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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 12, 2013
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket No. EERE–2008–BT–TP–0011]

RIN 1904–AB78

Energy Conservation Program: Test Procedures for Microwave Ovens

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

ACTION: Final rule.

SUMMARY: On November 23, 2011, the U.S. Department of Energy (DOE) issued a supplemental notice of proposed rulemaking (SNOPR) to amend the test procedures for microwave ovens. That SNOPR proposed amendments to the DOE test procedure to incorporate provisions from the International Electrotechnical Commission (IEC) Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0 2011–01 (IEC Standard 62301 (Second Edition)). DOE published a second SNOPR on May 16, 2012, proposing additional provisions for measuring the standby mode and off mode energy use of products that combine a microwave oven with other appliance functionality, as well as minor technical clarifications. Those proposed rulemakings serve as the basis for today's action. DOE is issuing a final rule amending the DOE test procedure to incorporate by reference the proposed provisions from IEC Standard 62301 (Second Edition) and the technical clarifications. DOE is not amending the test procedure at this time to measure the energy consumption of products that combine microwave ovens with other appliance functionality, but may consider such amendments in a future rulemaking.

DATES: The effective date of this rule is February 19, 2013. The final rule changes will be mandatory for representations of the energy efficiency of microwave ovens starting July 17, 2013.

The incorporation by reference of a publication listed in this rule was approved by the Director of the **Federal Register** on December 17, 2012.

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

A link to the docket web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR;rpp=25;po=0;D=EERE-2008-BT-TP-0011*. This web page will contain a link to the docket for this notice on the *regulations.gov* site. The *regulations.gov* Web page will contain simple instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov*.

Mr. Ari Altman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone: (202) 287–6307. Email: *ari.altman@hq.doe.gov*.

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I. Authority and Background

Title III of the Energy Policy and Conservation Act (42 U.S.C. 6291, *et seq.;* ''EPCA'' or, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007)). Part B of title III, which for editorial reasons was redesignated as Part A upon incorporation into the U.S. Code (42 U.S.C. 6291–6309), establishes the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' These include microwave ovens, the subject of today's notice. (42 U.S.C. 6291(1)–(2) and 6292(a)(10))

Under EPCA, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered products must use (1) as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA, and (2) for making representations about the

efficiency of those products. Similarly, DOE must use these test requirements to determine whether the products comply with any relevant standards promulgated under EPCA.

General Test Procedure Rulemaking Process

Under 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In addition, if DOE determines that a test procedure amendment is warranted, it must publish proposed test procedures and offer the public an opportunity to present oral and written comments on them. (42 U.S.C. 6293(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine to what extent, if any, the proposed test procedure would alter the measured energy efficiency of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that the amended test procedure would alter the measured efficiency of a covered product, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

EISA 2007 amended EPCA to require DOE to amend its test procedures for all covered products to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor, unless the current test procedure already incorporates the standby mode and off mode energy consumption, or if such integration is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe a separate standby mode and off mode energy use test procedure for the covered product, if a separate test is technically feasible. (42 U.S.C. 6295(gg)(2)(A)) Any such amendment must consider the most current versions of IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' and IEC Standard 62087, ''Methods of measurement for the power consumption of audio, video, and related equipment.'' [1] *Id.* At the time of the enactment of EISA 2007, the most current versions of these standards were IEC Standard 62301 (First Edition 2005–06) and IEC Standard 62087 (Second Edition 2008–09).

DOE Microwave Oven Test Procedure

DOE's test procedure for microwave ovens is codified at appendix I to subpart B of Title 10 of the Code of Federal Regulations (CFR). The test procedure was established in an October 3, 1997 final rule that addressed active mode energy use only. 62 FR 51976.

To address standby mode and off mode energy use, DOE published a notice of proposed rulemaking (NOPR) on October 17, 2008 (hereafter referred to as the October 2008 TP NOPR), in which it proposed incorporating provisions from IEC Standard 62301 (First Edition) into the DOE active mode test procedure, as well as language to clarify application of these provisions for measuring standby mode and off mode power in microwave ovens. 73 FR 62134. DOE held a public meeting on November 14, 2008, to hear oral comments on and solicit information relevant to the October 2008 TP NOPR. Interested parties remarked upon, among other things, harmonization of standards and test procedures with those of other countries and international agencies. In particular, commenters urged DOE to consider IEC Standard 62301 (Second Edition) (or ''Second Edition''), which was in the process of being drafted.

EPCA requires DOE to consider the most recent version of IEC Standard 62301. (42 U.S.C. 6295(gg)(2)(A)) After the October 2008 TP NOPR was published, DOE determined that it would consider the revised version of IEC Standard 62301, (*i.e.,* IEC Standard 62301 (Second Edition)), in the microwave oven test procedure rulemaking. DOE anticipated, based on review of drafts of the updated IEC Standard 62301, that the revisions could include different mode definitions. The revised version was expected in July 2009. IEC Standard 62301 (Second Edition) was not published, however, until January 27, 2011.

In order to ensure that DOE could establish test procedures for standby mode and off mode by March 31, 2011, as required by the EISA 2007 amendments to EPCA, DOE published an SNOPR on July 22, 2010 (hereafter referred to as the July 2010 TP SNOPR) proposing mode definitions based on those in the then current draft version of IEC Standard 62301 (Second Edition), designated as IEC Standard 62301 Second Edition, Committee Draft for Vote (IEC Standard 62301 (CDV)). 75 FR 42612, 42620–23 (July 22, 2010). DOE stated that it believed that those most recent mode definitions represented the best definitions available for the analysis in support of this rulemaking. 75 FR 42612, 42621. DOE held a public meeting on September 16, 2010, to hear oral comments on and solicit information relevant to the July 2010 TP SNOPR. Interested parties remarked upon, among other things, covered products, incorporation of IEC Standard 62301 (First Edition), mode definitions, and testing procedures. On October 29, 2010, the IEC released a finalized draft version of IEC Standard 62301 (Second Edition), IEC Standard 62301 (FDIS).

On March 9, 2011, DOE published an interim final rule (hereafter referred to as the March 2011 Interim Final Rule) amending the test procedures for microwave ovens. 76 FR 12825. The March 2011 Interim Final Rule incorporated by reference specific clauses from IEC Standard 62301 (First Edition) regarding test conditions and testing procedures for measuring the average standby mode and average off mode power consumption into the microwave oven test procedure. DOE also incorporated into the microwave oven test procedure definitions of ''active mode,'' ''standby mode,'' and ''off mode'' based on the definitions provided in IEC Standard 62301 (FDIS). DOE further adopted language to clarify the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode and off mode power in the March 2011 Interim Final rule. Specifically, DOE defined the test duration for cases in which the measured power is not stable (*i.e.,* varies over a cycle), recognizing that the power consumption of microwave oven displays can vary based on the displayed clock time. 76 FR 12825, 12828.

The amendments adopted in the March 2011 Interim Final Rule became effective on April 8, 2011. However, DOE noted that in order to ensure that the amended test procedure adequately addresses the EISA 2007 requirement to consider the most recent version of IEC Standard 62301, and recognizing that the IEC issued IEC Standard 62301 (Second Edition) in January of 2011, DOE issued the microwave oven test procedure as an interim final rule and offered an additional 180-day comment period to consider whether any changes

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

should be made to the interim final rule in light of publication of IEC Standard 62301 (Second Edition). DOE stated that it would consider these comments and, to the extent necessary, publish a final rulemaking incorporating any changes. 76 FR 12825, 12830–31. In response to the March 2011 Interim Final Rule, interested parties commented that, among other things, DOE should incorporate by reference IEC Standard 62301 (Second Edition) for optimal international harmonization, to give clarity and consistency to the regulated community and to decrease the testing burden.

Based upon the public comment, DOE decided to further analyze IEC Standard 62301 (Second Edition). DOE reviewed this latest version of the IEC standard and believes that it improves some measurements of standby mode and off mode energy use. Accordingly, DOE published a second SNOPR on November 23, 2011 (hereafter referred to as the November 2011 TP SNOPR), proposing to incorporate certain provisions of IEC Standard 62301 (Second Edition), along with clarifying language, into the DOE test procedures for microwave ovens adopted in the March 2011 Interim Final Rule. In addition, DOE proposed in the November 2011 TP SNOPR to make minor editorial changes in 10 CFR part 430, subpart B, appendix I, section 2.2.1.1 to aid the reader by presenting the electrical supply voltages consistently for microwave ovens and conventional cooking products, and also in section 1.12 to clarify the alternative use of metric units for various measurements and calculations in the conventional cooking products test procedure. 76 FR 72331 (Nov. 23, 2011).

In the course of reviewing comments on the November 2011 TP SNOPR, DOE determined that an additional SNOPR would be necessary before moving to a final rule. DOE subsequently published the additional SNOPR on May 16, 2012 (hereafter referred to as the May 2012 TP SNOPR), to address comments received on the November 2011 TP SNOPR regarding coverage of additional microwave oven product types in the DOE test procedure, and in particular, products combining a microwave oven with other appliance functionality. 77 FR 28805. Comments on this topic and other topics received in response to both the November 2011 TP SNOPR and the May 2012 TP SNOPR are addressed in today's final rule.

With respect to today's rulemaking, as noted above, EPCA requires that DOE determine whether a test procedure amendment would alter the measured efficiency of a product, thereby requiring adjustment of existing standards. (42 U.S.C. 6293(e)) Because there are currently no Federal energy conservation standards for microwave ovens (including standards for energy use in the standby and off modes), no determination is needed under these circumstances. DOE is conducting a concurrent rulemaking process to consider standby and off mode energy conservation standards and will utilize the DOE test procedure as amended by today's final rule in developing those standard levels.

Today's rule also fulfills DOE's obligation to periodically review its test procedures under 42 U.S.C. 6293(b)(1)(A). DOE anticipates that its next evaluation of this test procedure will occur in a manner consistent with the timeline set out in this provision.

II. Summary of the Final Rule

The final rule amends the current DOE test procedures for microwave ovens to incorporate by reference certain provisions of IEC Standard 62301 (Second Edition) for measuring standby mode and off mode energy use. As noted in section I of today's final rule, the use of this internationally recognized standard will optimize harmonization for manufacturers, will give clarity and consistency in the test conduct, and will decrease the testing burden. The current procedures are also being amended to clarify testing requirements for supply voltage and alternative metric units.

In addition, in today's final rule DOE confirms that the microwave oven portion of a combined product is covered under the definition of ''microwave oven'' at 10 CFR 430.2, and is adding and clarifying definitions of certain combined products which incorporate microwave ovens and conventional cooking products. Due to a lack of data and information at this time, however, DOE is not amending its test procedures in this rule to measure standby mode and off mode energy use for the microwave portion of combined products. DOE may choose to initiate a separate rulemaking at a later date that would address standby and off mode energy use of combined products.

III. Discussion

A. Products Covered by This Test Procedure Rulemaking

DOE defines ''microwave oven'' as a class of kitchen ranges and ovens which is a household cooking appliance consisting of a compartment designed to cook or heat food by means of microwave energy. 10 CFR 430.2 In the March 2011 Interim Final Rule, DOE determined that this regulatory definition includes all ovens equipped with microwave capability, including convection microwave ovens (*i.e.,* microwave ovens that incorporate convection features and possibly other means of cooking) because they are capable of cooking or heating food by means of microwave energy. 76 FR 12825, 12828–30 (March 9, 2011). In the March 2011 Interim Final Rule, DOE referred to such a product as a ''combination oven''.

In the May 2012 TP SNOPR, DOE proposed that the regulatory definition of microwave oven also includes all products that combine a microwave oven with other appliance functionality. To aid in distinguishing such other ''combined products'' from the type of microwave oven that incorporates convection features and any other means of cooking, DOE proposed in the May 2012 TP SNOPR to use the term ''convection microwave oven'' to more accurately describe the latter, and to provide a definition of convection microwave oven in 10 CFR 430.2. In this definition, DOE would clarify that the microwave capability, convection features, and any other cooking means are incorporated in a single cavity. 77 FR 28805, 28808 (May 16, 2012).

DOE further proposed in the May 2012 TP SNOPR that all products that combine a microwave oven with other appliance functionality would be considered covered products, including microwave/conventional ranges, microwave/conventional ovens, microwave/conventional cooking tops, and other combined products such as microwave/refrigerator-freezer/charging stations. Regarding microwave/conventional ranges, DOE clarified that an appliance need not be free-standing to be covered as a microwave/conventional range. 77 FR 28805, 28808–09 (May 16, 2012). DOE, therefore, proposed in the May 2012 TP SNOPR to add a definition of ''microwave/conventional cooking top'' in 10 CFR 430.2 to state that it is a class of kitchen ranges and ovens that is a household cooking appliance consisting of a microwave oven and a conventional cooking top. Similarly, DOE proposed in the May 2012 TP SNOPR to add a definition in 10 CFR 430.2 of a ''microwave/conventional oven'' as a class of kitchen ranges and ovens which is a household cooking appliance consisting of a microwave oven and a conventional oven in separate compartments. DOE also proposed to clarify in the definition of microwave/conventional range that the microwave oven and conventional oven are

incorporated as separate compartments. 77 FR 28805, 28809–10 (May 16, 2012).

Because each of those combined products described previously contains a microwave oven as one of its functional components, DOE proposed that the microwave oven component of these products would meet the statutory requirements as a covered product for the purposes of measuring standby mode and off mode energy use under EPCA. (42 U.S.C. 6295(gg)(2)(B)(vi)) DOE stated that it does not believe that the presence of additional appliance functionality would eliminate the statutory requirement to evaluate standby mode and off mode energy use in the microwave oven component. DOE also tentatively concluded in the May 2012 TP SNOPR that the test procedure should only measure the standby mode and off mode energy use associated with the microwave oven portion of combined products, and for that reason the proposed amendments do not require any determination as to which appliance function of a combined product with a microwave oven component represents the primary usage of the product. 77 FR 28805, 28809–10 (May 16, 2012).

Whirlpool Corporation (Whirlpool) commented in response to the May 2012 TP SNOPR that combined products should not be covered. Whirlpool noted that it produces a microwave/conventional oven in which both cavities are controlled by a single control panel. Whirlpool believes that this product should be regulated according to the primary use of the product, based on total energy consumption, which in this case would be as a conventional oven since their research indicates that the microwave oven cavity uses one-tenth of the energy annually that the conventional oven cavity does. (Whirlpool, No. 33 at p. 1; Whirlpool, No. 41 at pp. 1–2) The Association of Home Appliance Manufacturers (AHAM) also commented that the primary use of a combined product should determine how the product is regulated, whether that be as a conventional cooking product or a microwave oven. AHAM also stated that both free-standing and built-in ranges that provide microwave oven capability in one compartment and a conventional oven in a separate compartment should not be considered covered products. As a clarification, AHAM proposed that DOE define ''combination oven'' as ''a microwave oven that incorporates means of cooking other than microwave energy, and does not mean free-standing or built-in conventional cooking tops, conventional ovens, or conventional ranges that include microwave ovens in separate cavities.'' (AHAM, No. 40 at pp. 2–3)

DOE maintains its determination from the May 2012 TP SNOPR that the microwave oven component is subject to the statutory requirement for measuring standby mode and off mode energy use, and that the added conventional oven functionality, regardless of its annual energy consumption, does not exempt the microwave oven component from this requirement. Therefore, DOE determines for today's final rule that all products that incorporate microwave ovens with additional appliance functionality are covered products under the microwave oven regulatory definition, but DOE is declining to adopt a test procedure for such products at this time due to a lack of information. DOE also adopts in today's final rule regulatory definitions of several specific product types that incorporate microwave and conventional cooking functionality, either within a single cavity or in separate cavities, to aid manufacturers in determining which products are the subject of the provisions adopted in today's final rule. These definitions include the definition of ''convection microwave oven'' in place of the term ''combination oven'', for those products that incorporate microwave and conventional cooking functionality in a single cavity. In sum, today's final rule adds the following definitions to 10 CFR 430.2:

- Convection microwave oven means a microwave oven that incorporates convection features and any other means of cooking in a single compartment.
- Microwave/conventional cooking top means a class of kitchen ranges and ovens that is a household cooking appliance consisting of a microwave oven and a conventional cooking top.
- Microwave/conventional oven means a class of kitchen ranges and ovens that is a household cooking appliance consisting of a microwave oven and a conventional oven in separate compartments.

In addition, DOE amends the definition of ''microwave/conventional range'' in 10 CFR 430.2 as a class of kitchen ranges and ovens that is a household cooking appliance consisting of a microwave oven and a conventional oven in separate compartments and a conventional cooking top. DOE also amends the definition of ''microwave oven'' to include the use of the term ''convection microwave oven'' in place of ''combination oven.''

AHAM commented that DOE proposed to cover all products that combine microwave oven and other appliance functionality, but did not propose definitions for all of the possible combined products. According to AHAM, such an approach results in uncertainty about coverage for products that are manufactured as microwave ovens only, but later added to other appliances to create a combined product. AHAM noted that this integration may occur when the microwave oven is no longer in the manufacturer's control. Therefore, AHAM believes that DOE should not cover combined products. Should it do so, AHAM stated that a microwave oven should be classified according to its configuration as produced by the manufacturer, since a manufacturer would have no way of knowing how a stand-alone microwave oven may be later integrated into a combined product. (AHAM, No. 40 at p. 3)

DOE has determined that while combined products are covered products under the statute, it will not be promulgating a test procedure for such products at this time, due to a lack of sufficient data. DOE will clarify its position on this issue at the time of any future rulemaking regarding combined products.

B. Effective Date for the Test Procedure and Date on Which Use of the Test Procedure Will be Required

The effective date of the standby and off mode test procedures for microwave ovens is February 19, 2013. DOE's amended test procedure regulations codified in 10 CFR part 430, subpart B, appendix I clarify, though, that the procedures and calculations adopted in today's final rule need not be performed to determine compliance with energy conservation standards until compliance with any final rule establishing amended energy conservation standards for microwave ovens in standby mode and off mode is required. However, as of July 17, 2013, any representations as to the standby mode and off mode energy consumption of the products that are the subject of this rulemaking must be based upon results generated under the applicable provisions of this amended test procedure. (42 U.S.C. 6293(c)(2)) In the period between February 19, 2013 and July 17, 2013, any representations as to the standby mode and off mode energy consumption of the products that are the subject of this rulemaking may be based upon results generated under the applicable provisions of either this amended test procedure or the previous test procedure, published at 10 CFR part 430, subpart B, Appendix I as contained in the 10 CFR parts 200 to 499 edition revised as of January 1, 2012.

The Republic of Korea (Korea) stated that if DOE adopted its proposals from the May 2012 TP SNOPR, manufacturers would require approximately 6 months for product development and another 6 months to demonstrate compliance with energy conservation standards and safety requirements. Therefore, Korea requested a compliance date at least a year after publication of the test procedure final rule. (Korea, No. 42, at p. 1) As noted above, use of the amended test procedure established in today's final rule will not be required to demonstrate compliance until the compliance date of any final rule establishing amended microwave oven energy conservation standards. DOE is conducting such a standards rulemaking concurrently with this test procedure rulemaking, and expects that the compliance date of any amended standards will be later than 1 year after the publication of today's final rule.

C. Incorporation of IEC Standard 62301 (Second Edition)

As discussed in section I of today's final rule, EPCA, as amended by EISA 2007, requires that test procedures be amended to include standby mode and off mode energy consumption, taking into consideration the most current versions of IEC Standards 62301 and 62087. (42 U.S.C. 6295(gg)(2)(A)) DOE adopted certain provisions from IEC Standard 62301 (First Edition) regarding test conditions and testing procedures for measuring the average standby mode and average off mode power consumption in the microwave oven test procedure in the March 2011 Interim Final Rule. DOE also incorporated into the microwave oven test procedure definitions of ''active mode,'' ''standby mode,'' and ''off mode'' based on the definitions provided in IEC Standard 62301 (FDIS), along with clarifying language for clauses incorporated by reference in the March 2011 Interim Final Rule from IEC Standard 62301 (First Edition). Specifically, these provisions measure power consumption of microwave ovens in the case that the measured power is not stable (*i.e.,* varies over a cycle), based on displayed clock time, and DOE defined the test duration in this case. 76 FR 12825, 12828 (Mar. 9, 2011).

Based upon the public comment received on the March 2011 Interim Final Rule, DOE published the November 2011 TP SNOPR, proposing to update its reference to IEC Standard 62301 by incorporating certain provisions of IEC Standard 62301 (Second Edition), along with clarifying language, into the DOE test procedures for microwave ovens adopted in the March 2011 Interim Final Rule.

AHAM and Whirlpool support the incorporation by reference of IEC Standard 62301 (Second Edition) in the microwave oven test procedure. (AHAM, No. 40 at p. 1; Whirlpool, No. 33 at p. 1) AHAM stated that the use of the Second Edition would allow for optimum international harmonization, provide clarity and consistency to manufacturers, and decrease test burden. (AHAM, No. 40 at p. 4)

The suitability of specific clauses from IEC Standard 62301 (Second Edition) regarding testing conditions and methodology for use in DOE's microwave oven test procedure are discussed in the following paragraphs.

Section 4, paragraph 4.4 of the Second Edition revises the power measurement accuracy provisions of the First Edition. A more comprehensive specification of required accuracy is provided in the Second Edition, which depends upon the characteristics of the power being measured. Testers using the Second Edition are required to measure the crest factor and power factor of the input power, and to calculate a maximum current ratio (MCR) (paragraph 4.4.1 of the Second Edition). The Second Edition then specifies calculations to determine the maximum permitted uncertainty in MCR. DOE noted in the November 2011 TP SNOPR, however, that the permitted uncertainty is the same or less stringent than the uncertainty specified in the First Edition, depending on the value of MCR and the power level being measured. DOE determined, however, that this change in the permitted uncertainty maintains sufficient accuracy of measurements under a full range of possible measured power levels without placing undue demands on the instrumentation. These power measurement accuracy requirements were based upon detailed technical submissions to the IEC in the development of IEC Standard 62301 (FDIS), which showed that commonly-used power measurement instruments were unable to meet the original requirements for certain types of loads. Therefore, DOE concluded in the November 2011 TP SNOPR that the incremental testing burden associated with the additional measurements and calculations is offset by the more reasonable requirements for testing equipment, while maintaining measurement accuracy deemed acceptable and practical by voting members for IEC Standard 62301 (Second Edition). For these reasons, DOE proposed in the November 2011 TP SNOPR to incorporate by reference in 10 CFR part 430, subpart B, appendix I, section 2.9.1.3 the power equipment specifications in section 4, paragraph 4.4 of IEC Standard 62301 (Second Edition). 76 FR 72332, 72339 (Nov. 23, 2011). DOE did not revise this proposal for the May 2012 TP SNOPR, and did not receive any comments on this topic in response to either notice. In today's final rule, DOE adopts these amendments to its microwave oven test procedure.

In the November 2011 TP SNOPR, DOE observed that section 5, paragraph 5.2 of IEC Standard 62301 (Second Edition) maintains the installation and setup procedures incorporated by reference in the microwave oven test procedure in the March 2011 Interim Final Rule from the First Edition. These provisions require that the appliance be prepared and set up in accordance with manufacturer's instructions, and that if no instructions are given, then the factory or ''default'' settings shall be used, or where there are no indications for such settings, the appliance is tested as supplied. Additionally, IEC Standard 62301 (Second Edition) adds certain clarifications to the installation and setup procedures in section 5, paragraph 5.2 of the First Edition regarding products equipped with a battery recharging circuit for an internal battery, as well as instructions for testing each relevant configuration option identified in the product's instructions for use. DOE stated in the November 2011 TP SNOPR that it is not aware of any microwave oven with an internal battery, or with a recharging circuit for such a battery. DOE also determined that a requirement to separately test each configuration option could substantially increase test burden and potentially conflicts with the requirement within the same section to set up the product in accordance with the instructions for use or, if no such instructions are available, to use the factory or ''default'' settings. Therefore, DOE tentatively concluded in the November 2011 TP SNOPR that the portions of the installation instructions in section 5, paragraph 5.2 of IEC Standard 62301 (Second Edition) pertaining to batteries and the requirement for the determination, classification, and testing of all modes associated with every combination of available product configuration options (which may be more numerous than the modes associated with operation at the default settings) are not appropriate for the microwave oven test procedures. Accordingly, DOE proposed in the November 2011 TP SNOPR qualifying language in the test procedure

amendments at 10 CFR part 430, subpart B, appendix I, section 2.1.3 to disregard those portions of the installation instructions. *Id.* DOE maintained this proposal for the May 2012 TP SNOPR. No comments on this topic were submitted to DOE, and for the reasons discussed, DOE is amending the microwave oven test procedure accordingly in today's final rule.

The Second Edition also contains provisions for the power supply (section 4.3) and power-measuring instruments (section 4.4). Paragraph 4.3.2 requires that the value of the harmonic content of the voltage supply be recorded during the test and reported. As described previously, paragraph 4.4.1 requires the instrument to measure the crest factor and maximum current ratio. Paragraph 4.4.3 requires the instrument to be capable of measuring the average power or integrated total energy consumption over any operator-selected time interval. In the November 2011 TP SNOPR, DOE stated that it is aware of commercially available power measurement instruments that can perform each of these required measurements individually. However, DOE is also aware that certain industry-standard instruments, such as the Yokogawa WT210/WT230 digital power meter and possibly others, are unable to measure harmonic content or crest factor while measuring average power or total integrated energy consumption. DOE expressed concern that laboratories currently using power-measuring instruments without this capability would be required to purchase, at potentially significant expense, additional power-measuring instruments that are able to perform all these measurements simultaneously. Therefore, DOE proposed in the November 2011 TP SNOPR for 10 CFR part 430, subpart B, appendix I, sections 2.2.1.2 and 2.9.1.3 that if the power-measuring instrument is unable to perform these measurements during the actual test measurement, it would be acceptable to measure the total harmonic content, crest factor, and maximum current ratio immediately before and immediately after the actual test measurement to determine whether the requirements for the power supply and power measurement have been met. 76 FR 72332, 72339–40 (Nov. 23, 2011).

AHAM and Whirlpool support the measurement of the total harmonic content, crest factor, and maximum current ratio before and after the actual test measurement if the power measuring instrument is unable to perform these measurements during the actual test. Whirlpool commented that this provision would prevent manufacturers from being required to purchase more comprehensive and expensive test equipment. (AHAM, No. 40 at p. 4; Whirlpool, No. 33 at p. 2) DOE agrees with these commenters, and in today's final rule amends the microwave oven test procedure to include such a provision in section 2.2.1.2 of appendix I.

The other major changes in the Second Edition related to the measurement of standby mode and off mode power consumption in covered products involve measurement techniques and specification of the stability criteria required to measure that power. The Second Edition contains more detailed techniques to evaluate the stability of the power consumption and to measure the power consumption for loads with different stability characteristics. According to the Second Edition, the user is given a choice of measurement procedures, including sampling methods, average reading methods, and a direct meter reading method. For the November 2011 TP SNOPR, DOE evaluated these new methods in terms of test burden and improvement in results as compared to those methods adopted in the March 2011 Interim Final Rule, which were based on IEC Standard 62301 (First Edition).

In the March 2011 Interim Final Rule, DOE adopted provisions requiring that microwave oven standby mode and off mode power be measured using section 5, paragraph 5.3 of IEC Standard 62301 (First Edition). DOE also adopted additional specific methodology for microwave ovens in which power varies as a function of the time displayed. In particular, based on DOE's testing, DOE adopted a requirement for these microwave ovens to set the display time to 3:23 and allowing a 10-minute stabilization period prior to a 10-minute measurement period for the display time of 3:33 to 3:42, based on the average power approach of section 5, paragraph 5.3.2(a) of IEC Standard 62301 (First Edition). DOE stated that this method provides a valid measure of standby energy use for those microwave ovens with power consumption varying according to the time displayed on the clock. 76 FR 12825, 12838–40 (Mar. 9, 2011).

For the November 2011 TP SNOPR, DOE analyzed the potential impacts of referencing methodology from IEC Standard 62301 (Second Edition) rather than from the First Edition by comparing the provisions allowed by each under different scenarios of power consumption stability. Based on its analysis, DOE concluded that the use of the Second Edition would improve the accuracy and representativeness of power consumption measurements. DOE also recognized industry's overwhelming support for the Second Edition and the benefit of harmonizing with international test standards to reduce testing burden on manufacturers that sell products internationally by not requiring multiple test methods to be conducted according to different testing methods in different countries. In the narrow case of microwave ovens with power consumption that varies as a function of the clock time displayed, DOE proposed to maintain the application of clauses from IEC Standard 62301 (First Edition) for measuring standby mode power consumption during a 10-minute test period that were adopted in the March 2011 Interim Final Rule. DOE determined that, in this case, the use of the Second Edition would cause manufacturers to incur significant burden that would not be warranted by any potential improved accuracy of the measurement. 76 FR 72332, 72340–42 (Nov. 23, 2011). DOE did not revise these proposals regarding testing methodology and the use of IEC Standard 62301 in the May 2012 TP SNOPR.

AHAM and Whirlpool agreed with the existing methodology to measure standby power for microwave ovens with power consumption that varies as a function of the time displayed over a period of 10 minutes starting at a clock time of 3:33. Whirlpool, however, objected to a fixed stabilization period of 10 minutes, starting at a clock time of 3:23, prior to the start of the measurement period. Whirlpool commented that the time for the controls to reach the lowest power consumption state may be longer or shorter than 10 minutes for a particular microwave oven, and that manufacturers should be allowed to conduct the test by setting the clock sufficiently far in advance to ensure that the controls have stabilized by the start of the measurement period. (Whirlpool, No. 33 at p. 2) AHAM also stated that some microwave ovens may have a shorter stabilization period than 10 minutes, and for those products, the current methodology would have a higher test burden than an approach in which the stabilization period is defined as the number of minutes needed for the microwave oven to return to its lowest power consumption state. AHAM objected to DOE's assertion in the November 2011 TP SNOPR that a defined stabilization period would encourage manufacturers to minimize the duration of the stabilization period

in their products. According to AHAM, a fixed stabilization period would likely lead to standardization of stabilization periods, and since DOE did not observe any current stabilization periods longer than 10 minutes, manufacturers would be encouraged to increase them up to the maximum of 10 minutes. AHAM agreed, however, that the current 10-minute approach is less burdensome than measuring standby power consumption in this case using IEC Standard 62301 (Second Edition). AHAM further commented that setting the clock time to 3:23 and allowing a 10-minute stabilization period prior to the 10-minute test ensures that the test procedure is repeatable and reproducible, and minimizes test burden by not requiring independent test laboratories to determine the number of minutes needed for the microwave oven to reach its lowest power consumption state. According to AHAM, it is critical in the context of increased enforcement that third-party laboratories be able to conduct the test procedure with as little lab-to-lab variation as possible. AHAM, therefore, supports DOE's proposal to maintain the 10-minute measurement method currently provided in the test procedure. (AHAM, No. 40 at p. 5)

For the reasons discussed above, and in consideration of the comments received supporting the proposals, DOE amends the microwave oven test procedure in today's final rule by incorporating by reference the relevant paragraphs of section 5.3 of IEC Standard 62301 (Second Edition) in 10 CFR part 430, subpart B, appendix I, sections 3.1.4.1 and 3.2.4. The amendments require the use of the sampling method in section 5.3.2 of the Second Edition for standby mode and off mode power measurements, except in the case of microwave ovens with power consumption that varies as a function of the time displayed. DOE is not amending the substance of the 10-minute test method that is currently provided for these products in the microwave oven test procedure, which reference provisions from IEC Standard 62301 (First Edition). Today's final rule also adopts necessary editorial changes to appendix I to allow for the correct referencing of the Second Edition, including definitions and section numbering.

D. Definitions of ''Active Mode,'' ''Standby Mode,'' and ''Off Mode''

In the March 2011 Interim Final Rule, DOE adopted a definition of ''standby mode'' based on the definitions provided in IEC Standard 62301 (FDIS), as follows:

- ''Standby mode'' is the condition in which an energy-using product is connected to a mains power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time:
- a remote switch (including remote control), internal sensor, or timer to facilitate the activation of other modes (including activation or deactivation of active mode);
- and continuous functions, including information or status displays (including clocks) or sensor-based functions. 76 FR 12825, 12834 (Mar. 9, 2011).

