits operators from conditioning a child's participation in an activity on the child disclosing more personal information than is reasonably necessary to participate.[303] Operators also must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.[304] This new data retention and deletion provision, Section 312.10, requires operators to anticipate the reasonable lifetime of the personal information they collect from children, and apply the same concepts of data security to its disposal as they are required to do with regard to its collection and maintenance.

Therefore, the Commission modifies Section 312.10 as originally proposed, without change from its 2011 proposal.

F. Section 312.11: Safe Harbors

The COPPA statute established a ''safe harbor'' for participants in Commission-approved COPPA self-regulatory programs.[305] As noted in the 2011 NPRM, with the safe harbor provision, Congress intended to encourage industry members and other groups to develop their own COPPA oversight programs, thereby promoting efficiency and flexibility in complying with

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the Matter of Upromise, Inc., FTC Docket No. C–4351 (consent order) (Apr. 3, 2012), *available at http://www.ftc.gov/os/caselist/1023116/120403upromisedo.pdf.*

[290] 15 U.S.C. 6502(b)(1)(D).

[291] Facebook (comment 50, 2011 NPRM), at 16; MPAA (comment 109, 2011 NPRM), at 16–17.

[292] 16 CFR 314.4(d).

[293] *See* 76 FR at 59822.

[294] *See* 1999 Notice of Proposed Rulemaking, 64 FR at 22750, 22758–59 (''The Commission encourages operators to establish reasonable procedures for the destruction of personal information once it is no longer necessary for the fulfillment of the purpose for which it was collected. Timely elimination of data is the ultimate protection against misuse or unauthorized disclosure.'').

[295] *See* 15 U.S.C. 6502(b)(1)(D).

[296] EPIC (comment 41, 2011 NPRM), at 4–5; Institute for Public Representation (comment 71, 2011 NPRM), at 42–43; Sarah Kirchner (comment 82, 2011 NPRM); Privacy Rights Clearinghouse (comment 131, 2011 NPRM), at 2–3.

[297] Institute for Public Representation, *supra* note 296, at 42–43.

[298] *See* EPIC (comment 41, 2011 NPRM), at 12; Privacy Rights Clearinghouse (comment 131, 2011 NPRM), at 2–3.

[299] American Association of Advertising Agencies (comment 2, 2011 NPRM), at 3; DMA (comment 37, 2011 NPRM), at 27; NCTA (comment 113, 2011 NPRM), at 21; National Retail Federation (comment 114, 2011 NPRM), at 4; TRUSTe (comment 164, 2011 NPRM), at 11–12; Yahoo! (comment 180, 2011 NPRM), at 15–16.

[300] *See* DMA (comment 37, 2011 NPRM), at 26; Yahoo! (comment 180, 2011 NPRM), at 15.

[301] *See* National Retail Federation (comment 114, 2011 NPRM), at 4; TRUSTe (comment 164, 2011 NPRM), at 12.

[302] For this reason, the Commission declines to adopt the Institute for Public Representation's request that it require companies to delete children's personal information within three months. *See* Institute for Public Representation (comment 71, 2011 NPRM), at 43.

[303] 16 CFR 312.7.

[304] 16 CFR 312.8.

[305] *See* 15 U.S.C. 6503.

COPPA's substantive provisions.[306] COPPA's safe harbor provision also was intended to reward operators' good faith efforts to comply with COPPA. The Rule therefore provides that operators fully complying with an approved safe harbor program will be ''deemed to be in compliance'' with the Rule for purposes of enforcement. In lieu of formal enforcement actions, such operators instead are subject first to the safe harbor program's own review and disciplinary procedures.[307]

In the 2011 NPRM, the Commission proposed several significant substantive changes to the Rule's safe harbor provision to strengthen the Commission's oversight of participating safe harbor programs. The proposed changes include a requirement that applicants seeking Commission approval of self-regulatory guidelines submit comprehensive information about their capability to run an effective safe harbor program. The changes also establish more rigorous baseline oversight by Commission-approved safe harbor programs of their members. In addition, the changes require Commission-approved safe harbor programs to submit periodic reports to the Commission. The Commission also proposed certain structural and linguistic changes to increase the clarity of the Rule's safe harbor provision.[308]

The Commission received several comments regarding the proposed changes, including comments from all four of the COPPA safe harbor programs the Commission had approved by 2011,[309] as well as from several other industry associations.[310] With the exception of a few areas discussed below, commenters favorably viewed the Commission's proposed revisions.[311] First, among commenters who mentioned them, there was uniform support for the proposed revised criteria for approval of self-regulatory guidelines, which would mandate that (at a minimum) safe harbor programs conduct annual, comprehensive reviews of each of their members' information practices.[312] Accordingly, the Commission retains paragraph (b)(2) (''Criteria for approval of self-regulatory guidelines'') without change from its 2011 proposal.

In paragraph (c) (''Request for Commission approval of self-regulatory program guidelines''), the Commission proposed requiring applicants to explain in detail their business model and their technological capabilities and mechanisms for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program. Again, commenters who mentioned it uniformly supported this change.[313] Accordingly, the Commission revises paragraph (c) (''Request for Commission approval of self-regulatory program guidelines'') without change from its 2011 proposal.

The response to the 2011 proposal for periodic reporting by safe harbors to the Commission (paragraph (d)) was more ambivalent.[314] While commenters generally supported stronger Commission oversight of safe harbor activities post-approval, they were concerned that a requirement forcing safe harbors to ''name names'' of violative member operators would chill the programs' abilities to recruit and retain members, and generally would be counter to notions of self-regulation.[315]

The Commission continues to believe that there is great value in receiving regular reports from its approved safe harbor programs. It is persuaded, however, that these reports need not name the member operators who were subject to a safe harbor's annual comprehensive review. Rather, the Commission has revised paragraph (d) to permit safe harbors to submit a report to the Commission containing an *aggregated summary* of the results of the independent assessments conducted under paragraph (b)(2). In addition, to simplify matters, the Commission has changed the required reporting period to an *annual* requirement rather than one occurring every eighteen months after the first annual report.[316] Therefore, the Commission amends paragraph (d) of the safe harbor provision so that it reads as set forth at § 312.11(d) in the regulatory amendments of this rule.

III. Final Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act of 1980 (''RFA'')[317] requires a description and analysis of proposed and final Rules that will have significant economic impact on a substantial number of small entities. The RFA requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with the proposed Rule, and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final Rule.[318] The Commission is not required to make such analyses if a Rule would not have such an economic effect.[319] As described below, the Commission anticipates the final Rule amendments will result in more Web sites and online services being subject to the Rule and to the Rule's disclosure and other compliance requirements. As discussed in Part IV.C, below, the Commission believes that a high proportion of operators of Web sites and online services potentially affected by

[306] *See* 2011 NPRM, 76 FR at 59822 (citing the 1999 Statement of Basis and Purpose, 64 FR at 59906).

[307] *See* 16 CFR 312.10(a) and (b)(4).

[308] *See* 2011 NPRM, 76 FR at 59822–24.

[309] CARU (comment 20, 2011 NPRM); Entertainment Software Rating Board (''ESRB'') (comment 48, 2011 NPRM); Privo (comment 132, 2011 NPRM); TRUSTe (comment 164, 2011 NPRM).

[310] DMA (comment 37, 2011 NPRM); IAB (comment 73, 2011 NPRM); kidSAFE Seal Program (comment 81, 2011 NPRM).

[311] *See, e.g.,* CARU (comment 20, 2011 NPRM), at 2 (''In general, CARU believes that most of the proposed modifications will not only strengthen the safe harbor program, but will facilitate and enhance the Commission's named goals of reliability, accountability, transparency and sustainability.'').

[312] CARU (comment 20, 2011 NPRM), at 3; ESRB (comment 48, 2011 NPRM), at 2; kidSAFE Seal Program (comment 81, 2011 NPRM), at 20; TRUSTe (comment 164, 2011 NPRM), at 12.

[313] *See, e.g.,* kidSAFE Seal Program (comment 81, 2011 NPRM), at 20 (''KSP supports this change and believes more detailed information during the application process will give the FTC greater comfort regarding the operations of safe harbor programs''); *see also* CARU (comment 20, 2011 NPRM), at 3; ESRB (comment 48, 2011 NPRM), at 3; TRUSTe (comment 164, 2011 NPRM), at 13. One commenter sought assurance that such materials will be treated confidentially. kidSAFE Seal Program (comment 81, 2011 NPRM), at 20. Safe harbor applicants may designate materials as ''confidential,'' and the Commission will apply the same standards of confidentiality to such materials as it does to other voluntary submissions. *See* 15 U.S.C. 46(f) and 57b–2, and the Commission's Rules of Practice 4.10–4.11, 16 CFR 4.10–4.11.

[314] The proposed change would have required safe harbor programs to submit periodic reports—within one year after the revised Rule goes into effect and every eighteen months thereafter—of the results of the independent audits under revised paragraph (b)(2) and of any disciplinary actions taken against member operators. *See* 2011 NPRM, 76 FR at 59823.

[315] *See* CARU (comment 20, 2011 NPRM), at 3 (''Much of the value of self-regulation is that issues can be handled quickly and effectively. The reporting of 'any' action taken against a Web site operator may have a chilling effect on Web site operators' willingness to raise compliance issues themselves''); DMA (comment 37, 2011 NPRM), at 26 (''Based on feedback from our members, the DMA has reason to believe that this revision would decrease interest and participation in the safe harbor programs in contravention of the Commission's goal of increasing safe harbor participation''); *see also* ESRB (comment 48, 2011 NPRM), at 4; IAB (comment 73, 2011 NPRM), at 14; kidSAFE Seal Program (comment 81, 2011 NPRM), at 20; Privo (comment 132, 2011 NPRM), at 8; TRUSTe (comment 164, 2011 NPRM), at 13.

[316] The kidSAFE Seal Program also sought to limit the Rule's reporting requirements to ''material'' descriptions of disciplinary action taken against member operators (paragraph (d)(1)), ''reasonable'' Commission requests for additional information (paragraph (d)(2)), and ''material'' consumer complaints (paragraph (d)(3)). *See* kidSAFE Seal Program (comment 81, 2011 NPRM), at 21. The Commission believes that such limitations are unnecessary and that the wording of the requirements in revised paragraph (d) will not be overly burdensome for compliance by safe harbor programs.

[317] 5 U.S.C. 601–612.

[318] *See* 5 U.S.C. 603–04.

[319] *See* 5 U.S.C. 605.

these revisions are small entities as defined by the RFA.

As described in Part I.B above, in September 2011, the Commission issued a Notice of Proposed Rulemaking setting forth proposed changes to the Commission's COPPA Rule. The Commission issued a Supplemental Notice of Proposed Rulemaking in August 2012 in which the Commission proposed additional and alternative changes to the Rule. In both the 2011 NPRM and 2012 SNPRM, the Commission published IRFAs and requested public comment on the impact on small businesses of its proposed Rule amendments. The Commission received approximately 450 comments, combined, on the changes proposed in the 2011 NPRM and the 2012 SNPRM. Numerous comments expressed general concern that the proposed revisions would impose costs on businesses, including small businesses;[320] few comments discussed the specific types of costs that the proposed revisions might impose, or attempted to quantify the costs or support their comments with empirical data.

In the 2011 NPRM and 2012 SNPRM, the Commission proposed modifications to the Rule in the following five areas: Definitions, Notice, Parental Consent, Confidentiality and Security of Children's Personal Information, and Safe Harbor Programs. The Commission proposed modifications to the definitions of *operator, personal information, support for internal operations,* and *Web site or online service directed to children.* Among other things, the proposed definition of *personal information* was revised to include persistent identifiers where they are used for purposes other than support for internal operations, and to include screen and user names where they function as online contact information. In addition, the Commission proposed adding a new Section to the Rule regarding data retention and deletion.

The Commission shares the concern many commenters expressed that operators be afforded enough time to implement changes necessary for them to comply with the final Rule amendments.[321] Accordingly, the final Rule will go into effect on July 1, 2013.

[320] *See, e.g.,* D. Russell-Pinson (comment 81, 2012 SNPRM), at 1; Ahmed Siddiqui (comment 83, 2012 SNPRM), at 1; Mindy Douglas (comment 29, 2012 SNPRM), at 1; Karen Robertson (comment 80, 2012 SNPRM), at 1; R. Newton (comment 118, 2011 NPRM), at 1.

[321] *See* DMA (comment 37, 2011 NPRM), at 17; National Cable & Telecommunications Association (comment 113, 2011 NPRM), at 15–16.

A. Need for and Objectives of the Final Rule Amendments

The objectives of the final Rule amendments are to update the Rule to ensure that children's online privacy continues to be protected, as directed by Congress, even as new online technologies evolve, and to clarify existing obligations for operators under the Rule. The legal basis for the final Rule amendments is the Children's Online Privacy Protection Act, 15 U.S.C. 6501 *et seq.*

B. Significant Issues Raised by Public Comments, Summary of the Agency's Assessment of These Issues, and Changes, if Any, Made in Response to Such Comments

In the IRFAs, the Commission sought comment regarding the impact of the proposed COPPA Rule amendments and any alternatives the Commission should consider, with a specific focus on the effect of the Rule on small entities. As discussed above, the Commission received hundreds of comments in response to the rule amendments proposed in the NPRM and SNPRM. The most significant issues raised by the public comments, including comments addressing the impacts on small businesses, are set forth below. While the Commission received numerous comments about the compliance burdens and costs of the rules, the Commission did not receive much quantifiable information about the nature of the compliance burdens. The Commission has taken the costs and burdens of compliance into consideration in adopting these amendments.

(1) Definitions

Definition of Collects or Collection

As described above in Part II.A.1.b., the Commission proposed amendments to the Rule provision that allows sites and services to make interactive content available to children, without providing parental notice and obtaining consent, if *all* personal information is deleted prior to posting. The Commission proposed replacing this 100% deletion standard with a ''reasonable measures'' standard to further enable sites and services to make interactive content available to children, without providing parental notice and obtaining consent, thereby reducing burdens on operators. Most comments favored the ''reasonable measures'' standard, and the Commission has adopted it.