DOE also adopted in its amendments to the test procedure the clarification, provided as a note accompanying the definition of standby mode in IEC Standard 62301 (FDIS), that a timer is a continuous clock function (which may or may not be associated with a display) that provides regularly scheduled tasks (*e.g.* switching) and that operates on a continuous basis. *Id.*

DOE also adopted definitions of ''off mode'' and ''active mode'' based on the definitions provided in IEC Standard 62301 (FDIS), as follows:

- ''Off mode'' is the condition in which an energy-using product is connected to a mains power source and is not providing any standby mode or active mode function and where the mode may persist for an indefinite time. An indicator that only shows the user that the product is in the off position is included within the classification of off mode. *Id.*
- ''Active mode(s)'' is the condition in which an energy-using product is connected to a mains power source and at least one primary function is activated. *Id.*

In the November 2011 TP SNOPR, DOE did not propose changing these definitions in light of its proposal to reference the updated version of IEC Standard 62301, because these definitions have the same functional equivalence to those in both IEC Standard 62301 (FDIS) and IEC Standard 62301 (Second Edition). DOE did, however, propose to make non-substantive editorial changes to clarify for the reader the description of the user-oriented or protective functions associated with standby mode operation in the definition of standby mode in 10 CFR part 430, subpart B, appendix I, section 1.13. 76 FR 72332, 72343 (Nov. 23, 2011). DOE did not revise these proposals for mode definitions in the May 2012 TP SNOPR.

DOE did not receive any comments regarding these proposals, and thus amends the microwave oven test procedure in today's final rule to provide those clarifications in the definition of standby mode, which is now included as section 1.17 in 10 CFR part 430, subpart B, appendix I.

E. Specifications for the Test Methods and Measurements for Microwave Oven Standby Mode and Off Mode Testing

As discussed in section III.A, DOE has determined that for products combining a microwave oven with other appliance functionality, the compartment incorporating microwave cooking capability would be considered to meet the definition of a microwave oven at 10 CFR 430.2. As a result, DOE proposed in the May 2012 TP SNOPR testing procedures specifically for such combined products. In particular, DOE proposed that the standby mode and off mode power for combined products be measured according to the same methodology proposed in the November 2011 TP SNOPR for microwave ovens; *i.e.,* according to the provisions incorporated from IEC Standard 62301 (Second Edition), except in the case in which standby mode power consumption varies as a function of displayed time. In that case, the standby mode power would be measured for the entire product according to the method outlined in the November 2011 TP SNOPR. To determine the standby mode and off mode power associated with the microwave oven portion only, apportionment factors representing the fractional contribution of the microwave oven portion to the total standby mode and off mode power consumption would be multiplied by the overall standby mode and off mode power measurements. DOE further proposed specific standby mode apportionment factors for products that incorporate microwave ovens and conventional cooking products. The proposed amendments would also allow a manufacturer, upon submission of suitable supporting information to DOE, to use alternate apportionment values for such combined products. Manufacturers of combined products for which specific apportionment values were not provided in the test procedure would also be required to submit information as to the appropriate values for their products. 77 FR 28805, 28810–12 (May 16, 2012).

AHAM and Whirlpool objected to the method of apportionment factors for measuring standby mode and off mode energy use for combined products, stating that DOE's analysis was based on data derived from an insufficient sample size and to regulate a combined product on that basis would be arbitrary and unreasonable. (AHAM, No. 40 at pp. 1–2, 4; Whirlpool, No. 41 at pp. 1–2)

Whirlpool also stated that the standby power of a combined product cannot be logically divided, and that off mode power may apply to one functional component of a combined product but not the other. (Whirlpool, No. 41 at pp. 2–3) AHAM commented that, under the apportionment approach, third-party laboratories would be unable to conduct verification testing, because they would be unable to determine how to divide standby power among the functional components. (AHAM, No. 40 at p. 2) AHAM and Whirlpool further commented that the apportionment method would, in effect, regulate the standby power of the other functional component in addition to the microwave oven portion, which is outside of the scope of this rulemaking and would be unreasonable and arbitrary. (AHAM, No. 40 at p. 3, Whirlpool, No. 41 at p. 2) According to Whirlpool, the conventional cooking component of a combined product would be subject to energy conservation standards, while other conventional cooking products would not, creating an unfair competitive advantage for manufacturers of the unregulated products.

As discussed in section III.A of this notice, DOE has decided not to adopt methodology in its microwave oven test procedure at this time for measuring the standby mode and off mode energy use of the microwave portion of combined products. Therefore, DOE does not need to further address these comments in today's final rule. DOE may choose to initiate a separate rulemaking at a later date that would address standby and off mode energy use of combined products, at which time such comments could again be raised.

F. Technical Clarifications

DOE proposed in the November 2011 TP SNOPR to make minor editorial changes in 10 CFR part 430, subpart B, appendix I, section 2.2.1.1 to aid the reader by presenting the electrical supply voltages consistently for microwave ovens and conventional cooking products, and also in section 1.12 to clarify the alternative use of metric units for various measurements and calculations in the conventional cooking products test procedure. 76 FR 72331 (Nov. 23, 2011). DOE did not revise this proposal for the May 2012 TP SNOPR, and did not receive any comments regarding these clarifications in response to either notice. Therefore, DOE adopts these clarifications to appendix I in today's final rule, although section 1.12 is now designated as section 1.16.

G. Compliance With Other EPCA Requirements

1. Test Burden

EPCA requires that test procedures shall be reasonably designed to produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. Test procedures must also not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

In the March 2011 Interim Final Rule, DOE concluded that the amended test procedure would produce test results that measure the power consumption of covered products during a representative average use cycle as well as annual energy consumption, and that the test procedure would not be unduly burdensome to conduct. 76 FR 12825, 12840 (March 9, 2011).

The amendments to the DOE test procedures proposed in the November 2011 TP SNOPR would be based on an updated version of IEC Standard 62301, specifically IEC Standard 62301 (Second Edition). For the reasons discussed in the November 2011 TP SNOPR, DOE concluded that the proposed amended test procedures would produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures would not be unduly burdensome to conduct. 76 FR 72332, 72344–45 (Nov. 23, 2011).

Whirlpool stated that it considers the test burden acceptable. However, Whirlpool added that this is contingent upon its comments on the following topics: (1) The exclusion of all products with multiple cavities, with one cavity having microwave capability and the other having a conventional oven, as covered products, (2) the proposed use of IEC Standard 62301 (Second Edition), (3) the measurement of total harmonic distortion before and/or after the actual test, and (4) the use of a manufacturer-determined stabilization period at the start of standby power testing for microwave ovens with clocks. (Whirlpool, No. 33 at p. 2)

For the reasons discussed in section III.A of this notice, DOE determined in today's final rule to cover all products with a microwave oven component, including products that combine a microwave oven with other appliance functionality, for the purposes of the microwave oven test procedure. However, DOE is not adopting provisions to measure the standby mode and off mode energy use of the microwave oven portion of combined products at this time.

Today's final rule also adopts amendments to the test procedure that incorporate by reference IEC Standard 62301 (Second Edition) and provisions that allow the measurement of total harmonic distortion before and/or after the actual test, which are in accordance with Whirlpool's comments. The amendments do not, however, include Whirlpool's recommendation that the stabilization period for microwave ovens with power consumption that varies as a function of the time displayed be set according to the time it takes for the product to transition to its lowest power state. DOE determined that a fixed 10-minute stabilization period prior to the start of the 10-minute measurement period for those products will provide clarity to testing laboratories and ensure repeatability and reproducibility, which will outweigh the burden of an additional few minutes of testing time.

DOE concludes that the amended test procedures for microwave ovens will produce test results that measure the standby mode and off mode power consumption during representative use, and that the test procedures will not be unduly burdensome to conduct.

2. Certification Requirements

Sections 6299–6305 of EPCA authorize DOE to enforce compliance with the energy and water conservation standards established for certain consumer products. (42 U.S.C. 6299–6305 (consumer products) On March 7, 2011, the Department revised, consolidated, and streamlined its existing certification, compliance, and enforcement regulations for certain consumer products and commercial and industrial equipment covered under EPCA, including microwave ovens. 76 FR 12422. These regulations are codified in 10 CFR 429.23 (conventional cooking tops, conventional ovens, microwave ovens).

The certification requirements for microwave ovens consist of a sampling plan for selection of units for testing and requirements for certification reports. Because there are no existing energy conservation standards for microwave ovens, DOE is not amending the certification reporting requirements for these products. However, because DOE adopts new metrics in today's final rule (standby mode power consumption (P_{SB}) and off mode power consumption (P_{OFF})) for microwave ovens, DOE additionally amends provisions in the sampling plan in 10 CFR 429.23(a)(2)(i) to include P_{SB} and P_{OFF}.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget has determined that test procedure rulemakings do not constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735 (Oct. 4, 1993). Accordingly, this action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of a regulatory flexibility analysis (RFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's Web site: *http://energy.gov/gc/office-general-counsel.* DOE reviewed today's final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

In conducting this review, DOE first determined the potential number of affected small entities. The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than the threshold number of workers specified in 13 CFR part 121 according to the North American Industry Classification System (NAICS) codes. The SBA's Table of Size Standards is available at: *http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* The threshold number for NAICS classification 335221, *Household Cooking Appliance Manufacturers,* which includes microwave oven manufacturers, is 750 employees. DOE surveyed the AHAM member directory to identify manufacturers of microwave ovens. In addition, as part of the appliance standards rulemaking, DOE asked interested parties and AHAM representatives within the microwave oven industry if they were aware of any small business manufacturers. DOE consulted publicly available data, purchased company reports from sources such as Dun & Bradstreet, and contacted manufacturers, where needed, to determine if they meet the SBA's definition of a small business manufacturing facility and have their manufacturing facilities located within the United States. Based on this analysis, DOE estimates that there is one small business which manufactures a product which combines a microwave oven with other appliance functionality. However, because DOE is not amending at this time the test procedures for microwave ovens to include provisions for measuring the standby mode and off mode energy use for the microwave oven portion of such combined products, DOE certifies that today's final rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of microwave ovens must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for microwave ovens, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including microwave ovens. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE amends its test procedure for microwave ovens. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without affecting the amount, quality or distribution of energy usage, and, therefore, will not result in any environmental impacts. Thus, this rulemaking is covered by Categorical Exclusion A5 under 10 CFR part 1021, subpart D, which applies to any rulemaking that interprets or amends an existing rule without changing the environmental effect of that rule. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42

U.S.C. 6297(d)) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *http://energy.gov/gc/office-general-counsel*. DOE examined today's final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. Today's final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; FEAA) Section 32 essentially provides in relevant part that, where a rule authorizes or requires use of commercial standards, the rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition.

The final rule incorporates testing methods contained in the following commercial standards:

1. IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' (First Edition, June 2005).

2. IEC Standard 62301, ''Household electrical appliances—Measurement of standby power,'' Edition 2.0, 2011–01.

DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA, *i.e.,* whether they were developed in a manner that fully provides for public participation, comment, and review. DOE has consulted with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Reporting and recordkeeping requirements.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

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

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 2. Section 429.23 is amended by revising paragraph (a)(2)(i) introductory text to read as follows:

§ 429.23 Conventional cooking tops, conventional ovens, microwave ovens.

(a) * * *

(2) * * *

(i) Any represented value of estimated annual operating cost, energy consumption, standby mode power consumption, off mode power consumption, or other measure of energy consumption of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 4. Section 430.2 is amended by:

■ a. Revising the definitions of ''Microwave/conventional range'' and ''Microwave oven''; and

■ b. Adding the definitions for ''Convection microwave oven'', ''Microwave/conventional cooking top'', and ''Microwave/conventional oven'' in alphabetical order.

The revisions and additions read as follows:

§ 430.2 Definitions.

* * * * *

Convection microwave oven means a microwave oven that incorporates convection features and any other means of cooking in a single compartment.

* * * * *

Microwave/conventional cooking top means a class of kitchen ranges and ovens that is a household cooking appliance consisting of a microwave oven and a conventional cooking top.

Microwave/conventional oven means a class of kitchen ranges and ovens that is a household cooking appliance consisting of a microwave oven and a conventional oven in separate compartments.

Microwave/conventional range means a class of kitchen ranges and ovens that is a household cooking appliance consisting of a microwave oven and a conventional oven in separate compartments and a conventional cooking top.

Microwave oven means a class of kitchen ranges and ovens comprised of household cooking appliances consisting of a compartment designed to cook or heat food by means of microwave energy, including microwave ovens with or without thermal elements designed for surface browning of food and convection microwave ovens.

* * * * *

■ 5. Appendix I to Subpart B of part 430 is amended:

■ a. By revising the note after the heading;

■ b. In section 1. *Definitions,* by revising sections 1.16 and 1.17:

■ c. In section 2. *Test Conditions,* by revising sections 2.1.3, 2.2.1.1, 2.2.1.2, 2.5.2, 2.6, and 2.9.1.3; and

■ d. In section 3. *Test Methods and Measurements,* by revising sections 3.1.4.1, and 3.2.4.

The revisions read as follows:

Appendix I to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Conventional Ranges, Conventional Cooking Tops, Conventional Ovens, and Microwave Ovens

Note: Any representation made after April 29, 2013 related to standby mode and off mode energy consumption of conventional ranges, conventional cooking tops, and conventional ovens, or after July 17, 2013 for standby and off mode energy consumption of microwave ovens, must be based upon results generated under this test procedure.

Any representation related to standby mode and off mode energy consumption of microwave ovens made between February 19, 2013 and July 17, 2013 may be based upon results generated under this test procedure or upon the test procedure as it appeared at 10 CFR part 430, subpart B, appendix I as contained in the 10 CFR parts 200 to 499 edition revised as of January 1, 2012.

Upon the compliance date(s) of any energy conservation standard(s) for conventional ranges, conventional cooking tops, conventional ovens, and microwave ovens that incorporates standby mode and off mode energy consumption, use of the applicable provisions of this test procedure to demonstrate compliance with the energy conservation standard will also be required.

1. Definitions

* * * * *

1.16 *Standard cubic foot (or liter (L)) of gas* means that quantity of gas that occupies 1 cubic foot (or alternatively expressed in L) when saturated with water vapor at a temperature of 60 °F (15.6 °C) and a pressure of 30 inches of mercury (101.6 kPa) (density of mercury equals 13.595 grams per cubic centimeter).

1.17 *Standby mode* means any mode in which a conventional cooking top, conventional oven, conventional range, or microwave oven is connected to a main power source and offers one or more of the following user-oriented or protective functions which may persist for an indefinite time: (a) facilitation of the activation of other modes (including activation or deactivation

of active mode) by remote switch (including remote control), internal sensor, or timer; (b) provision of continuous functions, including information or status displays (including clocks) or sensor-based functions. A timer is a continuous clock function (which may or may not be associated with a display) that allows for regularly scheduled tasks and that operates on a continuous basis.

* * * * *

2. Test Conditions

* * * * *

2.1.3 *Microwave ovens.* Install the microwave oven in accordance with the manufacturer's instructions and connect to an electrical supply circuit with voltage as specified in section 2.2.1 of this appendix. The microwave oven shall also be installed in accordance with Section 5, Paragraph 5.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), disregarding the provisions regarding batteries and the determination, classification, and testing of relevant modes. A watt meter shall be installed in the circuit and shall be as described in section 2.9.1.3 of this appendix.

* * * * *

2.2.1.1 *Voltage.* Maintain the electrical supply to the conventional range, conventional cooking top, and conventional oven being tested at 240/120 volts ±2 percent except that basic models rated only at 208/120 volts shall be tested at that rating ±2 percent. For microwave oven testing, maintain the electrical supply to the unit at 240/120 volts ±1 percent. Maintain the electrical supply frequency for all products at 60 hertz ± 1 percent.

2.2.1.2 *Supply voltage waveform.* For the standby mode and off mode testing, maintain the electrical supply voltage waveform as indicated in Section 4, Paragraph 4.3.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, if the power measuring instrument used for testing is unable to measure and record the total harmonic content during the test measurement period, it is acceptable to measure and record the total harmonic content immediately before and after the test measurement period.

* * * * *

2.5.2 *Standby mode and off mode ambient temperature.* For standby mode and off mode testing, maintain room ambient air temperature conditions as specified in Section 4, Paragraph 4.2 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3).

2.6 *Normal nonoperating temperature.* All areas of the appliance to be tested shall attain the normal nonoperating temperature, as defined in section 1.12 of this appendix, before any testing begins. The equipment for measuring the applicable normal nonoperating temperature shall be as described in sections 2.9.3.1, 2.9.3.2, 2.9.3.3, and 2.9.3.4 of this appendix, as applicable.

* * * * *

2.9.1.3 *Standby mode and off mode watt meter.* The watt meter used to measure standby mode and off mode shall meet the requirements specified in Section 4, Paragraph 4.4 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). For microwave oven standby mode and off mode testing, if the power measuring instrument used for testing is unable to measure and record the crest factor, power factor, or maximum current ratio during the test measurement period, it is acceptable to measure the crest factor, power factor, and maximum current ratio immediately before and after the test measurement period.

* * * * *

3. Test Methods and Measurements

* * * * *

3.1.4.1 *Microwave oven test standby mode and off mode power.* Establish the testing conditions set forth in section 2, *Test Conditions,* of this appendix. For microwave ovens that drop from a higher power state to a lower power state as discussed in Section 5, Paragraph 5.1, Note 1 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3), allow sufficient time for the microwave oven to reach the lower power state before proceeding with the test measurement. Follow the test procedure as specified in Section 5, Paragraph 5.3.2 of IEC 62301 (Second Edition). For units in which power varies as a function of displayed time in standby mode, set the clock time to 3:23 and use the average power approach described in Section 5, Paragraph 5.3.2(a) of IEC 62301 (First Edition), but with a single test period of 10 minutes +0/−2 sec after an additional stabilization period until the clock time reaches 3:33. If a microwave oven is capable of operation in either standby mode or off mode, as defined in sections 1.17 and 1.13 of this appendix, respectively, or both, test the microwave oven in each mode in which it can operate.

* * * * *

3.2.4 *Microwave oven test standby mode and off mode power.* Make measurements as specified in Section 5, Paragraph 5.3 of IEC 62301 (Second Edition) (incorporated by reference; see § 430.3). If the microwave oven is capable of operating in standby mode, as defined in section 1.17 of this appendix, measure the average standby mode power of the microwave oven, P_{SB}, in watts as specified in section 3.1.4.1 of this appendix. If the microwave oven is capable of operating in off mode, as defined in section 1.13 of this appendix, measure the average off mode power of the microwave oven, P_{OM}, as specified in section 3.1.4.1.

* * * * *

[FR Doc. 2013–00917 Filed 1–17–13; 8:45 am]

BILLING CODE 6450–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 700, 701, 741, 747, and 750

RIN 3133–AD97

Definition of Troubled Condition

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule amending the definition of ''troubled condition'' as that term is used to trigger the statutory requirement to give the Board notice and an opportunity to disapprove a change of credit union officials, and as that term appears elsewhere in NCUA's regulations. Generally, the current definition allows only a state supervisory authority (SSA) to declare a federally insured, state-chartered credit union (FISCU) to be in ''troubled condition.'' The final rule amends the definition to allow either NCUA or an SSA to declare a FISCU in ''troubled condition.'' NCUA is adopting the amended definition of ''troubled condition'' as proposed.

DATES: This rule is effective February 19, 2013.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, or Steven W. Widerman, Staff Attorney, at (703) 518–6557.

SUPPLEMENTARY INFORMATION:

1. Background

a. *Why is NCUA Adopting this Rule?* The Board is adopting this rule to fully utilize the combined resources of NCUA and SSAs to identify FISCUs in ''troubled condition'' at the earliest possible juncture. The Federal Credit Union Act (the Act) requires a credit union in ''troubled condition'' to give NCUA notice and an opportunity to disapprove a change of credit union officials. Currently, only SSAs can make this determination for a FISCU. The rule permits *either* NCUA or an SSA to designate a FISCU in ''troubled condition'' for this purpose, thus expanding NCUA's opportunity to act preemptively to ensure that the officials who take control of a FISCU in ''troubled condition'' are qualified to address its troubles. This gives the National Credit Union Share Insurance Fund (NCUSIF) a further measure of protection against the risk of loss.

b. *Statutory Framework.* In 1989, Congress amended the Act to require a federally insured credit union ''in troubled condition, as determined on the basis of such credit union's most recent report of condition or report of examination,'' [1] to notify NCUA prior to adding or replacing any individual serving as a member of the board of directors or a committee, or employed

[1] 12 U.S.C. 1790a(a)(2).

as a senior executive officer (each, an official).[2]

The amendment to the Act bars an insured credit union in troubled condition from adding or replacing an official if NCUA issues a Notice of Disapproval in response to a notification of a change in officials.[3] NCUA may disapprove an individual when ''the competence, experience, character, or integrity of the individual * * * indicates that it would not be in the best interests'' of the credit union's members or the public for the individual to serve.[4] The individual or the credit union may appeal the disapproval to the Board.[5]

c. *Historical Definition of ''Troubled Condition.''* To implement the amendment to the Act, Congress directed NCUA to define by regulation the term ''troubled condition.''[6] Since 1990, NCUA has defined a natural person credit union in ''troubled condition'' as:

(1) A federal credit union that has been assigned a ''4'' or ''5'' composite CAMEL rating by NCUA;

(2) A FISCU that has been assigned a ''4'' or ''5'' composite CAMEL rating by its SSA;

(3) A FISCU that has been assigned a ''4'' or ''5'' composite CAMEL rating by NCUA based on core workpapers received from an SSA; or

(4) A federal credit union or FISCU that has received special assistance under sections 208 or 216 of the Act to avoid liquidation.[7]

In 1999, the Board adopted a separate definition of ''troubled condition'' for corporate credit unions to conform to the Corporate Risk Information System (''CRIS'').[8] Under that definition, a corporate credit union is in ''troubled condition'' if:

(1) A corporate federal credit union is assigned a ''4'' or ''5'' CRIS rating by NCUA in either the Financial Risk or Risk Management composites;

(2) A corporate FISCU is assigned a ''4'' or ''5'' CRIS rating by its SSA in either the Financial Risk or Risk Management composites or, if the state has not adopted CRIS, is assigned a ''4'' or ''5'' composite CAMEL rating by its SSA;

(3) A corporate FISCU is assigned a ''4'' or ''5'' CRIS rating in either the Financial Risk or Risk Management composites by NCUA based on core workpapers received from a state that does not use either the CRIS or CAMEL rating systems; or

(4) A corporate federal credit union or corporate FISCU receives special assistance under sections 208 or 216 of the Act to avoid liquidation.[9]

The ''troubled condition'' definitions for natural person credit unions and corporate credit unions have since been incorporated by reference in other parts of NCUA's regulations.

2. Proposed Rule

The proposed rule defined a FISCU in ''troubled condition'' not just when its SSA assigns it a ''4'' or ''5'' composite CAMEL or CRIS rating, but when *either* its SSA or NCUA assigns such a rating.[10] This expanded definition was intended to enhance NCUA's ability to administer and protect the NCUSIF. Additionally, the proposed rule made technical and conforming amendments to update the rule and the cross-references to ''troubled condition'' that appear elsewhere in NCUA's regulations.[11]

3. Discussion of Comments on Proposed Rule

NCUA received 48 comment letters in response to the proposed rule: 21 from FISCUs, 16 from state credit union leagues, 5 from state credit union regulators, 4 from credit union trade associations, and 2 from individuals. All of the commenters opposed the proposed rule, noting various concerns.

Approximately half of the commenters objected that the rule constitutes excessive federal oversight that will undermine or destabilize the dual chartering system. The Board disagrees with these conclusions. The rule's primary purpose is to help NCUA, as administrator of the NCUSIF, to minimize losses to the NCUSIF by instituting a regulatory framework that more fully utilizes state and federal resources. The rule does not supplant an SSA's authority with NCUA's, nor does it substitute NCUA's judgment for that of an SSA. Rather, the Board views it as a cooperative effort between NCUA and SSAs. Under the rule, NCUA acknowledges that SSAs are the primary regulators of FISCUs. Further, SSAs maintain all of their regulatory and supervisory authorities with no diminution of responsibilities. Accordingly, the Board believes the rule reflects its commitment to the dual chartering system and, as noted below, is consistent with federalism policymaking criteria.

Five commenters interpreted the rule as implying doubt that SSAs are qualified to assess their own FISCUs, and that NCUA's judgment is superior. A few others condemned the implication of doubt as a pretext to diminish an SSA's regulatory responsibility in favor of federal authority. The Board finds no merit in these comments. In the final rule, the Board in no way intends to diminish an SSA's role or disparage the high quality work performed by state examiners. In fact, the final rule simply levels the playing field by deferring to whichever regulator—state or federal—assigns a CAMEL 4 or 5 rating to a FISCU. In instances where an SSA rates a FISCU as a CAMEL 4 or 5 but NCUA does not, the SSA's rating prevails. In such cases, even if NCUA rates that FISCU as a CAMEL 1, 2, or 3, NCUA will defer to the SSA's CAMEL 4 or 5 rating and will classify that FISCU as being in ''troubled condition.''

Additionally, the scope of the rule is limited to changes in FISCU officials and does not affect other aspects of an SSA's relationship with its credit unions.

Seventeen commenters found a lack of sufficient justification to support the rule, with eight maintaining that NCUA did not document enough cases where the discrepancy between NCUA's and an SSA's rating made a difference. From cases arising in the recent financial crisis, NCUA has learned that it must be able to respond quickly when problems are discovered in the credit unions that it insures. Failing to timely identify a credit union in ''troubled condition'' can have significant consequences for the NCUSIF. In some cases during the crisis, it was not possible to respond quickly enough when NCUA's CAMEL rating of a FISCU differed from the SSA's. In 4 of 8 cases since 2008 that yielded a loss to the NCUSIF, the SSA assigned a CAMEL rating that did not trigger ''troubled condition'' status.[12]

Although ratings discrepancies between NCUA and SSAs affecting whether a FISCU is deemed in ''troubled condition'' are not routine, they do occur. Such ratings discrepancies between NCUA and SSAs averaged 7.7 percent among regular examinations of FISCUs and on-site

[2] 12 U.S.C. 1790a.

[3] 12 U.S.C. 1790a(b).

[4] 12 U.S.C. 1790a(e).

[5] 12 CFR 747.904.

[6] 12 U.S.C. 1790a(f).

[7] 12 CFR 701.14(b)(3); 55 FR 43086 (Oct. 26, 1990).

[8] 64 FR 28715 (May 27, 1999).

[9] 12 CFR 701.14(b)(4).

[10] 77 FR 45285 (July 31, 2012).

[11] The definition of ''troubled condition'' in § 701.14(b) is incorporated by reference in parts 711 [management official interlocks], 741 [requirements for insurance], 747 [challenge to disapproval of change in officials] and 750 [golden parachute and indemnification payments] of NCUA's regulations. 12 CFR parts 711, 741, 747, and 750.

[12] The four credit unions ultimately failed due to various causes, together producing a loss of $235 million to the NCUSIF.

supervision contacts conducted from 2009 through 2011. More recently, NCUA has observed a significant increase in the discrepancy rate. Among regular examinations of FISCUs and on-site supervision contacts in 2012, the CAMEL rating variance between ''troubled condition'' and not was 10 percent through the third quarter.

When NCUA's rating is inconsistent with an SSA's, NCUA's practice is to work cooperatively with state examiners to resolve the discrepancy. Further, pursuant to NCUA policy, NCUA will not designate a FISCU to be in ''troubled condition'' without first making an on-site contact at that FISCU. This on-site contact will typically consist of a joint examination by NCUA and state examiners.

Eleven commenters contended that requiring an SSA to defer to NCUA's lower CAMEL rating to designate a FISCU in ''troubled condition'' would diminish and encroach on an SSA's authority as primary regulator. As explained above, the Board maintains that the single, narrow purpose of the rule is not an encroachment on, or diminution of, an SSA's authority over its FISCUs.

Three commenters complained that the rule is inconsistent with applicable federalism policymaking criteria, alleging that NCUA did not identify a problem of national significance to justify the rule, and did not assess its impact on the states. The Board disagrees, as explained in the discussion of Executive Order 13132 in section 4 below.

Finally, eight commenters argued that the rule is unnecessary because the Act gives NCUA other remedies to deal with issues relating to FISCU officials. Further, six commenters maintained that a FISCU's change of officials should be the exclusive province of the SSA and NCUA should have no role at all. The Board notes, however, that, in 1989, Congress granted NCUA the authority to disapprove a change of officials of an insured credit union (including a FISCU) in ''troubled condition.'' This Congressional action is the foundation of NCUA's position that it need not limit itself to existing ''other remedies'' to deal with FISCU officials and, further, that deciding who is qualified to serve as a FISCU official is not the ''exclusive province'' of an SSA.

Apart from the CAMEL and CRIS ratings-based criteria for ''troubled condition,'' the Board on its own initiative is adding language to the final rule to clarify the ''troubled condition'' criterion that is based on a credit union's receipt of cash assistance from NCUA. The proposed rule, like the existing rule, provided that an insured credit union is in ''troubled condition'' if it ''has been granted assistance under section 208'' of the Act.[13] This incorrectly suggests that a credit union, once granted such assistance, remains in ''troubled condition'' even after it has satisfied its repayment obligation to NCUA. To clarify that an insured credit union is no longer in ''troubled condition'' once it has met this obligation, the final rule provides that an insured credit union is in ''troubled condition'' if it ''has been granted assistance under section 208 of the [Act], 12 U.S.C. 1788, that *remains outstanding and unextinguished.''* (emphasis added).

The Board has carefully considered the comments and appreciates the commenters' concerns. For the foregoing reasons, however, the Board adopts the amended definition of ''troubled condition'' as proposed with the addition of the substantive change described in the preceding paragraph.[14]

4. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (less than $10 million in assets). This rule enables NCUA to better administer the NCUSIF without imposing any additional regulatory burden on credit unions. It will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

NCUA has determined that this rule will not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the Executive Order.

In promulgating this rule, the Board has carefully limited its scope. The rule narrowly addresses the definition of a FISCU in ''troubled condition'' for the sole purpose of better enabling NCUA to administer and protect the NCUSIF. The rule fully recognizes an SSA's primary regulatory and supervisory authority over its FISCUs. The rule creates a cooperative partnership between primary regulator (SSA) and insurer (NCUA) and in no way diminishes an SSA's power or authority. For these reasons, NCUA believes this rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Accordingly, this rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

Treasury and General Government Appropriations Act, 1999

NCUA has determined that the rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) (''SBREFA'') provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the APA.[15] The Office of Management and Budget has determined that this rule is not a ''major rule'' for purposes of SBREFA.

List of Subjects

12 CFR Part 700

Credit unions, Definitions.

12 CFR Part 701

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Credit unions, Requirements for insurance.

12 CFR Part 747

Administrative practice and procedure, Bank deposit insurance, claims, Credit unions, Crime, Equal access to justice, Hearing procedures, Investigations, Lawyers, Penalties.

12 CFR Part 750

Credit unions, Golden parachute payments, Indemnity payments.

[13] 12 U.S.C. 1788.

[14] As suggested by a commenter, the final rule makes a technical amendment to the cross-reference to ''troubled condition'' in § 747.901 so that it properly refers to the new uniform definition of ''troubled condition'' in § 700.2.

[15] 5 U.S.C. 551.

By the National Credit Union Administration Board on January 10, 2013.

Mary Rupp,

Secretary of the Board.

For the reasons set forth above, 12 CFR parts 700, 701, 741, 747, and 750 are amended as follows:

PART 700—DEFINITIONS

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 12 U.S.C. 1752, 1757(6), 1766.

■ 2. Amend § 700.2 by adding a new definition of ''troubled condition'' in alphabetical order to read as follows:

§ 700.2 Definitions.

* * * * *

Troubled condition means:

(1) In the case of an insured natural person credit union:

(i) A federal credit union that has been assigned a 4 or 5 CAMEL composite rating by NCUA; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL composite rating by either NCUA, after an on-site contact, or its state supervisor; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, that remains outstanding and unextinguished.

(2) In the case of an insured corporate credit union:

(i) A federal credit union that has been assigned a 4 or 5 Corporate Risk Information System rating by NCUA in either the Financial Risk or Risk Management composites; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 Corporate Risk Information System rating by either NCUA, after an on-site contact, or its state supervisor in either the Financial Risk or Risk Management composites; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, that remains outstanding and unextinguished.

* * * * *

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 3. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761A, 1761B, 1766, 1767, 1782, 1784, 1786, 1787, 1789, section 701.6 is also authorized by 15 U.S.C. 1601, et seq.; 42 U.S.C. 1981 and 3601–3610, section 701.35 is also authorized by 42 U.S.C. 4311–4312.

■ 4. Revise § 701.14(b)(3) and (b)(4) to read as follows:

§ 701.14 Change in official or senior executive officer in credit unions that are newly chartered or are in troubled condition.

* * * * *

(b) * * *

(3) In the case of an insured natural person credit union, *Troubled condition* means:

(i) A federal credit union that has been assigned a 4 or 5 CAMEL composite rating by NCUA; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 CAMEL composite rating by either NCUA, after an on-site contact, or its state supervisor; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, that remains outstanding and unextinguished.

(4) In the case of an insured corporate credit union, *Troubled condition* means:

(i) A federal credit union that has been assigned a 4 or 5 Corporate Risk Information System rating by NCUA in either the Financial Risk or Risk Management composites; or

(ii) A federally insured, state-chartered credit union that has been assigned a 4 or 5 Corporate Risk Information System rating by either NCUA, after an on-site contact, or its state supervisor in either the Financial Risk or Risk Management composites; or

(iii) A federal credit union or a federally insured, state-chartered credit union that has been granted assistance under section 208 of the Federal Credit Union Act, 12 U.S.C. 1788, that remains outstanding and unextinguished.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

■ 5. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, 1781–1790, and 1790d. Section 741.4 is also authorized by 31 U.S.C. 3717.

■ 6. Amend § 741.205 by removing the last two sentences and adding one sentence in its place to read as follows:

§ 741.205 Reporting requirements for credit unions that are newly chartered or in troubled condition.

* * * NCUA will consult with the state supervisor before making its determination. NCUA will notify the state supervisor of its approval/disapproval no later than the time that it notifies the affected individual.

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTGATIONS

■ 7. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787, 1790a, 1790d; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134; Pub. L. 109–351; 120 Stat. 1966.

■ 8. Amend § 747.901 by removing ''§ 701.14 of this chapter'' at the end of the first sentence and adding in its place ''§ 700.2 of this chapter''.

PART 750—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

■ 9. The authority citation for part 750 continues to read as follows:

Authority: 12 U.S.C. 1786(t).

■ 10. Amend § 750.1 as follows:

■ a. Revise paragraphs (e)(1)(ii)(C), (D), and (E) ; and

■ b. Remove paragraph (l).

§ 750.1 Definitions.

* * * * *

(ii) * * *

(C) The federally insured credit union is in troubled condition as defined in § 700.2(j) of this chapter; or

(D) In the case of a corporate credit union, the federally insured credit union is undercapitalized as defined in § 704.4 of this chapter; or

(E) The federally insured credit union is subject to a proceeding to terminate or suspend its share insurance; and

* * * * *

[FR Doc. 2013–00863 Filed 1–17–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

RIN 3133–AE15

Treasury Tax and Loan Depositaries; Depositaries and Financial Agents of the Government

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is making technical amendments to NCUA's regulation regarding share insurance on various kinds of treasury accounts. The technical amendments

conform the regulation to changes made to NCUA's standard maximum share insurance amount (SMSIA) by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Specifically, the Dodd-Frank Act increased the SMSIA from $100,000 to $250,000.

DATES: The final rule is effective on January 18, 2013.

FOR FURTHER INFORMATION CONTACT: John H. Brolin, Staff Attorney, or Frank Kressman, Associate General Counsel, Office of General Counsel, at 1775 Duke Street, Alexandria, VA 22314 or telephone: (703) 518–6438.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of the Final Rule

Why is the NCUA Board issuing this rule?

Section 335 of the Dodd-Frank Act [1] amended the Federal Credit Union Act to make permanent an increase in the SMSIA to $250,000. In September 2010, the Board issued a final rule [2] which amended the SMSIA in NCUA's part 745 share insurance regulations to conform the regulatory language to the Dodd-Frank Act statutory change. The Board is now amending § 701.37(c), which still reflects the former $100,000 SMSIA, to update it to reflect the current $250,000 SMSIA.

II. Regulatory Procedures

Final Rule

Generally, the Administrative Procedure Act (APA) requires a federal agency to provide the public with notice and the opportunity to comment on agency rulemakings. The amendments in this rule are non-substantive and technical. They make minor changes which are statutorily required by the Dodd-Frank Act. The APA permits an agency to forego the notice and comment period under certain circumstances, such as when a rulemaking is technical and non-substantive. NCUA finds that, in this instance, notice and public comment are unnecessary under section 553(b)(3)(B) of the APA.[3] NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under section 553(d)(3) of the APA.[4] The rule, therefore, will be effective immediately upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under $10 million in assets). NCUA has determined these technical amendments will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[5] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. NCUA has determined that the technical amendments in this final rule do not increase the paperwork requirements under PRA or regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[6]

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 [7] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[8] NCUA has submitted this rule to the Office of Management and Budget for it to determine if the final rule is a ''major rule'' for purposes of SBREFA. NCUA does not believe the rule is major.

List of Subjects in 12 CFR Part 701

Credit unions; Share insurance.

By the National Credit Union Administration Board on January 10, 2013.

Mary Rupp,

Secretary of the Board.

For the reasons discussed above, the NCUA Board amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1758, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1786, 1787, 1789. Section 701.6 is also authorized by 15 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 et seq.; 42 U.S.C. 1981 and 3601–3610. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

§ 701.37 [Amended]

■ 2. Amend § 701.37(c) by removing the term ''$100,000'' wherever it appears and adding in its place the term ''$250,000''.

[FR Doc. 2013–00861 Filed 1–17–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

RIN 3133–AE09

Designation of Low-Income Status; Acceptance of Secondary Capital Accounts by Low-Income Designated Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is amending its low-income credit unions regulation by extending the time period in which a federal credit union (FCU) may accept a low-income designation. Under the current rule, an FCU that receives notice from NCUA of its

[1] Public Law 111–203; 124 Stat. 1376, 1540 (July 21, 2010).

[2] 75 FR 53841 (Sept. 2, 2010).

[3] 5 U.S.C. 553(b)(3)(B).

[4] 5 U.S.C. 553(d)(3).

[5] 44 U.S.C. 3507(d); 5 CFR part 1320.

[6] Public Law 105–277, 112 Stat. 2681 (1998).

[7] Public Law 104–121, 110 Stat. 857 (1996).

[8] 5 U.S.C. 551.

eligibility for a low-income designation has 30 days to notify NCUA in writing that it wishes to accept the designation. The final rule extends an FCU's response time from 30 days to 90 days to make certain an FCU has adequate time to respond. The final rule also makes minor, nonsubstantive technical amendments to NCUA's requirements for insurance regulation to reflect current agency practice.

DATES: This rule is effective February 19, 2013.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Associate General Counsel, or Pamela Yu, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428 or telephone (703) 518–6593.

SUPPLEMENTARY INFORMATION:

I. Background and Proposal

A. What is a low-income credit union?

An FCU qualifies as a low-income credit union (LICU) under NCUA's regulations if a majority of its membership consists of ''low-income members,'' as defined by the Board.[1] Currently, the Board defines ''low-income members'' as those members whose family income is 80% or less than the total median earnings for individuals for the metropolitan area where they live or national metropolitan area, whichever is greater.[2]

B. What are the benefits of being designated a LICU?

The Federal Credit Union Act provides LICUs with statutory relief and other benefits.[3] Examples of such relief and benefits include:

- Exemption from the statutory cap on member business loans;
- Authorization to accept non-member deposits from any source;
- Authorization to accept secondary capital; and
- Eligibility for assistance from the Community Development Revolving Loan Fund.

All of these benefits help a LICU better serve its members and community.

C. October 2012 Proposal

Executive Order 13579 provides that independent agencies, including NCUA, should consider if they can modify, streamline, expand, or repeal existing regulations to make their programs more effective and less burdensome.[4] Additionally, the Board has a policy of continually reviewing its regulations to ''update, clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.'' [5] To carry out this internal policy, NCUA identifies one-third of its existing regulations for review each year and provides notice of this review so the public may comment. NCUA reviewed the LICU rule as part of this process.

In October 2012, the Board proposed amendments to the LICU rule.[6] The Board was aware that some FCUs believed the LICU designation process was too burdensome in some cases. In particular, FCUs have stated that the requirement that an FCU accept the LICU designation within 30 days of having received notice of its eligibility from NCUA is too short for some FCUs. For example, they noted that it may take an FCU longer than 30 days to fully analyze if it wishes to accept the LICU designation or to obtain approval from its board of directors. Accordingly, the October 2012 proposal extended the acceptance time period from 30 days to 90 days. The Board believes that extending the timeframe to 90 days will make it easier for an eligible FCU to accept the LICU designation, take advantage of the benefits afforded to LICUs, and better serve its members and community. Overall, the proposal provided regulatory relief to FCUs and improved the LICU designation process.

Additionally, the proposal made several minor, nonsubstantive revisions to NCUA's requirements for insurance regulation. These technical corrections are necessary to reflect current agency practice.

II. Final Rule

A. Summary of Comments on the October 2012 Proposal

NCUA received 5 comments on the October 2012 proposal. The comments were universally positive, and all commenters supported extending the acceptance time period to 90 days. Several commenters also noted the extended time period will allow an FCU sufficient time to determine if the designation fits with its strategic plans.

In addition, four commenters urged NCUA to further clarify the process for designating state-chartered, low-income credit unions as LICUs and to work with state regulators to ensure the state designation process is comparable to the federal process. The Board agrees that working with state regulators in this regard is worthwhile and would benefit state-chartered credit unions and their members.

B. Why is the Board adopting this rule?

The Board is adopting the October 2012 proposed rule as a final rule without change for the same reasons it issued the October 2012 proposed rule. In short, the final rule provides FCUs with regulatory relief and improves the LICU designation process by giving eligible FCUs sufficient time to: (1) Evaluate the benefits of having the designation; (2) determine if having the designation is consistent with their strategic plans; and (3) obtain FCU board of directors' approval. The final rule also enables more eligible FCUs to accept the LICU designation to better serve their members and communities. The proposed and final rules are fully supported by those who commented.

The Board is also adopting minor, nonsubstantive technical corrections to NCUA's requirements for insurance regulation to update and conform it to current agency practice. Previously, regional directors had the delegated authority to designate FCUs as LICUs. Currently, NCUA's Office of Consumer Protection has that delegated authority. This final rule updates and amends § 741.204 to remove references to regional directors.[7]

The Board reiterates that NCUA plans to notify FCUs of their eligibility on a periodic basis. An FCU that does not or is not able to respond to a particular NCUA notification in a timely manner will have additional opportunities to accept the designation in the future. Additionally, an FCU may relinquish its LICU status at any time, for any reason, simply by notifying NCUA in writing that it wishes to do so. While the Board believes the LICU designation is advantageous to eligible FCUs, it notes that it is just as easy to relinquish the designation as it is to accept it. An FCU that accepts the designation only needs to accept it once, after which NCUA will not send additional notifications.

[1] 12 CFR 701.34. A state-chartered credit union may obtain a LICU designation from its state supervisory authority with concurrence from NCUA. Benefits of the state LICU designation vary by state, based on applicable state law.

[2] For members living outside a metropolitan area, NCUA will use the statewide or national, non-metropolitan area median family income instead of the metropolitan area or national metropolitan area median family income. 12 CFR 701.34(a)(2).

[3] 12 U.S.C. 1752(5), 1757a(b)(2)(A), 1757a(c)(2)(B), 1772c–1.

[4] E.O. 13579 (July 11, 2011).

[5] NCUA Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2, Developing and Reviewing Government Regulations.

[6] 77 FR 65139 (Oct. 25, 2012).

[7] 12 CFR 741.204.

C. Does the final rule create any new burdens for credit unions?

No, neither the October 2012 proposal nor this final rule creates any new regulatory burdens for FCUs. To the contrary, as mentioned above, the Board is providing regulatory relief to FCUs that qualify for the LICU designation.

III. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small entities (primarily those under ten million dollars in assets). This final rule makes nonsubstantive, technical amendments and extends regulatory relief to FCUs. NCUA has determined and certifies that this final rule will not have a significant economic impact on a substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or modifies an existing burden.[8] For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. As noted above, the amendments make minor, technical corrections and extend regulatory relief. The final rule does not impose or modify paperwork burdens.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. This final rule will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act, 1999.[9]

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 [10] (SBREFA) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedure Act.[11] NCUA does not believe this final rule is a ''major rule'' within the meaning of the relevant sections of SBREFA. NCUA has submitted the rule to the Office of Management and Budget for its determination in that regard.

List of Subjects

12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Credit, Credit unions, Reporting and recordkeeping requirements, Share insurance.

By the National Credit Union Administration Board on January 10, 2013.

Mary F. Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration amends 12 CFR parts 701 and 741 as set forth below:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1757, 1765, 1766, 1781, 1782, 1787, 1789; Title V, Pub. L. 109–351, 120 Stat. 1966.

■ 2. Revise § 701.34(a)(1) to read as follows:

§ 701.34 Designation of low-income status; Acceptance of secondary capital accounts by low-income designated credit unions.

(a) *Designation of low-income status.* (1) Based on data obtained through examinations, NCUA will notify a federal credit union that it qualifies for designation as a low-income credit union if a majority of its membership qualifies as low-income members. A federal credit union that wishes to receive the designation must notify NCUA in writing within 90 days of receipt of any NCUA notifications.

* * * * *

PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790, and 1790d; 31 U.S.C. 3717.

§ 741.204 [Amended]

■ 4. Amend § 741.204 by:

■ a. Removing the words ''the appropriate regional director'' in paragraph (b) and adding in their place the word ''NCUA''.

■ b. Removing the words ''the NCUA Regional Director'' wherever they appear and adding in their place the word ''NCUA''.

■ c. Removing the words ''the appropriate NCUA Regional Director'' wherever they appear and adding in their place the word ''NCUA''.

[FR Doc. 2013–00859 Filed 1–17–13; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 702, 741 and 791

RIN 3133–AE07

Prompt Corrective Action, Requirements for Insurance, and Promulgation of NCUA Rules and Regulations

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board (Board) is issuing a final rule to amend Interpretive Ruling and Policy Statement (IRPS) 87–2, as amended by IRPS 03–2, and two NCUA regulations that apply asset thresholds to grant relief from risk-based net worth and interest rate risk requirements. The amended IRPS increases the asset threshold that identifies credit unions to which NCUA will give more robust consideration of regulatory relief in future rulemakings. The amended regulations similarly include increased asset thresholds, granting immediate and prospective relief from existing regulatory burden to a larger group of small credit unions.

DATES: This rule is effective February 19, 2013.

FOR FURTHER INFORMATION CONTACT: Kevin Tuininga, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke

[8] 44 U.S.C. 3507(d); 5 CFR part 1320.

[9] Public Law 105–277, 112 Stat. 2681 (1998).

[10] Public Law 104–121, 110 Stat. 857 (1996).

[11] 5 U.S.C. 551.

Street, Alexandria, Virginia 22314–3428 or telephone: (703) 518–6543.

SUPPLEMENTARY INFORMATION:

I. Background

What changes does this final rule make?

The Regulatory Flexibility Act, Public Law 96–354, as amended (RFA), generally requires federal agencies to determine and specially consider the impact of proposed and final rules on small entities. Since 2003, NCUA has defined ''small entity'' in this context as a credit union with less than $10 million in assets.[1] This final rule and IRPS 13–1 redefines ''small entity'' as a credit union with less than $50 million in assets. The final rule also amends 12 CFR 702.103, increasing to $50 million the asset threshold used to define a ''complex'' credit union for determining whether risk-based net worth requirements apply, and 12 CFR 741.3(b)(5), exempting all federally insured credit unions (referred to as FICUs or credit unions) with assets of $50 million or less from interest rate risk rule requirements. To cross-reference IRPS 13–1, the final rule makes a technical amendment to 12 CFR 791.8.

What changes were proposed?

On September 20, 2012, the Board issued a proposed rule and IRPS with a 30-day comment period, which the Board later extended to 60 days. The proposal increased from $10 million to $30 million the asset thresholds used to define small entity under the RFA and to determine the applicability of interest rate risk and risk-based net worth requirements, subject to review every three years.[2] This increase addressed the Board's concern that various asset thresholds affecting regulatory relief for small FICUs were outdated. By proposing an increase to the applicable thresholds to $30 million, the Board intended to account for industry asset growth, consolidation, and inflation, while avoiding undue risk to the National Credit Union Share Insurance Fund (NCUSIF).

What is the history and purpose of the RFA?

Congress enacted the RFA in 1980 and amended it with the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. The RFA requires federal agencies to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities.[3] If so, agencies must prepare an analysis that describes the rule's impact on small entities.[4] The analysis must include descriptions of any significant alternatives that minimize the impact.[5] This requirement encourages federal agencies to give special consideration to the ability of smaller entities to absorb compliance burden imposed by new rules.

In IRPS 81–4, the Board initially defined ''small entity'' for purposes of the RFA as any credit union with less than $1 million in assets.[6] IRPS 87–2 superseded IRPS 81–4 but retained the definition of ''small entity'' as a credit union with less than $1 million in assets.[7] The Board updated the definition in 2003 to include credit unions with less than $10 million in assets.[8] IRPS 87–2 and IRPS 03–2 were incorporated by reference into NCUA's rule governing the promulgation of regulations.[9]

When the Board updated its RFA threshold to $10 million, it noted that amendments to the Federal Credit Union Act (FCU Act) in 1998 employed a $10 million threshold for multiple new provisions.[10] These new provisions addressed the use of generally accepted accounting principles and voluntary audits; prompt corrective action (PCA) for new credit unions; and assistance for small credit unions in filing net worth restoration plans.[11] IRPS 03–2 set the threshold in NCUA's RFA definition consistent with the $10 million threshold in the new FCU Act provisions. The Board has not increased the RFA threshold since 2003.

II. Summary of Public Comments

The public comment period for the proposed rule and IRPS ended on November 26, 2012. NCUA received 51 comments from 52 commenters. The commenters included 19 federal credit unions, 13 state-chartered credit unions, four trade associations (representing credit unions and state credit union regulators), 15 state credit union leagues, and one individual.

Almost all commenters expressly supported the Board's efforts to relieve regulatory burden, with just over half advocating for changes to the proposed asset threshold, the criteria NCUA uses to define small entity, and/or the proposed three-year review period. In addition to resource concerns, multiple commenters drew comparisons between FICUs and non-credit union institutions with which they compete to advocate for a higher RFA threshold. The general comments on the proposal are described in detail below.

What were the general comments supporting the proposed rule or advocating for a higher asset threshold?

Commenters generally fell into groups that supported or advocated three different asset thresholds or ranges, including (a) $30 million; (b) $40 million to approximately $50 million; and (c) approximately $100 million to $500 million. The first group, comprised of 22 commenters, supported the rule without advocating changes. These commenters noted that raising the threshold would give them more time and resources to serve members. Seventeen of these commenters submitted similar form letters.

A second group of six commenters advocated for a threshold between $40 million and $51.5 million. Two of these commenters suggested NCUA reference the Home Mortgage Disclosure Act reporting threshold (currently $42 million) to support increasing the RFA threshold to $40 million or $50 million. One commenter suggested an increase to $45 million, noting minimal operational differences between credit unions of $30 million and $45 million. Finally, one of these six commenters suggested NCUA adopt a threshold of $51.5 million based on an industry risk assessment.

A third group, comprised of 16 commenters, suggested NCUA reference the $175 million asset threshold the Small Business Administration (SBA) uses in its small business size standards.[12] Most of these commenters suggested that NCUA simply adopt the SBA's threshold for the RFA, stating that the Consumer Financial Protection Bureau and Federal Reserve Board have done so.[13] These commenters also

[1] IRPS 03–2, 68 FR 31949 (May 29, 2003).

[2] The proposal also included a technical amendment to 12 CFR 791.8.

[3] 5 U.S.C. 603, 604, 605(b). The term ''small entity'' as used in the RFA includes small businesses, small organizations, and small government jurisdictions. 5 U.S.C. 601(6). Credit unions fall within the definition of organization. 5 U.S.C. 601(4). The RFA gives agencies authority, under certain conditions, to establish their own definition of ''small entity.'' Id.

[4] Id.

[5] Id.

[6] 46 FR 29248 (June 1, 1981).

[7] 52 FR 35231 (Sept. 8, 1987).

[8] 68 FR at 31949.

[9] 12 CFR 791.8(a).

[10] 68 FR at 31950.

[11] 12 U.S.C. 1782(a)(6); 1790d.

[12] 13 CFR 121.201.

[13] One commenter that advised referencing the SBA's threshold suggested $150 million as a threshold for NCUA. Another advised a comparison to the Consumer Financial Protection Bureau in suggesting a $150 million threshold.

generally supported the SBA's proposal to increase its size standard to $500 million and suggested that NCUA follow such an increase, if finalized.[14] One of these commenters suggested NCUA weigh three different metrics, including industry percentages, loss history, and the SBA's size standard to support a threshold of $99 million. Two of these commenters acknowledged $40 million and $50 million, respectively, as minimum alternatives to the SBA threshold.

What were the general comments on the three-year review period and criteria for defining small entities?

Eleven commenters thought NCUA's RFA threshold should be reviewed or automatically adjusted every 18 months, or at least more frequently than every three years, asserting that the SBA reviewed its threshold on such a schedule. The other supportive commenters (over two-thirds of all commenters) either expressed support for the three-year review period or did not mention the review period in their comments supporting the proposal. A few commenters suggested using one or more additional or alternative criteria to define small entity, including number of branches, number of employees, relative risk, and gross revenues.

What were the comments opposing or not expressly supporting the proposed rule?

One commenter stated that the RFA is bad policy for financial institutions and that smaller institutions have more risk and should be subject to equally or more stringent standards and oversight. This commenter thought the proposed rule would create a tiered regulatory system and impede consolidation and efficiency that benefits members. One commenter noted the challenge and expense of regulatory compliance but did not expressly support or oppose any aspect of the proposed rule. Finally, one commenter advocated for three groups of small credit unions: A micro small group (less than $10 million), a small group ($10 million to $30 million), and a mid-small group ($30 million to $50 million).

What other comments did NCUA receive?

A few commenters made suggestions that no other commenters proposed or made suggestions on matters the Board did not address in the proposed rule. One commenter, who otherwise supported reference to the SBA's threshold, suggested NCUA use an alternative threshold of $50 million for the interest rate risk and risk-based net worth rules. Several commenters that supported reference to the SBA threshold stated that NCUA should use a separate threshold of $50 million for assistance eligibility from the Office of Small Credit Union Initiatives to avoid strain on NCUA's budget. One commenter suggested a longer period between examinations for well-run FICUs.

One commenter criticized NCUA for requiring compliance with the interest rate risk rule on the rule's September 30, 2012 effective date and stated that failing to relieve small credit unions from proposed Financial Accounting Standards Board requirements further negated the benefit of increasing the asset threshold in that rule.[15] Another requested that NCUA include more discussion in the final rule's preamble of the proposed emergency liquidity rule and discuss which rules would remain unchanged by the new threshold.[16] One commenter suggested removal of the term ''complex'' from NCUA regulations and an immediate effective date for the final rule.[17]

Multiple commenters stated that NCUA's complexity index from the proposed rule's preamble was not a reliable indicator of risk and would unnecessarily reduce the scope of regulatory relief and become a disincentive to diversify products and services.[18] A couple commenters also requested more rigorous RFA analysis for NCUA regulations.[19]

The Board has carefully considered all the public comments it received in response to the proposed rule and IRPS. Recognizing the concerns and suggestions the above commenters raised, the Board has made a substantial adjustment in the final rule. The final rule and the Board's response to the public comments are discussed below.

III. Final Rule

What changes does this final rule make?

a. The RFA Asset Threshold

This final rule and IRPS 13–1 amends IRPS 87–2 and partially supersedes IRPS 03–2 by changing the definition of ''small entity'' to include credit unions with less than $50 million in assets. Several commenters advocated for a threshold near $50 million based on industry characteristics, risk data, and the Home Mortgage Disclosure Act reporting threshold set by the Consumer Financial Protection Bureau. The Board believes increasing the RFA threshold to $50 million is reasonable and supportable. As the starting point for its analysis in the proposed rule, the Board used industry percentages for credit unions of less than $10 million in assets from 1998, when Congress established a $10 million threshold in multiple provisions of the FCU Act. Based on Call Report data from September 30, 2012, a threshold of $50 million would still approximate several of the industry percentages from 1998 that the Board referenced in the proposed rule.

As shown in the table below, FICUs with less than $50 million in assets currently represent 569.6 percent of the NCUSIF, which is very close to the percentage represented by credit unions with less than $10 million in assets in 1998 (562.0 percent).[20] Further, using a $50 million threshold, the percentage of system assets and system net worth would remain within one percentage point of 1998 ratios. A $50 million threshold also makes a reasonable allowance for asset growth before the Board's next review of the threshold.

[14] 77 FR 55737, 55747 (Sept. 11, 2012).

[15] The Board understands that some FICUs exempt from interest rate risk rule requirements because of this final rule nevertheless adopted an interest rate risk policy and program as of September 30, 2012 to comply with the interest rate risk rule's deadline. The Board determined an extension of the September deadline was imprudent due to uncertainty about when the proposed rule would become final and what threshold amount the final rule would incorporate after consideration of public comments. With respect to FASB requirements, the FCU Act contains provisions governing compliance with generally accepted accounting principles. See, e.g., 12 U.S.C. 1782(a)(6). Only Congress can amend these FCU Act provisions; the Board cannot alter them by regulation.

[16] The Board will consider regulatory burden in the emergency liquidity rule in a manner consistent with the principles expressed here and seeks to avoid blending parallel, ongoing rulemakings. Further, the Board believes a discussion of unaffected thresholds would make this rulemaking confusing and more cumbersome without contributing to its clarity. This final rule and IRPS will affect only the thresholds it expressly addresses.

[17] The term ''complex'' appears in the FCU Act in connection with risk-based net worth requirements. See 12 U.S.C. 1790d(d). Only Congress can amend the FCU Act.

[18] The complexity index is only one reference point that helped the Board develop a proposed threshold. While the index is a good indicator of a FICU's relative risk, it does not necessarily measure whether a particular risk presented by an exemption from a specific rule is acceptable.

[19] The Board welcomes general comments in this respect and also particular comments on ensuring an effective RFA analysis in future regulations.

[20] The table also shows percentages for various other asset thresholds, based on the most recent Call Report, for comparison to the 1998 percentages. The percentages for FICUs with less than $10 million in assets from 1998 and for FICUs with less than $50 million in assets today are shaded for ease of comparison.

Threshold ($M)	% Units	% System assets	% System net worth	% NCUSIF	# Units
< $10 (1998)	**60.4**	**5.5**	**6.9**	**561.2**	**6,637**
< $10	34.9	1.0	1.3	80.4	2,402
< $25	54.2	3.1	4.0	264.3	3,731
< $30	58.0	3.8	4.8	325.5	3,997
< $35	61.2	4.5	5.6	384.2	4,213
< $40	63.5	5.1	6.2	434.7	4,374
< $45	65.8	5.8	7.0	490.9	4,532
< $50	**67.8**	**6.4**	**7.7**	**569.6**	**4,672**
< $175	86.0	18.1	19.7	1534.5	5,925
< $500	94.2	34.5	36.3	2931.4	6,485

Commenters advocating that the Board set the threshold higher than $50 million, including up to $175 million or $500 million, generally suggested that the Board reference indicators outside of the credit union industry. The Board believes it should establish NCUA's RFA threshold by focusing primarily on credit union characteristics, rather than external indicators and thresholds that apply across multiple and distinct institution charters. A $50 million threshold will represent a substantial majority of FICUs, close to 68 percent, and almost 6.5 percent of system assets. It will also align with the RFA's language permitting agencies to establish a definition that is appropriate to their own activities, as opposed to the activities of other agencies.[21]

In the context of the SBA's broad mandate covering a host of industries, a $175 million threshold encompasses only 54 percent of all financial institutions and only three percent of total financial institution assets. Under the narrower scope of NCUA's regulatory authority, the SBA's $175 million threshold envelops 86 percent of FICUs and over 18 percent of FICU assets. When compared in this context, the percentages of FICUs (68 percent) and assets (6.4 percent) under this rule's $50 million threshold are significantly higher than the percentages of all financial institutions (54 percent) and their assets (three percent) under the SBA's $175 million threshold.[22]

With respect to commenters advocating alternative criteria for the RFA definition, the Board continues to believe that an asset threshold is the best and most transparent measurement for NCUA's RFA definition. Using an asset threshold is consistent with size standards that appear elsewhere in the FCU Act and NCUA regulations. Further, regardless of a FICU's business model, the Board believes the total assets measurement remains the principal comparative tool that the industry uses to determine a FICU's relative size.

b. The Review Period

The final rule sets an initial review period of two years, but it retains the three-year period from the proposed rule for subsequent reviews. The majority of commenters either expressly supported the proposed review period or did not advocate for an alternative period. As stated in the proposal, a three-year review period provides a reasonable time within which to discern new trends in percentage, loss, and risk data. In addition, a three-year period is consistent with the longstanding review period NCUA uses for all its regulations. It provides sufficient time to avoid the uncertainty of a continuous cycle of rulemakings and policy adjustments that a shorter period could create.

Finally, a three-year period will provide more frequent review than that required of the SBA, which several commenters referenced. Under the Small Business Jobs Act of 2010 (Jobs Act), the SBA must review at least one-third of its size standards in 18-month intervals, starting from date the Jobs Act was enacted, with no longer than five-year review periods thereafter.[23] Reviewing one-third of size standards at 18-month intervals would bring each standard up for SBA review every 4.5 years. The Board will initially review the size standards in this rule, however, within two years of its effective date. After that, the Board will review the standards every three years. The Board believes a shorter initial review period is appropriate given the time passed since the threshold was last reviewed and updated.

c. The Interest Rate Risk and Risk-Based Net Worth Rules

This final rule adopts a $50 million asset threshold for defining a ''complex'' credit union in 12 CFR 702.103(a). This update will increase by approximately 2,270, to around 4,670, the number of FICUs removed from the definition of ''complex'' based on asset size alone. The increase eliminates the possibility that these FICUs could become subject to additional PCA provisions due solely to a risk-based net worth requirement.

In addition, the final rule exempts FICUs of $50 million or less in assets from the requirements of 12 CFR 741.3(b)(5), NCUA's interest rate risk rule. The final rule will streamline the tiered system in the interest rate risk rule by simply requiring all FICUs with more than $50 million in assets to adopt an interest rate risk policy and program. FICUs with $50 million or less in assets will not be subject to interest rate risk requirements by regulation, regardless of their first mortgage loans and investment maturities. This change will increase by approximately 2,270, to a total of around 4,670, the number of FICUs that are exempt, based on asset size alone, from adopting an interest rate risk policy and program.

In general, incremental risk elevation will accompany the exclusion of more FICUs from regulations aimed principally at reducing risk. The Board believes the incremental risk presented by raising the regulatory thresholds to $50 million is acceptable, especially when weighed against the advantages of implementing a uniform threshold across multiple regulations and the benefits of regulatory relief.

The proposed rule's preamble acknowledged that FICU loss history since 1998 shows that even FICUs with somewhat more than $30 million in assets have caused a relatively small amount of losses to the NCUSIF. Loss history data for FICUs of various asset sizes from 1998 through September 30, 2012 appears below.

[21] See 12 U.S.C. 601(4) (permitting agencies to establish one or more definitions that ''are appropriate to the activities of the agency'').

[22] 77 FR 55747.

[23] 77 FR 55737.

Assets ($M)	Number of failures		NCUSIF Loss ($M)		Percentage of total NCUSIF losses	
	Failures for asset range	Cumulative	Loss for asset range	Cumulative	Percent for asset range (%)	Cumulative (%)
< $10	205	205	$138.5	$138.5	14.3	14.3
$10 to < $20	12	217	31.0	169.5	3.2	17.5
$20 to < $30	8	225	22.8	192.2	2.4	19.9
$30 to < $40	9	234	36.2	228.4	3.7	23.6
$40 to < $50	4	238	11.3	239.7	1.2	24.8
$50 to < $60	1	239	3.3	243.1	0.3	25.1
$60 to < $70	0	239	0.0	243.1	0.0	25.1
$70 to < $80	2	241	11.3	254.4	1.2	26.3
$80 to < $90	4	245	22.4	276.8	2.3	28.6
$90 to < $100	3	248	66.1	342.9	6.8	35.4
$100 to < $200	10	258	76.3	419.2	7.9	43.3
$200 to < $500	7	265	512.7	931.9	53.0	96.3
≥ $500	1	266	36.1	968.0	3.7	100.0

As reflected in the table below, almost half of total losses over the last ten years for FICUs under $50 million in assets occurred in credit unions with under $10 million in assets, which were already exempt from interest rate risk and risk-based net worth regulatory requirements.