Definitions of Operator and Web Site or Online Service Directed to Children

As discussed above in Part II.A.4., the Commission's proposed rule changes clarify the responsibilities under COPPA when independent entities or third parties, *e.g.,* advertising networks or downloadable plug-ins, collect information from users through child-directed sites and services. Under the proposed revisions, the child-directed content provider would be strictly liable for personal information collected from its users by third parties. The Commission also proposed imputing the child-directed nature of the content site to the entity collecting the personal information if that entity knew or had reason to know that it was collecting personal information through a child-directed site. Most of the comments opposed the Commission's proposed modifications. Some of these commenters asserted that the proposed revisions would impracticably subject new entities to the Rule and its compliance costs.[322]

With some modifications to the proposed Rule language, the Commission has retained the proposed strict liability standard for child-directed content providers that allow third parties to collect personal information from users of the child-directed sites, as discussed in Part II.A.5.b. The Commission recognizes the potential burden that strict liability places on child-directed content providers, particularly small app developers, but believes that the potential burden will be eased by the changes to the definitions of persistent identifier and *support for internal operations* adopted in the Final Rule, as well as the exception to notice and parental consent—§ 312.5(c)(7)—where an operator collects only a persistent identifier only to support its internal operations. Further, in light of the comments received, the Commission revised the language proposed in the 2012 SNPRM to clarify that the language describing ''on whose behalf'' does not encompass platforms, such as Google Play or the App Store, that offer access to someone else's child-directed content. Also in light of the comments received, the Commission deemed third-party plug-ins to be co-operators only where they have actual knowledge that

[322] *See, e.g.,* Application Developers Alliance (comment 5, 2012 SNPRM), at 3–5; Association for Competitive Technology (comment 7, 2012 SNPRM), at 3–5; Center for Democracy & Technology (''CDT'') (comment 15, 2012 SNPRM), at 4–5; DMA (comment 28, 2012 SNPRM), at 5, 17; J. Garrett (comment 38, 2012 SNPRM), at 1; L. Mattke (comment 63, 2012 SNPRM); S. Weiner (comment 97, 2012 SNPRM), at 1–2.

they are collecting personal information from users of a child-directed site. This change will likely substantially reduce the number of operators of third-party plug-ins, many of whom are small businesses, who must comply with the Rule in comparison to the proposal in the 2012 SNPRM. In response to comments requesting it, the Commission is also providing guidance in Part II.A.4.b. above as to when it believes this ''actual knowledge'' standard will likely be met.

Definition of Online Contact Information

The Commission proposed clarifications to the definition of *online contact information* to flag that the term broadly covers all identifiers that permit direct contact with a person online and to ensure consistency between the definition of *online contact information* and the use of that term within the definition of *personal information.* The proposed revised definition identified commonly used online identifiers, including email addresses, instant messaging (''IM'') user identifiers, voice over Internet protocol (''VOIP'') identifiers, and video chat user identifiers, while also clarifying that the list of identifiers was non-exhaustive. This amendment, which serves to clarify the definition, should not increase operators' burden.

Definition of Personal Information

a. Screen or User Names

As described above, the Commission in the 2011 NPRM proposed modifications to the inclusion of screen names in the definition of personal information. Numerous commenters expressed concern that the Commission's screen-name proposal would unnecessarily inhibit functions that are important to the operation of child-directed Web sites and online services. In response to this concern, the 2012 SNPRM proposed covering screen names as *personal information* only in those instances in which a screen or user name rises to the level of *online contact information.* As discussed in Part II.A.5.a., the Commission has adopted the proposal in the SNPRM. The revision permits operators to use anonymous screen and user names in place of individually identifiable information, including use for content personalization, filtered chat, for public display on a Web site or online service, or for operator-to-user communication via the screen or user name. Moreover, the definition does not reach single log-in identifiers that permit children to transition between devices or access related properties across multiple platforms. Thus, the provision for screen or usernames does not create any additional compliance burden for operators.

b. Persistent Identifiers and Support for Internal Operations

In the 2011 NPRM, and again in the 2012 SNPRM, the Commission proposed broadening the definition of personal information to include persistent identifiers, except where used to support the internal operations of the site or service. Numerous commenters opposed the inclusion of persistent identifiers, while others sought to broaden the definition of support for internal operations to allow for more covered uses of persistent identifiers. Some commenters maintained that, to comply with COPPA's notice and consent requirements in the context of persistent identifiers, sites would be burdened to collect more personal information on their users, which is also contrary to COPPA's goals of data minimization.[323] As set forth in Part II.A.5.b, the Commission believes that persistent identifiers permit the online contacting of a specific individual and thus are personal information. However, the Commission recognizes that including persistent identifiers within the definition of personal information may impose a burden on some operators to provide notice to parents and obtain consent under circumstances where they previously had no COPPA obligation. The Commission also recognizes that persistent identifiers are used for a host of functions that are unrelated to contacting a specific individual and fundamental to the smooth functioning of the Internet, the quality of the site or service, and the individual user's experience. Thus, the final Rule further restricts the proposed definition of *persistent identifiers* to ''a persistent identifier that can be used to recognize a user over time *and* across different Web sites or online services, where such persistent identifier is used for functions other than or in addition to support for the internal operations of the Web site or online service.'' (Emphasis added.) The Final Rule also modifies the definition of *support for internal operations* to broaden the list of activities covered within this category. As a result of these modifications, fewer uses of persistent identifiers will be covered in the Final Rule than in the proposals, thereby resulting in fewer operators being subject to the final Rule amendments.

c. Photographs, Videos, and Audio Files

In the 2011 NPRM, the Commission proposed creating a new category within the definition of *personal information* covering a photograph, video, or audio file where such file contains a child's image or voice. Some commenters supported this proposal; others were critical. The latter claimed that the proposal's effect would limit children's participation in online activities involving ''user-generated content,'' that photos, videos, and/or audio files, in and of themselves, do not permit operators to locate or contact a child, or that the Commission's proposal is premature.[324] The Commission determined, as discussed in Part II.A.5.c, that such files meet the standard for ''personal information'' set forth in the COPPA statute. While recognizing that defining *personal information* to include photos, videos, and/or audio files may affect a limited number of operators, this is warranted given the inherently personal nature of this content.

d. Geolocation Information

In the 2011 NPRM, the Commission stated that, in its view, existing paragraph (b) of the definition of *personal information* already covered any geolocation information that provides precise enough information to identify the name of a street and city or town. To make this clear, the Commission has made geolocation information a stand-alone category within the definition of *personal information.* Thus, this amendment should impose little or no additional burden on operators.

Definition of Web Site or Online Service Directed to Children

In the 2012 SNPRM, the Commission proposed revising the definition of Web site or online service directed to children to allow a subset of sites falling within that category an option not to treat all users as children. However, several commenters expressed concern and confusion that the proposed amendment would expand COPPA's reach to sites or services not previously covered under the definition of Web site directed to children, and thus would be likely to impose COPPA's burdens on

[323] Facebook (comment 33, 2012 SNPRM), at 9–10; Google (comment 41, 2012 SNPRM), at 5; J. Holmes (comment 47, 2012 SNPRM).

[324] *See* National Cable & Telecommunications Association (comment 113, 2011 NPRM), at 16; Wired Trust (comment 177, 2011 NPRM), at 10; Toy Industry Association (comment 163, 2011 NPRM), at 14; Privo (comment 132, 2011 NPRM), at 7; *see also* Center for Democracy and Technology (comment 17, 2011 NPRM), at 7–8.

operators not previously covered by the Rule. The Commission has clarified in Part II.A.7 that it did not intend to expand the reach of the Rule to additional sites and services through the proposed revision, but rather to create a new compliance option for a subset of Web sites and online services already considered *directed to children* under the Rule's totality of the circumstances standard. The Commission also clarified when a child-directed site would be permitted to age-screen to differentiate among users, thereby providing further guidance to businesses. This amendment will ease compliance burdens on operators of sites or services that qualify to age-screen their visitors. In addition, the Commission has made further clarifying edits to the definition of *Web site or online service directed to children* to incorporate the ''actual knowledge'' standard for plug-ins or ad networks, as discussed above.

(2) Section 312.4: Notice

Direct Notice to a Parent

The Commission proposed refining the Rule requirements for the direct notice to ensure a more effective ''just-in-time'' message to parents about an operator's information practices. Commenters generally supported the Commission's proposed changes as providing greater clarity and simplicity to otherwise difficult-to-understand statements. The Commission adopted the proposed modification but, in light of suggestions in the comments, reorganized the paragraphs to provide a better flow and guidance for operators.

Notice on the Web Site or Online Service

The Commission proposed to change the Rule's online notice provision to require all operators collecting, using, or disclosing information on a Web site or online service to provide contact information, including, at a minimum, the operator's name, physical address, telephone number, and email address. This proposal marked a change from the existing Rule's ''single operator designee'' proviso that such operators could designate one operator to serve as the point of contact. Almost all commenters who spoke to the issue opposed mandating that the online notice list all operators. Among the varied reasons cited in opposition to this change was the potential burden on operators. After considering the comments, the Commission has determined to retain the Rule's ''single operator designee'' proviso.

(3) Section 312.5: Parental Consent

Based on input the Commission received at its June 2, 2010 COPPA roundtable and comments to the 2010 FRN, in the 2011 NPRM the Commission proposed several significant changes to the mechanisms of verifiable parental consent set forth in paragraph (b) of § 312.5. These included recognizing electronic scans of signed consent forms, video conferencing, government-issued ID, and a credit card in connection with a monetary transaction as additional mechanisms for operators to obtain parental consent. In response to comments, the Commission also adopted amendments to allow the use of other payment systems, in addition to credit cards, in connection with a monetary transaction as verifiable parental consent, provided that any such payment system notifies the primary account holder of each discrete transaction. These changes provide operators with further flexibility in complying with the Rule.

The Commission also proposed eliminating the sliding scale (''email plus'') approach to parental consent for operators collecting personal information only for *internal* use. As discussed in Part II.C.7, most commenters urged the Commission to retain email plus, in part because they asserted it is more affordable and less burdensome for operators to use than other approved methods for obtaining consent. Persuaded by the weight of the comments, the Commission retained email plus as an acceptable consent method for internal use of personal information, thereby providing operators with the choice of a mechanism many deem useful and affordable.

Finally, the Commission also added two new voluntary processes for evaluation and pre-clearance of parental consent mechanisms: use of an FTC preapproval process and use of a safe harbor program for such purpose. The availability of these voluntary pre-clearance mechanisms may provide benefits to participating operators in reducing the burden associated with the start-up of a new COPPA compliance mechanism.

(4) Section 312.8: Confidentiality, Security, and Integrity of Personal Information Collected From Children

In 2011, the Commission proposed amending § 312.8 of the Rule to require that operators take reasonable measures to ensure that any *service provider* or *third party* to whom they release children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information. Although many commenters supported this proposal, some raised concerns about the language ''reasonable measures'' and ''ensure.'' Other commenters opposed the requirement as unduly onerous on small businesses. The Commission found merit in the concerns expressed about the difficulty operators may face in ''ensuring'' that any service provider or third party has in place reasonable confidentiality and security procedures. Thus, the Commission has lessened the burden on operators that would have been imposed by the earlier proposal by requiring operators to take reasonable steps to release personal information only to service providers and third parties capable of maintaining it securely.

(5) Section 312.10: Data Retention and Deletion Requirements

The Commission also has added a data retention and deletion provision (new Section 312.10) to the Rule to require operators to anticipate the reasonable lifetime of the personal information they collect from children, and apply the same concepts of data security to its disposal as they are required to do with regard to its collection and maintenance. While several commenters supported this provision, several others objected to it as unnecessary, vague, or unduly prescriptive.[325] These commenters especially objected to the burden imposed by the combination of the data retention and deletion provision with the proposed expansion of the definition of *personal information* to include persistent identifiers. The Commission believes these concerns are not warranted in light of the language of the final Rule amendments, and that this requirement should not add significantly to operators' burdens.

(6) Section 312.11: Safe Harbors

The Commission proposed changing the Rule's safe harbor provision to strengthen the Commission's oversight of participating safe harbor programs. Among other things, the Commission proposed requiring those programs to submit periodic reports to the Commission. Commenters generally viewed the proposed revisions favorably, but expressed concern that the proposed language requiring safe harbors to name violative member operators, would chill participation in the programs. Heeding these concerns,

[325] *See, e.g.,* DMA (comment 37, 2011 NPRM), at 27; Toy Industry Association (comment 163, 2011 NPRM), at 16–17.

the Commission will not require regular reports from approved safe harbor programs to name the member operators who were subject to a safe harbor's annual comprehensive review. The final Rule amendments instead will require safe harbor programs to submit an aggregated summary of the results of the annual, comprehensive reviews of each of their members' information practices. These amendments ensure the effectiveness of the safe harbor programs upon which numerous operators rely for assistance in their compliance with COPPA.

C. Description and Estimate of the Number of Small Entities Subject to the Final Rule or Explanation Why No Estimate Is Available

The revised definitions in the Final Rule will affect operators of Web sites and online services directed to children, as well as those operators that have actual knowledge that they are collecting personal information from children. The Final Rule amendments will impose costs on entities that are ''operators'' under the Rule. The Commission staff is unaware of any comprehensive empirical evidence concerning the number of operators subject to the Rule. However, based on the public comments received and the modifications adopted here, the Commission staff estimates that approximately 2,910 existing operators may be subject to the Rule's requirements and that there will be approximately 280 new operators per year for a prospective three-year period.

Under the Small Business Size Standards issued by the Small Business Administration, ''Internet publishing and broadcasting and web search portals'' qualify as small businesses if they have fewer than 500 employees.[326] Consistent with the estimate set forth in the 2012 SNPRM, Commission staff estimates that approximately 85–90% of operators potentially subject to the Rule qualify as small entities. The Commission staff bases this estimate on its experience in this area, which includes its law enforcement activities, discussions with industry members, privacy professionals, and advocates, and oversight of COPPA safe harbor programs. This estimate is also consistent with the sole comment that attempted to quantify how many operators are small entities.[327]

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule Amendments, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Rule and the Type of Professional Skills That Will Be Necessary To Comply

The final Rule amendments will likely increase certain disclosure and other compliance requirements for covered operators. In particular, the requirement that the direct notice to parents include more specific details about an operator's information collection practices, pursuant to a revised § 312.4 (Notice), would impose a one-time cost on operators. The addition of language in § 312.8 (confidentiality, security, and integrity of personal information collected from children) will require operators to ''take reasonable steps'' to release children's personal information only to third parties capable of maintaining its confidentiality, security, and integrity, and who provide assurances that they will do so. The final Rule amendments contain additional reporting requirements for entities voluntarily seeking approval to be a COPPA safe harbor self-regulatory program, and additional compliance requirements for all Commission-approved safe harbor programs. Each of these improvements to the Rule may entail some added cost burden to operators, including those that qualify as small entities, but the Commission has considered these burdens and responded to commenters as described in Part III.C., above.