Asset size	< $10M	< $20M	< $30M	< $40M	< $50M
# Failures Last 10 years	132	143	151	160	162
Losses ($M) Last 10 years	$104.4	$150.3	$171.7	$207.9	$212.8
Avg. # Failures Per Year	12.3	13.3	14	14.9	15.1

More specifically, NCUA determined that, as of the last Call Report, only one credit union between the proposed $30 million threshold and a $50 million threshold would have been subject to additional PCA because it failed to meet risk-based net worth requirements. Further, only 4.5 percent of FICUs with assets between $10 million and $50 million have a net worth ratio below seven percent.

For the interest rate risk rule, 56.3 percent of the approximately 2,270 FICUs between $10 million and $50 million were not covered by the rule as of the last Call Report, because their level of first mortgage loans and investment maturities, relative to net worth, exempted them. The 992 FICUs with assets between $10 million and $50 million that were subject to the interest rate risk rule as of September 30, 2012 (because of their level of first mortgage loans and investment maturities, relative to net worth) held only 2.7 percent of industry assets. As with IRPS 13–1, the Board will review and consider adjusting the thresholds in 12 CFR 702.103(a) and 741.3(b)(5) within two years of the effective date of this final rule and, subsequently, at least once every three years. This review period will permit the Board to adjust the thresholds accordingly if the risk and losses attributable to increased thresholds are greater than expected.

How does the final rule and IRPS affect FICUs?

The change to the RFA threshold will ensure that regulatory burden will be more consistently and robustly considered for approximately 2,270 additional FICUs. Around 4,670 FICUs with less than $50 million in assets would come within the RFA's mandates. Future regulations, including the proposed emergency liquidity rule, 77 FR 44503 (July 30, 2012), will be more thoroughly evaluated to determine whether FICUs below $50 million in assets should be exempt from some provisions or separately considered.

The $50 million threshold for defining ''complex'' credit unions would categorically exclude around 2,270 more FICUs from the definition of ''complex'' based on asset size alone, bringing the total number of excluded FICUs to approximately 4,670. NCUA previously defined a ''complex'' credit union in 12 CFR 702.103 as one with more than $10 million in assets and with a risk-based net worth requirement of more than six percent. If a ''complex'' credit union fails its risk-based net worth requirement, the credit union is subject to mandatory PCA requirements that it otherwise would not be subject to when measured solely by its net worth.[24] These PCA requirements govern earnings retention, net worth restoration plans, asset increases, and member business loans. Of the 2,270 additional credit unions that the final rule excludes, approximately 358 FICUs with at least six percent net worth are no longer subject to a risk-based net worth requirement. These FICUs are removed one step further from the possibility of PCA requirements.

The new $50 million threshold in NCUA's interest rate risk rule categorically excludes around 2,270 more FICUs from complying with the interest rate risk rule based on asset size alone. Once again, this change brings the total FICUs excluded to around 4,670. The prior version of the regulation required FICUs between $10 million and $50 million in assets holding combined first mortgages and investments with maturities greater than five years that equal or exceed net worth to adopt and implement an interest rate risk policy. Of the approximately 2,270 additional FICUs that this final rule and IRPS excludes, 992 are no longer required by regulation to adopt and implement an interest rate risk policy.

IV. Regulatory Procedures

A. Regulatory Flexibility Act

The RFA requires NCUA to prepare an analysis to describe any significant economic impact a final rule may have on a substantial number of small entities (defined in this final rule and IRPS as credit unions with under $50 million in

[24] 12 CFR 702.202(a).

assets). In this case, the final rule and IRPS expands the number of FICUs defined as small entities under the RFA from those with less than $10 million in assets to those with less than $50 million. It similarly expands the group of FICUs eligible for relief from risk-based net worth and interest rate risk requirements. The final rule will reduce compliance burden for approximately 2,270 more FICUs and, therefore, will not raise costs in a manner that requires a regulatory flexibility analysis or a discussion of alternatives for minimizing the final rule's compliance burden.

With respect to additional FICUs covered by the RFA for future regulations, the final rule and IRPS provides prospective relief in the form of special and more robust consideration of their ability to handle compliance burden. This prospective relief is not quantifiable. Accordingly, NCUA has determined and certifies that the final rule and IRPS will not have a significant economic impact on a substantial number of small entities. No regulatory flexibility analysis is required.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, Public Law 104–13 (PRA), applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. For purposes of the PRA, a paperwork burden may take the form of either a reporting or a recordkeeping requirement, both referred to as information collections. This final rule's changes to 12 CFR 702.103 and 741.3(b)(5) will cause an immediate and prospective reduction in paperwork burden related to PCA requirements and interest rate risk policies for FICUs between $10 million and $50 million in assets. The changes to IRPS 87–2, as amended by IRPS 03–2, will not create any new paperwork burden for FICUs. Thus, NCUA has determined that the requirements of this final rule and IRPS do not increase the paperwork requirements under the PRA and regulations of the Office of Management and Budget.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order to adhere to fundamental federalism principles. This final rule and IRPS does not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

D. Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule and IRPS will not affect family well-being within the meaning of Section 654 of the Treasury and General Government Appropriations Act of 1999, Public Law 105–277.

E. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121, provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined in the Administrative Procedure Act.[25] NCUA believes this final rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act, but a determination from the Office of Management and Budget is pending.

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 741

Credit unions, Requirements for insurance.

12 CFR Part 791

Administrative practice and procedure, Sunshine Act.

By the National Credit Union Administration Board on January 10, 2013.

Mary Rupp,

Secretary of the Board.

Interpretive Ruling and Policy Statement 87–2

For the reasons stated above, IRPS 13–1 amends IRPS 87–2 (52 FR 35231, September 18, 1987) and partially supersedes IRPS 03–2 (68 FR 31951, May 29, 2003) by revising the second sentence in Section II, paragraph 2 of IRPS 87–2 and adding two sentences to the end of Section II, paragraph 2 of IRPS 87–2 to read as follows:

II. Procedures for the Development of Regulations

* * * * *

2. * * * NCUA will designate credit unions with less than $50 million in assets as small entities. * * * Within two years of the effective date of the increase to $50 million, the NCUA Board will review and consider adjusting the asset threshold it uses to define small entities for purposes of analyzing whether a regulation will have a significant economic impact on a substantial number of small entities. Thereafter, the NCUA Board will conduct reviews of the asset threshold every three years.

* * * * *

Conforming Amendments to NCUA Regulations

For the reasons discussed above, the Board amends 12 CFR parts 702, 741 and 791 as follows:

PART 702—PROMPT CORRECTIVE ACTION

■ 1. The authority citation for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 2. In § 702.103, amend paragraph (a) by:

■ a. Removing ''ten'' and adding in its place ''fifty'', and

■ b. Removing ''($10,000,000)'' and adding in its place ''($50,000,000)''.

PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), 1781–1790 and 1790d; 31 U.S.C. 3717.

■ 4. In § 741.3, revise paragraph (b)(5) to read as follows:

§ 741.3 Criteria.

* * * * *

(b) * * *

(5) The existence of a written interest rate risk policy (''IRR policy'') and an effective interest rate risk management program (''effective IRR program'') as part of asset liability management. Federally insured credit unions (''FICUs'') with assets of more than $50 million, as measured by the most recent Call Report filing, must adopt a written IRR policy and implement an effective IRR program. Appendix B to this Part 741 provides guidance on how to develop an IRR policy and an effective IRR program. The guidance describes widely accepted best practices in the management of interest rate risk for the benefit of all FICUs.

* * * * *

[25] 5 U.S.C. 551.

PART 791—RULES OF NCUA BOARD PROCEDURES; PROMULGATION OF NCUA RULES AND REGULATIONS; PUBLIC OBSERVATION OF NCUA BOARD MEETINGS

■ 5. The authority citation for part 791 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789 and 5 U.S.C. 552b.

■ 6. In § 791.8, revise paragraph (a) to read as follows:

§ 791.8 Promulgation of NCUA rules and regulations.

* * * * *

(a) NCUA's procedures for developing regulations are governed by the Administrative Procedure Act (5 U.S.C. 551 et seq.), the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and NCUA's policies for the promulgation of rules and regulations as set forth in its Interpretive Ruling and Policy Statement 87–2 as amended by Interpretive Ruling and Policy Statements 03–2 and 13–1.

* * * * *

[FR Doc. 2013–00864 Filed 1–17–13; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No.: FAA–2010–0940–0001; Amdt. No. 35–9]

RIN 2120–AJ88

Critical Parts for Airplane Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is amending the airworthiness standards for airplane propellers. This action would require a safety analysis to identify a propeller critical part. Manufacturers would identify propeller critical parts, and establish engineering, manufacturing, and maintenance processes for propeller critical parts. These new requirements provide an added margin of safety for the continued airworthiness of propeller critical parts by requiring a system of processes to identify and manage these parts throughout their service life. This rule would eliminate regulatory differences between part 35 and European Aviation Safety Agency (EASA) propeller critical parts requirements, thereby simplifying airworthiness approvals for exports.

DATES: Effective March 19, 2013.

Affected parties, however, are not required to comply with the information collection requirement[s] in § 35.16 until the Office of Management and Budget (OMB) approves the collection and assigns a control number under the Paperwork Reduction Act of 1995. The FAA will publish in the **Federal Register** a notice of the control number[s] assigned by the Office of Management and Budget (OMB) for this [these] information collection requirement[s].

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Jay Turnberg, Engine and Propeller Directorate Standards Staff, ANE–111, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299; telephone (781) 238–7116; facsimile (781) 238–7199, email: *jay.turnberg@faa.gov.* For legal questions concerning this action, contact Vincent Bennett, FAA Office of the Regional Counsel, ANE–7, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299; telephone (781) 238–7044; facsimile (781) 238–7055, email: *vincent.bennett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, section 44701, ''General requirements.'' Under that section, the FAA is charged with prescribing regulations promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce, including minimum safety standards for airplane propellers. This regulation is within the scope of that authority because it updates the existing regulations for airplane propellers.

I. Overview of Final Rule

Part 35 does not specifically define the term propeller critical part. Consequently, there are no requirements for design, manufacture, maintenance, or management of propeller critical parts. This rule defines and requires the identification of propeller critical parts, and establishes requirements to ensure the integrity of those parts.

II. Background

On December 20, 2006, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop recommendations that would address the integrity of propeller critical parts, as well as be in harmony with similar European Aviation Safety Agency (EASA) regulations. This rule addresses those recommendations, a copy of which can be found in the docket of this rulemaking.

A. Statement of the Problem

Propeller critical parts are not adequately addressed by current regulations. Presently, the FAA does not—

➢ Have a specific definition for a propeller critical part, or

➢ Require type certificate holders to identify propeller critical parts.

Consequently, propeller manufacturers are not required to provide information concerning propeller critical part design, manufacture, or maintenance.

B. Summary of the NPRM

Primary failure of certain single propeller elements (for example, blades) can result in a hazardous propeller effect. Part 35 does not specifically identify these elements as propeller critical parts. Consequently, there are no requirements for design, manufacture, maintenance, or management of propeller critical parts. EASA, however, has regulations that identify a specific definition for propeller critical part, and regulations to reduce the likelihood of propeller critical part failures. These regulations, EASA Certification Specifications for Propellers (CS–P), are CS–P 150, Propeller Safety Analysis and CS–P 160 Propeller Critical Parts Integrity. The EASA regulations specifically require propeller manufacturers to identify propeller critical parts and provide adequate information for the design, manufacture, and maintenance of those parts to ensure their integrity throughout their service life. This FAA action establishes standards equivalent to the EASA regulations, thereby simplifying airworthiness approvals for export of these parts.

Safety Analysis (§ 35.15)

We proposed to revise § 35.15(c) to require the identification of propeller critical parts, and that applicants establish the integrity of these parts using the standards in proposed § 35.16. Section 35.15(c) refers to the failure of

these parts as primary failures of ''certain single elements''. We recognize that a meaningful numerical estimate of the reliability of these parts is not possible, since over 100 million hours of service history on a part design would be needed to directly meet the probability requirements of the regulation. Current regulations accommodate this inability to provide a meaningful estimate by stating that these failures cannot be ''sensibly'' estimated in numerical terms.

Propeller Critical Parts (New § 35.16)

Our proposed § 35.16 would require the development and execution of an engineering process, a manufacturing process, and a service management process for propeller critical parts. These three processes form a closed loop system that links the design intent, as defined by the engineering process, to how the part is manufactured and to how the part is maintained in service. Engineering, manufacturing, and service management function as an integrated system. This integrated systems approach recognizes that the effects of an action in one area would have an impact on the entire system. The proposed § 35.16 clarifies the wording of the EASA propeller critical parts requirement. Since the CS–P 160 use of the term ''plan'' might imply a requirement that a ''part-specific'' document would be required, the term ''process'' is used instead of ''plan''. In this context compliance will consist of a procedures manual that describes the manufacturer's method(s) to control propeller critical parts.

The engineering, manufacturing, and service management processes should provide clear information for propeller critical part management. ''Process'' in the context of the proposed requirement does not mean that all the required technical information is within a single document. When relevant information exists elsewhere, the process documents may reference, for example, drawings, material specifications, and process specifications, as appropriate. These references should be clear enough to sufficiently identify the referenced document so as to allow the design history of an individual part to be traced.

The FAA published a notice of proposed rulemaking on December 1, 2011, requesting pubic comments [76 FR 74749]. The comment period closed on January 30, 2012.

C. General Overview of Comments

The FAA received three comments. One was from a repair station, Sensenich Propeller Service, and the others were from propeller manufacturers, Hamilton Sundstrand and Hartzell Propeller. The comments requested clarification on how the rule would be applied to propeller parts being serviced, old (legacy) propellers and part 45 Identification and Registration and Marking requirements. The comments did not suggest changes to the proposal.

III. Discussion of Public Comments and Final Rule

Sensenich Propeller Service asked would this rule require the replacement of airworthy parts that were found to have no defects. This rule would not. Nor does it require propeller manufacturers to revise manuals for existing certified propellers. This rule will result in manuals that are more informative with respect to propeller critical parts, when manuals are revised or developed for amended or new propeller certification programs.

Hamilton Sundstrand wanted to know if some sort of grandfather clause for legacy propellers was contemplated. This rule is applicable to propellers based on the propeller certification basis. Therefore, the rule will be applicable to new propellers, and may be applicable to propellers certified to earlier amendments, if the type design is changed sufficiently. See 14 CFR § 21.101 Designation of applicable regulations. The current regulations accommodate older propellers as needed.

Hartzell Propeller, Inc., requested clarification on the applicability of paragraph (c) of § 45.15 Identification and registration marking for a propeller critical part. The propeller critical parts rule does address part marking. Propellers, propeller blades, and hubs are subject to the marking requirements of §§ 45.11 and 45.13. Section 45.15 (c) is not applicable to critical propeller parts that do not have a replacement time, inspection interval, or related procedure specified in the Airworthiness Limitations Section of a manufacturer's maintenance manual or Instructions for Continued Airworthiness.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires 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 $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect, and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

Presently, airplane propeller part manufacturers must satisfy both the code of federal regulations (CFR) and the European Aviation Safety Agency (EASA) certification requirements to market their products in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing new airplane propeller parts, often with no increase in safety. In the interest of fostering international trade, lowering the cost of airplane propeller parts development, and making the certification process more efficient, the FAA, EASA, and airplane propeller part manufacturers worked to create to the maximum extent possible a single set of certification requirements accepted in both the United States and Europe. These efforts are referred to as harmonization.

Propellers contain critical parts whose primary failure can result in a hazardous propeller effect. 14 CFR part 35 does not currently identify what a propeller critical part is, and consequently, has no specific requirement(s) for their design, manufacture, maintenance, or

management. EASA however, has regulations that identify what propeller critical parts are, and regulations to reduce the likelihood of propeller critical part failures.

This rule will revise § 35.15 and add a new § 35.16 to part 35 with EASA's ''more stringent'' CS–P 150 Propeller Safety Analysis and CS–P 160 Propeller Critical Parts Integrity requirements. The FAA has concluded for the reasons previously discussed in the preamble, the adoption of these EASA requirements into the CFR is the most efficient way to harmonize these sections, and in so doing, enhance the existing level of safety.

A review of current manufacturers of airplane propeller parts certificated under part 35 has revealed that all manufacturers of such future airplane propeller parts are expected to continue their current practice of compliance under part 35 of the CFR and the EASA certification requirements. Since future certificated airplane propeller parts are expected to meet EASA's existing CS–P 150 Propeller Safety Analysis and CS–P 160 Propeller Critical Parts Integrity requirements, and this rule simply adopts the same EASA requirement, manufacturers will incur no additional cost resulting from this rule. Therefore, the FAA estimates that there are no more than minimal costs associated with this final rule.

The FAA, however, has not attempted to quantify the cost savings that may accrue from this rule, beyond noting that while it may be minimal, it contributes to a potential harmonization savings. Furthermore, we did not receive comments regarding this determination that this rule will have minimal cost with a possible cost savings to the industry.

The FAA has therefore determined this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities for profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this rule would not have a significant economic impact on a substantial number of small entities for the following reason. The net effect of the rule is minimum regulatory cost relief. The rule requires that new propeller manufacturers meet the ''more stringent'' European certification requirement, CS–P 150, Propeller Safety Analysis and CS–P 160, Propeller Critical Parts, rather than both the U.S. and European standards. Propeller manufacturers already meet or expect to meet this standard as well as the existing CFR requirement.

Given that this rule has minimal to no costs, could be cost-relieving, and as we received no comments on this determination for the NPRM, as the Administrator, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards, and where appropriate, be the basis for U. S. standards. The FAA has assessed the potential effect of this final rule and determined that it is in accord with the Trade Agreements Act as the rule uses European standards as the basis for United States regulation.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This final rule will impose the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these information collection amendments to OMB for its review. Notice of OMB approval for this information collection will be published in a future **Federal Register** document.

Summary: On December 1, 2011, FAA published a notice of proposed rulemaking titled ''Critical Parts for Airplane Propellers'' (76 FR 74749). This activity contains new Paperwork Reduction Act recordkeeping requirements that were not addressed in that notice of proposed rulemaking, and which are addressed here. The rule will require that U.S. companies who manufacture critical parts for airplane propellers update their manuals to record engineering, manufacture, and maintenance processes for propeller critical parts. There are currently three U.S. companies who will be required to create or revise their manuals to include these processes.

Public comments: We received no comments on information collection

Use: This information will be used by the propeller manufacturer to show compliance with the propeller critical parts requirements. This action would define what a propeller critical part is, require the identification of propeller critical parts by the manufacturer, and establish engineering, manufacture, and maintenance processes for those parts. The need and use of the information is to ensure the continued airworthiness of propeller critical parts by requiring a system of processes to identify and manage these parts throughout their service life.

Respondents: There are five propeller manufacturers that will be affected by the new requirement. Responses were provided by two of the manufacturers who have already prepared propeller critical parts manuals and are compliant with the final rule. The information provided by the two manufacturers was used to establish the paperwork required to show compliance with the propeller critical parts requirements for the remaining three propeller manufacturers.

Frequency: The information will only need to be collected once to show compliance with the FAA propeller critical part rule § 35.16. If the information is not collected, the propeller manufacturer will not be able to obtain a type certificate for the propeller.

Annual Burden Estimate: There will be no annualized cost to the Federal Government. Industry has informed the FAA that the one-time paperwork requirement will take approximately 40 hours and consist of 18 pages per manufacturer. The FAA estimated 120 hours as the total hourly burden by taking the product of the number of affected U.S. manufacturers with the hourly burden. There will be a one-time cost of $3,555.60 per respondent which will occur on the effective date of the rule. The total cost for the three respondents is $10,666.80.

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform our regulations to International Civil Aviation Organization (ICAO) Standards to the maximum extent practicable. The FAA has determined that there are no ICAO Standards that correspond to these regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609 and has determined that this action would have no effect on international regulatory cooperation.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph Chapter 3, paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at *http://www.gpo.gov/fdsys/*.

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/*.

List of Subjects 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

PART 35—AIRWORTHINESS STANDARDS: PROPELLERS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

■ 2. Amend § 35.15 by revising paragraphs (c) and (d) to read as follows:

§ 35.15 Safety Analysis.

* * * * *

(c) The primary failures of certain single propeller elements (for example, blades) cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous propeller effects, those elements must be identified as propeller critical parts.

(d) For propeller critical parts, applicants must meet the prescribed integrity specifications of § 35.16. These instances must be stated in the safety analysis.

* * * * *

■ 3. Add § 35.16 to subpart B to read as follows:

§ 35.16 Propeller Critical Parts.

The integrity of each propeller critical part identified by the safety analysis required by § 35.15 must be established by:

(a) A defined engineering process for ensuring the integrity of the propeller critical part throughout its service life,

(b) A defined manufacturing process that identifies the requirements to consistently produce the propeller critical part as required by the engineering process, and

(c) A defined service management process that identifies the continued airworthiness requirements of the propeller critical part as required by the engineering process.

Issued in Washington, DC, on January 8, 2013.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2013–01041 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0724; Directorate Identifier 2010–NM–181–AD; Amendment 39–17299; AD 2012–26–04]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 757–200, –200PF, and –200CB series airplanes powered by Rolls-Royce engines. That AD currently requires repetitive inspections of the shim installation between the drag brace fitting vertical flange and bulkhead, and repair if necessary; for certain airplanes, an inspection for cracking of the four critical fastener holes in the horizontal flange, and repair if necessary; and, for airplanes without conclusive records of previous inspections, performing the existing actions. This new AD reduces the repetitive inspection interval; adds repetitive detailed inspections for cracking of the bulkhead, and repair if necessary; allows an extension of the repetitive intervals for certain airplanes by also doing repetitive ultrasonic inspections for cracking of the bulkhead, and repair if necessary; and provides an option for a high frequency eddy current inspection for cracking of the critical fastener holes, and repair if necessary. This action also adds a terminating action for certain repetitive inspections. This AD was prompted by reports of loose fasteners and cracks at the joint common to the aft torque bulkhead and strut-to-diagonal brace fitting, and one report of such damage occurring less than 3,000 flight cycles after the last inspection. We are issuing this AD to detect and correct cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

DATES: This AD is effective February 22, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 22, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 24, 2007 (72 FR 44753, August 9, 2007).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone 425–917–6440; fax 425–917–6590; email: *Nancy.Marsh@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008). (AD 2008–05–10 superseded AD 2007–16–13, Amendment 39–15152 (72 FR 44753, August 9, 2007); and AD 2007–16–13 superseded AD 2005–12–04, Amendment 39–14120 (70 FR 34313, June 14, 2005).) AD 2008–05–10 applies to the specified products. The SNPRM published in the **Federal Register** on June 21, 2012 (77 FR 37332). The original NPRM (76 FR 52901, August 24, 2011) proposed to continue to require repetitive inspections of the shim installation between the engine strut vertical flange and bulkhead, and repair if necessary. That NPRM also proposed to continue to require, for certain airplanes, inspecting for cracking of the four critical fastener holes in the horizontal flange, and repair if necessary; and, for airplanes without conclusive records of previous inspections, performing the existing actions. Additionally, that NPRM proposed to reduce the repetitive inspection interval, add repetitive detailed inspections for cracking of the bulkhead, and repair if necessary; extend the repetitive intervals for certain airplanes by also doing repetitive ultrasonic inspections for cracking of the bulkhead, and repair if necessary; and add an option for a high frequency eddy current inspection for cracking of the critical fastener holes, and repair if necessary. The SNPRM proposed to add a terminating action for certain repetitive inspections.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 37332, June 21, 2012) and the FAA's response to each comment.

Support for the SNPRM (77 FR 37332, June 21, 2012)

United Airlines (United) stated that it has 41 Model 757–200 airplanes affected by the SNPRM (77 FR 37332, June 21, 2012). United stated that, in general, it concurs with the SNPRM to mandate the inspections and modifications described in Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011.

UPS stated that it concurs with the reduced inspection interval specified in the SNPRM (77 FR 37332, June 21, 2012), as it provides additional opportunity beyond that required by AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), to find and correct any damage.

Request To Change Compliance Time

United requested that we remove the 54-month compliance time in favor of only a 9,000 airplane-cycle limit for the modification specified in paragraph (o) of the SNPRM (77 FR 37332, June 21, 2012). United stated that the 54-month compliance time does not align with current 72-month heavy check intervals at United. United stated that it understands the related bulkhead cracking to be a fatigue related failure, thus negating the need for a calendar driven modification limit. United stated it believes that the currently mandated repetitive inspection limits, in conjunction with a 9,000-airplane-cycle mandated modification limit only, would provide a safe program that would allow for a controlled implementation that minimizes the negative financial impact to operators.

We disagree with the request to change the specified compliance time. We have determined that the 54-month compliance time (grace period), as specified in Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, is necessary to adequately address the identified unsafe condition. This structure has been the subject of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008); which superseded AD 2007–16–13, Amendment 39–15152 (72 FR 44753, August 9, 2007); which superseded AD 2005–12–04, Amendment 39–14120 (70 FR 34313, June 14, 2005). In each of these ADs, the results from the new inspection found more damage than anticipated, and more frequent and complicated inspections were needed.

In developing an appropriate compliance time for the modification specified in paragraph (o) of this AD, we considered the safety implications, the time necessary to design an acceptable modification, and normal maintenance schedules for timely accomplishment of the modification. In light of these items, we have determined that a 54-month compliance time (grace period) is appropriate. However, under the provisions of paragraph (q) of this AD, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the extension would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Change Terminating Action

UPS requested that the terminating action proposed in the SNPRM (77 FR 37332, June 21, 2012) be optional in lieu of continued reduced interval inspections, and the terminating action be required only if the reduced interval inspections find cracks or other damage at the fitting.

We do not agree to change the required terminating action specified in this AD because this portion of the Model 757 pylon has been the subject of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008); which superseded AD 2007–16–13, Amendment 39–15152 (72 FR 44753, August 9, 2007); which superseded AD 2005–12–04, Amendment 39–14120 (70 FR 34313, June 14, 2005). In each of these ADs, results from the new, more frequent, and more complicated inspections showed more damage than anticipated. Under the provisions of paragraph (q) of this AD, we will consider requests for approval of alternative methods of compliance (AMOC) if sufficient data are submitted to substantiate that continued inspections without the terminating action can mitigate the identified unsafe condition. We have not changed the AD in this regard.

Request To Specify Certain Section of Service Information

Boeing requested that we specifically call out Part V of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, in paragraph (o) of the SNPRM (77 FR 37332, June 21, 2012) to prevent misinterpretation in that paragraph because it is different than all other locations in the SNPRM.

We agree to specify Part V in paragraph (o) of this AD, as requested by Boeing, since doing so will help prevent misinterpretation. We have changed paragraph (o) of this AD to specify PART V of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011.

Request To Change Paragraph Header

Boeing requested that we revise the header of paragraph (g) of the SNPRM (77 FR 37332, June 21, 2012), by deleting ''With Reduced Repetitive Intervals and New Optional Inspection Method.'' Boeing stated that there are no repetitive inspection requirements in paragraph (g) of the SNPRM.

We agree to modify the specified header, since the repetitive inspection is specified in paragraph (h) of this AD. We have removed the words ''Reduced Repetitive Intervals and New Optional Inspection Interval'' from the header of paragraph (g) of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the SNPRM (77 FR 37332, June 21, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 37332, June 21, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 309 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Part I inspection on fasteners and shims—vertical flange [retained actions from AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008)].	28 work-hours × $85 per hour = $2,380 per inspection cycle.	$0	$2,380 per inspection cycle.	$735,420 per inspection cycle.

ESTIMATED COSTS—Continued

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Part II inspection on fasteners—horizontal flange [retained actions from AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008)].	6 work-hours × $85 per hour = $510 per inspection cycle.	0	$510 per inspection cycle.	$157,590 per inspection cycle.
Part IV inspection on critical fasteners—horizontal flange [retained action from AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008)].	6 work-hours × $85 per hour = $510 per inspection cycle.	0	$510 per inspection cycle.	$157,590 per inspection cycle.
Part II additional inspection on fasteners—horizontal flange [new action].	10 work-hours × $85 per hour = $850 per inspection cycle.	0	$850 per inspection cycle.	$262,650 per inspection cycle.
Part IV inspection on critical fasteners—horizontal flange [new action].	8 to 22 work-hours × $85 per hour = $680 to $1,870 per inspection cycle.	0	$680 to $1,870 per inspection cycle.	$210,120 to $577,830 per inspection cycle.
Part V fastener replacement flange [new action]	Up to 37 work-hours × $85 per hour = $3,145 per strut.	750	Up to $3,895 per strut ..	Up to $1,203,555 per strut.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), and adding the following new AD:

2012–26–04 The Boeing Company: Amendment 39–17299; Docket No. FAA–2011–0724; Directorate Identifier 2010–NM–181–AD.

(a) Effective Date

This airworthiness directive (AD) is effective February 22, 2013.

(b) Affected ADs

This AD supersedes AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008).

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, and –200CB series airplanes; certificated in any category; line numbers 1 through 1048 inclusive; powered by Rolls-Royce engines.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 54, Nacelles/Pylons.

(e) Unsafe Condition

This AD was prompted by reports of loose fasteners and cracks at the joint common to the aft torque bulkhead and strut-to-diagonal brace fitting, and one report of such damage occurring less than 3,000 flight cycles after the last inspection. We are issuing this AD to detect and correct cracks, loose and broken bolts, and shim migration in the joint between the aft torque bulkhead and the strut-to-diagonal brace fitting, which could result in damage to the strut and consequent separation of the strut and engine from the airplane.

(f) Compliance

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

(g) Retained One-Time Inspection and Repair With Optional Inspection Method

This paragraph restates the one-time inspection and repair required by paragraph (g) of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), with optional inspection method and revised service information. For airplanes identified in paragraphs (g)(1) and (g)(2) of this AD: Within 90 days after August 24, 2007 (the effective date of AD 2007–16–13, Amendment 39–15152 (72 FR 44753, August 9, 2007)), do a high frequency eddy current (HFEC) inspection for cracking of the four critical fastener holes in the horizontal flange and, before further flight, do all applicable repairs, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007; Boeing Alert Service

Bulletin 757–54A0047, Revision 4, dated June 24, 2010; or Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011; except as required by paragraph (i)(3) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, may be used to accomplish the actions required by this paragraph. Doing an ultrasonic inspection for cracking of the fasteners, in accordance with Part IV of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010; or Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011; is an acceptable method of compliance with the HFEC inspection requirement of this paragraph.

(1) Airplanes on which findings on the horizontal or vertical fasteners or the shims led to a rejection of any fastener during the actions specified in Boeing Alert Service Bulletin 757–54A0047, dated November 13, 2003; or Boeing Service Bulletin 757–54A0047, Revision 1, dated March 24, 2005.

(2) Airplanes that had equivalent findings prior to the actions specified in Boeing Alert Service Bulletin 757–54A0047, dated November 13, 2003, except for findings on airplanes identified as Group 1, Configuration 2, in Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, that were prior to the incorporation of Boeing Service Bulletin 757–54–0035.

(h) Retained Repetitive Inspection and Repair With Reduced Interval

This paragraph restates the repetitive inspections and repair required by paragraph (h) of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), with reduced repetitive intervals and revised service information. At the applicable initial times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, except as required by paragraphs (i)(1) and (i)(2) of this AD: Do the inspections specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, and, before further flight, do all the applicable related investigative actions and repairs, by doing all the actions specified in Parts I and II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007; or by doing all the actions specified in Part I, and in Step 2 of Part II, of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047 Revision 4, dated June 24, 2010, or Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, except as required by paragraph (i)(3) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, may be used to accomplish the actions required by this paragraph. Repeat the inspections required by this paragraph at the times specified in paragraph (h)(4) of this AD.

(1) Do detailed inspections of the shim installations between the vertical flange and bulkhead to determine if there are signs of movement.

(2) Do detailed inspections of the four fasteners in the vertical flange to determine if there are signs of movement or if there are gaps under the head or collar.

(3) Do detailed inspections of the fasteners that hold the strut to the horizontal flange of the strut-to-diagonal brace fitting to determine if there are signs of movement or if there are gaps under the head or collar.

(4) Repeat the inspections required by paragraph (h) of this AD at the earlier of the times specified in paragraphs (h)(4)(i) and (h)(4)(ii) of this AD. Thereafter, repeat the inspections at intervals not to exceed the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011.