The revisions to the Rule's definitions will also likely increase the number of operators subject to the final Rule amendments' disclosure and other compliance requirements. In particular, the revised definition of *operator* will cover additional child-directed Web sites and online services that choose to integrate plug-ins or advertising networks that collect personal information from visitors. Similarly, the addition of paragraph (2) to the definition of *Web site or online service directed to children,* which clarifies that the Rule covers a Web site or online service that has actual knowledge that it is collecting personal information directly from users of a Web site or online service directed to children, will potentially cover additional Web sites and online services. These amendments may entail some added cost burden to operators, including those that qualify as small entities; however, as described above, other final Rule amendments will ease the burdens on operators and facilitate compliance.

The estimated burden imposed by these modifications to the Rule's definitions is discussed in the Paperwork Reduction Act section of this document, and there should be no difference in that burden as applied to small businesses. While the Rule's compliance obligations apply equally to all entities subject to the Rule, it is unclear whether the economic burden on small entities will be the same as or greater than the burden on other entities. That determination would depend upon a particular entity's compliance costs, some of which may be largely fixed for all entities (*e.g.,* Web site programming) and others that may be variable (*e.g.,* choosing to operate a family friendly Web site or online service), and the entity's income or profit from operation of the Web site or online service (*e.g.,* membership fees) or from related sources (*e.g.,* revenue from marketing to children through the site or service). As explained in the Paperwork Reduction Act section, in order to comply with the Rule's requirements, operators will require the professional skills of legal (lawyers or similar professionals) and technical (*e.g.,* computer programmers) personnel. As explained earlier, the Commission staff estimates that there are approximately 2,910 Web site or online services that would qualify as *operators* under the final Rule amendments, that there will be approximately 280 new operators per year for a three-year period, and that approximately 85–90% of all such operators would qualify as small entities under the SBA's Small Business Size standards.

E. Steps the Agency Has Taken To Minimize Any Significant Economic Impact on Small Entities, Consistent With the Stated Objectives of the Applicable Statute

In drafting the amendments to the Rule's definitions, the Commission has attempted to avoid unduly burdensome requirements for all entities, including small businesses. The Commission believes that the final Rule amendments will advance the goal of children's online privacy in accordance with COPPA. For each of the modifications, the Commission has taken into account the concerns evidenced by the record. On balance, the Commission believes that the benefits to children and their parents outweigh the costs of implementation to industry.

The Commission has considered, but has decided not to propose, an

[326] *See* U.S. Small Business Administration Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[327] Association for Competitive Technology (comment 7, 2012 SNPRM), at 2 (ACT's research ''found that 87% of educational apps are created by companies qualifying as 'small' by SBA guidelines''). ACT gave only limited information about how it calculated this figure.

exemption for small businesses. The primary purpose of COPPA is to protect children's online privacy by requiring verifiable parental consent before an operator collects personal information. The record and the Commission's enforcement experience have shown that the threats to children's privacy are just as great, if not greater, from small businesses or even individuals than from large businesses.[328] Accordingly, an exemption for small businesses would undermine the very purpose of the statute and Rule.

Nonetheless, the Commission has taken care in developing the final Rule amendments to set performance standards that regulated entities must achieve, but provide them with the flexibility to select the most appropriate, cost-effective, technologies to achieve COPPA's objective results. For example, the Commission has retained the standard that verifiable parental consent may be obtained via any means reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent. The new requirements for maintaining the security of children's personal information and deleting such information when no longer needed do not mandate any specific means to accomplish those objectives. The Commission has adopted the ''reasonable measures'' standard enabling operators to use competent filtering technologies to prevent children from publicly disclosing personal information, which the Commission believes will make it easier for operators to avoid the collection of children's personal information. The new definition of *support for internal operations* is intended to provide operators with the flexibility to collect and use personal information for purposes consistent with ordinary operation, enhancement, or security measures. Moreover, the changes to *Web site or online service directed to children* should provide greater flexibility to ''family friendly'' sites and services in developing mechanisms to provide the COPPA protections to child visitors.

[328] *See, e.g.,United States* v. *RockYou, Inc.,* No. 3:12–cv–01487–SI (N.D. Cal., entered Mar. 27, 2012); *United States* v. *Godwin,* No. 1:11–cv–03846–JOF (N.D. Ga., entered Feb. 1, 2012); *United States* v. *W3 Innovations, LLC,* No. CV–11–03958 (N.D. Cal., filed Aug. 12, 2011); *United States* v. *Industrious Kid, Inc.,* No. CV–08–0639 (N.D. Cal., filed Jan. 28, 2008); *United States* v. *Xanga.com, Inc.,* No. 06–CIV–6853 (S.D.N.Y., entered Sept. 11, 2006); *United States* v. *Bonzi Software, Inc.,* No. CV–04–1048 (C.D. Cal., filed Feb. 17, 2004); *United States* v. *Looksmart, Ltd.,* No. 01–605–A (E.D. Va., filed Apr. 18, 2001); *United States* v. *Bigmailbox.Com, Inc.,* No. 01–606–B (E.D. Va., filed Apr. 18, 2001).

IV. Paperwork Reduction Act

The existing Rule contains recordkeeping, disclosure, and reporting requirements that constitute''information collection requirements'' as defined by 5 CFR 1320.3(c) under the OMB regulations that implement the Paperwork Reduction Act (APRA''), as amended, 44 U.S.C. 3501 *et seq.* OMB has approved the Rule's existing information collection requirements through July 31, 2014. In accordance with the PRA, the Commission is seeking OMB approval of the final Rule amendments under OMB Control No. 3084–0117. The disclosure, recordkeeping, and reporting requirements under the final Rule amendments discussed above constitute''collections of information'' for purposes of the PRA.

Upon publication of the 2011 NPRM and the 2012 SNPRM, the FTC submitted the proposed Rule amendments and a Supporting Statement to OMB. In response, OMB filed comments (dated October 27, 2011 and August 10, 2012) indicating that it was withholding approval pending the Commission's examination of the public comments in response to the 2011 NPRM and 2012 SNPRM. The remainder of this section sets forth a revised PRA analysis, factoring in relevant public comments and the Commission's resulting or self-initiated changes to the proposed Rule.

A. Practical Utility

According to the PRA,''practical utility'' is'' the ability of an agency to use information, particularly the capability to process such information in a timely and useful fashion.'' [329] The Commission has maximized the practical utility of the new disclosure (notice) and reporting requirements contained in the final Rule amendments, consistent with the requirements of COPPA.

(1) Disclosure Requirements

The final Rule amendments to Section 312.4(c) more clearly articulate the specific information that operators' direct notices to parents must include about their information collection and use practices. The succinct, ''just-in-time'' notices will present key information to parents to better enable them to determine whether to permit their children to provide personal information online, seek access from a Web site or online service operator to review their children's personal information, and object to any further collection, maintenance, or use of such information. The final Rule amendments to the definitions of *operator* and *Web site or online service directed to children* in Section 312.2 will better ensure that parents are provided notice when a child-directed site or service chooses to integrate into its property other services that collect visitors' personal information. For example, the final Rule amendment to the definition of *operator* clarifies that child-directed Web sites that do not collect personal information from users, but that employ downloadable software plug-ins or permit other entities, such as advertising networks, to collect personal information directly from their users, are covered operators with responsibility for providing parental notice and obtaining consent. Additionally, the changes to the definition of *Web site or online service directed to children,* among other things, will clarify that the Rule covers a plug-in or ad network where it has actual knowledge that it is collecting personal information directly from users of a child-directed Web site or online service.

To avoid obscuring the most meaningful, material information for consumers, however, the Commission removed a previously proposed requirement, set forth in the 2011 NPRM, that *all* operators collecting, using, or disclosing information on a Web site or online service must provide contact information.[330] The Commission retained the existing Rule's proviso that such operators could designate one operator to serve as the point of contact. For the same reason, the Commission has streamlined the Rule's online notice requirement to require a simple statement of: (1) What information the operator collects from children, including whether the Web site or online service enables a child to make personal information publicly available; (2) how the operator uses such information; and (3) the operator's disclosure practices for such information.[331] As a part of this revision, the Commission also removed the required statement that the operator may not condition a child's participation in an activity on the child's disclosure of more personal

[329] 44 U.S.C. 3502(11). In determining whether information will have ''practical utility,'' OMB will consider ''whether the agency demonstrates actual timely use for the information either to carry out its functions or make it available to third-parties or the public, either directly or by means of a third-party or public posting, notification, labeling, or similar disclosure requirement, for the use of persons who have an interest in entities or transactions over which the agency has jurisdiction.'' 5 CFR 1320.3(l).

[330] 2011 NPRM, 76 FR at 59815.

[331] *See id.*

information than is reasonably necessary to participate in such activity.[332]

(2) Reporting Requirements

As stated above, the Commission believes that there is great value in receiving annual reports from its approved safe harbor programs. Obtaining this information (in addition to the Commission's right to access program records) will better ensure that all safe harbor programs keep sufficient records and that the Commission is routinely apprised of key information about the safe harbors' programs and membership oversight. Further, requiring annual reports to include a description of any safe harbor approvals of new parental consent mechanisms will inform the Commission of the emergence of new feasible parental consent mechanisms for operators. Additionally, the final Rule amendments impose more stringent requirements for safe harbor applicants' submissions to the Commission to better ensure that applicants are capable of administering effective safe harbor programs.

Thus, given the justifications stated above for the amended disclosure and reporting requirements, the final Rule amendments will have significant practical utility.

B. Explanation of Estimated Incremental Burden Under the Final Rule Amendments

1. Disclosure: 69,000 hours (for new and existing operators, combined).
2. Reporting: 720 hours (one-time burden, annualized, and recurring).
3. Labor Costs: $21,508,900.
4. Non-Labor/Capital Costs: $0.

Estimating PRA burden of the final Rule amendments' requirements depends on various factors, including the number of firms operating Web sites or online services directed to children or having actual knowledge that they are collecting or maintaining personal information from children, and the number of such firms that collect persistent identifiers for something other than support for the internal operations of their Web sites or online services.

In its 2011 NPRM PRA analysis, FTC staff estimated that there were then approximately 2,000 operators subject to the Rule. Staff additionally stated its belief that the number of operators subject to the Rule would not change significantly as a result of the proposed revision to the definition of *personal information* proposed in the 2011 NPRM.[333] Staff believed that altering that definition would potentially increase the number of operators, but that the increase would be offset by other proposed modifications. These offsets included provisions allowing the use of persistent identifiers to support the internal operations of a Web site or online service, and permitting the use of ''reasonable measures,'' such as automated filtering, to strip out personal information before posting children's content in interactive venues. The 2011 NPRM PRA analysis also assumed that some operators of Web sites or online services will adjust their information collection practices so that they will not be collecting personal information from children.[334] In the 2011 NPRM PRA analysis, staff estimated that approximately 100 new operators per year [335] (over a prospective three-year OMB clearance [336]) of Web sites or online services would likely be covered by the Rule through the proposed modifications. No comments filed in response to the 2011 NPRM took direct issue with these estimates.[337] Commission staff also estimated that no more than one safe harbor applicant will submit a request within the next three years,[338] and this estimate has not been contested.

In its 2012 SNPRM PRA analysis, staff stated that the proposed modifications to the Rule would change the definitions of *operator* and *Web site or online service directed to children,* potentially increasing the number of operators subject to the Rule. Staff added, however, that the proposed amendments to the definitions of *support for internal operations* and *Web site or online service direct to children* should offset some of the effects of these other definitional expansions.[339] The 2012 SNPRM PRA analysis also assumed that some operators of Web sites or online services would adjust their information collection practices so that they would not be collecting personal information from children.[340] Based on those assumptions, FTC staff estimated that, in addition to the 2,000 existing operators already covered by the Rule (per the 2011 NPRM PRA analysis), there would be approximately 500 existing operators of Web sites or online services likely to be newly covered due to the proposed modifications.[341] Staff also estimated that 125 additional new operators per year (over a prospective three-year clearance) would be covered by the Rule through the proposed modifications. That was incremental to the previously cleared FTC estimate of 100 new operators per year for the then existing Rule.[342] The FTC's 2011 NPRM and 2012 SNPRM analyses thus cumulatively accounted for an estimated 2,500 existing operators and 225 new operators each year that would be subject to the proposed Rule amendments.[343]

Given the public comments received, the Commission now estimates, as detailed further below, that the final Rule amendments will cover 2,910 existing operators of Web sites or online services and 280 new operators per year.[344] These groups of covered operators would generally consist of certain traditional Web site operators, mobile app developers, plug-in developers, and advertising networks.

Existing Operators

The Commission received several comments directed to its estimates of the number of existing operators, all of which assert that the Commission significantly underestimated these

[332] *See id.*

[333] *Id.* at 59826.

[334] *Id.*

[335] *Id.*

[336] Under the PRA, agencies may seek from OMB a maximum three year clearance for a collection of information. 44 U.S.C. 3507(g).

[337] Likewise, no comments were received in response to the February 9, 2011 and May 31, 2011 **Federal Register** notices (76 FR 7211 and 76 FR 31334, respectively, *available at http://www.gpo.gov/fdsys/pkg/FR–2011–02–09/pdf/2011–2904.pdf* and *http://www.gpo.gov/fdsys/pkg/FR–2011–05–31/pdf/2011–13357.pdf*) seeking comment on the information requirements associated with the existing COPPA Rule and the FTC burden estimates for them. These notices included the Commission staff estimate that roughly 100 new web entrants each year will fall within the Rule's coverage.

[338] 2011 NPRM, 76 FR at 59826; *accord* 76 FR 7211 at 7213 and 76 FR at 31335.

[339] 2012 SNPRM, 77 FR at 46650.

[340] *Id.*

[341] *Id.*

[342] *Id.*

[343] Commenter Association for Competitive Technology therefore is mistaken in asserting that the ''FTC has estimated 500 existing education app makers will be affected by the proposed rule, and an additional 125 newly affected entities each successive year.'' Association for Competitive Technology (comment 7, 2012 SNPRM), at 2. The Commission's previous PRA analyses did not specifically estimate numbers of ''education app makers,'' and the commenter did not account for the Commission's 2011 NPRM estimate of 2,000 existing entities.

[344] Under the existing OMB clearance for the pre-amended Rule, however, the FTC had already accounted for an estimated 100 new operators each requiring approximately 60 hours to comply with the Rule. *See* 76 FR at 7211, 7212 (Feb. 9, 2011); 76 FR at 31334, 31335 (May 31, 2011). Thus, to avoid double-counting what has already been submitted to OMB and cleared, the ensuing calculations for new operators' disclosure burden account strictly for the difference between the revised population estimate (280) and the currently cleared estimate (100), *i.e.,* 180 additional new operators.

numbers.[345] The Association for Competitive Technology (''ACT'') cited data showing that as of September 2012, there were approximately 74,000 ''education'' apps in the iTunes App Store, and 30,000 in the Android market.[346] Based on its review of ''top'' apps, ACT calculated a ratio of 1.54 apps per developer of ''education'' apps in the iTunes App Store,[347] and that approximately 60% of apps in this category were directed to children under 13.[348] Based on this information, ACT calculated that approximately 28,800 app developers would be ''potentially affected'' by the proposed modifications to the Rule set forth in the 2011 NPRM and 2012 SNPRM.[349] One commenter, the moderator of an online group called ''Parents With Apps,'' stated that the group has more than 1,400 small developers of family-friendly apps as members.[350] Another commenter stated that the Silicon Valley Apps for Kids Meetup group had ''well over 500 members'' as of September 2012, and that ''the kids app market is incredibly vibrant with thousands of developers, over 500 of which'' are group members.[351]

Per the industry information source cited by ACT, the Commission believes that as of November 2012, there were approximately 75,000 education apps in the iTunes App Store and approximately 33,000 education apps in the Android market.[352] ACT's comment appears to suggest that it would be reasonable for the Commission to base its PRA estimate of the number of existing operators subject to the final Rule amendments on the number of ''Education'' app developers. The Commission agrees that developer activity in the ''Education'' category, to the extent it can be discerned through publicly available information, is a useful starting point for estimating the number of mobile app developers whose activities may bring them within coverage of the final Rule amendments. As discussed below, the Commission also looks to information about ''Education'' apps in the Google Play store, and apps in the game and entertainment categories in both the iTunes App Store and Google Play, as a basis for its estimates for this PRA analysis.[353]

Similar to what appears to have been ACT's methodology, Commission staff reviewed a list, generated using the desktop version of iTunes, of the Top 200 Paid and Top 200 Free ''Education'' apps in the iTunes App Store as of early November 2012. Based on the titles and a prima facie review of the apps' descriptions, staff believes that approximately 56% of them may be directed to children under 13.[354] Averaging this figure and ACT's 60% calculation, FTC staff estimates that 58% of ''Education'' Apps in the iTunes App Store may be directed to children under 13, meaning that 43,500 of those 75,000 ''Education'' apps may be directed to children under 13. To determine a ratio for the Education apps for the Android platform, Commission staff reviewed listings of the Top 216 Paid and Top 216 Free ''Education'' apps in the Google Play store as of mid-November 2012. Staff believes that approximately 42% of them may be directed to children under 13; 42% of 33,000 apps yields 13,860 apps that may be directed to children under 13. Adding these projected totals together yields 57,360 such apps for both platforms, combined.

It is unreasonable to assume, however, that all apps directed to children under 13 collect personal information from children, and that no developers only collect persistent identifiers in support for their internal operations. Data from the Mobile Apps for Kids II Report indicate that about 59% of the apps surveyed transmit device identification or other persistent identifiers, to their developers.[355] However, it is not clear how many of those app developers would be using those persistent identifiers in a way that would fall within the final Rule's amended definition of *personal information.* Indeed, the Commission believes, based on the comments received, that many developers would use such persistent identifiers to support internal operations as defined in the final Rule amendments and not for other purposes, such as behavioral advertising directed to children.[356] Furthermore, the Commission believes that some mobile app developers, like some other operators of Web sites or online services, will adjust their information collection practices so that they will not be collecting personal information from children. The data in the staff report do suggest, however, that approximately 3.5% of apps directed to children under 13 could be collecting location information or a device's phone number, thus making their developers more likely to be covered by the final Rule amendments.[357] The Commission believes it is reasonable to assume that an additional 1.5% of those apps could be collecting other personal information, including transmitting persistent identifiers to developers (or their partners) to use in ways that implicate COPPA. This results in an estimate of 5% of apps that may be directed to children under 13, *i.e.,* approximately 2,870 apps, that operate in ways that implicate the final Rule amendments.

To estimate the number of developers responsible for these apps,[358] Commission staff used the ''Browse'' function in iTunes, to generate a list of 6,000 apps in the ''Education'' category. Sorting that list by ''Genre'' generates a list of approximately 3,300 apps for which ''Education'' was listed as the ''Genre.'' Approximately 1,800 developers were listed in connection

[345] Association for Competitive Technology (comment 7, 2012 SNPRM), at 2–3; S. Weiner (comment 97, 2012 SNPRM), at 1–2; J. Garrett (comment 38, 2012 SNPRM), at 1; *see also* DMA (comment 28, 2012 SNPRM), at 17.

[346] Association for Competitive Technology (comment 7, 2012 SNPRM), at 2.

[347] *Id.* (''Unlike the game sector, where one developer may have several applications in the top 100, Educational Apps tended to be much closer to a one-to-one ratio between app and creator at 1.54 apps per developer.'').

[348] *Id.* ACT's comment does not describe the methodology it used to categorize apps as being directed to children under 13.

[349] *Id.* at 2–3.

[350] S. Weiner (comment 97, 2012 SNPRM), at 1–2.

[351] J. Garrett (comment 38, 2012 SNPRM), at 1.

[352] ''App Store Metrics,'' 148Apps.biz (accessed Nov. 14, 2012), *available at http://148apps.biz/app-store-metrics;* ''Android Statistic Top Categories,'' AppBrain (accessed Nov. 15, 2012), *available at http://www.appbrain.com/stats/android-market-app-categories.*

[353] Although there are other mobile app platforms and distribution channels, the Commission believes that the education, games, and entertainment categories in the iTunes App Store and the Google Play store adequately approximate the relevant universe of unique mobile app developers whose apps may be directed to children under 13.

[354] In estimating this percentage (and similar percentages throughout this section) for purposes of the PRA analysis, the Commission's staff attempted to err on the side of inclusion to count any apps that were likely to be used by children, whether independently or with parents' assistance. To ensure a generous accounting of operators potentially subject to the Rule, this estimate included, for example, even toddler apps unlikely to be used by children themselves without direct parental assistance.

[355] *See* Mobile Apps for Kids II Report, at 9–10, *supra* note 189.

[356] *See* L. Akemann (comment 2, 2012 SNPRM), at 1; DMA (comment 37, 2011 NPRM), at 7, 14; Scholastic (comment 144, 2011 NPRM), at 13–14; TRUSTe (comment 164, 2011 NPRM), at 5.

[357] *See* Mobile Apps for Kids II Report, at 5–6, 10, *supra* note 189 (14 of 400 apps tested transmitted the mobile device's geolocation or phone number). These apps also transmitted device identification.

[358] The Commission believes it is reasonable to assume, as ACT appears to, that developers responsible for multiple apps directed to children under 13 will typically have a single set of privacy practices, a single privacy policy to describe them, and will develop a single method of disclosing the information required by the final Rule amendments. Any marginal increase in developer burdens addressed in this PRA analysis arising from developers publishing additional apps is therefore not likely to be significant.

with these apps. Dividing 3,300 apps by 1,800 developers yields an iTunes education-apps-per-developer ratio of approximately 1.83,[359] and the Commission assumes this ratio would apply for Android apps, as well. Assuming a 1.83 education-apps-to-developer ratio, it appears that approximately 1,570 developers (2,870) 1.83) are responsible for apps directed to children under 13 that operate in ways likely to implicate the final Rule amendments.

At least one more adjustment to this total of approximately 1,570 potentially affected developers is warranted, however. Commission staff's research for its two Mobile Apps for Kids reports indicate that approximately 2.2% of developers of apps that may be directed to children under 13 develop apps for both iOS and Android.[360] To avoid double-counting developers that develop for both platforms, the Commission subtracts 18 developers from the total (*i.e.,* 1,570 × 2.2% = 34.54; 35) 2 = 17.5), leaving approximately 1,552 potentially affected developers of iOS and Android education apps that may be directed to children under 13.

The Commission believes it is also reasonable to add to this total existing developers of game and entertainment apps directed to children under 13. Commission staff reviewed a list, generated using the desktop version of iTunes, of the Top 200 Paid and Top 200 Free ''Game'' apps in the iTunes App Store as of mid November 2012. Staff believes that approximately 7% of them may be directed to children under 13. Publicly available industry data show that approximately 131,000 game apps were available in the iTunes App Store as of mid-November 2012;[361] thus, approximately 9,170 of those apps may be directed to children under 13. Assuming 5% of those apps operate in ways that bring their developers within the ambit of the final Rule amendments, at a general app-to-developer ratio of 3.8 apps per developer,[362] this yields approximately 120 developers (9,170 × .05 = 458.5; 458.5) 3.8 = 120.66). Commission staff observed that approximately 35% of developers of games that may be directed to children under the age of 13 also develop similar education apps. Thus, of the aforementioned 120 developers, 65% would not already have been counted in the previous tally of educational app developers. This calculation yields an estimate of approximately 78 additional developers of iTunes games apps primarily directed to children under 13 that likely are covered by the final Rule amendments.

Performing a similar calculation for iTunes ''Entertainment'' app developers yields few additional existing developers that are likely to be covered. Commission staff reviewed a list, generated using the desktop version of iTunes, of the Top 200 Paid and Top 200 Free ''Entertainment'' apps in the iTunes App Store as of mid-November 2012. Staff believes that approximately 2.5% of them may be directed to children under 13. Publicly available industry data show that approximately 67,600 ''Entertainment'' apps were available in the iTunes App Store as of mid-November 2012; [363] thus, approximately 1,690 of those apps may be directed to children under 13. Assuming 5% of those apps operate in ways that bring their developers within the ambit of the final Rule amendments, at a general app-to-developer ratio of 3.8 apps per developer, this yields approximately 22 developers (1,690 × .05 = 84.5; 84.5) 3.8 = 22.24). Commission staff observed that approximately 84% of developers of ''Entertainment'' apps that may be directed to children under the age of 13 also develop similar education and game apps. Thus, of the aforementioned 22 developers, 16% would not already have been counted in the previous tally of educational and games app developers. This calculation yields an estimate of approximately 4 additional developers of iTunes entertainment apps primarily directed to children under 13 that likely are covered by the final Rule amendments.

To account for Android ''Games'' apps, Commission staff reviewed listings of the Top 216 Paid and Top 216 Free ''Games'' apps in the Google Play store as of mid-November 2012. Staff believes that approximately 3% of them may be directed to children under 13. Three percent of 75,000 apps [364] yields about 2,250 Android ''Games'' apps that may be directed to children under 13. Assuming 5% of those apps operate in ways that bring their developers within the ambit of the final Rule amendments, at a general app-to-developer ratio of 3.8 apps per developer, this yields approximately 30 developers (2,250 × .05 = 112.5; 112.5) 3.8 = 29.6). Assuming that, as Commission staff observed in the iTunes App Store, approximately 35% of developers of games that may be directed to children under the age of 13 also develop similar education apps, 65% of the aforementioned 30 developers would not already have been counted in the previous tally of educational app developers. This calculation yields an estimate of approximately 19 additional developers of Android games apps primarily directed to children under 13 that likely are covered by the final Rule amendments.

Similarly, for Android ''Entertainment'' apps, Commission staff reviewed listings of the Top 216 Paid and Top 216 Free ''Entertainment'' apps in the Google Play store as of mid-November 2012. Staff believes that approximately 2% of them may be directed to children under 13. Two percent of 67,000 apps [365] yields about 1,340 Android ''Entertainment'' apps that may be directed to children under 13. Assuming 5% of those apps operate in ways that bring their developers within the ambit of the final Rule amendments, at a general app-to-developer ratio of 3.8 apps per developer, this yields approximately 18 developers (1,340 × .05 = 67; 67) 3.8 = 17.63). Assuming that, as Commission staff observed with regard to the iTunes App Store, approximately 84% of developers of entertainment apps that may be directed to children under the age of 13 also develop similar education and game apps, 16% of the aforementioned 18 developers would not already have been counted in the prior tally of educational and game app developers. This calculation yields an estimate of approximately 3 additional developers of Android entertainment apps primarily directed to children

[359] This appears to be a larger universe of data than ACT consulted in generating its education-apps-to-developer ratio of 1.54. *See* Association for Competitive Technology (comment 7, 2012 SNPRM), at 2. Data from the industry source ACT cites indicate a more general apps-to-developer ratio of approximately 3.8 apps per developer of iTunes App Store apps. *See* ''App Store Metrics,'' 148Apps.biz (accessed Nov. 14, 2012), *available at http://148apps.biz/app-store-metrics* (727,938 Total Active Apps; 191,366 Active Publishers in the U.S. App Store).

[360] *See* Mobile Apps for Kids II Report, at 26, *supra* note 189 (approximately 1.6% of developers of apps studied developed apps for both Android and iOS); FTC Staff, *Mobile Apps for Kids: Current Privacy Disclosures are Disappointing,* at 8–9 (Feb. 2012), *available at http://www.ftc.gov/os/2012/02/120216mobile_apps_kids.pdf* (approximately 2.7% of developers of apps studied developed apps for both Android and iOS). Averaging these two percentages indicates developer overlap of approximately 2.2%.

[361] ''App Store Metrics,'' 148 Apps.biz (accessed Nov. 14, 2012), *available at http://148apps.biz/app-store-metrics.*

[362] *See* note 357, *supra.*

[363] ''App Store Metrics,'' 148Apps.biz (accessed Nov. 14, 2012), *available at http://148apps.biz/app-store-metrics.*

[364] ''Android Statistic Top Categories,'' AppBrain (accessed Nov. 15, 2012), *available at http://www.appbrain.com/stats/android-market-app-categories* (total calculated by adding the number of apps in each ''Games'' subcategory).

[365] *Id.*

under 13 that likely are covered by the final Rule amendments.