(i) At intervals not to exceed the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007.

(ii) At intervals not to exceed the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, or within 90 days after the effective date of this AD, whichever occurs later.

(i) Retained Exceptions To Alert Service Bulletin Procedures

This paragraph restates the exceptions to alert service bulletin procedures specified in paragraphs (i), (j), and (k) of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), with revised service information.

(1) Where Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, specifies a compliance time relative to ''the date on this service bulletin,'' this AD requires compliance within the corresponding specified time relative to the effective date of AD 2007–16–13, Amendment 39–15152 (72 FR 44753, August 9, 2007).

(2) Where Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, specifies a compliance time relative to the ''date of issuance of airworthiness certificate,'' this AD requires compliance within the corresponding time relative to the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

(3) If any crack is found during any inspection required by this AD, and Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007; Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010; or Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011; specifies to contact Boeing for appropriate action: Before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

(j) Retained Inspection/Repair for Airplanes for Which There Are No Conclusive Inspection Records

This paragraph restates the inspection and repair requirements for airplanes for which there are no conclusive inspection records, as required by paragraph (l) of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), with revised service information. For airplanes for which there are no conclusive records showing no loose or missing fasteners during previous inspections done in accordance with the requirements of AD 2007–16–13, Amendment 39–15152 (72 FR 44753, August 9, 2007); or AD 2005–12–04, Amendment 39–14120 (70 FR 34313 June 14, 2005): Do the actions specified in paragraphs (j)(1) and (j)(2) of this AD, at the times specified in those paragraphs, as applicable.

(1) Within 90 days after March 18, 2008 (the effective date of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008)), do the actions specified in paragraph (g) of this AD, except as required by paragraph (i)(3) of this AD.

(2) At the applicable initial times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, do the actions specified in paragraph (h) of this AD, except as required by paragraphs (i)(2) and (k) of this AD. And, before further flight, do all applicable related investigative actions and repairs, by doing all the actions specified in Parts I and II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007; or in Part 1 and in Step 2 of Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010, or Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011; except as required by paragraph (i)(3) of this AD. As of the effective date of this AD, only Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, may be used to accomplish the actions required by this paragraph. Repeat the actions specified in paragraph (h) of this AD at the times specified in paragraph (h)(4) of this AD.

(k) Retained Additional Exception To Alert Service Bulletin Procedures

This paragraph restates the exception to alert service bulletin procedures required by paragraph (m) of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008). Where Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007, specifies a compliance time relative to ''the date on this service bulletin,'' this AD requires compliance within the corresponding specified time relative to March 18, 2008 (the effective date of AD 2008–05–10).

(l) Retained Acceptable Method of Compliance with Certain Requirements of AD 2004–12–07, Amendment 39–13666 (69 FR 33561 June 16, 2004)

This paragraph restates an acceptable method of compliance with certain requirements of AD 2004–12–07, Amendment 39–13666 (69 FR 33561 June 16, 2004), specified by paragraph (p) of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008). Accomplishing the actions specified in paragraphs (g) and (h) of this AD terminates the requirements specified in paragraphs (b) and (d) of AD 2004–12–07.

(m) New Repetitive Inspections and Repair

At the applicable initial compliance times specified in paragraph (n) of this AD: Do the applicable actions specified in paragraph (m)(1) or (m)(2) of this AD, in accordance with Step 3 of Part II of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010; or Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011. If no cracking is found, repeat the inspections thereafter at intervals not to exceed the applicable intervals specified in paragraph 1.E., ''Compliance,'' of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011. If any crack is found during any inspection required by this paragraph, before further flight, repair the crack using a method approved in accordance with the procedures specified in paragraph (q) of this AD.

(1) For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011: Do the actions specified in paragraph (m)(1)(i) or (m)(1)(ii) of this AD.

(i) Do a detailed inspection for cracking of the bulkhead in the area around the access door cutout and around the critical fasteners in the horizontal flange.

(ii) Do a detailed inspection for cracking of the bulkhead in the area around the access door cutout and around the critical fasteners in the horizontal flange, and do an ultrasonic inspection for cracking of the bulkhead around the fasteners in the horizontal flange. Doing the actions in this paragraph extends the repetitive intervals of the inspections required by paragraph (n) of this AD.

(2) For Group 1, Configuration 2 airplanes; and Group 2 airplanes; identified in Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011: Do a detailed inspection for cracking of the bulkhead in the area around the access door cutout and around the critical fasteners in the horizontal flange.

(n) New Compliance Times for Paragraph (m) of This AD

At the applicable times specified in paragraphs (n)(1) and (n)(2) of this AD, do the actions required by paragraph (m) of this AD.

(1) For Group 1, Configuration 1 airplanes identified in Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011: At the later of the times specified in paragraph (n)(1)(i) or (n)(1)(ii) of this AD.

(i) Within 1,800 flight cycles after accomplishing the most recent inspection required by paragraph (h) or (j) of this AD.

(ii) Within 90 days after the effective date of this AD.

(2) For Group 1, Configuration 2 airplanes; and Group 2 airplanes; identified in Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011: At the later of the times specified in paragraph (n)(2)(i) or (n)(2)(ii) of this AD.

(i) Within 3,000 flight cycles after accomplishing the most recent inspection required by paragraph (h) or (j) of this AD.

(ii) Within 90 days after the effective date of this AD.

(o) New Terminating Action for Certain Airplanes: Fastener Replacement

For Group 1, Configuration 2 airplanes; and Group 2 airplanes; as identified in Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011: Within 9,000 flight cycles or 54 months after the effective date of this AD, whichever occurs first, replace the horizontal and vertical flange fasteners in the strut-to-diagonal brace fitting on the number 1 and number 2 struts with new fasteners, and do all related investigative and applicable corrective actions, in accordance with PART V of the Accomplishment Instructions of Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, except where Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011, specifies to contact Boeing for repair instructions, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (q) of this AD. Do all related investigative and corrective actions before further flight. Accomplishment of the actions required in paragraph (o) of this AD terminates the inspection requirements of paragraphs (g), (h), (j), and (m) of this AD for Group 1, Configuration 2 airplanes; and Group 2 airplanes; as identified in Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011.

(p) Credit for Previous Actions

(1) Except for the actions specified in paragraphs (j), (m), and (o) of this AD, this paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if those actions were performed before March 18, 2008 (the effective date of AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), using Boeing Service Bulletin 757–54A0047, Revision 1, dated March 24, 2005; or Boeing Alert Service Bulletin 757–54A0047, Revision 2, dated January 31, 2007 (which are not incorporated by reference in this AD).

(2) This paragraph provides credit for the initial inspection required by paragraph (h) of this AD, if that inspection was performed before June 29, 2005 (the effective date of AD 2005–12–04, Amendment 39–14120 (70 FR 34313, June 14, 2005)), using the actions required by paragraph (b) or (d), as applicable, of AD 2004–12–07, Amendment 39–13666 (69 FR 33561, June 16, 2004).

(q) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

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

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

(4) AMOCs approved previously in accordance with AD 2004–12–07, Amendment 39–13666 (69 FR 33561, June 16, 2004), are approved as AMOCs for the corresponding provisions of this AD.

(5) AMOCs approved previously in accordance with AD 2005–12–04, Amendment 39–14120 (70 FR 34313, June 14, 2005), are approved as AMOCs for the corresponding provisions of this AD.

(6) AMOCs approved previously in accordance with AD 2007–16–13, Amendment 39–15152 (72 FR 44753, August 9, 2007), are approved as AMOCs for the corresponding provisions of this AD.

(7) AMOCs approved previously in accordance with AD 2008–05–10, Amendment 39–15404 (73 FR 11347, March 3, 2008), are approved as AMOCs for the corresponding provisions of this AD.

(r) Related Information

(1) For more information about this AD, Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6440; fax: 425–917–6590; email: *Nancy.Marsh@faa.gov*.

(2) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com*.

(s) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 22, 2013.

(i) Boeing Alert Service Bulletin 757–54A0047, Revision 4, dated June 24, 2010.

(ii) Boeing Alert Service Bulletin 757–54A0047, Revision 5, dated June 9, 2011.

(4) The following service information was approved for IBR on August 24, 2007, (72 FR 44753, August 9, 2007).

(i) Boeing Alert Service Bulletin 757–54A0047, Revision 3, dated June 27, 2007.

(ii) Reserved.

(5) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com*.

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

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

Issued in Renton Washington, on December 17, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–00897 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0299; Directorate Identifier 2011–NM–029–AD; Amendment 39–17295; AD 2012–25–13]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400F, and 747SR series airplanes. This AD was prompted by reports of broken and damaged latch pin retention bolts and subsequent migration of the latch pins of the main deck side cargo door (MDSCD). This AD requires various repetitive inspections of the MDSCD latch pin fittings, measuring the latch pin, and related investigative and corrective actions if necessary. This AD also requires modifying the latch pin fittings and installing new latch pins and latch pin fasteners. We are issuing this AD to prevent loss of the cargo door and rapid depressurization of the airplane.

DATES: This AD is effective February 22, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of February 22, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on March 27, 2012 (77 FR 18137). That NPRM proposed to require various repetitive inspections of the MDSCD latch pin fittings, measuring the latch pin, and related investigative and corrective actions if necessary. That NPRM also proposed to require modifying the latch pin fittings and installing new latch pins and latch pin fasteners.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 18137, March 27, 2012) and the FAA's response to each comment.

Requests To Change Applicability

Boeing and Thai Airways International PCL requested that we limit the applicability of the NPRM (77 FR 18137, March 27, 2012) to airplanes with a Boeing-certified MDSCD instead of airplanes identified in Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011. The commenters requested this change to ensure that airplanes modified in the future to Model 747–400 Boeing Converted Freighter (BCF) with an MDSCD installation are inspected and modified per the intent of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011.

We partially agree with changing the applicability. The AD already provides coverage for the future Model 747–400 BCF airplanes with an MDSCD installation. That is, the applicability of the AD specifies Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400F, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011. This service information identifies Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, and 747–400F airplanes with an MDSCD installed in production or by a Boeing-approved modification. For clarification, per the Type Certificate Data Sheet (TCDS) for those airplanes, Model 747–400 BCF and 747–400 Special Freighter (SF) airplanes remain as Model 747–400 series airplanes for documentation purposes on the TCDS and with regard to the applicability of ADs. Where Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, specifies ''all'' airplanes, this means past, present, and future airplanes.

However, we found that Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, does not currently provide a grace period for airplanes that have been modified with an MDSCD after the initial compliance time of 6 months after the effective date of this AD. Therefore, the initial compliance time specified in paragraph (g) of this AD has been modified to add a grace period for airplanes that are modified with an MDSCD after the effective date of this AD. Additionally, the initial compliance time reference to paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, has been removed from paragraph (g) of this final rule.

Request To Change Service Information Reference

Boeing requested that we change the service information reference in paragraphs (g), (h), (i), and (j) of the NPRM (77 FR 18137, March 27, 2012) from Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16,

2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, to Revision 3 of that service information. (Since Revision 3 has not been published, there is no issue date.) Boeing stated that Revision 3 of Boeing Alert Service Bulletin 747–52A2294 will be a full revision that will ''update the effectivity list of Model 747–400 BCF airplanes,'' and will incorporate changes identified during validation, which was accomplished in March 2012. Boeing stated that Revision 3 of Boeing Alert Service Bulletin 747–52A2294 will add no new work for airplanes having previously incorporated the actions specified in Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011; or Revision 2, dated December 12, 2011.

We disagree with referencing Revision 3 of Boeing Alert Service Bulletin 747–52A2294 in this final rule. Boeing has not submitted Revision 3 of Boeing Alert Service Bulletin 747–52A2294 for FAA approval. We consider it inappropriate to delay correcting the identified unsafe condition to wait for this new service information revision. However, after Revision 3 of Boeing Alert Service Bulletin 747–52A2294 is FAA-approved and issued, operators may submit requests for approval of alternative methods of compliance (AMOCs) under the provisions of paragraph (l) of this AD to use Revision 3. We have not changed the final rule in this regard.

Request To Change Credit for Previous Actions

Boeing requested that we change paragraph (k) of the NPRM (77 FR 18137, March 27, 2012) to also give credit for actions required by paragraphs (g) and (h) of the NPRM, if those actions were performed before the effective date of the AD using Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. Boeing stated that this request is related to its request to replace the service information reference in paragraphs (g), (h), (i), and (j) of the NPRM from Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, to Revision 3 of that service information.

We partially agree. We agree to provide credit for Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, before its revision by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. However, since we have not changed the AD to refer to Revision 3 of Boeing Alert Service Bulletin 747–52A2294, we disagree with specifying credit for using Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. We have changed paragraph (k) of this AD to specify credit for the actions required by paragraphs (g) and (h) of this AD performed before the effective date of this AD using Boeing Alert Service Bulletin 747–52A2294, dated July 8, 2010; or Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, before its revision by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

Request To Change Unsafe Condition Statement

Boeing requested that we modify the unsafe condition statement in the NPRM (77 FR 18137, March 27, 2012) by removing the reference to broken latch pin fittings. Boeing stated that Boeing Alert Service Bulletin 747–52A2294, dated July 8, 2010, was prompted by broken retention bolts and the subsequent migration of the latch pins rather than by the broken latch pin fittings. Boeing also stated that the service information recommends inspecting the latch pin fittings for damage, but that no broken latch pin fittings have been associated with this issue.

We agree with the commenter's request. We have changed the Summary and paragraph (e) of the AD to state that this AD was prompted by reports of broken and damaged latch pin retention bolts and subsequent migration of the latch pins of the MDSCD.

Request To Add Federal Aviation Regulation Reference

Boeing requested that we add a reference to paragraph (b) of section 25.571 of the Federal Aviation Regulations (14 CFR 25.571) to paragraph (l)(3), ''Alternative Methods of Compliance (AMOCs),'' of the NPRM (77 FR 18137, March 27, 2012). Boeing stated that paragraph (b) is the specific paragraph of 14 CFR 25.571, Amendment 45, that requires compliance for the Model 747 airframe beyond the original certification basis.

We find that clarification is necessary. The reference to section 25.571 of the Federal Aviation Regulations (14 CFR 25.571), Amendment 45, was included inadvertently in paragraph (l)(3) of the NPRM (77 FR 18137, March 27, 2012). Therefore, we have revised paragraph (l)(3) of this final rule to remove the reference to ''14 CFR 25.571, Amendment 45.''

Request To Change Compliance Time for Deactivated MDSCDs

KLM Royal Dutch Airlines (KLM) requested that we add alternative compliance times to the NPRM (77 FR 18137, March 27, 2012) for deactivated MDSCDs. KLM stated that a deactivated MDSCD is much less susceptible to mechanical defects than an activated door. KLM suggested that an initial inspection within 6 months after the effective date of the AD, and a modification as required by paragraph (h) of the NPRM within 48 months after the effective date of the AD, would be sufficient to maintain a safe condition. KLM noted that a similar alternative was made for deactivated main entry doors in paragraph (f) of AD 2007–12–11, Amendment 39–15089 (72 FR 31984, June 11, 2007).

We agree that a deactivated MDSCD is much less susceptible to mechanical defects than an activated door. We have changed paragraphs (g) and (i) of this AD to reference an exception in new paragraph (j)(3) of this AD, which states that the repetitive inspections required by paragraphs (g) and (i) of this AD are not applicable to a deactivated MDSCD. The initial inspection required by paragraph (g) of this AD and modifications and replacements required by paragraph (h) of this AD are still applicable to a deactivated MDSCD. In addition, when the MDSCD is reactivated, the repetitive inspections required by paragraphs (g) and (i) of this AD are applicable and must be done at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 18137, March 27, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 18137, March 27, 2012).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 77 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection, including torque check.	4 work-hours × $85 per hour = $340 per inspection cycle.	$0	$340 per inspection cycle	$26,180 per inspection cycle.
Modification	11 work-hours × $85 per hour = $935.	5,530	$6,465	$497,805.
Post-modification detailed inspection.	2 work-hours × $85 per hour = $170 per inspection cycle.	0	$170 per inspection cycle	$13,090 per inspection cycle.

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair/replacements (Groups 1 and 2 airplanes)	7 work-hours × $85 per hour = $595	$11,478	$12,073
Repair/replacements (Group 3 airplanes)	7 work-hours × $85 per hour = $595	12,254	12,849

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–25–13 The Boeing Company: Amendment 39–17295; Docket No. FAA–2012–0299; Directorate Identifier 2011–NM–029–AD.

(a) Effective Date

This AD is effective February 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400F, and 747SR series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by reports of broken and damaged latch pin retention bolts and subsequent migration of the latch pins of the main deck side cargo door (MDSCD). We are issuing this AD to prevent loss of the cargo door and rapid depressurization of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Action

At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD, whichever occurs later: Do a detailed inspection of the ten MDSCD latch pin fittings to detect loose, broken, damaged, or missing retention bolts and nuts; measure the latch pin diameter; and do all applicable related investigative and corrective actions, except as required by paragraph (j)(1) of this AD; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service

Bulletin 747–52A2294, Revision 2, dated December 12, 2011. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter, except as required by paragraph (j)(3) of this AD, at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

(1) Within 6 months after the effective date of this AD.

(2) Within 6 months after the installation of an MDSCD installed in Boeing production or by a Boeing-approved modification.

(h) Modification of Latch Pin Fittings and Replacement of Latch Pins and Latch Pin Retention Fasteners

At the time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, except as provided by paragraph (j)(2) of this AD: Modify the 10 MDSCD latch pin fittings, replace the latch pins with new latch pins, and replace the latch pin retention fasteners with new latch pin retention fasteners, except as required by paragraph (j)(1) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. Accomplishment of the actions specified in paragraph (h) of this AD terminates the inspection required in paragraph (g) of this AD.

(i) Post-Modification Inspection and Corrective Action

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, except as provided by paragraph (j)(2) of this AD: Do a detailed inspection of the 10 MDSCD latch pin fittings to detect loose, broken, damaged, or missing retention bolts and nuts; measure the latch pin diameter; and do all applicable related investigative and corrective actions, except as required by paragraph (j)(1) of this AD; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011. Do the applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter, except as required by paragraph (j)(3) of this AD, at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

(j) Exceptions to Service Bulletin Specifications

(1) If any damage is found during any inspection required by this AD, and Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, specifies to contact Boeing for appropriate action: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (l) of this AD.

(2) Where Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011, specifies a compliance time relative to the issue date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) The repetitive inspections required by paragraphs (g) and (i) of this AD are not applicable to a deactivated MDSCD. However, the initial inspection required by paragraph (g) of this AD and modifications and replacements required by paragraph (h) of this AD are still applicable to a deactivated MDSCD. When the MDSCD is reactivated, the repetitive inspections required by paragraphs (g) and (i) of this AD are applicable and must be done thereafter at intervals not to exceed those specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, as revised by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

(k) Credit for Previous Actions

This paragraph provides credit for actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 747–52A2294, dated July 8, 2010, which is not incorporated by reference in this AD; or Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011, before its revision by Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(m) Related Information

(1) For more information about this AD, contact Bill Ashforth, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6432; fax: 425–917–6590; email: *Bill.Ashforth@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

(n) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 747–52A2294, Revision 1, dated August 16, 2011.

(ii) Boeing Alert Service Bulletin 747–52A2294, Revision 2, dated December 12, 2011.

(3) For The Boeing Company service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

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

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–00895 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0804; Directorate Identifier 2012–NM–094–AD; Amendment 39–17316; AD 2013–01–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for certain The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes; and certain Model 757–200, –200PF, and –300 series airplanes. That AD currently requires replacing the control switches of the forward, aft, and nose cargo doors of Model 747 airplanes; and requires replacing the control switches of cargo doors 1 and 2 of Model 757 series airplanes. This new AD adds airplanes to the applicability and revises the initial compliance times for those airplanes. This AD was prompted by reports of problems associated with the uncommanded operation of cargo doors. We are issuing this AD to prevent injuries to persons and damage to the airplane and equipment.

DATES: This AD is effective February 22, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 22, 2013.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of December 3, 2009 (74 FR 55763, October 29, 2009).

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P. O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on August 3, 2012 (77 FR 46343). That NPRM proposed to continue to require replacing the control switches of the forward, aft, and nose cargo doors of Model 747 airplanes; and the control switches of cargo doors 1 and 2 of Model 757 airplanes. That NPRM also proposed to add airplanes to the applicability and to revise the initial compliance times for those airplanes.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 46343, August 3, 2012) and the FAA's response to each comment.

Support for the NPRM (77 FR 46343, August 3, 2012)

Boeing supported the NPRM (77 FR 46343, August 3, 2012).

American Airlines found that the NPRM (77 FR 46343, August 3, 2012) would not require additional actions for its Model 757 fleet; therefore, American Airlines had no comments concerning the NPRM.

Request for Clarification of Proposed Compliance Times

Asiana Airlines requested that we clarify the compliance times specified in paragraph (g) of the NPRM (77 FR 46343, August 3, 2012). Specifically, Asiana Airlines requested clarification of the compliance times for Model 747 Groups 1 and 2 airplanes on which the door switches had been replaced before the effective date of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), per Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007; and on which the certificate of airworthiness had been issued long before 72 months after the effective date of AD 2009–22–08.

We agree to provide clarification. Paragraph (g)(1) of this AD restates the compliance time from AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009) for Groups 1 and 2 Model 747 airplanes identified in Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010. If an operator has already replaced the switches before the effective date of this AD in accordance with either Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007; or Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010; then no further action is necessary for compliance with paragraph (g) of this AD. No change to this AD is necessary.

Explanation of Change Made to This AD

We have added new paragraph (i)(3) to this final rule to allow delegation of repairs to the Boeing Commercial Airplanes Organization Designation Authorization (ODA). We have re-identified subsequent paragraphs accordingly.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (77 FR 46343, August 3, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 46343, August 3, 2012).

Costs of Compliance

We estimate that this AD affects 225 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of airplanes	Cost on U.S. operators
Replacement [retained from existing AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009)].	Up to 5 work-hours × $85 per hour = $425.	$195	Up to $620	221	Up to $137,020.
Replacement [new action for added airplanes].	5 work-hours × $85 per hour = $425.	195	$620	4	$2,480.

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), and adding the following new AD:

2013–01–02 The Boeing Company: Amendment 39–17316; Docket No. FAA–2012–0804; Directorate Identifier 2012–NM–094–AD.

(a) Effective Date

This airworthiness directive (AD) is effective February 22, 2013.

(b) Affected ADs

This AD supersedes AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009).

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010; and Model 757–200, –200PF, and –300 series airplanes, certificated in any category, as indentified in Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by reports of problems associated with the uncommanded operation of cargo doors. We are issuing this AD to prevent injuries to persons and damage to the airplane and equipment.

(f) Compliance

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

(g) Retained Replacement

This paragraph restates the requirements of paragraph (f) of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), with revised compliance times and service information. Replace the control switches, as specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. Repeat the replacements thereafter at intervals not to exceed 72 months.

(1) For Groups 1 and 2 Model 747 airplanes identified in Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010: Within 24 months after December 3, 2009 (the effective date of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009)), or within 72 months from the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness, whichever occurs later, replace the control switches of the forward, aft, and nose cargo doors, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007; or Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010. As of the effective date of this AD, use only Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010, to do the actions specified in this paragraph.

(2) For Model 757 series airplanes: Within 24 months after December 3, 2009 (the

effective date of AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009)), replace the control switches of cargo doors 1 and 2, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

(h) New Replacement

For Group 3 airplanes identified in Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010: Within 72 months from the date of issuance of the original certificate of airworthiness or the original export certificate of airworthiness, or within 12 months after the effective date of this AD, whichever occurs later, replace the control switches of the forward, aft, and nose cargo doors, as applicable, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010. Repeat the replacements thereafter at intervals not to exceed 72 months.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

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

(4) AMOCs approved previously in accordance with AD 2009–22–08, Amendment 39–16059 (74 FR 55763, October 29, 2009), are approved as AMOCs for the corresponding provisions of this AD.

(j) Related Information

For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on February 22, 2013.

(i) Boeing Special Attention Service Bulletin 747–52–2286, Revision 1, dated October 28, 2010.

(ii) Reserved.

(4) The following service information was approved for IBR on December 3, 2009 (74 FR 55763, October 29, 2009).

(i) Boeing Special Attention Service Bulletin 747–52–2286, dated September 28, 2007.

(ii) Boeing Special Attention Service Bulletin 757–52–0090, dated September 21, 2007.

(5) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

(6) You may view this service information at FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356. For information on the availability of this material at the FAA, call 425–227–1221.

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

Issued in Renton, Washington, on January 4, 2013.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–00559 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0025; Directorate Identifier 2012–CE–048–AD; Amendment 39–17320; AD 2013–01–06]

RIN 2120–AA64

Airworthiness Directives; PILATUS Aircraft Ltd. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for PILATUS Aircraft Ltd. Model PC–7 airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks in the engine mount fittings caused by stress corrosion. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective February 7, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of February 7, 2013.

We must receive comments on this AD by March 4, 2013.

ADDRESSES: You may send comments by any of the following methods:

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

For service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; telephone: +41 (0)41 619 67 74; fax: 41 (0)41 619 67 73; Internet: *http://www.pilatus-aircraft.com* or email: *Techsupport@pilatus-aircraft.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer,

FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The Federal Office of Civil Aviation (FOCA), which is the aviation authority for Switzerland, has issued FOCA AD HB–2012–009, dated December 20, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> This Airworthiness Directive (AD) is prompted due to the discovery of cracks in the engine mount fittings. The cracks are caused by stress corrosion. It is possible for stress corrosion cracks to occur on engine mount fittings initially made of aluminium alloy AA2024–T351. Later in production, the material specification was changed to aluminium alloy AA2124–T851 to decrease the risk of stress corrosion. The Part Number (P/N) of the engine mount fittings remained the same.
>
> Such a condition, if left uncorrected, could lead to failure of the engine mount fittings and possible failure of the engine attachment.
>
> In order to correct and control the situation, this AD requires a one-time check to identify the material specification and inspect those affected engine mount fittings that are made of aluminium alloy AA2024–T351. Any engine mount fittings found to be cracked must be reported to Pilatus prior to further flight.

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

Relevant Service Information

PILATUS Aircraft Ltd. has issued PILATUS PC–7 Service Bulletin No. 53–008, dated November 30, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Interim Action

We consider this AD interim action. The type certificate holder is looking at repetitive inspection intervals to be done through the maintenance program. When these intervals are established, we may take additional rulemaking action to mandate the repetitive inspections.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because stress corrosion cracking in the engine mount area presents a critical safety of flight condition that requires inspection to ensure that the unsafe condition is mitigated. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0025; Directorate Identifier 2012–CE–048–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Costs of Compliance

We estimate that this AD will affect 15 products of U.S. registry. We also estimate that it would take about 7 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $0 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $8,925, or $595 per product.

In addition, we estimate that any necessary follow-on actions would take about 10 work-hours and require parts costing $5,000, for a cost of $5,850 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–01–06 PILATUS Aircraft Ltd.: Amendment 39–17320; Docket No. FAA–2013–0025; Directorate Identifier 2012–CE–048–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective February 7, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to PILATUS Aircraft Ltd. Models PC–7 airplanes, serial numbers 101 through 618, certificated in any category.

(d) Subject

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

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to detect and correct cracks in the engine mount fittings.

(f) Actions and Compliance

Unless already done, do the following actions.

(1) Within the next 90 days after February 7, 2013 (the effective date of this AD), perform a conductivity test to identify the material specification of the engine mount fittings (part number (P/N) 112.35.07.152) following paragraph 3.B. of PILATUS Aircraft Ltd. PILATUS PC–7 Service Bulletin No. 53–008, dated November 30, 2012.

(2) If during the conductivity test required by paragraph (f)(1) of this AD, engine mount fittings made of aluminum alloy AA2024–T351 are found, within the next 90 days after February 7, 2013 (the effective date of this AD), do the inspection following paragraph 3.C. of PILATUS Aircraft Ltd. PILATUS PC–7 Service Bulletin No. 53–008, dated November 30, 2012.

(3) If during the inspection required by paragraph (f)(2) of this AD, any crack is found in the engine mount fittings, before further flight, contact Pilatus Customer Technical Support (MCC) for further instructions at P.O. Box 992, CH–6371 Stans, Switzerland; telephone: +41 (0)41 619 67 74; fax: 41 (0)41 619 67 73; Internet: *http://www.pilatus aircraft.com* or email: *Techsupport@pilatus-aircraft.com*.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: doug.rudolph@faa.gov. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to Swiss MCAI Federal Office of Civil Aviation (FOCA) AD HB–2012–009, dated December 20, 2012; and PILATUS Aircraft Ltd. PILATUS PC–7 Service Bulletin No. 53–008, dated November 30, 2012, for related information.

(i) Material Incorporated by Reference

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

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

(i) PILATUS Aircraft Ltd. PILATUS PC–7 Service Bulletin No. 53–008, dated November 30, 2012.

(ii) Reserved.

(3) For PILATUS Aircraft Ltd. service information identified in this AD, contact PILATUS AIRCRAFT LTD., Customer Technical Support (MCC), P.O. Box 992, CH–6371 Stans, Switzerland; telephone: +41 (0)41 619 67 74; fax: 41 (0)41 619 67 73; Internet: *http://www.pilatus aircraft.com* or email: *Techsupport@pilatus-aircraft.com*.

(4) You may view this service information at FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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

Issued in Kansas City, Missouri, on January 11, 2013.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–00894 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0987; Directorate Identifier 2012–NM–130–AD; Amendment 39–17317; AD 2013–01–03]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–300, 737–400, 737–500, and 757–200 series airplanes. This AD was prompted by a report of damage caused by electrical arcing to the wires that connect seat electronics boxes (SEBs). This AD requires installing a new relay and doing certain wiring changes of the entertainment control switch. We are issuing this AD to prevent power from being supplied to passenger seats when the entertainment control switch is in the OFF position, which could cause an electrical shock hazard resulting in serious or fatal injury to maintenance personnel.

DATES: This AD is effective February 22, 2013.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the AD as of February 22, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6485; fax: 425–917–6590; email: *binh.tran@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on September 20, 2012 (77 FR 58325). That NPRM proposed to require installing a new relay and doing certain wiring changes of the entertainment control switch if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 58325, September 20, 2012) and the FAA's response to each comment. Boeing concurred with the contents of the NPRM. American Airlines stated that it understands the basis for the proposed AD and that it does not operate any of the airplanes having serial numbers identified in the NPRM.

Supplemental Type Certificate (STC) Winglet Comment

Aviation Partners Boeing stated that the installation of winglets per STC ST01518SE *(http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSTC.nsf/Frameset?OpenPage)* does not affect accomplishment of the proposed requirements.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 58325, September 20, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 58325, September 20, 2012).

Costs of Compliance

We estimate that this AD affects 28 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Wire bundle change, relay installation, and operational test (one Group 1 Model 737 airplane).	29 work-hours × $85 per hour = $2,465.	$0	$2,465	$2,465
Wire bundle change, relay installation, and operational test (one Group 2 Model 737 airplane).	14 work-hours × $85 per hour = $1,190.	0	1,190	1,190
Wire bundle change, relay installation, and operational test (26 Model 757 airplanes).	34 work-hours × $85 per hour = $2,890.	0	2,890	75,140

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2013–01–03 The Boeing Company: Amendment 39–17317; Docket No.

FAA–2012–0987; Directorate Identifier 2012–NM–130–AD.

(a) Effective Date

This AD is effective February 22, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 737–23–1302, dated August 24, 2009; and Model 757–200 series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 757–23–0107, Revision 1, dated May 16, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 23, Communications.

(e) Unsafe Condition

This AD was prompted by a report of damage caused by electrical arcing to the wires that connect seat electronics boxes. We are issuing this AD to prevent power from being supplied to passenger seats when the entertainment control switch is in the OFF position, which could cause an electrical shock hazard resulting in serious or fatal injury to maintenance personnel.

(f) Compliance

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

(g) Installation of New Relay and Wiring Bundle Change

Within 24 months after the effective date of this AD: Change the wire bundle route, and install a new relay and applicable wiring of the entertainment control switch, in accordance with the Accomplishment Instructions of the service information specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) For Model 737–300, -400, and -500 series airplanes: Use Boeing Special Attention Service Bulletin 737–23–1302, dated August 24, 2009.

(2) For Model 757–200 series airplanes: Use Boeing Special Attention Service Bulletin 757–23–0107, Revision 1, dated May 16, 2012.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(i) Related Information

For more information about this AD, contact Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6485; fax: 425–917–6590; email: *binh.tran@faa.gov.*

(j) Material Incorporated by Reference

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

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

(i) Boeing Special Attention Service Bulletin 737–23–1302, dated August 24, 2009.