Thus, the FTC estimates that approximately 1,660 mobile app developers (1,552 for iTunes and Android education apps + 78 for iTunes games apps + 4 for iTunes entertainment apps + 19 for Android games apps + 3 for Android entertainment apps = 1,656) are existing operators of Web sites or online services that will be covered by the final Rule amendments. The FTC's 2011 NPRM PRA estimate of 2,000 existing operators already covered by the Rule and its 2012 SNPRM PRA estimate of 500 newly covered existing operators,[366] however, already partially accounted for these mobile app developers because these estimates covered all types of operators subject to COPPA, including mobile app developers. As discussed above, comments on the FTC staff's estimate of the number of existing operators focused almost entirely on an asserted understatement of the number of mobile app developers that would be covered by the final Rule amendments. The estimate otherwise was not contested. Thus, the total numbers of mobile app developers set forth herein must be substituted for the total (unspecified) number of mobile app developers subsumed within the 2011 NPRM and 2012 SNPRM PRA estimates.

The Commission believes it is reasonable to substitute the above-noted estimate of 1,660 mobile app developers for half, *i.e.,* 1,250, of the 2,500 existing operators previously estimated to be ''covered'' and ''newly covered'' by the 2011 NPRM and 2012 SNPRM PRA estimates. Based on its experience, the Commission believes that half—if not more—of the existing operators currently covered by the Rule already develop or publish mobile apps. The remaining 1,250 operators would account for traditional Web site and other online service providers that are not mobile app developers, as well as plug-in developers and advertising networks that could be covered by the ''actual knowledge'' standard.[367] Thus, combining these totals (1,660 + 1,250) yields a total of 2,910 operators of existing Web sites or online services that would likely be covered by the final Rule amendments.

New Operators

The Commission received one comment asserting that the Commission significantly underestimated the number of new operators per year that will be covered by the proposed Rule amendments. One commenter, the moderator of an online group called ''Parents With Apps,'' stated that this group of more than 1,400 small developers of family-friendly apps grows by at least 100 new developers every six months.[368] This would constitute an annual growth rate of nearly 15% (200 new developers per year divided by 1,400 developers in the group = 0.1429). Although the Commission believes this rate of increase is due, at least in part, to increased awareness among developers of the group's existence rather than growth in the number of new developers, the Commission concludes it is reasonable to incorporate this information into its revised estimate. Assuming a base number of 1,660 existing mobile app developers estimated to be covered by the final Rule amendments, a 15% growth rate would yield, year-over-year after three years, an additional 864 new developers, or approximately 290 per year averaged over a prospective three-year clearance ($1{,}660 \times 1.15 = 1{,}909$; $1{,}909 \times 1.15 = 2{,}195$; $2{,}195 \times 1.15 = 2{,}524$; $2{,}524 - 1{,}660 = 864$; $864 \div 3 = 288$).[369]

Bureau of Labor Statistics (''BLS'') projections suggest a much more modest rate of growth. BLS has projected that employment of software application developers will increase 28% between 2010 and 2020.[370] Assuming 10% of that total 28% growth would occur each year of the ten-year period, and a base number of 1,660 existing mobile app developers, one can derive an increase of approximately 46 ($1{,}645 \times 0.028 = 46.48$) new mobile app developers per year on average that will be covered by the final Rule amendments. Combining the average based on the annual growth rate of Parents With Apps and that based on the BLS software application developer growth projection yields an increase of approximately 168 (290 + 46 = 336; 336 ÷ 2 = 168) new mobile app developers per year on average that will be covered by the proposed Rule amendments.

As with its previous estimates of existing developers, mobile app developers were already included in the Commission's 2011 NPRM PRA estimate of 100 new operators and the Commission's 2012 SNPRM PRA estimate of 125 additional new operators per year. As noted above, the Commission's 2011 NPRM and 2012 SNPRM PRA estimates of new operators were contested only as they relate to their estimation of new mobile app developers. Thus, the total number of new mobile app developers set forth herein should replace the total (unspecified) number of new mobile app developers subsumed within the 2011 NPRM and 2012 SNPRM PRA estimates.

The Commission believes it is reasonable to substitute the above-noted estimate of 168 mobile app developers for half, *i.e.,* 113, of the 225 new operators previously estimated to be covered by the 2011 NPRM and 2012 SNPRM PRA estimates. The remainder of the prior estimates would account for new Web site and other online service providers other than new mobile app developers, as well as new plug-in developers and advertising networks that could be covered by the ''actual knowledge'' standard. Thus, combining these totals (168 + 113 = 281) yields a total of approximately 280 new operators per year (over a prospective three-year clearance) of Web sites or online services that would likely be covered by the final Rule amendments. Given that the FTC's existing clearance already accounts for an estimate of 100 new operators,[371] the incremental calculation for additional OMB clearance is 180 new operators × 60 hours each = 10,800 hours.

C. Recordkeeping

Under the PRA, the term ''recordkeeping requirement'' means a requirement imposed by or for an agency on persons to maintain specified records, including a requirement to (A) Retain such records; (B) notify third parties, the Federal Government, or the public of the existence of such records; (C) disclose such records to third parties, the Federal Government, or the public; or (D) report to third parties, the Federal Government, or the public

[366] *See* 2011 NPRM, 76 FR at 59812, 59813; 2012 SNPRM, 77 FR at 46649.

[367] Disclosure burdens do not increase when taking into account plug-in developers and advertising networks with actual knowledge because the burden will fall on either the primary-content site or the plug-in, but need not fall on both. They can choose to allocate the burden between them. The Commission has chosen to account for the burden via the primary-content site or service because it would generally be the party in the best position to give notice and obtain consent from parents.

[368] S. Weiner (comment 97, 2012 SNPRM), at 1–2.

[369] *See also* Association for Competitive Technology (comment 5, 2011 SNPRM), at 2 (''total unique apps across all platforms continue to grow beyond the one million mark'' since Apple's 2008 launch of its App Store; ''[t]he mobile app marketplace has grown to a five billion dollar industry from scratch in less than four years.'').

[370] Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2012–13 Edition,* Software Developers, *http://www.bls.gov/ooh/computer-and-information-technology/software-developers.htm* (visited November 16, 2012).

[371] *See* note 342, *supra.*

regarding such records.'' The final amendments do not affect the Rule's existing recordkeeping requirements. Moreover, FTC staff believes that most of the records listed in the Rule's pre-existing safe harbor recordkeeping provisions consist of documentation that such parties have kept in the ordinary course of business irrespective of the Rule.[372] Any incremental burden, such as that for maintaining the results of independent assessments under section 312.11(d), would be, in staff's view, marginal.

D. Disclosure Hours

(1) New Operators' Disclosure Burden

Under the existing OMB clearance for the Rule, the FTC has estimated that new operators will each spend approximately 60 hours to craft a privacy policy, design mechanisms to provide the required online privacy notice and, where applicable, direct notice to parents in order to obtain verifiable consent. Several commenters noted that this 60-hour estimate failed to take into account accurate costs of compliance with the Rule, but they did not provide the Commission with empirical data or specific evidence on the number of hours such activities require.[373] The Toy Industry Association (''TIA'') [374] asserts that the Commission underestimated the number of hours shown in the 2011 NPRM and 2012 SNPRM PRA calculations,[375] and that ''[d]epending on the FTC's final revisions to the COPPA Rule, the time it takes to implement technological changes could more than triple the Commission's 60-hour estimate.'' [376] These assertions appear to be based primarily on TIA's concern that the FTC's estimate did not include costs ''of 'ensuring' security procedures of third parties, securing deletion, managing parental consents, or updating policies to disclose changes in 'operators.' In addition, the FTC seems to reference only top level domains and, as such, its estimates for implementation of new verifiable parental consent requirements are very low.'' [377] TIA states that ''the additional processes and procedures mandated under the revised proposed Rule will potentially include privacy policy and operational changes, with related resource-intensive measures, such as organizational management and employee training.'' [378] Moreover, TIA suggests that changes proposed in the 2011 NPRM to the treatment of screen or user names would entail ''enormous'' costs that the FTC did not quantify.[379]

Substantially all of TIA's concerns about understated burden estimates relate to proposed requirements that the Commission has ultimately determined not to adopt. For example, the final Rule amendments do not require operators to ''ensure'' that third-parties secure information, but that they ''take reasonable steps'' to release children's information only to third parties capable of maintaining it securely and provide assurances that they will do so.[380] The Commission is not eliminating the ''single operator designee'' proviso of the Rule's online notice requirement.[381] It is not eliminating email plus as an acceptable consent method for operators collecting personal information only for internal use.[382] The Commission determined to treat screen names as *personal information* only in those instances in which a screen or user name rises to the level of *online contact information.*[383] Thus, in the Commission's view, TIA's proposed increase to the above-noted estimate of 60 hours for compliance is not warranted.[384]

Applying, then, the 60 hours estimate to the portion of new operators not accounted for in the FTC's previously cleared burden totals yields a cumulative total of 10,800 hours (180 new operators × 60 hours each).

(2) Existing Operators' Disclosure Burden

The final Rule amendments will not impose ongoing incremental disclosure time per entity, but, as noted above, would result in an estimated 2,910 existing operators covered by the Rule. These entities will have a one-time burden to re-design their existing privacy policies and direct notice procedures that would not carry over to the second and third years of a prospective three-year OMB clearance under the PRA. Commission staff believes that an existing operator's time to make these changes would be no more than that for a new entrant crafting its online and direct notices for the first time, *i.e.,* 60 hours. Annualized over three years of a prospective clearance,[385] this amounts to 20 hours ((60 hours + 0 + 0) ÷ 3) per year. Aggregated for the estimated 2,910 existing operators that would be subject to the Rule, annualized disclosure burden would be 58,200 hours per year.

E. Reporting Hours

The final Rule amendments do not impose reporting requirements on operators; they do, however, for safe harbor programs. Under the FTC's already cleared estimates, pre-amendments, staff projected that each new safe harbor program applicant

[372] Under 5 CFR 1320.3(b)(2), OMB excludes from the definition of PRA ''burden'' the time and financial resources needed to comply with agency-imposed recordkeeping, disclosure, or reporting requirements that customarily would be undertaken independently in the normal course of business. Thus, on further reflection, the FTC has determined not to include recordkeeping costs for safe harbors as it did in the 2011 NPRM PRA analysis.

[373] *See* N. Savitt (comment 142, 2011 NPRM), at 1; NCTA (comment 113, 2011 NPRM), at 23–24.

[374] TIA contends that in the 2012 SNPRM, the Commission ''disregarded the empirical economic input'' regarding compliance costs that TIA had submitted in response to the 2011 NPRM, including hour and labor cost estimates. Toy Industry Association (comment 89, 2012 SNPRM), at 16. Although the Commission did not discuss TIA's 2011 comments in the SNPRM—which focused on the potential incremental compliance cost changes that the Commission anticipated would flow from certain newly proposed Rule amendments—it has considered TIA's 2011 and 2012 comments on compliance costs as discussed herein.

[375] Toy Industry Association (comment 89, 2012 SNPRM), at 16–17; Toy Industry Association (comment 163, 2011 NPRM), at 17–18; *see also* DMA (comment 28, 2012 SNPRM), at 17.

[376] Toy Industry Association (comment 163, 2011 NPRM), at 18.

[377] *Id.* at 17. Also with specific regard to potential costs associated with obtaining and verifying parental consent, TIA estimates that dedicating employees specifically to this task would, if the FTC were to require a ''scanned form type of control regime,'' require additional salary and benefit costs. *Id.* at 18.

[378] *Id.* at 17.

[379] *Id.* at 18.

[380] *See* Part II.D., *supra.* As for the ''reasonable steps'' requirement, the time and financial resources operators devote to this task would likely be incurred, anyway, in the normal course of their seeking to preserve the security of children's data conveyed to those third parties. To reiterate, PRA ''burden'' does not include effort expended in the ordinary course of business independent of a regulatory requirement. 5 CFR 1320.3(b)(2). *See also* Toy Industry Association (comment 163, 2011 NPRM), at 16 (''Operators regularly investigate agents, service providers, and business partners to assure that they will responsibly maintain the security and confidentiality of children's data . * * *'').

[381] *See* Part II.B.2, *supra.*

[382] *See* Part II.C.7, *supra.* Furthermore, the requirement to obtain parental consent is not a collection of information under the PRA.

[383] *See* Part II.A.5.a, *supra.* This change also appears to moot NCTA's concern that operators would be faced with substantial costs if ''forced to redesign'' Web sites to eliminate the use of unique screen or user names. NCTA (comment 113, 2011 NPRM), at 23 n.69.

[384] TIA also cites the potential cost of needing to ''develop communication tools and respond to complaints from parents who may mistakenly believe that companies are altering data collection practices. * * *'' Toy Industry Association (comment 163, 2011 NPRM), at 18. This speculative cost does not relate to any ''information collection requirement'' in the final Rule amendments.

[385] TIA states that this first-year cost associated with compliance should not be ''amortized'' over three years. Toy Industry Association (comment 89, 2012 SNPRM), at 17. As stated *supra* note 336, however, agencies may seek up to three years of clearance from OMB, and this is what the FTC routinely does for rulemakings. Moreover, OMB seeks estimates of annual burden (reflective of the clearance period sought). *See* 5 CFR 1320.5(a)(1)(iv)(B).

would require 265 hours to prepare and submit its safe harbor proposal.[386] The final Rule amendments, however, require a safe harbor applicant to submit a more detailed proposal than what the Rule, prior to such amendments, mandated. Existing safe harbor programs will thus need to submit a revised application and new safe harbor applicants will have to provide greater detail than they would have under the original Rule. The FTC estimates this added information will entail approximately 60 additional hours for each new, and each existing, safe harbor to prepare. Accordingly, for this added one-time preparation, the aggregate incremental burden is 60 hours for the projected one new safe harbor program per three-year clearance cycle and 300 hours, cumulatively, for the five existing safe harbor programs. Annualized for an average single year per three-year clearance, this amounts to 20 hours for one new safe harbor program, and 100 hours for the existing five safe harbor programs; thus, cumulatively, the burden is 120 hours.

The final Rule amendments require safe harbor programs to audit their members at least annually and to submit periodic reports to the Commission on the aggregate results of these member audits. As such, this will increase currently cleared burden estimates pertaining to safe harbor applicants. The burden for conducting member audits and preparing these reports likely will vary for each safe harbor program depending on the number of members. Commission staff estimates that conducting audits and preparing reports will require approximately 100 hours per program per year. Aggregated for one new (100 hours) and five existing (500 hours) safe harbor programs, this amounts to an increased disclosure burden of 600 hours per year. Accordingly, the annualized reporting burden for one new and five existing safe harbor applicants to provide the added information required (120 hours) and to conduct audits and prepare reports (600 hours) is 720 hours, cumulatively.

F. Labor Costs

(1) Disclosure

The Commission assumes that the time spent on compliance for new operators and existing operators covered by the final Rule amendments would be apportioned five to one between legal (lawyers or similar professionals) and technical (*e.g.,* computer programmers, software developers, and information security analysts) personnel.[387] In the 2012 SNPRM, based on BLS compiled data, FTC staff assumed for compliance cost estimates a mean hourly rate of $180 for legal assistance and $42 for technical labor support.[388] These estimates were challenged in the comments.

TIA asserts that the Commission underestimates the labor rate for lawyers used in the Commission's 2011 NPRM and 2012 SNPRM compliance cost calculations.[389] Given the comments received, the Commission believes it appropriate to increase the estimated mean hourly rate of $180 for legal assistance used in certain of the Commission's 2011 NPRM and 2012 SNPRM compliance cost calculations. TIA stated in its 2011 comment that the ''average rates'' of ''specialized attorneys who understand children's privacy and data security laws'' with whom its members typically consult are ''2–3 times the Commission's estimates'' of $150 per hour set forth in the 2011 NPRM.[390] TIA reiterated this information in its 2012 comment[391] and added: ''According to *The National Law Journal's* 2011 annual billing survey, the average hourly firm-wide billing rate (which combines partner and associate rates) ranges from $236 to $633, not taking into account any area of specialization.'' [392] While the Commission believes TIA's information provides useful reference points, it does not provide an adequate basis for estimating an hourly rate for lawyers for compliance cost calculation purposes.

As an initial matter, the Commission notes that TIA has cited a range of average hourly rates that its members pay for counsel, not a single average hourly rate, and it did not submit the underlying data upon which those average rate calculations were based. The range of average hourly rates TIA stated that its members typically pay (*i.e.,* $300–$450 per hour) may include some unusually high or low billing rates that have too much influence on the arithmetic means for those averages to be representative of the rates operators are likely to have to pay.[393] Without more information about the distribution of the underlying rates factored into each average, or the distribution of the averages within the cited range, TIA's information is of limited value. Likewise, as TIA's comments appear to implicitly recognize, routine COPPA compliance counseling would likely be performed by a mix of attorneys billed at a range of hourly rates. Unfortunately, the information submitted in TIA's comments does not indicate how that workload is typically apportioned as between ''high-level partner[s]'' whose ''support'' is required for ''complex'' COPPA compliance matters and other, less senior, attorneys at a law firm. The *National Law Journal* survey the TIA cites is also a useful reference point, but it is a non-scientific survey of the nation's 250 largest law firms [394] that are located predominantly in major metropolitan areas.[395] Beyond the range of average hourly firm-wide billing rates that TIA cites, the survey states that the

[386] 76 FR at 7211, 7212 (Feb. 9, 2011); 76 FR at 31334, 31335 (May 31, 2011). These safe harbor reporting hour estimates have not been contested. For PRA purposes, annualized over the course of three years of clearance, this averages roughly 100 hours per year, given that the 265 hours is a one-time, not recurring, expenditure of time for an applicant.

[387] *See* 76 FR at 7211, 7212–7213 (Feb. 9, 2011); 76 FR at 31334, 31335 n.1 (May 31, 2011) (FTC notices for renewing OMB clearance for the COPPA Rule).

[388] As explained in the 2012 SNPRM, ''[t]he estimated rate of $180 is roughly midway between [BLS] mean hourly wages for lawyers ($62.74) in the most recent annual compilation available online [as of August 2012] and what Commission staff believes more generally reflects hourly attorney costs ($300) associated with Commission information collection activities.'' 77 FR at 46651, n.54. This estimated rate was an upward revision of the Commission's estimate of $150 per hour used in the 2011 NPRM. *See* 76 FR at 59827 n.204 and accompanying text. The estimated mean hourly wages for technical labor support ($42) is based on an average of the salaries for computer programmers, software developers, information security analysts, and web developers as reported by the BLS. *See National Occupational and Wages—May* 2011, *available at http://www.bls.gov/news.release/archives/ocwage_03272012.pdf.*

[389] Toy Industry Association (comment 89, 2012 SNPRM), at 16; Toy Industry Association (comment 163, 2011 NPRM), at 17.

[390] Toy Industry Association (comment 163, 2011 NPRM), at 17. *See also* NCTA (comment 113, 2011 NPRM), at 23 n.70 (''NCTA members typically consult with attorneys who specialize in data privacy and security laws and whose average rates are 2–3 times the Commission's [2011 NPRM] estimates [of $150 per hour].'').

[391] Toy Industry Association (comment 89, 2012 SNPRM), at 18.

[392] *Id.,* at 10 (*citation omitted*).

[393] *See* Federal Judicial Center, Reference Manual on Scientific Evidence (3rd Ed.), David H. Kay and David A. Freedman, Reference Guide on Statistics at 238 (''[t]he mean takes account of all the data B it involves the total of all the numbers; however, particularly with small datasets, a few unusually large or small observations may have too much influence on the mean.'').

[394] Toy Industry Association (comment 89, 2012 SNPRM), at 19. Fifty-one law firms supplied the average rate information used in the survey's tabulation, ''A nationwide sampling of law firm billing rates,'' to which the TIA appears to refer.

[395] The Commission recognizes that many attorneys who specialize in COPPA compliance and data security law often work at large law firms located in major metropolitan areas. However, just as the nature of online technology and the mobile marketplace allow operators to live almost anywhere, *see* Association for Competitive Technology (comment 5, 2011 NPRM), at 2 (the ''nature of this industry allows developers to live almost anywhere''), it also allows them to seek the counsel of competent lawyers practicing anywhere in the United States.

average firm-wide billing rate (partners and associates) in 2011 was $403, the average partner rate was $482, and the average associate rate was $303.

The Commission believes it reasonable to assume that the workload among law firm partners and associates for COPPA compliance questions could be competently addressed and efficiently distributed among attorneys at varying levels of seniority, but would be weighted most heavily to more junior attorneys. Thus, assuming an apportionment of two-thirds of such work is done by associates, and one-third by partners, a weighted average tied to the average firm-wide associate and average firm-wide partner rates, respectively, in the *National Law Journal* 2011 survey would be about $365 per hour. The Commission believes that this rate B which is very near the mean of TIA's stated range of purported hourly rates that its members typically pay to engage counsel for COPPA compliance questions B is an appropriate measure to calculate the cost of legal assistance for operators to comply with the final Rule amendments.[396]

TIA also states that the 2012 SNPRM estimate of $42 per hour for technical support is too low, and that engaging expert technical personnel can, on average, involve hourly costs that range from $72 to $108.[397] Similar to TIA's hours estimate, discussed above, the Commission believes that TIA's estimate may have been based on implementing requirements that, ultimately, the Commission has determined not to adopt. For example, technical personnel will not need to ''ensure'' the security procedures of third parties; operators that have been eligible to use email plus for parental consents will not be required to implement new systems to replace it. It is unclear whether TIA's estimate for technical support is based on the types of disclosure-related tasks that the final Rule amendments would actually require, other tasks that the final Rule amendments would not require, or non-disclosure tasks not covered by the PRA. Moreover, unlike its estimate for lawyer assistance, TIA's estimates for technical labor are not accompanied by an adequate explanation of why estimates for technical support drawn from BLS statistics are not an appropriate basis for the FTC's PRA analysis. Accordingly, the Commission believes it is reasonable to retain the 2012 SNPRM estimate of $42 per hour for technical assistance based on BLS data.

Thus, for the 180 new operators per year not previously accounted for under the FTC's currently cleared estimates, 10,800 cumulative disclosure hours would be composed of 9,000 hours of legal assistance and 1,800 hours of technical support. Applied to hourly rates of $365 and $42, respectively, associated labor costs for the 180 new operators potentially subject to the proposed amendments would be $3,360,600 (*i.e.,* $3,285,000 for legal support plus $75,600 for technical support).

Similarly, for the estimated 2,910 existing operators covered by the final Rule amendments, 58,200 cumulative disclosure hours would consist of 48,500 hours of legal assistance and 9,700 hours for technical support. Applied at hourly rates of $365 and $42, respectively, associated labor costs would total $18,109,900 (*i.e.,* $17,702,500 for legal support plus $407,400 for technical support). Cumulatively, estimated labor costs for new and existing operators subject to the final Rule amendments is $21,470,500.

(2) Reporting

The Commission staff assumes that the tasks to prepare augmented safe harbor program applications occasioned by the final Rule amendments will be performed primarily by lawyers, at a mean labor rate of $180 an hour.[398] Thus, applied to an assumed industry total of 120 hours per year for this task, incremental associated yearly labor costs would total $21,600.

The Commission staff assumes periodic reports will be prepared by compliance officers, at a labor rate of $28 per hour.[399] Applied to an assumed industry total of 600 hours per year for this task, associated yearly labor costs would be $16,800.

Cumulatively, labor costs for the above-noted reporting requirements total approximately $38,400 per year.

G. Non-Labor/Capital Costs

Because both operators and safe harbor programs will already be equipped with the computer equipment and software necessary to comply with the Rule's new notice requirements, the final Rule amendments should not impose any additional capital or other non-labor costs.[400]

List of Subjects in 16 CFR Part 312

Children, Communications, Consumer protection, Electronic mail, Email, Internet, Online service, Privacy, Record retention, Safety, science and technology, Trade practices, Web site, Youth.

■ Accordingly, for the reasons stated above, the Federal Trade Commission revises part 312 of Title 16 of the Code of Federal Regulations to read as follows:

PART 312—CHILDREN'S ONLINE PRIVACY PROTECTION RULE

Sec.

312.1 Scope of regulations in this part.
312.2 Definitions.
312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.
312.4 Notice.
312.5 Parental consent.
312.6 Right of parent to review personal information provided by a child.
312.7 Prohibition against conditioning a child's participation on collection of personal information.

[396] *Cf.* Civil Division of the United States Attorney's Office for the District of Columbia, United States Attorney's Office, District of Columbia, Laffey Matrix B 2003-2013, *available at http://www.justice.gov/usao/dc/divisions/Laffey_Matrix_2003-2013.pdf* (updated ''Laffey Matrix'' for calculating ''reasonable'' attorneys fees in suits in which fee shifting is authorized can be evidence of prevailing market rates for litigation counsel in the Washington, DC area; rates in table range from $245 per hour for most junior associates to $505 per hour for most senior partners).

[397] Toy Industry Association (comment 89, 2012 SNPRM), at 18.

[398] Based on Commission staff's experience with previously approved safe harbor programs, staff anticipates that most of the legal tasks associated with safe harbor programs will be performed by in-house counsel. *Cf.* Toy Industry Association (comment 89, 2012 SNPRM), at 19 (regional BLS statistics for lawyer wages can support estimates of the level of in-house legal support likely to be required on an ongoing basis). Moreover, no comments were received in response to the February 9, 2011 and May 31, 2011 **Federal Register** notices (76 FR at 7211 and 76 FR at 31334, respectively, *available at http://www.gpo.gov/fdsys/pkg/FR-2011-02-09/pdf/2011-2904.pdf* and *http://www.gpo.gov/fdsys/pkg/FR-2011-05-31/pdf/2011-13357.pdf*), which assumed a labor rate of $150 per hour for lawyers or similar professionals to prepare and submit a new safe harbor application. Nor was that challenged in the comments responding to the 2011 NPRM.

[399] *See* Bureau of Labor Statistics National Compensation Survey: Occupational Earnings in the United States, 2010, at Table 3, *available at http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf.* This rate has not been contested.

[400] NCTA commented that the Commission failed to consider costs ''related to redeveloping child-directed Web sites'' that operators would be ''forced'' to incur as a result of the proposed Rule amendments, including for ''new equipment and software required by the expanded regulatory regime.'' NCTA (comment 113, 2011 NPRM), at 23. Similarly, TIA commented that the proposed Rule amendments would entail ''increased monetary costs with respect to technology acquisition and implementation * * *.'' Toy Industry Association (comment 163, 2011 NPRM), at 17. These comments, however, do not specify projected costs or which Rule amendments would entail the asserted costs.

312.8 Confidentiality, security, and integrity of personal information collected from children.
312.9 Enforcement.
312.10 Data retention and deletion requirements.
312.11 Safe harbor programs.
312.12 Voluntary Commission Approval Processes.
312.13 Severability.

Authority: 15 U.S.C. 6501–6508.

§ 312.1 Scope of regulations in this part.

This part implements the Children's Online Privacy Protection Act of 1998, (15 U.S.C. 6501, *et seq.*,) which prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

§ 312.2 Definitions.

Child means an individual under the age of 13.

Collects or *collection* means the gathering of any personal information from a child by any means, including but not limited to:

(1) Requesting, prompting, or encouraging a child to submit personal information online;

(2) Enabling a child to make personal information publicly available in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings before they are made public and also to delete such information from its records; or

(3) Passive tracking of a child online.

Commission means the Federal Trade Commission.

Delete means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

Disclose or disclosure means, with respect to personal information:

(1) The release of personal information collected by an operator from a child in identifiable form for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the Web site or online service; and

(2) Making personal information collected by an operator from a child publicly available in identifiable form by any means, including but not limited to a public posting through the Internet, or through a personal home page or screen posted on a Web site or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

Federal agency means an agency, as that term is defined in Section 551(1) of title 5, United States Code.

Internet means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

Obtaining verifiable consent means making any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child:

(1) Receives notice of the operator's personal information collection, use, and disclosure practices; and

(2) Authorizes any collection, use, and/or disclosure of the personal information.

Online contact information means an email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.

Operator means any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such Web site or online service, or on whose behalf such information is collected or maintained, or offers products or services for sale through that Web site or online service, where such Web site or online service is operated for commercial purposes involving commerce among the several States or with 1 or more foreign nations; in any territory of the United States or in the District of Columbia, or between any such territory and another such territory or any State or foreign nation; or between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45). Personal information is *collected or maintained on behalf of* an operator when:

(1) It is collected or maintained by an agent or service provider of the operator; or

(2) The operator benefits by allowing another person to collect personal information directly from users of such Web site or online service.

Parent includes a legal guardian.