(ii) Boeing Special Attention Service Bulletin 757–23–0107, Revision 1, dated May 16, 2012.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on January 4, 2013.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–00563 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 28, 30, and 180

[Docket No. FR–5662–F–01]

RIN 2501–AD59

Inflation Adjustment of Civil Money Penalty Amounts

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's civil money penalty and civil penalty regulations by making inflation adjustments that are required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (FCPIA Act). The FCPIA Act mandates the adjustments and the formula used to calculate them. Also in this final rule, HUD is taking the opportunity to update an outdated cross-reference in its civil money penalty regulations.

DATES: *Effective Date:* February 19, 2013.

FOR FURTHER INFORMATION CONTACT: Dane Narode, Associate General Counsel, Office of Program Enforcement, Department of Housing and Urban Development, 1250 Maryland Avenue SW., Suite 200, Washington, DC 20024; telephone number 202–245–4141 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) (FCPIA Act), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701) (DCIA), requires each federal agency to make inflation adjustments to its maximum civil money penalties and civil penalties. The formula for determining the specific adjustment of such penalties for inflation is nondiscretionary and is determined by section 5 of the FCPIA Act. The adjustment is based on the change in the cost-of-living increase, which is defined in the statute as based on the percentage change, if any, in the Consumer Price Index (CPI). The statute also states specific rules for rounding off, first-time adjustments and provides that adjusted civil money penalties and civil penalties can only be applied prospectively; that is, only to violations that occur after the date that the increase takes effect.

II. This Final Rule

A. Inflation Adjustment of Civil Money Penalty and Civil Penalty Amounts

The changes made by this final rule increase the amount of civil money penalties, consistent with statutory authority for 24 CFR parts 28 and 30 and civil penalties consistent with 24 CFR part 180. Additionally, no amendment is necessary to civil money penalties and civil penalties found in some HUD regulations (e.g., 24 CFR parts 30.20, 30.25, and 180.671(a)(1)) because application of the statute's

formula would not result in an increase to the penalty.

Applying the statutory formula to determine the amount of the adjustment is a four-step process. The first step entails determining the inflation adjustment factor. This is done by calculating the percentage increase by which the CPI for all urban consumers (CPI–U) for the month of June of the calendar year preceding the adjustment (i.e., June 2012) exceeds the CPI–U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted. CPI–U values are available at a Department of Labor, Bureau of Labor Statistics file transfer protocol site, *ftp://ftp.bls.gov/pub/special.requests/cpi/cpiai.txt*. Once the inflation adjustment factor is determined, the second step is to calculate the inflation increase. That is done by multiplying the inflation adjustment factor by the current civil penalty amount. The third step is to round off the inflation increase according to Section 5(a) of the FCPIA Act, as amended by the DCIA. The FCPIA Act provides for a ''rounding-off,'' using multiples from $10 to $25,000, of the increase calculated based on the change in the CPI. See 28 U.S.C. 2461(5)(a). Once the inflation increase has been rounded, the last step is to add the rounded inflation increase to the current civil penalty amount, to obtain the new inflation-adjusted civil penalty amount. Consequently, in those instances in which the increased dollar amount is determined to be less than the applicable multiple, the existing penalty is unchanged. The first time the civil penalty amount is adjusted, the FCPIA Act limits any increase of the civil penalty to no more than 10 percent.

In § 28.10, the maximum penalties for making a false claim or written statement, as described in the regulation, is increased from $7,500 to $8,500.

In § 30.35(c)(1), the maximum penalties that the Mortgagee Review Board may impose for a series of violations identified in the regulations are increased from $7,500 to $8,500 per violation, and from $1,375,000 to $1,525,000 for all violations committed during any one-year period.

In § 30.36(c), the maximum penalty that HUD may impose upon participants in Federal Housing Administration (FHA) programs for violations identified in the regulation is increased from $6,050 to $7,050, and from $1,210,000 to a maximum of $1,335,000 for all violations committed during any one-year period.

In § 30.40(c), the maximum penalty that HUD may impose upon a mortgagee or a holder of a guarantee certificate that violates the statutory provisions concerning loan guarantees for Indian housing is increased from $7,000 to $8,000 per violation, and from $1,375,000 to a maximum of $1,525,000 for all violations committed during any one-year period.

In § 30.45(g), the maximum penalty that may be imposed upon a mortgagor of a multifamily property or upon any person in a relationship with the mortgagor, as described in the regulations, is increased from $37,500 to $42,500 per violation.

In § 30.50(c), the maximum penalty that may be imposed against a Government National Mortgage Association (GNMA) issuer or custodian for a violation of any provision of 12 U.S.C. 1723i(b) or other authorities cited in the regulations is increased from $7,500 to $8,500 per violation, and from $1,375,000 to $1,525,000 for all violations committed during any one-year period.

In § 30.60(c), the maximum penalty that HUD may impose upon any dealer or sponsored third-party originator for, among other things, falsifying statements or making false representations in violation of section 2(b)(7) of the National Housing Act (12 U.S.C. 1703(b)(7)) is increased from $7,500 to $8,500 for each violation, and from $1,375,000 to a maximum of $1,525,000 during any one-year period.

In § 30.68(c), the maximum penalty that may be imposed against any owner, any general partner of a partnership owner, or any agent, as described in the regulation, that provides a knowing and material breach of a housing assistance payments contract, is increased from $25,000 to $27,500 per violation.

In § 180.671(a)(2) and (3), the maximum penalties that the Administrative Law Judge may impose upon a respondent who is found to have engaged in a discriminatory housing practice is increased from $37,500 to $42,500, and from $65,000 to $70,000, respectively. The maximum penalty of $16,000 at § 180.671(a)(1) does not increase under the formula.

B. Correction to 24 CFR 30.90

On December 17, 2008, HUD published a final rule (73 FR 76832) to amend its regulations governing hearing procedures for administrative sanction hearings pursuant to 2 CFR part 2424 and with respect to determinations by the Multifamily Participation Review Committee pursuant to 24 CFR part 200, subpart H. The final rule replaced and reorganized Part 26. As a result, the cross-references to Part 26 in § 30.90 are outdated. This final rule takes the opportunity to correct that by updating the cross-references in § 30.90(c).

III. Justification for Final Rulemaking

In general, HUD publishes a rule for public comment before issuing a rule for effect, in accordance with HUD's regulations on rulemaking at 24 CFR part 10. Part 10, however, provides in § 10.1 for exceptions from that general rule where HUD finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when the prior public procedure is ''impracticable, unnecessary or contrary to the public interest.''

HUD finds that good cause exists to publish this rule for effect without first soliciting public comment because prior public comment is unnecessary. This final rule merely follows the statutory directive in the FCPIA Act allowing for periodic increases in HUD's civil money penalties and civil penalties by applying the adjustment formula established in the statute. Accordingly, because calculation of the increases is formula-driven, HUD has no discretion in updating its regulations to reflect the maximum allowable penalties derived from application of the formula. HUD emphasizes that this rule addresses only the matter of the calculation of the maximum civil money penalties or civil penalties for the respective violations described in the regulations. This rule does not address the issue of the Secretary's discretion to impose or not to impose a penalty, nor the procedures that HUD must follow in initiating a civil money penalty action, or in seeking a civil penalty in a Fair Housing Act case.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if the regulation is necessary, to select the regulatory approach that maximizes net benefits. As discussed above in this preamble, this final rule updates an incorrect cross reference and revises the civil money penalty and civil penalty regulations to make inflation adjustments required by the FCPIA Act. As a result, this rule was determined to be not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and therefore was not reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule has no economic impact on entities that are in compliance with relevant laws and HUD regulations. This final rule does not establish special procedures that would need to be complied with by small entities. All entities, small or large, could be subject to the same penalties as established by statute and implemented by this rule, but only if they violate a relevant statute or regulation and become subject to civil money penalties or civil penalties. Accordingly, the undersigned certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This final rule will not have federalism implications and would not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Environmental Review

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. This rule does not impose any federal mandates on any state, local, or tribal government, or the private sector within the meaning of UMRA.

List of Subjects

24 CFR Part 28

Administrative practice and procedure, Claims, Fraud, Penalties.

24 CFR Part 30

Administrative practice and procedure, Grant programs—housing and community development, Loan programs—housing and community development, Mortgages, Penalties.

24 CFR Part 180

Administrative practice and procedure, Aged, Civil rights, Fair housing, Individuals with disabilities, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR parts 28, 30, and 180 to read as follows:

PART 28—IMPLEMENTATION OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

■ 1. The authority citation for part 28 is revised to read as follows:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812; 42 U.S.C. 3535(d).

■ 2. Revise § 28.10 (a)(1) introductory text and (b)(1) introductory text to read as follows:

§ 28.10 Basis for civil penalties and assessments.

(a) *Claims.* (1) A civil penalty of not more than $8,500 may be imposed upon a person who makes a claim that the person knows or has reason to know:

* * * * *

(b) *Statements.* (1) A civil penalty of up to $8,500 may be imposed upon a person who makes a written statement that:

* * * * *

PART 30—CIVIL MONEY PENALTIES: CERTAIN PROHIBITED CONDUCT

■ 3. The authority citation for part 30 continues to read as follows:

Authority: 12 U.S.C. 1701q–1, 1703, 1723i, 1735f–14, 1735f–15; 15 U.S.C. 1717a; 28 U.S.C. 2461 note; 42 U.S.C. 1437z–1 and 3535(d).

■ 4. Revise § 30.35(c)(1) to read as follows:

§ 30.35 Mortgagees and lenders.

* * * * *

(c)(1) *Amount of penalty.* The maximum penalty is $8,500 for each violation, up to a limit of $1,525,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

* * * * *

■ 5. Revise § 30.36(c) to read as follows:

§ 30.36 Other participants in FHA programs.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $7,050 for each violation, up to a limit of $1,335,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

■ 6. Revise § 30.40(c) to read as follows:

§ 30.40 Loan guarantees for Indian housing.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $8,000 for each violation, up to a limit of $1,525,000 for all violations committed during any one-year period. Each violation shall constitute a separate violation as to each mortgage or loan application.

■ 7. Revise § 30.45(g) to read as follows:

§ 30.45 Multifamily and Section 202 or 811 mortgagors.

* * * * *

(g) *Maximum penalty.* The maximum penalty for each violation under paragraphs (c) and (f) of this section is $42,500.

* * * * *

■ 8. Revise § 30.50(c) to read as follows:

§ 30.50 GNMA issuers and custodians.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $8,500 for each violation, up to a limit of $1,525,000 during any one-year period. Each violation shall constitute a separate violation with respect to each pool of mortgages.

■ 9. Revise § 30.60(c) to read as follows:

§ 30.60 Dealers or sponsored third-party originators.

* * * * *

(c) *Amount of penalty.* The maximum penalty is $8,500 for each violation, up to a limit for any particular person of $1,525,000 during any one-year period.

■ 10. Revise § 30.68(c) to read as follows:

§ 30.68 Section 8 owners.

* * * * *

(c) *Maximum penalty.* The maximum penalty for each violation under this section is $27,500.

* * * * *

■ 11. Revise § 30.90(c) to read as follows:

§ 30.90 Response to the complaint.

* * * * *

(c) *Filing with the administrative law judges.* HUD shall file the complaint and response with the Docket Clerk, Office of Administrative Law Judges, in accordance with § 26.38 of this chapter. If no response is submitted, then HUD may file a motion for default judgment, together with a copy of the complaint, in accordance with § 26.41 of this title.

PART 180—CONSOLIDATED HUD HEARING PROCEDURES FOR CIVIL RIGHTS MATTERS

■ 12. The authority citation for part 180 continues to read as follows:

Authority: 29 U.S.C. 794; 42 U.S.C. 2000d–1, 3535(d), 3601–3619, 5301–5320, and 6103.

■ 13. Revise § 180.671 (a)(2) and (3) to read as follows:

§ 180.671 Assessing civil penalties for Fair Housing Act cases.

(a) * * *

(2) $42,500, if the respondent has been adjudged in any administrative hearing or civil action permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed one other discriminatory housing practice and the adjudication was made during the 5-year period preceding the date of filing of the charge.

(3) $70,000, if the respondent has been adjudged in any administrative hearings or civil actions permitted under the Fair Housing Act, or under any state or local fair housing law, or in any licensing or regulatory proceeding conducted by a federal, state, or local government agency, to have committed two or more discriminatory housing practices and the adjudications were made during the 7-year period preceding the date of filing of the charge.

* * * * *

Dated: January 8, 2013.

Shaun Donovan,

Secretary.

[FR Doc. 2013–01070 Filed 1–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–5222–F–02]

RIN 2502–A172

Manufactured Home Construction and Safety Standards, Test Procedures for Roof Trusses

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the roof truss testing procedures in the Federal Manufactured Home Construction and Safety Standards by adopting certain recommendations made by the Manufactured Home Consensus Committee (MHCC), as modified by HUD. Pursuant to the National Manufactured Housing Construction and Safety Standards Act of 1974, HUD published a recommendation submitted by MHCC to revise the existing roof truss testing procedures in 2003. In response to public comments, HUD returned the proposal to MHCC for further evaluation. After further consideration, MHCC submitted to HUD an amended version of its original proposal on roof truss testing. HUD was in agreement with the majority of MHCC's revised recommendations on roof truss testing which were published as a proposed rule on June 16, 2010. Many of MHCC's recommendations are included in this final rule. HUD identifies MHCC's proposals that were not accepted, or that were modified in light of public comments received or upon further evaluation, and provides its reasons for not accepting or for modifying these proposed revisions.

DATES: *Effective Date:* January 13, 2014.

FOR FURTHER INFORMATION CONTACT: Henry S. Czauski, Acting Deputy Administrator, Office of Manufactured Housing Programs, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9164, Washington, DC 20410–8000; telephone number 202–708–6409 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (the Act) authorizes HUD to establish the Federal Manufactured Home Construction and Safety Standards (Construction and Safety Standards), codified in 24 CFR part 3280. The Act was amended by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569), which expanded the Act's purposes and created MHCC. Congress established MHCC to provide periodic recommendations to the Secretary to adopt or revise provisions of the Construction and Safety Standards.

In 2002, MHCC began considering revisions to the Construction and Safety Standards and, in 2003, recommended revisions to the current requirements for roof truss testing.[1] Those recommendations were included in HUD's proposed rule to amend the Construction and Safety Standards, published in the **Federal Register** on December 1, 2004 (69 FR 70016). After considering public comment received on the proposed rule, HUD returned the proposal on truss testing procedures to MHCC. As indicated in the preamble of HUD's final rule published in the **Federal Register** on November 30, 2005 (70 FR 72024), which followed the December 1, 2004, proposed rule, HUD stated that truss testing procedures are too important a safety consideration to leave unaddressed. In returning the rule, HUD also stated that the standards had not been modified in a number of years and needed to be examined to determine whether they were adequate to protect homeowners in all geographic areas of the country. HUD's review of damage assessments following Hurricane Charley reinforced its conclusion regarding the need for the MHCC to ensure that truss testing procedures were updated and adequate to protect homeowners from roof and structural damage accompanying high wind events.

HUD requested MHCC to work expeditiously to reevaluate and resubmit new proposals for truss testing procedures. As a result, the Truss Test Task Force of MHCC's Standards Subcommittee was established. Five teleconferences of this task force were held, and the full MHCC held two teleconferences to review and vote on new truss testing procedures. HUD worked closely with MHCC throughout the review and reevaluation process, and agreed with the majority of the proposals to strengthen the truss testing procedures made by MHCC, but made editorial revisions and modified the

[1] A truss is a triangular structure used to support a roof. Multiple trusses are used to assemble the framework for a roof.

MHCC's proposal on uplift testing. Those recommendations and modifications were included in a proposed rule published in the **Federal Register** on June 16, 2010 (75 FR 34064). After careful review of the public comments received in response to the proposed rule, HUD made additional editorial and other revisions and further modified the MHCC's proposal regarding uplift testing. HUD's additional revisions in response to public comment are reflected in this final rule.

As a result of this final rule, the required truss testing procedures reflect the current industry standards and methods by which trusses are tested by truss fabricators. These procedures also provide flexibility in testing by reducing the amount of time required for the proof load test. Most importantly, they improve the performance and safety of trusses in high wind areas and high snow load areas, and ultimately reduce property damage and prevent injury and loss of life resulting from high wind events such as hurricanes and tropical storms, as well as injuries and deaths that occur from collapsed roofs under heavy loads. Table A identifies the changes made to the truss testing standards as a result of this final rule.

TABLE A—COMPARISON OF ROOF TRUSS TESTING PROCEDURES

Previous testing requirements	Revised testing requirements
Snow loads/vertical loads	Snow loads/vertical loads
Proof Load: 1.75/12 hours or Ultimate Load: 2.5/5minutes.	Proof Load: 1.75/12 hours or 2.0/6 hours or Ultimate Load: 2.5/5minutes.
Wind Uplift Loads	Wind Uplift Loads
* Wind Zone I: 1.75/3 hours—inverted. * Wind Zone I: 1.75/3 hours—upright. * Wind Zones II/III: 1.75/3 hours —inverted. * Wind Zones II/III: 1.75/3 hours—upright.	Wind Zone I: 2.50/1 minute—inverted. Wind Zone I: 1.75/1 minute—upright. Wind Zones II/III: 2.0/1 minute—inverted. Wind Zones II/III: 1.75/1 minute—upright.

* Note—The previous standards do not specify either the inverted or upright uplift load test method. Therefore, either method was acceptable under the existing standards and most roof truss designs were certified using the inverted/nonconservative roof truss testing procedure.

II. Analysis of Public Comments

The public comment period on the proposed rule closed August 16, 2010, and 12 public comments were received in response to the proposed rule. Comments were submitted by suppliers of roof trusses, manufactured home producers, a Design Approval Primary Inspection Agency, and two manufactured housing trade associations. All public comments can be found and reviewed at *www.regulations.gov.*

A. The Comments Generally

Comment: Generally, the commenters expressed various concerns about HUD's proposed changes to the roof truss testing requirements. In particular, the commenters questioned the need to requalify and retest all existing roof truss designs based on past truss performance under snow and wind loading. They also expressed concerns on significant cost increases to consumers and the estimated time (18 months) needed to requalify and retest all roof truss designs (there are approximately 1,500 existing truss designs, as estimated by a major truss supplier) currently used by manufactured home producers that would result from implementation of the proposed rule.

HUD Response: HUD agrees that the risk against truss failure in snow load areas is minimal based on past performance. As a result, the final rule limits the retesting to new truss designs in all three wind zones, and to the estimated 150 existing truss designs used in high wind areas (Wind Zones II and III) where the reliability and enhanced protection is needed to mitigate against future wind damage and to enhance wind safety in manufactured homes. HUD is also delaying implementation for 12 months to provide manufacturers sufficient time to retest existing trusses for Wind Zones II and III and minimize disruption to the availability of qualifying trusses. HUD acknowledges that wind damage to homes produced to meet its high wind standards has been reduced in wind events that have occurred since the implementation of the high wind requirements. However, while the damage to those homes has been relatively minimal, questions remain about the intensity of the windstorms and whether they were considered to be design wind events or were at lower wind speeds than required to be resisted by the standards.

Comment: Commenters also questioned the need to eliminate the inverted test procedure currently being used to assess uplift resistance of roof trusses in high wind areas. One commenter (a truss supplier) recommended that a higher factor of safety or overload of 2.0 times the design live load should be used to conduct inverted uplift roof truss testing and indicated that it would provide a close approximation to the overload proposed by HUD for the upright uplift wind test of 1.75 times the design live load.

HUD Response: HUD agrees with the commenter. As a result, the final rule allows the use of either upright or inverted testing for Wind Zones II or III, with a higher factor of safety of 2.0 for inverted testing, provided additional initial tests are used to qualify the design, and more frequent follow-up testing to verify continued truss performance under production conditions.

Comment: Commenters questioned the cost impact of increasing the overload factor of safety from 1.75 times the design live load for 12 hours to 2.0 times the design live load for 6 hours for the proof load test procedure in the proposed rule.

HUD Response: HUD recognizes this issue and, in the final rule, allows both the 2.0 overload/6 hour test and the 1.75/12 hour test to be used for evaluating roof trusses under the proof load test procedure.

B. Specific Issues for Comment

Question 1: Under the proposed rule, the proof load test or the ultimate load test can be used to qualify trusses in high snow load areas. Should the more stringent and reliable ultimate load test procedure be required only to qualify roof trusses designed for use in high snow load areas, such as the North and Middle Roof Load Zones, where the risk of roof and truss failure is greater?

Comment: The commenters indicated that HUD should maintain the option to use either test method in all roof load zones and that HUD should not adopt different requirements for North and South roof load zones because of past performance history of roof trusses in high snow load areas.

HUD Response: HUD agrees with the commenters and has not specified roof load zones for which the proof load or ultimate load test procedure must be used in the final rule.

Question 2: Should the spacing between hydraulic or pneumatic cylinders for the test fixture be increased from 12 inches to 24 inches in Figures 3280.402(b)(1) and 3280.402(b)(3)? Should the distance between friction pads along the top chord of the truss of the test fixture be increased from 6 inches to 12 inches in Figure 3280.402(b)(1)? Should the distance between 1-inch straps attached around the cylinder shoe and the top chord of the truss of the test fixture be increased from 6 inches to 12 inches in Figure 3280.402(b)(3)?

Comment. The commenters indicated that the loading cylinders should be maintained at 12 inches and that the loading shoes should be 6 inches long with loading pads at each end to provide a more realistic simulation of a uniformly distributed loading upon the truss.

HUD Response: HUD agrees with the commenters that the cylinders spacing needs to be maintained at 12 inches to more closely simulate uniform loading of the truss, and the loading shoes need to be 6 inches long with loading pads at each end, and has specified these requirements in the final rule.

Question 3: Should the overload period for all wind uplift tests be increased from 1 minute to 3 hours, as is currently required for uplift tests in the standards for the inverted test procedure?

Comment: The commenters recommended that the 1-minute overload time is adequate since wind pressures are based on a 3-second peak gust.

HUD Response: HUD agrees with the commenters and a 1-minute overload time is now permitted for all uplift tests required by the final rule.

Question 4: Should a wind uplift test always be required for trusses qualified for use in Wind Zone I instead of allowing the determination to be made by a Registered Engineer or Registered Architect or independent third-party agency that is certifying the design?

Comment: The commenters indicated that a registered design professional will possess the necessary knowledge and experience to decide if a wind uplift test is needed in Wind Zone I, especially since the design load requirements are low compared to meeting the overload requirements for vertical downward snow or gravity loading.

HUD Response: HUD agrees with the commenters that a registered design professional has the knowledge and experience to determine if a wind uplift test is needed for Wind Zone I, and the final rule allows for such determinations to be made.

III. Changes to the Proposed Rule, in This Final Rule

After considering the issues raised by the commenters and HUD's own evaluation of issues related to this final rule, HUD is making the following specific changes to the June 16, 2010, proposed rule and current roof truss testing requirements in § 3280.402 of the Construction and Safety Standards.

1. In § 3280.402(a), upon the effective date of the rule, testing procedures will be required for new roof truss designs in all three wind zones and for existing truss designs used in high wind areas (Wind Zones II and III).

2. In § 3280.402(d)(1), the proof load test (formally known as the non-destructive test procedure) contains both the proposed test method (2.0 times the design live load for 6 hours) as well as the existing non-destructive test method (1.75 times the design live load for 12 hours). Three consecutive tests of truss assemblies made with average quality materials and workmanship must meet all acceptance criteria, including new deflection limits for dead load, in order for the truss design to be acceptable.

3. In § 3280.402(d)(2), the ultimate load test procedure (2.5 times the design live load for 5 minutes) requires that two consecutive tests of truss assemblies made with average quality workmanship and materials meet all acceptance criteria, including new deflection limits for dead load, in order for the truss design to be acceptable.

4. In § 3280.402(d)(3), the final rule requires that for new truss designs to be used in Wind Zone I, when deemed necessary by a Professional Engineer or Registered Architect, at least one truss must meet all acceptance criteria and sustain 2.5 times the net design uplift load (22.5) for the inverted test procedure or 1.75 times the design uplift load (15.75) for at least 1 minute. For Wind Zone I, this results in an increase in the factor of safety from 1.75 to 2.5 for trusses tested for uplift in the inverted position, maintains the current factor of safety for uplift testing at 1.75 for trusses tested in the upright position, and reduces the period of overload testing from 3 hours to 1 minute for both test methods. For roof trusses designed to be used in Wind Zones II and III, both the currently utilized inverted test method and new upright test method may be used for conducting the wind uplift load test. However, there are different factors of safety and the number of tests required for each test procedure. For the inverted test method (load applied to the bottom chord of the truss), three consecutive tests must meet all acceptance criteria and sustain at least 2.0 times the design uplift load for 1 minute. For the upright test method (load applied to the top chord of the truss), two consecutive tests must meet all acceptance criteria and sustain 1.75 times the design live load for 1 minute.

5. In § 3280.402(e), the follow-up testing procedures and in-house quality control program requirements have been clarified for both manufacturers of roof trusses and for home manufacturers producing roof trusses for their own use. In addition, one truss test is to be conducted after the first 100 trusses have been produced, with a subsequent test for every 2,500 trusses qualified by either the proof load test procedure or by the inverted test procedure. One truss test will also be required for every 4,000 trusses produced, for trusses qualified under the ultimate load procedure or the upright uplift test procedure.

6. For consistency within 24 CFR part 3280, HUD is substituting reference to a nationally recognized testing laboratory for the reference to an independent third-party agency throughout this rule.

IV. Modifications to MHCC Recommendations

After reviewing the proposed recommendations for the revised truss testing procedures recommended by MHCC, HUD had concerns regarding one of MHCC's recommendations for uplift load testing. In the proposed rule published on June 16, 2010, HUD solicited comments from the public on both MHCC's recommendation as submitted to HUD, and HUD's modification of its recommendation in the proposed rule, and is further modifying MHCC's recommendation for uplift load testing.

HUD's Further Modifications to MHCC's Proposed Revision to § 3280.402(d)(3)

Based on the review of comments received from the public, HUD is further modifying the recommendation from MHCC on uplift testing, because MHCC's overload provisions for uplift load tests in the inverted position were deemed to be too conservative. HUD

now agrees with MHCC that either test method, inverted or upright, should be permitted to evaluate uplift resistance of trusses designed to be used in Wind Zones II and III. However, this final rule requires that three consecutive trusses be successfully tested utilizing an overload factor of safety of 2.0 for trusses evaluated using the inverted test method. HUD's modification for upright testing is based in part on the findings of a study conducted by the National Association of Home Builders Research Center (NAHB–RC), ''Comparison of Methods for Wind Uplift Load Testing of Roof Trusses for Manufactured Housing,'' and the requirements of the National Fire Protection Association (NFPA) consensus process related to uplift testing. In particular, the NAHB–RC study found that trusses tested in the inverted position failed at higher loads, had smaller mid-span deflections, and experienced different fail modes than trusses tested in the upright position. This is because the difference in truss orientation results in the uplift load being applied by pulling up on the top chord of the truss in the upright position (in the manner in which the wind would apply load to the trusses), while, in the inverted position, the uplift load is applied by pushing down on the bottom chord of the truss.

The regulatory language submitted by MHCC on this section, including introductory language that has not been modified but which provides context for MHCC's language, is as follows:

* * * * *

(d) * * *

(3) Uplift Load Tests. Each truss design must also pass all requirements of the uplift load test, as applicable, in paragraph (i) or (ii) and paragraphs (iii) and (iv) of this section.

* * * * *

(iii) Trusses designed for use in Wind Zone I, when tested [see (i) above], must be tested in either the inverted position to 2.5 times the net wind uplift load or in the upright position to 1.75 times the net wind uplift load. Trusses designed for use in Wind Zones II and III must be tested in the inverted position to 2.5 times the uplift load, minus the dead load, or to 1.75 times the uplift load, minus the dead load in the upright position. [See Figure 3280.402(b)(3)].

(iv) The following describes how to conduct the uplift test with the truss in the upright position. Similar procedures must be used if conducting the test in the inverted position.

* * * * *

(D) Continue to load the truss to 1.75 times the net uplift load and maintain the full load for 1 minute. (When tested in the inverted position, continue to load the truss to 2.5 times the net uplift load and maintain the load for 3 hours.) See paragraph (i) for the net uplift load in Wind Zone I and paragraph (ii) for the uplift load for Wind Zones II and III. Regardless of the test position of the truss, upright or inverted, trusses maintain the overload for the specified time period without rupture, fracture, or excessive yielding.

* * * * *

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866. This rule was determined to be a ''significant regulatory action,'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). This rule would affect costs for manufactured home manufacturers.

As discussed in this preamble, this rule would amend the required truss testing procedures of the Federal Manufactured Home Construction and Safety Standards to current industry methods and equipment in order to improve the performance and safety of trusses in high wind areas and to enhance the reliability and durability of trusses. Specifically, this rule would modify upright or inverted test procedures in high wind areas in order to prevent premature failures of trusses. This rule also would modify the current non-destructive test procedure to require a higher factor of safety and reduces the time required to conduct the test as well as the follow-up testing intervals. In response to public comments, this final rule will not require retesting of existing truss designs for manufactured housing located in Wind Zone I, which was included in the proposed rule. The final rule will only require testing of new roof truss designs to be used in Wind Zone I and only require testing for uplift resistance in Wind Zone I when required by a Professional Engineer or Registered Architect. Based on HUD's review of this final rule, HUD has determined that this final rule imposes one-time costs totaling $0.075 million and discounted production costs ranging from $4.8 million, assuming a 7 percent discount rate, to $7.4 million, assuming a 3 percent discount rate. Although difficult to predict, the discounted benefits of the rule, including prevented damage, injury and loss of life, are expected to exceed the costs imposed by this rule. Avoiding one death in the first year, for example, would offset the 30-year discounted costs by 83 percent, assuming the 3 percent discount rate, and offset the costs by 126 percent; i.e., exceed the costs, assuming the 7 percent discount rate. If one death was avoided at the end of the 30-year period, the discounted benefits from the prevented loss of life alone, not including damage prevented, would account for 35 percent of the increased costs, using a 3 percent discount rate, or 18 percent, assuming a 7 percent discount rate. Similarly, while the number and strength of high wind events make it difficult to provide an exact estimate, the benefits of the rule would offset costs if 44 percent of estimated property damage was prevented. Overall, HUD has determined that the total impact of this rule will not exceed the $100 million threshold as provided by Executive Order 12866.

The cost of this rule includes (1) a one-time retesting of existing truss designs used in Wind Zones II and III, (2) redesign costs of existing designs that do not meet the new testing requirements of this final rule, and (3) an increase in annual production costs. These costs are evaluated with respect to wind zone classifications. Wind Zone I homes have the least stringent construction standards and Wind Zone III homes have the most stringent construction standards. Approximately 90 percent of the units produced annually are constructed to Wind Zone I standards and would not be subject to the retesting requirement.

HUD estimates that there are approximately 150 truss designs in use for Wind Zones II and III, and that the cost of retesting, recertifying, and redesigning the truss designs will cost producers approximately $500 per truss design. As a result, the total cost of retesting, re-certifying, and redesigning truss designs for Wind Zones II and III is assessed to be $75,000 based on current production levels of 4,620 shipments.

In order to meet the testing standards provided by this final rule, HUD expects that 75 percent of the designs currently used for Wind Zones II and III will require modification. The increased construction cost to meet the new standards is estimated at $1.00 per truss. Based on an average of 51 trusses per transportable section in Wind Zones II and III, and 1.64 transportable sections per home, the annual increase in truss construction costs total $289,170 (7,560 transportable sections * 51 trusses per section * $1.00 increase in production cost * 75 percent of trusses produced). Over a 30-year period, the discounted value of the increase in production costs total $4.8 million, assuming a 7 percent discount rate, or $7.4 million, assuming a 3 percent discount rate.

With respect to benefits, this final rule will make manufactured housing less susceptible to wind damage and downward pressure by enhancing roof construction. The wind damage enhancements protect against high wind events such as hurricanes and tropical storms. Such damage to the manufactured home ranges from complete failure of the truss, in which the truss completely separates from the house section, to localized failure or minor separation that leads to progressive structural damage and damage from water entry. Complete failure of the truss not only destroys the home itself, but in high wind events, can result in ''missile'' damage to adjoining structures. Even minor localized failure can over time lead to complete failure and eventually result in ''missile'' damage in a later, perhaps weaker, wind event. In addition, there will be less collateral damage to housing and other structures adjacent to manufactured housing.

Quantifying the benefits of this rule, however, is difficult due to the high annual variance in frequency and force of storms. Further, there is virtually no detailed information concerning cost estimates of damaged manufactured homes from strong wind or snow events. However, it is possible to produce a reasonable, conservative estimate of property damage that could be avoided due to the requirements in this final rule. Due to the uncertainty of the occurrence and severity of natural disasters, a range of expected benefits are presented. However, the estimates below only represent a partial valuation of the expected benefits since it is not possible to estimate the damage occurring from heavy snow storms.

Based on 2008 housing data from the U.S. Postal Service [2] and the Census Bureau's Survey of Manufactured Housing, newly shipped manufactured housing accounts for 0.076 percent of the total housing stock in states prone to hurricane strikes. An approximation of the damage occurring to manufactured housing totals $836,634 ($1,194,4 million * 0.076 percent). The discounted value of the annual damage over 30 years is $11.1 million, assuming a 7 percent discount rate, or $16.9 million, assuming a 3 percent discount rate. The higher standards resulting from the tests required by this final rule would prevent a portion of this damage, although the annual variability in the number and strength of high wind events makes it difficult to provide a precise estimate. In order for the benefits to exactly offset the costs imposed by this rule, 44 percent of the damage would need to be prevented This percentage should not be considered a maximum, as it does not include damage from other types of weather events, such as heavy snowfall, or prevented deaths, which is also discussed below.

In addition to the improved safety in high wind events, the increased reliability of trusses that result from this rule will also benefit areas receiving high snowfall. Homes located in high snow load areas are susceptible to collapse in heavy snow storms. The new testing standards will decrease the number of such occurrences as new trusses are designed. Although no data exists on the amount of property damage due to such events, especially to manufactured housing, it is reasonable to assume that additional benefits would accrue to owners of manufactured housing as a result of this final rule.

In addition to avoiding property damage, this rule will also prevent injuries and deaths that occur during hurricanes, tropical storms, and other high wind events; although it is difficult to estimate the number of injuries and deaths that would be prevented, it is reasonable to expect that deaths and injuries would decrease in response to this final rule. Government estimates of the value of a human life range from $6.2 million used by the Department of Transportation (DOT) to $9.1 million used by the Environmental Protection Agency (EPA). HUD uses the DOT estimate in the current analysis. Avoiding one death in the first year would offset the 30-year discounted cost by 83 percent, assuming the 3 percent discount rate, and offset the costs by 126 percent; i.e., exceed the costs, assuming the 7 percent discount rate. If one death was avoided at the end of the 30-year period, the discounted benefits from the prevented loss of life alone, not including damage prevented, would account for 35 percent of the increased costs, using a 3 percent discount rate, or 18 percent assuming a 7 percent discount rate.

In summary, this final rule will impose one-time costs totaling $75,000, and discounted production costs ranging from $4.8 million to $7.4 million. Although difficult to predict, the discounted benefits, including prevented damage and prevented injury and loss of life, are expected to exceed the costs imposed by this rule. Overall, the total impact of this rule will not exceed the threshold of $100 million as required by Executive Order 12866.

The docket file is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an advance appointment to review the public comments by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Information Relay Service at 1–800–877–8339.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). That finding is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202–708–3055 (this is not a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would regulate establishments primarily

[2] See *http://www.huduser.org/datasets/usps.html.*

engaged in making manufactured homes under North American Industry Classification Standard (NAICS) 32991. The Small Business Administration's size standards define as small an establishment primarily engaged in making manufactured homes if it does not exceed 500 employees. Of the 123 manufactured home operations included under this NAICS definition, 55 are small manufacturers that fall below the small business threshold of 500 employees. The rule would apply to all of the manufacturers and would, therefore, affect a substantial number of small entities. For the reasons stated below, HUD knows of no instance in which a manufactured home manufacturer with fewer than 500 employees would be significantly affected by this rule.

HUD, with the concurrence of MHCC, conducted an economic cost impact analysis for this rule. A copy of the analysis is available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. The analysis determined the average potential cost impact, based on a per-home cost, to be approximately $8, multiplied by an estimated number of 46,000 homes produced in a year, which equals about $364,000 annually. The estimated average per-home cost in Wind Zone II and Wind Zone III is $79, based on an annual production estimate of 4,600 manufactured homes. This does not represent a significant economic effect on either an industry-wide or per-unit basis.

These two relatively small increases in cost would not impose a significant burden for a small business involved in the production of homes that typically cost the purchaser between $40,000 and $100,000. Therefore, although this rule would affect a substantial number of small entities, it would not have a significant economic impact on them. Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from promulgating a rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for Manufactured Home Construction and Safety Standards is 14.171.

List of Subjects in 24 CFR Part 3280

Housing standards, Manufactured homes.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 3280 to read as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

■ 1. The authority citation for part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

■ 2. Revise § 3280.402 to read as follows:

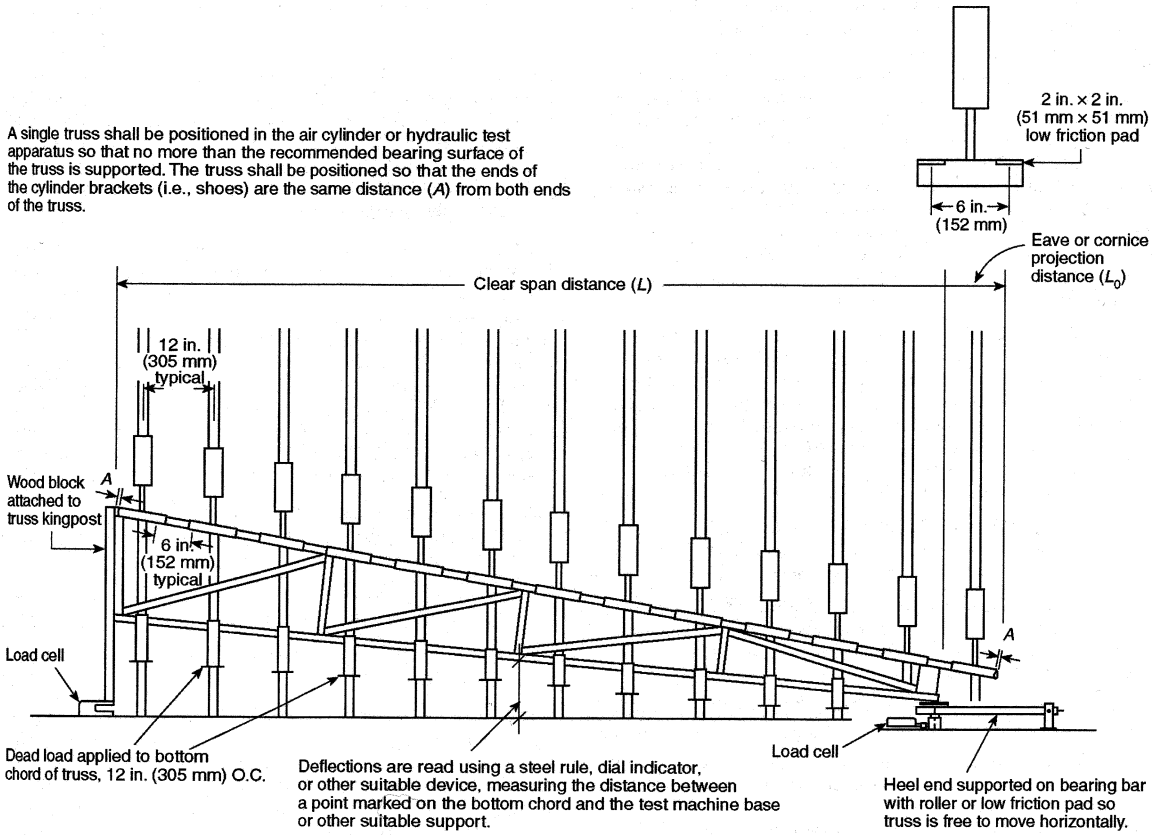
§ 3280.402 Test procedures for roof trusses

(a) *Roof load tests.* This section provides the roof truss test procedure for vertical loading conditions. Where roof trusses act as support for other members, have eave or cornice projections, or support concentrated loads, roof trusses must also be tested for those conditions. These test procedures are required for new truss designs in all three wind zones and for existing truss designs used in Wind Zones II and III.

(b) *General.* Trusses must be tested in a truss test fixture that replicates the design loads, and actual support points, and does not restrain horizontal movement. When tested singly or in groups of two or more trusses, trusses shall be mounted on supports and positioned as intended to be installed in the manufactured home in order to give the required clear span distance (L) and eave or cornice distance (Lo), if applicable, as specified in the design.

(l) When trusses are tested singly, trusses shall be positioned in a test fixture, with supports properly located and the roof loads evenly applied. See Figure 3280.402(b)(1).

Figure 3280.402(b)(1) – Test fixture for testing trusses singly

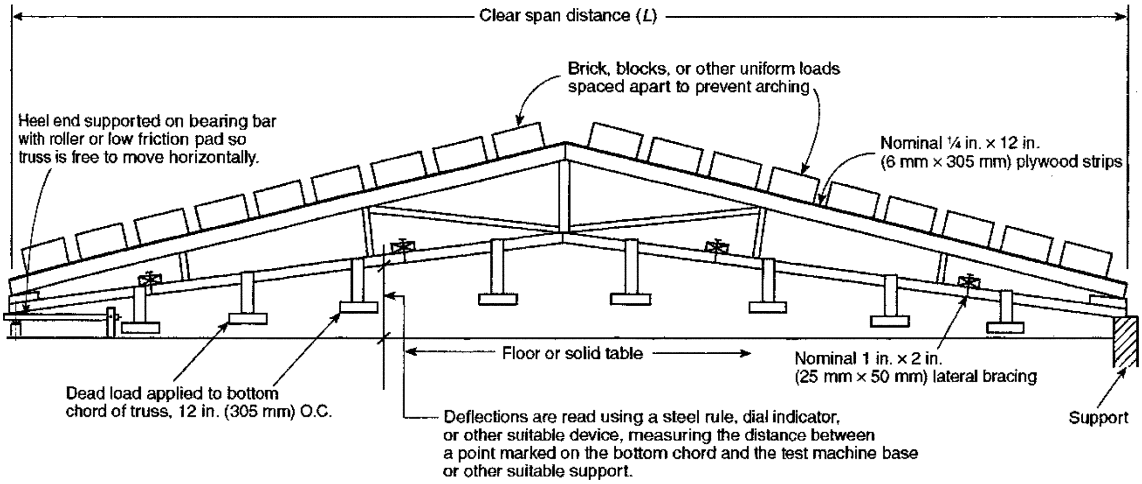


(2) When tested in groups of two or more, the top chords are permitted to be sheathed with nominal 1/4-inch x 12-inch plywood strips. The plywood strips shall be at least long enough to cover the top chords of the trusses at the designated design truss spacing. Adjacent plywood strips shall be separated by at least 1/8-inch. The plywood strips shall be nailed with 4d nails or equivalent staples no closer than 8 inches on center along the top chord. The bottom chords of the adjacent trusses shall be permitted to be one of the following:

(i) Unbraced; or

(ii) Laterally braced together (not cross-braced) with 1-inch x 2-inch stripping no closer than 24 inches on center, nailed with only one 8d nail at each truss. See Figure 3280.402(b)(2).

Figure 3280.402(b)(2) – Test set-up for roof trusses tested in groups of two or more



(c) *Measuring and loading methods.* Deflections must be measured at the free end of an eave or cornice projection and at least at the truss mid-span and quarter points. Scissors or other unique truss configurations are to be measured at as many additional bottom chord panel points as necessary to obtain an accurate representation of the deflected shape of the truss so as to be able to locate and record the point(s) of maximum deflection. Deflections must be read and recorded relative to a fixed reference datum. Deflections must be read and recorded to the nearest 1/32-inch. Dead load must be applied to the top and bottom chord, and live load must be applied to the top chord through a suitable hydraulic, pneumatic, or mechanical system or weights to simulate design loads. Load unit weights for uniformly distributed top chord loads must be separated so that arch action does not occur and be spaced not more than 12 inches on center so as to simulate uniform loading. Bottom chord loading must be spaced as uniformly as practical. Truss gravity loads must be calculated based on the overall truss length (horizontal projection), including eave or cornice projections.

(d) *Testing procedures.* Either the testing method in paragraph (d)(1) or (d)(2) of this section may be used, however, the testing method in paragraph (d)(3) of this section must be used, to test trusses to establish compliance with the provisions of these standards.

(1) *Proof load truss test procedure.* At least three average quality/consecutively tested trusses must pass all requirements of the test, for initial qualification of the truss design. All tests for initial qualification of the truss designs evaluated by this procedure must be certified by a Registered Engineer or Architect, or by a nationally recognized testing laboratory. An in-house quality control and follow-up testing program (see paragraphs (e) and (f) of this section) must be approved prior to entering production of any truss design evaluated by this procedure.

(i) *Dead load.* Measure and record initial elevation of the truss or trusses in the test position at no load. Apply to the top and bottom chords of the truss dead loads that are representative of the actual weights of materials to be supported by the truss. However, the dead load may only be applied as indicated in paragraph (e)(4) of this section for ongoing follow-up testing. Dead loads to be applied to the truss test assembly are permitted to include only the weights of materials supported by the truss and not the weight of the truss itself. However, readings from load cells (when used) on which the test truss rests must reflect the sum of the applied load plus the weight of the truss. Apply dead loads and hold for 5 minutes. Measure and record the deflections.

(ii) *Live load.* Maintaining the dead loads, apply live load to the top chord in approximate ¼ live load increments until dead load plus the live load is reached. Measure and record the deflections no sooner than one minute after each ¼ live load increment has been applied and 5 minutes after the full live load has been reached.

(iii) *Initial recovery phase.* Remove the design live load but not the dead load. Measure and record the deflections 5 minutes after the total live load has been removed.

(iv) Continue to load the truss to:

(A) Dead load plus 2.0 times the design live load. Maintain this loading for 6 hours and inspect the truss for failure. Failure is rupture, fracture, or excessive yielding; or

(B) Dead load plus 1.75 times the design live load. Maintain this loading for 12 hours and inspect the truss for failure. Failure is rupture, fracture, or excessive yielding.

(v) *Final recovery phase.* Remove 2.0 times the design live load, but not the dead load or 1.75 times the design live load, but not the dead load. Measure and record deflections within 4 hours after removing 2.0 times the design live load or 1.75 times the design live load.

(vi) *Acceptance criteria.* The truss design is acceptable if all of the following conditions are met:

(A) The maximum deflection between no load and dead load must be L/480 or less for simply supported clear spans and Lo/180 or less for eave and cornice projections; and

(B) The maximum deflection between dead load and design live load must be L/180 or less for simply supported clear spans and Lo/90 or less for eave and cornice projections; and

(C) After the design live load is removed, and with the dead load still applied, the maximum recovery deflection must be L/360 or less for simply supported spans and Lo/180 or less for eave and cornice projections; and

(D) The truss must maintain the overload condition for 6 hours without rupture or fracture, or excessive yielding; and

(E) After 2.0 times the design live load has been removed, and with the dead load still applied, the maximum recovery deflection must be L/180 or less for simply supported clear spans and Lo/90 or less for eave and cornice projections; and

(F) As applicable, each truss design must also meet all requirements for uplift loads required by paragraph (d)(3) of this section. For Wind Zone I uplift load requirements, see paragraph (d)(3)(i) of this section. For Wind Zones II and III uplift load requirements, see paragraph (d)(3)(ii) of this section.

(2) *Ultimate load truss test procedure.* (i) At least two average quality/consecutively tested trusses must pass all requirements of the test, for initial qualification of the truss design. All tests for initial qualification of the truss designs evaluated by this procedure must be certified by a Registered Engineer or Architect, or by a nationally recognized testing laboratory. An in-house quality control and follow-up testing program (see paragraph (e) and (f) of this section) must be approved prior to entering production of any truss design evaluated by this procedure.

(ii) *Dead load.* Measure and record initial elevation of the truss or trusses in the test position at no load. Apply to the top and bottom chords of the truss dead loads that are representative of the actual weights of materials to be supported by the truss. However, the dead load may only be applied as indicated in paragraph (e)(4) of this section for ongoing follow-up testing. Dead loads to be applied to the truss test assembly shall be permitted to include only the weights of materials supported by the truss, and not the weight of the truss itself. However, readings from load cells (when used) on which the test truss rests must reflect the sum of the applied load plus the weight of the truss. Apply dead loads and hold for 5 minutes. Measure and record the deflections.

(iii) *Live load.* Maintaining the dead loads, apply live load at a uniform rate to the top chord in approximate ¼ live load increments until the dead load plus the live load is reached. Measure and record the deflections no sooner than one minute after each ¼ live load increment has been applied and 5 minutes after the full live load has been reached.

(iv) *Initial recovery phase.* Remove the design live load but not the dead load. Measure and record the deflections 5 minutes after the design live load has been removed.

(v) *Overload phase.* After the recovery phase is completed, reapply the full live load to the truss assembly. Additional loading shall then be applied continuously until the dead load plus 2.5 times the design live load is reached. This overload condition must be maintained for at least 5 minutes.

(vi) *Final recovery phase.* Remove 2.5 times the design live load but not the

dead load. Measure and record deflections within 4 hours after 2.5 times the design live load has been removed.

(vii) *Acceptance criteria.* The truss design is acceptable if all of the following conditions are met:

(A) The maximum deflection between no load and dead load must be L/480 or less for simply supported clear spans and Lo/180 or less for eave and cornice projections; and

(B) Dead load to design live load deflections shall be L/180 or less for simply supported clear spans and Lo/90 or less for eave and cornice projections; and

(C) After the design live load is removed and with the dead load still applied, the maximum recovery deflection must be L/360 or less for simply supported spans and Lo/180 or less for eave and cornice projections; and

(D) The truss shall maintain the overload condition for 5 minutes without rupture, fracture, or excessive yielding; and

(E) After 2.5 times the design live load is removed, and with the dead load still applied, the truss must recover to at least L/180 for simply supported clear spans and Lo/90 for eave and cornice within 4 hours after the total live load has been removed; and

(F) As applicable, each truss design must also meet all requirements for uplift loads in Wind Zone I or Wind Zone II and III, as required by paragraph (d)(3) of this section. For Wind Zone I uplift load requirements, see paragraph (d)(3)(i) of this section. For Wind Zones II and III uplift load requirements, see paragraph (d)(3)(ii) of this section.

(3) *Uplift load tests.* Each truss design must also pass all requirements of the uplift load test, as applicable, in paragraph (d)(3)(i) or (d)(3)(ii) and paragraphs (d)(3)(iii) and (d)(3)(iv) of this section.

(i) *Wind Zone I uplift load test.* Where there are engineered connectors between the top chord and web members of the truss, such as metal connector plates or wood gussets or their equivalents, uplift testing in Wind Zone I is at the discretion of the Registered Engineer or Architect or nationally recognized testing laboratory certifying the truss design. When testing is deemed necessary by the Registered Engineer or Architect or nationally recognized testing laboratory certifying the truss design, a minimum of one average quality uplift load test is to be conducted for each such truss design and must pass all requirements of the test for initial qualification of the truss design. The net uplift load for trusses designed for use in Wind Zone I is 9 psf for the clear span of the truss and 22.5 psf for eave or cornice projections.

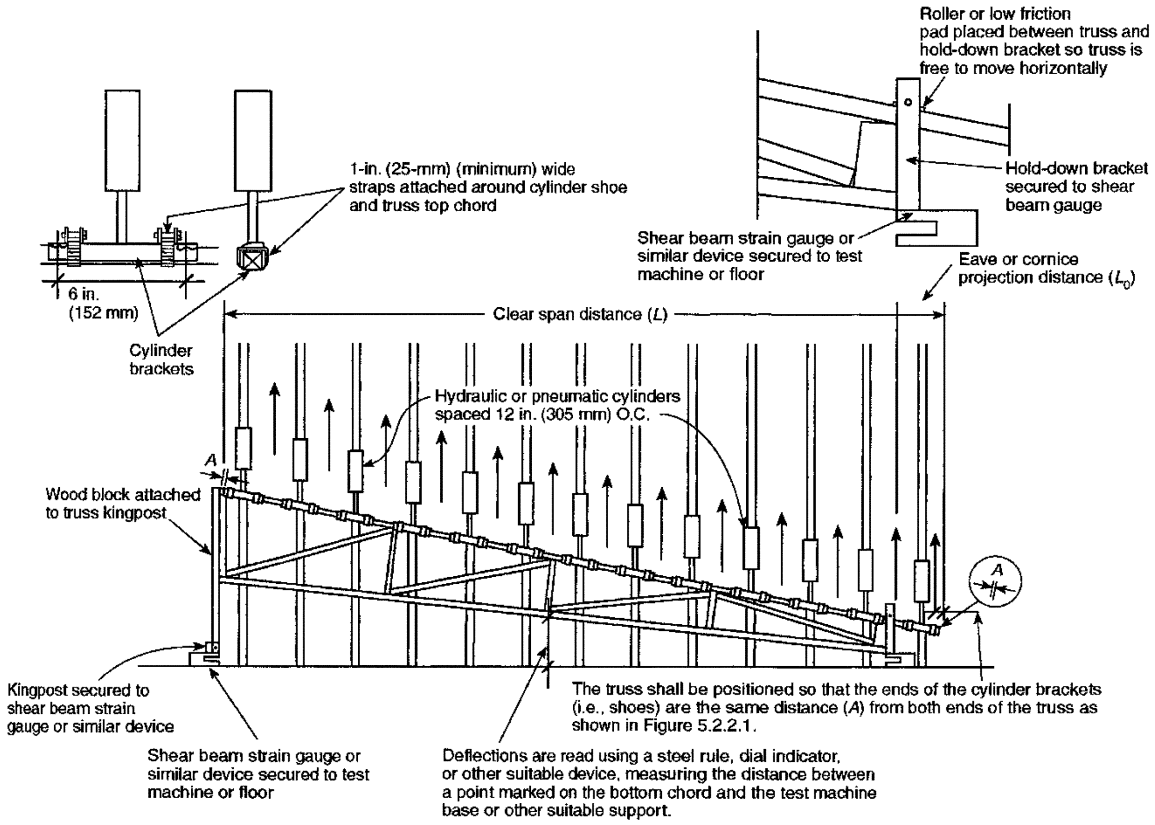
(ii) *Wind Zones II and III uplift loads test.* This test is required for all trusses designed for use in Wind Zones II and III. A minimum of three average quality/consecutive uplift load tests are to be conducted for each truss design when tested in the inverted position and a minimum of two average quality/consecutive uplift load tests are to be conducted for trusses in the upright position. The trusses must pass all requirements of the test for initial qualification of the truss design. The uplift load for trusses designed to be used in Wind Zones II and III for the clear span or eave cornice projections is to be determined by subtracting the dead load applied to the truss from the uplift load provided in the Table of Design Wind Pressures in § 3280.305(c)(1)(ii)(B).

(iii) Trusses designed for use in Wind Zone I, when tested (see paragraph (d)(3)(i) of this section), must be tested in either the inverted position to 2.5 times the net wind uplift load or in the upright position to 1.75 times the net wind uplift load. Trusses designed for use in Wind Zones II and III (see paragraph (d)(3)(ii) of this section) must be tested to 2.0 times the uplift load minus the dead load in the inverted position and to 1.75 times the uplift load minus the dead load in the upright position. See Figure 3280.402(b)(3).

(iv) The following describes how to conduct the uplift test with the truss in the upright position. Similar procedures must be used if conducting the test in the inverted position.

(A) Place the truss in the test fixture and position as it is intended to be installed in the manufactured home. See Figure 3280.402(b)(3).

Figure 3280.402(b)(3) – Test setup for roof trusses tested for uplift in the upright position



(B) Position the load measurement devices to register the wind uplift loads that will be applied to the top chord of the truss. The uplift loads shall be applied through tension devices not wider than one inch and spaced not greater than approximately 12 inches on center and shall be applied as uniform as possible, so as to simulate uniform loading. Gravity and wind uplift load tests may be performed on the same truss in this single setup mode. For the wind uplift test, it is permissible to stabilize the bottom chord of the truss in the test fixture to simulate ceiling materials or purlin supports. Measure and record the initial elevation of the bottom chord of the truss in the test position at the mid-span and quarter points of the truss, and at the free end of an eave or cornice projection greater than 12 inches. Scissors or other unique truss configurations are to be measured at as many additional bottom chord panel points as necessary to obtain an accurate representation of the deflected shape of the truss, so as to be able to locate and record the point(s) of maximum deflection. Eave or cornice projection loads are applied separately for eaves or cornice projections greater than 12 inches. For eave or cornice projections greater than 12 inches, the additional required load must be applied to the eave simultaneously with the main body load. For eave or cornice projections of 12 inches or less, add the additional required load to the main body load and apply it to the entire top chord.

(C) Measure and record the deflection 5 minutes after the net uplift load has been applied. Design load deflection shall be L/180 or less for a simply supported clear span and Lo/90 or less for eave or cornice projections.

(D) For trusses tested in the upright position, continue to load the truss to 1.75 times the net uplift load in paragraph (d)(3)(i) of this section for Wind Zone I and 1.75 times the uplift load in paragraph (d)(3)(ii) for Wind Zones II and III, and maintain the load for one minute. For trusses tested in the inverted position, continue to load the truss to 2.50 times the net uplift load in paragraph (d)(3)(i) for Wind Zone I and to 2.0 times the uplift load minus the dead load in paragraph (d)(3)(ii) for Wind Zones II and III, and maintain the full load for one minute. Regardless of the test position of the truss, upright or inverted, trusses must maintain the overload for the specified time period without rupture, fracture, or excessive yielding.

(e) *Follow-up testing.* Follow-up testing procedures must include the following:

(1) All trusses qualifying under these test procedures must be subject to a quality control and follow-up testing program.

(i) Manufacturers of listed or labeled trusses must follow an in-house quality control program with follow-up testing approved by a nationally recognized testing program as specified in paragraph (e)(3) of this section. The in-house quality control program must include, at a minimum, procedures for quality of materials including, but not limited to, grade(s) of materials, allowable splits, knots, and other applicable lumber qualities; workmanship including, but not limited to, plate placement and embedment tolerances; other manufacturing tolerances; description and calibration of test equipment; truss retesting criteria; and procedures in the event of noncomplying results.

(ii) Those home manufacturers producing trusses for their own use, and which are not listed or labeled, must have an in-house quality control program (see paragraph (i) of this section) that includes follow-up testing, as specified in this section, and is

approved by their Design Approval Primary Inspection Agency (DAPIA).

(2) Truss designs that are qualified but not in production are not subject to follow-up testing until produced. When the truss design is brought into production, a follow-up test is to be performed if the truss design has been out of production for more than 6 months.

(3) The frequency of truss manufacturer's quality control follow-up testing for trusses must be at least:

(i) One test for the first 100 trusses produced, with a subsequent test for every 2,500 trusses for trusses qualified under the proof load truss test procedure or inverted uplift test procedure for trusses used in Wind Zones II and III or once every 6 months, whichever is more frequent, for every truss design produced; or

(ii) One test for every 4,000 trusses produced for trusses qualified under the ultimate load truss test procedure or upright uplift test procedure for trusses used in Wind Zones II and III or once every 6 months, whichever is more frequent, for every truss design produced.

(4) For follow-up testing only, the full dead load may be applied to the top chord of the truss, when the bottom chord dead load is 5 psf or less.

Dated: January 8, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–01066 Filed 1–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0007]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway and Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviations from regulations.

SUMMARY: The Coast Guard has issued temporary deviations from the regulations governing the operation of the following two bridges in Miami, Florida: The Venetian Causeway Bridge (West), mile 1088.6, across the Atlantic Intracoastal Waterway; and the Venetian Causeway Bridge (East), across Biscayne Bay. The deviations are necessary due to the high volume of vessel and vehicle traffic anticipated during the Miami International Boat Show, which will be held in Miami Beach, Florida from February 11, 2013, through February 19, 2013. These deviations will result in the bridges opening to navigation on the hour and half-hour before, during, and after the Miami International Boat Show.

DATES: These deviations are effective from 7 a.m. on February 11, 2013, through 9 p.m. on February 19, 2013.

ADDRESSES: The docket for this temporary deviation, USCG–2013–0007, is available online by going to *http://www.regulations.gov,* inserting USCG–2013–0007 in the ''Search'' box and then clicking ''Search''. The docket is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Jessica Hopkins, Seventh District Bridge Branch, Coast Guard; telephone (305) 415–6744, email *Jessica.R.Hopkins@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 Miami International Boat Show Operations Manager has requested temporary modifications to the operating schedules of the Venetian Causeway Bridge (West) and the Venetian Causeway Bridge (East) in Miami, Florida. These deviations will result in the bridges being allowed to open on the hour and half-hour from 7 a.m. to 9 p.m. daily, from February 11, 2013, through February 19, 2013. The Miami International Boat Show generates a high volume of vessel and vehicle traffic. In previous years, opening these bridges on demand has resulted in significant vehicle congestion and bridge mechanical failure. By opening the bridges on the hour and half-hour (rather than on demand) traffic congestion will be reduced. The temporary deviations will be effective from 7 a.m. on February 11, 2013 through 9 p.m. on February 19, 2013.

The vertical clearance, regular operating schedule, and deviation period for each bridge are set forth below.

1. *Venetian Causeway Bridge (West), mile 1088.6.* The vertical clearance of the Venetian Causeway Bridge (West), across the Atlantic Intracoastal Waterway is 12 feet. The normal operating schedule is set forth in 33 CFR 117.261(nn), which requires the bridge to open on signal; except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the bridge need only open on the hour and half-hour.

As a result of this temporary deviation, the Venetian Causeway Bridge (West) will only open to navigation on the hour and half-hour from 7 a.m. until 9 p.m. daily, from February 11, 2013, through February 19, 2013. At all other times the bridges will open on demand. The bridge will also continue to open as necessary, in accordance with 33 CFR 117.31.

2. *Venetian Causeway Bridge (East).* The vertical clearance of the Venetian Causeway Bridge (East), across Biscayne Bay is 6 feet. The normal operating schedule is set forth in 33 CFR 117.269, which requires the bridge to open on signal; except that from 7 a.m. to 7 p.m., Monday through Friday, except Federal holidays, the bridge need only open on the hour and half-hour.

As a result of this temporary deviation, the Venetian Causeway Bridge (East) will only open to navigation on the hour and half-hour from 7 a.m. until 9 p.m. daily, from February 11, 2013, through February 19, 2013. At all other times the bridges will open on demand. The bridge will also continue to open as necessary, in accordance with 33 CFR 117.31.

In accordance with 33 CFR 117.35(e), these drawbridges must return to their regular operating schedules immediately at the end of the effective period of this temporary deviation. These deviations from the operating regulations are authorized under 33 CFR 117.35.

Dated: January 8, 2013.

B. L. Dragon,

Bridge Program Director, Seventh Coast Guard District.

[FR Doc. 2013–00972 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0228]

RIN 1625–AA00

Safety Zone, Brandon Road Lock and Dam to Lake Michigan Including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, and Calumet-Saganashkee Channel, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel on all waters of the Chicago Sanitary and Ship Canal from Mile Marker 296.1 to Mile Marker 296.7 at various times on February 12 through February 15, 2013. This action is necessary to protect the waterways, waterway users, and vessels from hazards associated with the U.S. Army Corps of Engineers Electromagnetic Fields evaluation operations.

During any of the below listed enforcement periods, entry into, transiting, mooring, laying-up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

DATES: The regulations in 33 CFR 165.930 will be enforced from 7:00 a.m. to 11:00 a.m. and from 1:00 p.m. to 5:00 p.m. on February 12 through February 15, 2013.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, telephone 414–747–7148, email address *joseph.p.mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce a segment of the Safety Zone; Brandon Road Lock and Dam to Lake Michigan including Des Plaines River, Chicago Sanitary and Ship Canal, Chicago River, Calumet-Saganashkee Channel, Chicago, IL, listed in 33 CFR 165.930. Specifically, the Coast Guard will enforce this safety zone between Mile Marker 296.1 to Mile Marker 296.7 on all waters of the Chicago Sanitary and Ship Canal. Enforcement will occur from 7:00 a.m. until 11:00 a.m. and 1:00 p.m. until 5:00 p.m. on February 12 through February 15, 2013.