Person means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

Personal information means individually identifiable information about an individual collected online, including:

(1) A first and last name;

(2) A home or other physical address including street name and name of a city or town;

(3) Online contact information as defined in this section;

(4) A screen or user name where it functions in the same manner as online contact information, as defined in this section;

(5) A telephone number;

(6) A Social Security number;

(7) A persistent identifier that can be used to recognize a user over time and across different Web sites or online services. Such persistent identifier includes, but is not limited to, a customer number held in a cookie, an Internet Protocol (IP) address, a processor or device serial number, or unique device identifier;

(8) A photograph, video, or audio file where such file contains a child's image or voice;

(9) Geolocation information sufficient to identify street name and name of a city or town; or

(10) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Release of personal information means the sharing, selling, renting, or transfer of personal information to any third party.

Support for the internal operations of the Web site or online service means:

(1) Those activities necessary to:

(i) Maintain or analyze the functioning of the Web site or online service;

(ii) Perform network communications;

(iii) Authenticate users of, or personalize the content on, the Web site or online service;

(iv) Serve contextual advertising on the Web site or online service or cap the frequency of advertising;

(v) Protect the security or integrity of the user, Web site, or online service;

(vi) Ensure legal or regulatory compliance; or

(vii) Fulfill a request of a child as permitted by § 312.5(c)(3) and (4);

(2) So long as The information collected for the activities listed in paragraphs (1)(i)–(vii) of this definition is not used or disclosed to contact a specific individual, including through behavioral advertising, to amass a

profile on a specific individual, or for any other purpose.

Third party means any person who is not:

(1) An operator with respect to the collection or maintenance of personal information on the Web site or online service; or

(2) A person who provides support for the internal operations of the Web site or online service and who does not use or disclose information protected under this part for any other purpose.

Web site or online service directed to children means a commercial Web site or online service, or portion thereof, that is targeted to children.

(1) In determining whether a Web site or online service, or a portion thereof, is directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the Web site or online service, as well as whether advertising promoting or appearing on the Web site or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience composition, and evidence regarding the intended audience.

(2) A Web site or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information directly from users of another Web site or online service directed to children.

(3) A Web site or online service that is directed to children under the criteria set forth in paragraph (1) of this definition, but that does not target children as its primary audience, shall not be deemed directed to children if it:

(i) Does not collect personal information from any visitor prior to collecting age information; and

(ii) Prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provisions of this part.

(4) A Web site or online service shall not be deemed directed to children solely because it refers or links to a commercial Web site or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

§ 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.

General requirements. It shall be unlawful for any operator of a Web site or online service directed to children, or any operator that has actual knowledge that it is collecting or maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part. Generally, under this part, an operator must:

(a) Provide notice on the Web site or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§ 312.4(b));

(b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children (§ 312.5);

(c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (§ 312.6);

(d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity (§ 312.7); and

(e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children (§ 312.8).

§ 312.4 Notice.

(a) *General principles of notice.* It shall be the obligation of the operator to provide notice and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children. Such notice must be clearly and understandably written, complete, and must contain no unrelated, confusing, or contradictory materials.

(b) *Direct notice to the parent.* An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.

(c) *Content of the direct notice to the parent*—(1) *Content of the direct notice to the parent under § 312.5(c)(1) (Notice to Obtain Parent's Affirmative Consent to the Collection, Use, or Disclosure of a Child's Personal Information).* This direct notice shall set forth:

(i) That the operator has collected the parent's online contact information from the child, and, if such is the case, the name of the child or the parent, in order to obtain the parent's consent;

(ii) That the parent's consent is required for the collection, use, or disclosure of such information, and that the operator will not collect, use, or disclose any personal information from the child if the parent does not provide such consent;

(iii) The additional items of personal information the operator intends to collect from the child, or the potential opportunities for the disclosure of personal information, should the parent provide consent;

(iv) A hyperlink to the operator's online notice of its information practices required under paragraph (d) of this section;

(v) The means by which the parent can provide verifiable consent to the collection, use, and disclosure of the information; and

(vi) That if the parent does not provide consent within a reasonable time from the date the direct notice was sent, the operator will delete the parent's online contact information from its records.

(2) *Content of the direct notice to the parent under § 312.5(c)(2) (Voluntary Notice to Parent of a Child's Online Activities Not Involving the Collection, Use or Disclosure of Personal Information).* Where an operator chooses to notify a parent of a child's participation in a Web site or online service, and where such site or service does not collect any personal information other than the parent's online contact information, the direct notice shall set forth:

(i) That the operator has collected the parent's online contact information from the child in order to provide notice to, and subsequently update the parent about, a child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information;

(ii) That the parent's online contact information will not be used or disclosed for any other purpose;

(iii) That the parent may refuse to permit the child's participation in the Web site or online service and may require the deletion of the parent's online contact information, and how the parent can do so; and

(iv) A hyperlink to the operator's online notice of its information

practices required under paragraph (d) of this section.

(3) *Content of the direct notice to the parent under § 312.5(c)(4) (Notice to a Parent of Operator's Intent to Communicate with the Child Multiple Times).* This direct notice shall set forth:

(i) That the operator has collected the child's online contact information from the child in order to provide multiple online communications to the child;

(ii) That the operator has collected the parent's online contact information from the child in order to notify the parent that the child has registered to receive multiple online communications from the operator;

(iii) That the online contact information collected from the child will not be used for any other purpose, disclosed, or combined with any other information collected from the child;

(iv) That the parent may refuse to permit further contact with the child and require the deletion of the parent's and child's online contact information, and how the parent can do so;

(v) That if the parent fails to respond to this direct notice, the operator may use the online contact information collected from the child for the purpose stated in the direct notice; and

(vi) A hyperlink to the operator's online notice of its information practices required under paragraph (d) of this section.

(4) *Content of the direct notice to the parent required under § 312.5(c)(5) (Notice to a Parent In Order to Protect a Child's Safety).* This direct notice shall set forth:

(i) That the operator has collected the name and the online contact information of the child and the parent in order to protect the safety of a child;

(ii) That the information will not be used or disclosed for any purpose unrelated to the child's safety;

(iii) That the parent may refuse to permit the use, and require the deletion, of the information collected, and how the parent can do so;

(iv) That if the parent fails to respond to this direct notice, the operator may use the information for the purpose stated in the direct notice; and

(v) A hyperlink to the operator's online notice of its information practices required under paragraph (d) of this section.

(d) *Notice on the Web site or online service.* In addition to the direct notice to the parent, an operator must post a prominent and clearly labeled link to an online notice of its information practices with regard to children on the home or landing page or screen of its Web site or online service, *and,* at each area of the Web site or online service where personal information is collected from children. The link must be in close proximity to the requests for information in each such area. An operator of a general audience Web site or online service that has a separate children's area must post a link to a notice of its information practices with regard to children on the home or landing page or screen of the children's area. To be complete, the online notice of the Web site or online service's information practices must state the following:

(1) The name, address, telephone number, and email address of all operators collecting or maintaining personal information from children through the Web site or online service. *Provided that:* The operators of a Web site or online service may list the name, address, phone number, and email address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the Web site or online service are also listed in the notice;

(2) A description of what information the operator collects from children, including whether the Web site or online service enables a child to make personal information publicly available; how the operator uses such information; and, the operator's disclosure practices for such information; and

(3) That the parent can review or have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

§ 312.5 Parental consent.

(a) *General requirements.* (1) An operator is required to obtain verifiable parental consent before any collection, use, or disclosure of personal information from children, including consent to any material change in the collection, use, or disclosure practices to which the parent has previously consented.

(2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

(b) *Methods for verifiable parental consent.* (1) An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent. (2) Existing methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include:

(i) Providing a consent form to be signed by the parent and returned to the operator by postal mail, facsimile, or electronic scan;

(ii) Requiring a parent, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder;

(iii) Having a parent call a toll-free telephone number staffed by trained personnel;

(iv) Having a parent connect to trained personnel via video-conference;

(v) Verifying a parent's identity by checking a form of government-issued identification against databases of such information, where the parent's identification is deleted by the operator from its records promptly after such verification is complete; or

(vi) *Provided that,* an operator that does not ''disclose'' (as defined by § 312.2) children's personal information, may use an email coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: Sending a confirmatory email to the parent following receipt of consent, or obtaining a postal address or telephone number from the parent and confirming the parent's consent by letter or telephone call. An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier email.

(3) *Safe harbor approval of parental consent methods.* A safe harbor program approved by the Commission under § 312.11 may approve its member operators' use of a parental consent method not currently enumerated in paragraph (b)(2) of this section where the safe harbor program determines that such parental consent method meets the requirements of paragraph (b)(1) of this section.

(c) *Exceptions to prior parental consent.* Verifiable parental consent is required prior to any collection, use, or disclosure of personal information from a child *except* as set forth in this paragraph:

(1) Where the sole purpose of collecting the name or online contact information of the parent or child is to provide notice and obtain parental consent under § 312.4(c)(1). If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the

operator must delete such information from its records;

(2) Where the purpose of collecting a parent's online contact information is to provide voluntary notice to, and subsequently update the parent about, the child's participation in a Web site or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2);

(3) Where the sole purpose of collecting online contact information from a child is to respond directly on a one-time basis to a specific request from the child, and where such information is not used to re-contact the child or for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request;

(4) Where the purpose of collecting a child's and a parent's online contact information is to respond directly more than once to the child's specific request, and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(3). An operator will not be deemed to have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;

(5) Where the purpose of collecting a child's and a parent's name and online contact information, is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to provide a parent with notice as described in § 312.4(c)(4);

(6) Where the purpose of collecting a child's name and online contact information is to:

(i) Protect the security or integrity of its Web site or online service;

(ii) Take precautions against liability;

(iii) Respond to judicial process; or

(iv) To the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety; and where such information is not be used for any other purpose;

(7) Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the Web site or online service. In such case, there also shall be no obligation to provide notice under § 312.4; or

(8) Where an operator covered under paragraph (2) of the definition of *Web site or online service directed to children* in § 312.2 collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child. In such case, there also shall be no obligation to provide notice under § 312.4.

§ 312.6 Right of parent to review personal information provided by a child.

(a) Upon request of a parent whose child has provided personal information to a Web site or online service, the operator of that Web site or online service is required to provide to that parent the following:

(1) A description of the specific types or categories of personal information collected from children by the operator, such as name, address, telephone number, email address, hobbies, and extracurricular activities;

(2) The opportunity at any time to refuse to permit the operator's further use or future online collection of personal information from that child, and to direct the operator to delete the child's personal information; and

(3) Notwithstanding any other provision of law, a means of reviewing any personal information collected from the child. The means employed by the operator to carry out this provision must:

(i) Ensure that the requestor is a parent of that child, taking into account available technology; and

(ii) Not be unduly burdensome to the parent.

(b) Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.

(c) Subject to the limitations set forth in § 312.7, an operator may terminate any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator's further use or collection of personal information from his or her child or has directed the operator to delete the child's personal information.

§ 312.7 Prohibition against conditioning a child's participation on collection of personal information.

An operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.

§ 312.8 Confidentiality, security, and integrity of personal information collected from children.

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must also take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner.

§ 312.9 Enforcement.

Subject to sections 6503 and 6505 of the Children's Online Privacy Protection Act of 1998, a violation of a regulation prescribed under section 6502 (a) of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

§ 312.10 Data retention and deletion requirements.

An operator of a Web site or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

§ 312.11 Safe harbor programs.

(a) *In general.* Industry groups or other persons may apply to the Commission for approval of self-regulatory program guidelines (''safe harbor programs''). The application shall be filed with the Commission's Office of the Secretary. The Commission will publish in the **Federal Register** a document seeking public comment on the application. The Commission shall issue a written determination within 180 days of the filing of the application.

(b) *Criteria for approval of self-regulatory program guidelines.* Proposed safe harbor programs must demonstrate

that they meet the following performance standards:

(1) Program requirements that ensure operators subject to the self-regulatory program guidelines (''subject operators'') provide substantially the same or greater protections for children as those contained in §§ 312.2 through 312.8, and 312.10.

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the self-regulatory program guidelines. At a minimum, this mechanism must include a comprehensive review by the safe harbor program, to be conducted not less than annually, of each subject operator's information policies, practices, and representations. The assessment mechanism required under this paragraph can be provided by an independent enforcement program, such as a seal program.

(3) Disciplinary actions for subject operators' non-compliance with self-regulatory program guidelines. This performance standard may be satisfied by:

(i) Mandatory, public reporting of any action taken against subject operators by the industry group issuing the self-regulatory guidelines;

(ii) Consumer redress;

(iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the self-regulatory guidelines;

(iv) Referral to the Commission of operators who engage in a pattern or practice of violating the self-regulatory guidelines; or

(v) Any other equally effective action.

(c) *Request for Commission approval of self-regulatory program guidelines.* A proposed safe harbor program's request for approval shall be accompanied by the following:

(1) A detailed explanation of the applicant's business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program;

(2) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;

(3) A comparison of each provision of §§ 312.2 through 312.8, and 312.10 with the corresponding provisions of the guidelines; and

(4) A statement explaining:

(i) How the self-regulatory program guidelines, including the applicable assessment mechanisms, meet the requirements of this part; and

(ii) How the assessment mechanisms and compliance consequences required under paragraphs (b)(2) and (b)(3) provide effective enforcement of the requirements of this part.

(d) *Reporting and recordkeeping requirements.* Approved safe harbor programs shall:

(1) By July 1, 2014, and annually thereafter, submit a report to the Commission containing, at a minimum, an aggregated summary of the results of the independent assessments conducted under paragraph (b)(2) of this section, a description of any disciplinary action taken against any subject operator under paragraph (b)(3) of this section, and a description of any approvals of member operators' use of a parental consent mechanism, pursuant to § 312.5(b)(4);

(2) Promptly respond to Commission requests for additional information; and

(3) Maintain for a period not less than three years, and upon request make available to the Commission for inspection and copying:

(i) Consumer complaints alleging violations of the guidelines by subject operators;

(ii) Records of disciplinary actions taken against subject operators; and

(iii) Results of the independent assessments of subject operators' compliance required under paragraph (b)(2) of this section.

(e) *Post-approval modifications to self-regulatory program guidelines.* Approved safe harbor programs must submit proposed changes to their guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(2) of this section. The statement required under paragraph (c)(4) of this section must describe how the proposed changes affect existing provisions of the guidelines.

(f) *Revocation of approval of self-regulatory program guidelines.* The Commission reserves the right to revoke any approval granted under this section if at any time it determines that the approved self-regulatory program guidelines or their implementation do not meet the requirements of this part. Safe harbor programs that were approved prior to the publication of the Final Rule amendments must, by March 1, 2013, submit proposed modifications to their guidelines that would bring them into compliance with such amendments, or their approval shall be revoked.

(g) *Operators' participation in a safe harbor program.* An operator will be deemed to be in compliance with the requirements of §§ 312.2 through 312.8, and 312.10 if that operator complies with Commission-approved safe harbor program guidelines. In considering whether to initiate an investigation or bring an enforcement action against a subject operator for violations of this part, the Commission will take into account the history of the subject operator's participation in the safe harbor program, whether the subject operator has taken action to remedy such non-compliance, and whether the operator's non-compliance resulted in any one of the disciplinary actions set forth in paragraph (b)(3).

§ 312.12 Voluntary Commission Approval Processes.

(a) *Parental consent methods.* An interested party may file a written request for Commission approval of parental consent methods not currently enumerated in § 312.5(b). To be considered for approval, a party must provide a detailed description of the proposed parental consent methods, together with an analysis of how the methods meet § 312.5(b)(1). The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the **Federal Register** a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request; and

(b) *Support for internal operations of the Web site or online service.* An interested party may file a written request for Commission approval of additional activities to be included within the definition of support for internal operations. To be considered for approval, a party must provide a detailed justification why such activities should be deemed support for internal operations, and an analysis of their potential effects on children's online privacy. The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the **Federal Register** a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request.

§ 312.13 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission, Commissioner Rosch abstaining, and Commissioner Ohlhausen dissenting.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Maureen K. Ohlhausen

I voted against adopting the amendments to the Children's Online Privacy Protection Act (COPPA) Rule because I believe a core provision of the amendments exceeds the scope of the authority granted us by Congress in COPPA, the statute that underlies and authorizes the Rule.[401] Before I explain my concerns, I wish to commend the Commission staff for their careful consideration of the multitude of issues raised by the numerous comments in this proceeding. Much of the language of the amendments is designed to preserve flexibility for the industry while striving to protect children's privacy, a goal I support strongly. The final proposed amendments largely strike the right balance between protecting children's privacy online and avoiding undue burdens on providers of children's online content and services. The staff's great expertise in the area of children's privacy and deep understanding of the values at stake in this matter have been invaluable in my consideration of these important issues.

In COPPA Congress defined who is an operator and thereby set the outer boundary for the statute's and the COPPA Rule's reach.[402] It is undisputed that COPPA places obligations on operators of Web sites or online services directed to children or operators with actual knowledge that they are collecting personal information from children. The statute provides, ''It is unlawful for an operator of a Web site or online service directed to children, or any operator that has actual knowledge that it is collecting personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed [by the FTC].'' [403]

The Statement of Basis and Purpose for the amendments (SBP) discusses concerns that the current COPPA Rule may not cover child-directed Web sites or services that do not themselves collect children's personal information but may incorporate third-party plug-ins that collect such information [404] for the plug-ins' use but do not collect or maintain the information for, or share it with, the child-directed site or service. To address these concerns, the amendments add a new proviso to the definition of operator in the COPPA Rule: ''Personal information is collected or maintained on behalf of an operator when: (a) it is collected or maintained by an agent or service provider of the operator; or (b) the operator benefits by allowing another person to collect personal information directly from users of such Web site or online service.'' [405]

The proposed amendments construe the term ''on whose behalf such information is collected and maintained'' to reach child-directed Web sites or services that merely derive from a third-party plug-in some kind of benefit, which may well be unrelated to the collection and use of children's information (*e.g.,* content, functionality, or advertising revenue). I find that this proviso—which would extend COPPA obligations to entities that do not collect personal information from children or have access to or control of such information collected by a third-party does not comport with the plain meaning of the statutory definition of an operator in COPPA, which covers only entities ''on whose behalf such information is collected and maintained.'' [406] In other words, I do not believe that the fact that a child-directed site or online service receives any kind of benefit from using a plug-in is equivalent to the collection of personal information by the third-party plug-in on behalf of the child-directed site or online service.

As the Supreme Court has directed, an agency ''must give effect to the unambiguously expressed intent of Congress.'' [407] Thus, regardless of the policy justifications offered, I cannot support expanding the definition of the term ''operator'' beyond the statutory parameters set by Congress in COPPA.

I therefore respectfully dissent.

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[401] 15 U.S.C. 6501–6506.

[402] COPPA, 15 U.S.C. 6501(2), defines the term ''operator'' as ''any person who operates a Web site located on the Internet or an online service and who collects or maintains personal information from or about users of or visitors to such Web site or online service, or on whose behalf such information is collected and maintained * * *'' As stated in the Statement of Basis and Purpose for the original COPPA Rule, ''The definition of 'operator' is of central importance because it determines who is covered by the Act and the Rule.'' Children's Online Privacy Protection Rule 64 FR 59888, 59891 (Nov. 3, 1999) (final rule).

[403] 15 U.S.C. 6502(a)(1).

[404] If the third-party plugs-ins are child-directed or have actual knowledge that they are collecting children's personal information they are already expressly covered by the COPPA statute. Thus, as the SBP notes, a behavioral advertising network that targets children under the age of 13 is already deemed an operator. The amendment must therefore be aimed at reaching third-party plug-ins that are either not child-directed or do not have actual knowledge that they are collecting children's personal information, which raises a question about what harm this amendment will address. For example, it appears that this same type of harm could occur through general audience Web sites and online services collecting and using visitors' personal information without knowing whether some of the data is children's personal information, which is a practice that COPPA and the amendments do not prohibit.

[405] 16 CFR 312.2 (Definitions).

[406] This expanded definition of operator reverses the Commission's previous conclusion that the appropriate test for determining an entity's status as an operator is to ''look at the entity's relationship to the data collected,'' using factors such as ''who owns and/or controls the information, who pays for its collection and maintenance, the pre-existing contractual relationships regarding collection and maintenance of the information, and the role of the Web site or online service in collecting and/or maintaining the information (*i.e.,* whether the site participates in collection or is merely a conduit through which the information flows to another entity.)'' Children's Online Privacy Protection Rule 64 FR 59888, 59893, 59891 (Nov. 3, 1999) (final rule).

[407] *Chevron* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 842–43 (1984) (''When a court reviews an agency's construction of the statute which it administers, it is confronted with two questions. First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'').

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H.R. 1339/P.L. 112–241

To designate the City of Salem, Massachusetts, as the Birthplace of the National Guard of the United States. (Jan. 10, 2013; 126 Stat. 2372)

H.R. 1845/P.L. 112–242

Medicare IVIG Access and Strengthening Medicare and Repaying Taxpayers Act of 2012 (Jan. 10, 2013; 126 Stat. 2374)

H.R. 2338/P.L. 112–243

To designate the facility of the United States Postal Service located at 600 Florida Avenue in Cocoa, Florida, as the ''Harry T. and Harriette Moore Post Office''. (Jan. 10, 2013; 126 Stat. 2382)

H.R. 3263/P.L. 112–244

Lake Thunderbird Efficient Use Act of 2012 (Jan. 10, 2013; 126 Stat. 2383)

H.R. 3641/P.L. 112–245

Pinnacles National Park Act (Jan. 10, 2013; 126 Stat. 2385)

H.R. 3869/P.L. 112–246

To designate the facility of the United States Postal Service located at 600 East Capitol Avenue in Little Rock, Arkansas, as the ''Sidney 'Sid' Sanders McMath Post Office Building''. (Jan. 10, 2013; 126 Stat. 2388)

H.R. 3892/P.L. 112–247

To designate the facility of the United States Postal Service located at 8771 Auburn Folsom Road in Roseville, California, as the ''Lance Corporal Victor A. Dew Post Office''. (Jan. 10, 2013; 126 Stat. 2389)

H.R. 4053/P.L. 112–248

Improper Payments Elimination and Recovery Improvement Act of 2012 (Jan. 10, 2013; 126 Stat. 2390)

H.R. 4057/P.L. 112–249

To amend title 38, United States Code, to direct the Secretary of Veterans Affairs to develop a comprehensive policy to improve outreach and transparency to veterans and members of the Armed Forces through the provision of information on institutions of higher learning, and for other purposes. (Jan. 10, 2013; 126 Stat. 2398)

H.R. 4073/P.L. 112–250

To authorize the Secretary of Agriculture to accept the quitclaim, disclaimer, and relinquishment of a railroad right of way within and adjacent to Pike National Forest in El Paso County, Colorado, originally granted to the Mt. Manitou Park and Incline Railway Company pursuant to the Act of March 3, 1875. (Jan. 10, 2013; 126 Stat. 2403)

H.R. 4389/P.L. 112–251

To designate the facility of the United States Postal Service located at 19 East Merced Street in Fowler, California, as the ''Cecil E. Bolt Post Office''. (Jan. 10, 2013; 126 Stat. 2405)

H.R. 5859/P.L. 112–252

To repeal an obsolete provision in title 49, United States Code, requiring motor vehicle insurance cost reporting. (Jan. 10, 2013; 126 Stat. 2406)

H.R. 6014/P.L. 112–253

Katie Sepich Enhanced DNA Collection Act of 2012 (Jan. 10, 2013; 126 Stat. 2407)

H.R. 6260/P.L. 112–254

To designate the facility of the United States Postal Service located at 211 Hope Street in Mountain View, California, as the ''Lieutenant Kenneth M. Ballard Memorial Post Office''. (Jan. 10, 2013; 126 Stat. 2410)

H.R. 6379/P.L. 112–255

To designate the facility of the United States Postal Service located at 6239 Savannah Highway in Ravenel, South Carolina, as the ''Representative Curtis B. Inabinett, Sr. Post Office''. (Jan. 10, 2013; 126 Stat. 2411)

H.R. 6587/P.L. 112–256

To designate the facility of the United States Postal Service located at 225 Simi Village Drive in Simi Valley, California, as the ''Postal Inspector Terry Asbury Post Office Building''. (Jan. 10, 2013; 126 Stat. 2412)

H.R. 6620/P.L. 112–257

Former Presidents Protection Act of 2012 (Jan. 10, 2013; 126 Stat. 2413)

H.R. 6671/P.L. 112–258

Video Privacy Protection Act Amendments Act of 2012 (Jan. 10, 2013; 126 Stat. 2414)

S. 925/P.L. 112–259

Mt. Andrea Lawrence Designation Act of 2011 (Jan. 10, 2013; 126 Stat. 2415)

S. 3202/P.L. 112–260

Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Jan. 10, 2013; 126 Stat. 2417)

S. 3666/P.L. 112–261

To amend the Animal Welfare Act to modify the definition of ''exhibitor''. (Jan. 10, 2013; 126 Stat. 2428)

S.J. Res. 49/P.L. 112–262

Providing for the appointment of Barbara Barrett as a citizen regent of the Board of Regents of the Smithsonian Institution. (Jan. 10, 2013; 126 Stat. 2429)

H.R. 443/P.L. 112–263

To provide for the conveyance of certain property from the United States to the Maniilaq Association located in Kotzebue, Alaska. (Jan. 14, 2013; 126 Stat. 2430)

H.R. 1464/P.L. 112–264

North Korean Child Welfare Act of 2012 (Jan. 14, 2013; 126 Stat. 2432)

H.R. 2076/P.L. 112–265

Investigative Assistance for Violent Crimes Act of 2012 (Jan. 14, 2013; 126 Stat. 2435)

H.R. 4212/P.L. 112–266

Drywall Safety Act of 2012 (Jan. 14, 2013; 126 Stat. 2437)

H.R. 4365/P.L. 112–267

To amend title 5, United States Code, to make clear that accounts in the Thrift Savings Fund are subject to certain Federal tax levies. (Jan. 14, 2013; 126 Stat. 2440)

H.R. 4606/P.L. 112–268

To authorize the issuance of right-of-way permits for natural gas pipelines in Glacier National Park, and for other purposes. (Jan. 14, 2013; 126 Stat. 2441)

H.R. 6029/P.L. 112–269

Foreign and Economic Espionage Penalty Enhancement Act of 2012 (Jan. 14, 2013; 126 Stat. 2442)

H.R. 6060/P.L. 112–270

Endangered Fish Recovery Programs Extension Act of 2012 (Jan. 14, 2013; 126 Stat. 2444)

H.R. 6328/P.L. 112–271

Clothe a Homeless Hero Act (Jan. 14, 2013; 126 Stat. 2446)

H.R. 6364/P.L. 112–272

World War I Centennial Commission Act (Jan. 14, 2013; 126 Stat. 2448)

H.R. 6586/P.L. 112–273

Space Exploration Sustainability Act (Jan. 14, 2013; 126 Stat. 2454)

H.R. 6621/P.L. 112–274

To correct and improve certain provisions of the Leahy-Smith America Invents Act and title 35, United States Code. (Jan. 14, 2013; 126 Stat. 2456)

H.R. 6655/P.L. 112–275

Protect our Kids Act of 2012 (Jan. 14, 2013; 126 Stat. 2460)

S. 3331/P.L. 112–276

Intercountry Adoption Universal Accreditation Act of 2012 (Jan. 14, 2013; 126 Stat. 2466)

S. 3454/P.L. 112–277

Intelligence Authorization Act for Fiscal Year 2013 (Jan. 14, 2013; 126 Stat. 2468)

S. 3472/P.L. 112–278

Uninterrupted Scholars Act (USA) (Jan. 14, 2013; 126 Stat. 2480)

S. 3630/P.L. 112–279

To designate the facility of the United States Postal Service located at 218 North Milwaukee Street in Waterford, Wisconsin, as the ''Captain Rhett W. Schiller Post Office''. (Jan. 14, 2013; 126 Stat. 2482)

S. 3662/P.L. 112–280

Lieutenant Ryan Patrick Jones Post Office Designation Act (Jan. 14, 2013; 126 Stat. 2483)

S. 3677/P.L. 112–281
To make a technical correction to the Flood Disaster Protection Act of 1973. (Jan. 14, 2013; 126 Stat. 2485)

S.J. Res. 44/P.L. 112–282
Granting the consent of Congress to the State and Province Emergency Management Assistance Memorandum of Understanding. (Jan. 14, 2013; 126 Stat. 2486)

S. 2318/P.L. 112–283
Department of State Rewards Program Update and Technical Corrections Act of 2012 (Jan. 15, 2013; 126 Stat. 2492)

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