This enforcement action is necessary because the Captain of the Port, Sector Lake Michigan has determined that the U.S. Army Corps of Engineers Electromagnetic Fields evaluation operations pose risks to life and property. Because of these risks, it is necessary to control vessel movement during the evaluation operations to prevent injury and property loss.

In accordance with the general regulations in § 165.23 of this part, entry into, transiting, mooring, laying up or anchoring within the enforced area of this safety zone by any person or vessel is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated representative.

This notice is issued under authority of 33 CFR 165.930 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Captain of the Port, Sector Lake Michigan, will also provide notice through other means, which may include, but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, local news media, distribution in leaflet form, and on-scene oral notice.

Additionally, the Captain of the Port, Sector Lake Michigan, may notify representatives from the maritime industry through telephonic and email notifications.

Dated: January 8, 2013.

M. W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.

[FR Doc. 2013–00970 Filed 1–17–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0636; FRL–9636–6]

Approval and Promulgation of State Implementation Plans; State of Utah; Smoke Management Requirements for Mandatory Class I Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Utah on September 29, 2011. The September 29, 2011 revision establishes rule R307–204 of the Utah Administrative Code (UAC). R307–204 contains smoke management requirements for land managers within the State of Utah as required by the regulations for regional haze (RH). The September 29, 2011 submittal supersedes and replaces R307–204 submitted as part of the State's December 12, 2003 RH SIP. The September 29, 2011 submittal also supersedes and replaces the State's May 8, 2006 submittal of R307–204.

EPA is also partially approving a SIP revision submitted by the State of Utah on May 26, 2011. Specifically, EPA is proposing to approve section XX.G of the State's RH SIP, which contains the State's long-term strategy for fire programs as required by the RH regulations. The May 26, 2011 submittal supersedes and replaces SIP revisions to section XX.G of the RH SIP submitted by the State on December 12, 2003 and September 9, 2008. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective February 19, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2011–0636. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Laurel Dygowski, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop, Denver, Colorado 80202–1129, (303) 312–6144, *dygowski.laurel@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *Utah* and *State* mean the State of Utah.

Table of Contents

I. Background Information

Under 40 CFR 51.309 of the RH program, there are numerous requirements aimed at protecting the 16 Class I areas of the Colorado Plateau. This action only addresses the requirements pertaining to programs related to fire of 40 CFR 51.309(d)(6). Pursuant to 40 CFR 51.309(d)(6), a state must show that its smoke management program and all federal or private programs for prescribed fire in the state have a mechanism in place for evaluating and addressing the degree of visibility impairment from smoke in their planning and application of burning. A state must also ensure that its prescribed fire smoke management programs have at least the following seven elements: Actions to minimize emissions, evaluation of smoke dispersion, alternatives to fire, public notification, air quality monitoring, surveillance and enforcement, and program evaluation.

States must include in their section 309 plan a statewide process for gathering the essential post-burn activity information to support emissions inventory and tracking systems. States must identify existing administrative barriers to the use of non-burning alternatives and adopt a process for continuing to identify and remove administrative barriers where feasible. The SIP must include an enhanced smoke management program, which means the smoke management program considers visibility and is based on the criteria of efficiency, economics, law, emission reduction opportunities, land management objectives, and reduction of visibility impairment. States must also adopt a process to establish annual emission goals to minimize emission increases from fire.

On December 12, 2003, the State of Utah submitted a RH SIP intended to meet all of the requirements under 40 CFR 51.309. This submittal adopted SIP section XX—*Regional Haze* as well as UAC R307–204 *Emissions Standards: Smoke Management.* The State revised the smoke management requirements of R307–204 in a May 8, 2006 submittal and then again in its September 29, 2011 submittal. The September 29, 2011 submittal supersedes and replaces the R307–204 portion of the December 12, 2003 submittal and all of the May 8, 2006 submittal. R307–204 contains provisions necessary to meet the requirements of 40 CFR 51.309(d)(6) which pertain to smoke management.

Section XX.G—*Long-Term Strategy for Fire Programs* of the State's RH SIP also contains provisions necessary to meet the requirements of 40 CFR 51.309(d)(6). The State originally submitted Section XX.G with its December 12, 2003 RH SIP submittal. The State resubmitted this section with subsequent SIP revisions on September 9, 2008 and May 26, 2011. Section XX.G of the May 26, 2011 submittal supersedes and replaces section XX.G of the December 12, 2003 and September 9, 2008 submittals. EPA will be taking action on the remainder of the December 12, 2003, September 9, 2008, and May 26, 2011 submittals at a later date.

On November 8, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Utah (76 FR 69217). The NPR proposed approval of the smoke management requirements adopted by the State as part of the September 29, 2011 (R307–204) and May 26, 2011 (section XX.G) SIP submittals.

II. Final Action

EPA is approving a SIP revision submitted by the State of Utah on September 29, 2011. The September 29, 2011 revision establishes UAC R307–204. R307–204 contains smoke management requirements for land managers within the State of Utah as required by 40 CFR 51.309(d)(6) for regional haze. The September 29, 2011 submittal supersedes and replaces R307–204 submitted as part of the State's December 12, 2003 regional haze SIP. The September 29, 2011 submittal also supersedes and replaces the State's May 8, 2006 submittal of R307–204. EPA is also partially approving a SIP revision submitted by the State of Utah on May 26, 2011. Specifically, EPA is approving section XX.G of the State's RH SIP which contains the State's long-term strategy for fire programs as required by 40 CFR 51.309(d)(6). The May 26, 2011 submittal supersedes and replaces SIP revisions to section XX.G of the RH SIP submitted by the State on December 12, 2003 and September 9, 2008.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 19, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 8, 2012.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(72) to read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

(72) On May 26, 2011 and September 29, 2011, the State of Utah submitted revisions to its State Implementation Plan to incorporate the smoke management requirements of the regional haze program.

(i) Incorporation by reference.

(A) Title R307 of the Utah Administrative Code—*Environmental Quality, Air Quality,* Rule R307–204—*Emission Standards: Smoke Management,* sections -1, *Purpose and Goals,* and -2, *Applicability*. Effective December 31, 2003; as published in the Utah State Bulletin October 1, 2003 and January 15, 2004.

(B) Title R307 of the Utah Administrative Code—*Environmental Quality, Air Quality,* Rule R307–204—*Emission Standards: Smoke Management,* section -4, *General Requirements*. Effective April 7, 2006; as published in the Utah State Bulletin March 1, 2006 and May 1, 2006.

(C) Title R307 of the Utah Administrative Code, Rule R307–204—*Environmental Quality, Air Quality,* Rule R307–204—*Emission Standards: Smoke Management,* sections -3, *Definitions,* -5, *Burn Schedule,* -6, *Small Prescribed Fires (de minimis),* -7, *Small Prescribed Pile Fires (de minimis),* -8, *Large Prescribed Fires,* -9, *Large Prescribed Pile Fires*, and -10, *Requirements for Wildland Fire Use Events*. Effective July 7, 2011; as published in the Utah State Bulletin May 1, 2011 and August 1, 2011.

(ii) Additional materials.

(A) Section XX.G of the Utah *Regional Haze State Implementation Pan*. Effective April 7, 2011. Published in the Utah State Bulletin February 1, 2011.

[FR Doc. 2013–00362 Filed 1–17–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 168

[EPA–HQ–OPP–2009–0607; FRL–9360–8]

RIN 2070–AJ53

Labeling of Pesticide Products and Devices for Export; Clarification of Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revising the regulations on the labeling of pesticide products and devices intended solely for export. Specifically, EPA is restructuring the current regulations to clarify which provisions apply under various circumstances. EPA is also increasing specificity in the regulations by requiring that people who transfer unregistered pesticide products between registered establishments operated by the same producer within the United States must also comply with the requirements of this part if those products are intended solely for export at the time of such transfer. EPA believes that this requirement is necessary to ensure appropriate handling of such products as they move in commerce before they actually leave the United States.

DATES: This final rule is effective March 19, 2013. The compliance date for the requirement to label unregistered pesticide products intended solely for export that are being shipped between registered establishments operated by the same producer is January 21, 2014.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0607, is available either at *http://www.regulations.gov,* or at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Vera Au, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number:

(703) 308–9069; fax number: (703) 305–5884; email address: *au.vera@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. What action is the agency taking?

The Agency is revising the regulations on the labeling of pesticide products and devices intended solely for export. The revisions will clarify the labeling requirements and assist in compliance. Unregistered pesticide products that are intended solely for export but that are shipped between registered establishments in the United States operated by the same producer under 40 CFR 152.30(a) must comply with the labeling requirements in 40 CFR part 168.

B. What is the agency's authority for taking this action?

EPA is authorized under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., to regulate the sale, distribution, and use of pesticide products and devices through a licensing (registration) scheme. This action is issued under the authority of section 25(a) of FIFRA, 7 U.S.C. 136w(a), to carry out the provisions of section 17(a) of FIFRA, 7 U.S.C. 136o(a).

In addition, because it is recognized that regulations written in a clear and easily readable style can save time and effort for the federal government and for persons affected by the regulation, agencies are specifically directed to use plain language in writing or revising regulations. For example, Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), says that regulations must be ''simple and easy to understand, with the goal of minimizing uncertainty and litigation * * *'' (Sec. 1, Par. (b)(12)). Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996), requires agencies that are reviewing existing regulations take the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The Plain Writing Act of 2010, 5 U.S.C. 301 note, requires Federal agencies to use ''clear government communication that the public can understand and use.'' Executive Order 13563, entitled *Improving Regulation and Regulatory Review* (76 FR 3821, January 21, 2011), states that ''[our regulatory system] must ensure that regulations are accessible, consistent, written in plain language, and easy to understand.''

C. Does this action apply to me?

You may be potentially affected by this action if you export a pesticide product, a pesticide device, or an active ingredient used in producing a pesticide. The inclusion of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document might apply to them. Potentially affected entities may include, but are not limited to: Pesticide and other agricultural chemical manufacturing (NAICS code 325320), e.g., Pesticides manufacturing, Insecticides manufacturing, Herbicides manufacturing, Fungicides manufacturing, etc.

D. What are the incremental costs and benefits of this action?

EPA did not quantify the potential costs or benefits from these revisions, which are qualitatively discussed in this unit. EPA has determined that there are minimal costs for industry to comply with the requirement that the unregistered pesticide product or device intended solely for export that is shipped between registered establishments operated by the same producer must be labeled in compliance with 40 CFR part 168, particularly the required statement ''Not Registered for Use in the United States.'' This determination was made given that most of the labeling requirements for export pesticide products already appear in other existing requirements, and the burden of adding the additional statement to unregistered products or devices intended solely for export that are shipped between registered establishments operated by the same producer would be negligible. EPA believes that this labeling change may be easily accomplished using commonly available word processing software; in addition, this label change does not require label submission to or approval by EPA, and shall be phased in as part of normal business operations. As such, EPA has concluded that the per firm and industry level impact of the rule is not significant.

Benefits are derived from the additional protection of public health and the environment that may result from ensuring appropriate handling of such unregistered pesticide products as they move in commerce before they actually leave the United States. Requiring that unregistered pesticide products and devices intended solely for export that are shipped between establishments operated by the same producer be labeled according to the current regulations in § 168.65, prevents them from inadvertently entering the U.S. market and provides compliance assistance. This requirement further protects public health and the environment by ensuring safe and appropriate handling of such products as they move in commerce before they actually leave the United States.

II. Background

A. Summary of the Proposed Rule

EPA published a notice in the **Federal Register** of April 6, 2011 (76 FR 18995) proposing to revise the regulations on labeling of pesticide products and devices intended solely for export. EPA proposed to include a specific indication that these requirements also apply to unregistered pesticide products intended solely for export when they are shipped between registered establishments in the United States operated by the same producer according to 40 CFR 152.30(a) before they are actually exported from the United States.

B. Public Comments on the Proposed Rule

EPA has considered the comments received on the proposed rule, and provided responses in a Response to Comments document, which is available in the docket for this rule under document ID No. EPA–HQ–OPP–2009–0607–0015. Only the key comments and the Agency's responses are discussed in this rule.

1. *Labeling terms.* Commenters called attention to inconsistencies in the use of the terms ''label,'' ''labeling,'' and ''supplemental labeling'' in the proposed regulations. EPA has revised the regulatory text according to the definitions of these terms in FIFRA section 2(p) to eliminate the inconsistencies.

2. *Foreign language labeling.* Commenters indicated that the proposed regulations addressing foreign languages on labeling did not explicitly allow for an exception when the predominant or official language of the importing country is English. The regulatory text has been revised so that labeling text is only required to appear in a foreign language if English is not the predominant or official language in the importing country, as well as the country of final destination, if known.

3. *Formulation modifications.* One commenter supported EPA's proposal to remove the list of formulation modifications and allow a broader range of changes that can be made to a registered pesticide product intended solely for export while it may still be

considered to be ''registered'' for purposes of section 17(a) of FIFRA, i.e. any changes that are permitted under notification or non-notification. The Pesticide Registration Manual and the Pesticide Registration Notice 98–10 provide more information and guidance on the permitted changes.

4. *Human hazard and precautionary statements.* One commenter disagreed with the use of ''appropriate'' and ''inappropriate'' in the description of the statements; EPA had selected those terms because a literal translation of the U.S. human health and precautionary statements might not convey the correct level of caution in the importing country. EPA has revised the regulatory text to require ''true and accurate'' translations of the English statements in the human hazard and precautionary statements.

5. *Amplification of the phrase ''Not Registered for Use in the United States.''* Several commenters assumed that amplification of the phrase was required and maintained such amplification was not necessary. EPA agrees that the phrase ''Not Registered for Use in the United States,'' a FIFRA requirement for unregistered pesticide products, is sufficient to comply with this rule if the exporting company prefers not to use any further optional amplification. Another commenter suggested that including the phrase on device labeling would create a competitive disadvantage in the marketplace. However, EPA believes that the ability to include explanatory text such as ''because pesticide devices are not required to be registered'' should resolve this potential concern.

6. *Shipping between registered establishments operated by the same producer.* Several commenters discussed potential problems associated with the proposed requirement that when unregistered pesticide products intended solely for export are shipped between registered establishments operated by the same producer, the products are required to have labeling that complies with 40 CFR part 168. One issue raised by a commenter related to the many steps in the production process for pesticide products. One commenter suggested the new requirement be added to 40 CFR 152.30 instead of part 168 while another believed the new requirement was not even necessary. After considering the comments, EPA believes that it is more appropriate to retain the new requirement in § 168.70 instead of adding it to 40 CFR 152.30.

III. The Final Rule

With the exception of the modifications discussed in the previous unit, EPA is finalizing the rule in essentially the same form as the proposed rule. This rule will clarify, restructure, add specificity to the current regulations and will also add an extra margin of safety when shipments of unregistered pesticides and devices that are intended solely for export move between registered establishments operated by the same producer prior to being exported. The regulations at 40 CFR 152.30(a) currently allow the transfer of an unregistered pesticide between registered establishments operated by the same producer, and require the transferor to follow the labeling requirements in 40 CFR part 156. EPA believes that requiring the registration status information from 40 CFR 168.70(b)(3) on the label when such products are intended solely for export at the time of the transfer will result in safer and more appropriate handling and distribution of unregistered pesticide products and devices. EPA also believes that this requirement will help to prevent unregistered pesticide products and devices intended solely for export from inadvertently entering the U.S. market.

IV. FIFRA Review Requirements

In accordance with FIFRA section 25(a), EPA submitted a draft of this final rule to the FIFRA Scientific Advisory Panel (SAP), the Secretary of Agriculture (USDA), and appropriate Congressional Committees. The FIFRA SAP waived its review of this final rule on June 7, 2012 because this action is administrative and does not contain scientific issues that require the FIFRA SAP's consideration. USDA waived the opportunity to review the final rule on June 19, 2012 because clarification and restructuring of the current regulations are administrative actions with no scientific or policy issues.

V. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act (PRA)

This action does not impose any new significant information collection burden that would require additional review or approval by OMB under the PRA, 44 U.S.C. 3501 *et seq.* The information collection requirements contained in the existing regulations (40 CFR 168.65), are already approved by OMB under OMB control number 2070–0027 (EPA ICR No. 0161); since there is no new significant burden, it was not necessary to amend the ICR. Burden is defined at 5 CFR 1320.3(b). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in Title 40 are displayed in the **Federal Register** and are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act, 5 U.S.C. 551–553, or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201. A small business that manufactures pesticides and other agricultural chemicals as defined by NAICS code 325320 has 500 or fewer employees (based on the Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The small entities directly regulated by this final rule are small manufacturers of pesticides which export unregistered pesticide products or devices.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that the cost is minimal to comply with the requirement that an unregistered

pesticide product intended solely for export that is transferred between registered establishments under § 152.30(a) must be labeled with the statement ''Not Registered for Use in the United States.'' This is because existing requirements already call for labeling that includes most of the provisions in 40 CFR part 168, and the burden of adding the additional statement in that limited context would be negligible. EPA believes this labeling change may be easily accomplished using commonly available word processing software; in addition, this label change does not require label submission to or approval by EPA, and can be phased in as part of normal business operations by January 21, 2014. EPA concluded that the per firm and industry level impact of the final rule is insignificant.

EPA believes that increasing the specificity of the current regulations will minimally affect all manufacturers of pesticide products and devices intended solely for export, not just those manufacturers that are small entities. The more specific indication that ''Not Registered for Use in the United States'' will be required for unregistered pesticide products and devices intended solely for export that are shipped between establishments operated by the same producer; this is the identical labeling information that is already required before an unregistered pesticide product or device intended solely for export is in fact exported to another country.

D. Unfunded Mandates Reform Act (UMRA)

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local or tribal governments or the private sector. This action imposes no enforceable duty on any State, local or tribal governments or the private sector because the action is expected to only affect producers, transporters, formulators, packagers, and exporters of unregistered pesticide products and devices intended solely for export and to not result in expenditures of $100 million or more. Since no State, local, or tribal government is known to produce, transport, formulate, package, or export unregistered pesticide products or devices, this rule is not expected to affect State, local, and tribal governments individually, much less in the aggregate. Therefore, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments since no small government is known to produce, transport, formulate, package, or export unregistered pesticide products or devices.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action contains no regulatory requirements that might affect State or local governments since no State or local government is known to produce, transport, formulate, package, or export unregistered pesticide products or devices. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and the State and local governments, EPA specifically solicited comment on the proposed action from State and local officials.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because this action is expected to only affect producers, transporters, formulators, packagers, and exporters of unregistered pesticide products and devices. Since no Indian tribal government is known to produce, transport, formulate, package, or export unregistered pesticide products or devices, this action has no tribal implications. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks, nor is it an ''economically significant regulatory action'' as defined in Executive Order 12866. The clarification and restructuring of current regulations for the export of unregistered pesticide products and devices do not present a disproportionate risk to children.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866 nor will it affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to NTTA section 12(d), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note). Thus, NTTAA does not apply to this action.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

The clarification and restructuring of current regulations for the export of unregistered pesticide products and devices increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population.

VI. Congressional Review Act (CRA)

Pursuant to the CRA, 5 U.S.C. 801 et seq., EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Information collection requirements.

40 CFR Part 168

Environmental protection, Administrative practice and procedure, Advertising, Exports, Labeling, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 11, 2013.

James Jones,

Acting Assistant Administrator for Chemical Safety and Pollution Prevention.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.,* 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.,* 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

■ 2. In the table to § 9.1, under the center heading ''Statements of Enforcement Policies and Interpretations,'' remove the entire entry for ''168.65.''

PART 168—[AMENDED]

■ 3. The authority citation for part 168 continues to read as follows:

Authority: 7 U.S.C. 136–136y.

■ 4. Revise the heading for subpart D to part 168 to read as follows:

Subpart D—Export Policy and Procedures for Exporting Pesticides

§ 168.65 [Removed and reserved]

■ 5. Remove and reserve § 168.65.

■ 6. Add § 168.66 through § 168.71 to subpart D to read as follows:

Sec.

§ 168.66 Labeling of pesticide products and devices intended solely for export.

(a) This subpart describes the labeling requirements applicable to pesticide products and devices that are intended solely for export from the United States under the provisions of FIFRA section 17(a). The requirements for pesticide production reporting, recordkeeping and inspection and purchaser acknowledgement provisions can be found in the following parts:

(1) Pesticide production reporting requirements under FIFRA section 7 are located in part 167 of this chapter (as referenced in § 168.85(b));

(2) Recordkeeping and inspection requirements under FIFRA section 8 are located in part 169 of this chapter (as referenced in § 168.85(a));

(3) Purchaser acknowledgement statement provisions under FIFRA section 17(a) are located in § 168.75.

(b) The labeling of pesticide products and devices intended solely for export must comply with the requirements in § 156.10(a)(4) of this chapter.

(c) The labeling of pesticide products and devices intended solely for export must comply with this regulation no later than January 21, 2014.

§ 168.67 Definitions.

Terms used in this subpart have the same meanings as in the Act and as in § 152.3 of this chapter, unless otherwise defined in this section.

Export pesticide device means a device, as defined in FIFRA section 2(h), that is intended solely for export from the United States to another country.

Export pesticide product means a pesticide product, as defined in § 152.3 of this chapter, that is intended solely for export from the United States to another country.

§ 168.68 Applicability.

This subpart applies to all export pesticide products and export pesticide devices that are exported for any purpose, including any research purpose.

§ 168.69 Registered export pesticide products.

(a) Each export pesticide product that is registered under FIFRA section 3 or FIFRA section 24(c) must bear labeling approved by EPA for its registration and comply with the requirements of § 168.66(b).

(b) For the purposes of this subpart, a registered export pesticide product is considered to be any of the following:

(1) A pesticide product of composition, packaging and labeling as described in its registration under FIFRA section 3;

(2) A pesticide product that has been modified in compliance with the notification or non-notification provisions of § 152.46 of this chapter, and any associated procedures issued under § 156.10(e) of this chapter, regardless of whether such modification has been made for the pesticide product's registration under FIFRA section 3;

(3) A pesticide product initially registered by a State under FIFRA section 24(c), and whose Federal registration has not been disapproved by EPA under § 162.164 of this chapter.

(c) The text of the labeling of the export pesticide product must be provided in English and, if applicable, the following foreign languages:

(1) The predominant or official language of the country of final destination, if known; and

(2) The predominant or official language of the importing country.

§ 168.70 Unregistered export pesticide products.

(a) Any export pesticide product that does not meet the terms of § 168.69 is an unregistered export pesticide product for purposes of this subpart.

(b) Each unregistered export pesticide product must bear labeling that complies with all requirements of this section and § 168.66(b).

(1) The labeling must comply with all of the prominence and legibility requirements of § 156.10(a)(2) of this chapter.

(2) The labeling must comply with all the language requirements in §§ 168.69(c) and 156.10(a)(3) of this chapter.

(3) The labeling must bear the following information:

(i) The name and address of the producer, in accordance with the requirements of § 156.10(c) of this chapter;

(ii) The net weight or measure of contents, in accordance with the requirements of § 156.10(d) of this chapter;

(iii) The pesticide producing establishment number, in accordance with the requirements of § 156.10(f) of this chapter;

(iv) An ingredients statement, in accordance with the requirements of § 156.10(g) of this chapter, except that:

(A) The ingredients statement need not appear in a second language besides English if English is the official or predominant language in the importing country and the country of final destination, if known; and

(B) An export pesticide product intended solely for research and development purposes, (and which bears the statement ''For research and development purposes only. Not for distribution, sale, or use,'' or similar language) may bear coded ingredient information to protect confidentiality.

(v) Human hazard and precautionary statements in accordance with the requirements of subpart D of part 156 of this chapter. The statements must be true and accurate translations of the English statements.

(vi) The statement ''Not Registered for Use in the United States of America,'' which may be amplified by additional statements accurately describing the reason(s) why the export pesticide product is not registered in the United States, or is not registered for particular uses in the United States.

(c) This section also applies to all unregistered pesticide products and devices that are intended solely for export and that are transferred, distributed, or sold between registered establishments operated by the same producer according to § 152.30(a) of this chapter if:

(1) The transfer, distribution or sale occurs between a point in the United States and a point outside the United States, or

(2) The transfer occurs within the United States solely for the purpose of export from the United States.

§ 168.71 Export pesticide devices.

(a) Each export pesticide device sold or distributed anywhere in the United States must bear labeling that complies with all requirements of this section and § 168.66(b).

(b) The labeling of each export pesticide device must meet all of the prominence and legibility requirements of § 156.10(a)(2) of this chapter.

(c) The labeling must also comply with all the language requirements in § 168.69(c) and § 156.10(a)(3) of this chapter.

(d) The labeling must bear the following information:

(1) The name and address of the producer, meeting the requirements of § 156.10(c) of this chapter;

(2) The producing establishment number, meeting the requirements of § 156.10(f) of this chapter;

(3) The statement ''Not Registered for Use in the United States of America,'' which may be amplified by additional statements describing the reason why the export pesticide device is not registered in the United States, such as ''because pesticide devices are not required to be registered in the United States.''

(e) An export pesticide device is not required to bear an ingredients statement.

[FR Doc. 2013–01055 Filed 1–17–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 11–38; RM–11621; DA 13–9]

Radio Broadcasting Services; Hebbronville, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Charles Crawford, substitutes Channel 282A for vacant Channel 232A at Hebbronville, Texas. The purpose of the proposed channel substitution at Hebbronville is to accommodate the hybrid application, File No. BNPH–20070502ADP, which requests the substitution of Channel 232A for Channel 282A at Benavides, Texas, and modification of the new FM station. Channel 282A can be allotted to Hebbronville consistent with the minimum distance separation requirements of the Rules with a site restriction 11 kilometers (6.8 miles) northwest of the community. The reference coordinates for Channel 282A are 27–23–18 NL and 98–44–26 WL. Channel 282A at Hebbronville is located 320 kilometers from the Mexican Border. Although Mexican concurrence has been requested, notification has not been received. If a construction permit for Channel 282A at Hebbronville, Texas is granted prior to receipt of formal concurrence by the Mexican government, the authorization will include the following condition: ''Operation with the facilities specified herein for Hebbronville, Texas, is subject to modification, suspension, or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Mexico-United States FM Broadcast Agreement, or if specifically objected to by the Government of Mexico.''

DATES: Effective February 18, 2013.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* adopted January 3, 2013, and released January 4, 2013. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

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 amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 232A at Hebbronville, and by adding Channel 282A at Hebbronville.

[FR Doc. 2013–01046 Filed 1–17–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 13
Friday, January 18, 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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS 2012–0076]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security U.S. Customs and Border Protection—002 Global Enrollment System (GES), System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of an updated and reissued system of records pursuant to the Privacy Act of 1974 for the ''Department of Homeland Security/U.S. Customs and Border Protection—002 Global Enrollment System (GES), System of Records'' and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

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

ADDRESSES: You may submit comments, identified by docket number DHS 2012–0076, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Laurence Castelli, (202) 325–0280, CBP Privacy Officer, U.S. Customs and Border Protection, Mint Annex, 799 Ninth Street NW., Washington, DC 20229. For privacy issues please contact: Jonathan R. Cantor (202–343–1717), Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS) U.S. Customs and Border Protection (CBP) proposes to exempt portions of a current DHS system of records titled, ''DHS/CBP–002 Global Enrollment System (GES)'' system of records.

Global Entry (GE) is the DHS/CBP program that enables CBP to expedite the inspection and security process for lower risk travelers and allows more scrutiny for those travelers who present an unknown risk. GE, previously a pilot program, is now a permanent trusted traveler program (77 FR 5681 (Feb. 6, 2012)). Under GE, expedited processing into the United States and certain foreign countries will be expanded through a growing number of participating U.S. and foreign international airports and foreign partnerships. Through such partnerships, U.S. citizens and citizens of certain foreign countries will be able to apply for expedited processing at their respective airports.

CBP has signed a number of joint statements with foreign partners that provide the basic framework for allowing U.S. citizens and citizens of the applicable foreign countries to apply for expedited processing at their respective airports. The general purpose of the joint statement is to offer expedited processing to U.S. citizens and the citizens of the foreign country that is party to that joint statement, based on a mutually determined set of vetting criteria and standards. CBP continues to work with government border authorities in various countries to create this growing international network in which, once individuals are screened and deemed trusted by the authorities in their own country, the other country in the alliance will accept them in their respective national trusted traveler programs.

In addition to new foreign partners, CBP has consolidated the registered traveler programs under GES to include the Small Vessel Reporting System (SVRS) and the Decal and Transponder Online Procurement System (DTOPS). SVRS, as an enhancement to the Local Boater Option (LBO) pilot program, allows individuals with advance submission and CBP approval of float plans to use a designated telephone line to notify a CBP officer of their arrival to the United States. DTOPS is a registered traveler program that allows individuals to purchase, renew, or transfer user fees related to the transponders/Radio Frequency Identification (RFID) tags for their commercial vehicles or to the decals for their private aircraft or vessels in advance of crossing a U.S. border.

The system of records notice is being re-published to update the categories of records, authorities, purposes, routine uses, retrievability, retention and disposal, notification procedures, record sources, and Privacy Act exemptions for the system of records. Specifically, DHS is updating the category of records to clarify that GES maintains limited law enforcement information, consisting of the case number references to law enforcement databases used to support or deny the membership decision for GES trusted traveler programs, as well as the membership decision for trusted traveler programs with foreign partners. These results were previously covered by the DHS/CBP–011 TECS SORN (73 FR 77778 (Dec. 19, 2008.) DHS/CBP is also retaining the fact of the other foreign governments' decisions either to approve or deny an application, pursuant to the applicable joint statements.

Participation in these programs is entirely voluntary. Joint statements with foreign partners establish that each country's use of GES information for vetting will be consistent with applicable domestic laws and policies. Participants should be aware that when they submit their information to a foreign country, or agree to share their information with a foreign partner, the foreign country uses, maintains, retains, or disseminates their information in accordance with that foreign country's laws and privacy protections.

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted the law enforcement related records, including the pointer information to other law enforcement databases that support the DHS/CBP membership decision, and the law enforcement risk assessment worksheet that have been created during the background check and vetting process, from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3) and (4); (d); (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5) and (e)(8); (f); and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted records created during the background check and vetting process from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). In addition, when a record contains information from other exempt systems of records, DHS/CBP will claim the same exemptions for that record as are claimed for the original systems of records, and will claim any additional exemptions provided here.

CBP will not assert any exemptions with regard to accessing or amending an individual's application data and final membership determination in the trusted traveler program. However, this data may be shared with law enforcement and/or intelligence agencies pursuant to the routine uses identified in this SORN. The Privacy Act requires DHS maintain an accounting of such disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement and/or intelligence agency has sought particular records may affect ongoing law enforcement activity. As such, the Secretary of Homeland Security pursuant to 5 U.S.C. 552a (j)(2) and (k)(2), will claim an exemption from (c)(3), (e)(8), and (g)(1) of the Privacy Act, as is necessary and appropriate to protect this information. The updated system will be included in DHS's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which federal government agencies collect, maintain, use, and disseminate personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions. If an agency claims an exemption, however, it must issue a Notice of Proposed Rulemaking to make clear to the public the reasons why a particular exemption is claimed.

DHS is claiming exemptions from certain requirements of the Privacy Act for DHS/CBP—002 GES. Some information in DHS/CBP—002 GES System of Records relates to official DHS national security, law enforcement, and immigration activities. These exemptions are needed to protect information relating to DHS activities from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these processes or to avoid disclosure of activity techniques. Disclosure of information to the subject of the inquiry could also permit the subject to avoid detection or apprehension.

In appropriate circumstances, when compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A notice of system of records for DHS/CBP—002 GES System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 continues to read as follows:

Authority: Pub. L. 107–296, 116 Stat. 2135; (6 U.S.C. 101 *et seq.*); 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

■ 2. In Appendix C to Part 5, revise paragraph ''68'', to read as follows:

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

68. The DHS/U.S. Customs and Border Protection (CBP)—002 Global Enrollment System (GES) system of records consists of electronic and paper records and will be used by DHS and its components. The DHS/CBP–002 GES system of records collects and maintains records on individuals who voluntarily provide personally identifiable information to U.S. Customs and Border Protection in return for enrollment in a program that will make them eligible for expedited processing at designated U.S. border ports of entry. The DHS/CBP–002 GES system of records contains personally identifiable information in biographic application data, biometric information, conveyance information, pointer information to other law enforcement databases that support the DHS/CBP membership decision, Law Enforcement risk assessment worksheets, payment tracking numbers, and U.S. or foreign trusted traveler membership decisions in the form of a ''pass/fail.''

The Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2), has exempted the law enforcement related records, including the pointer information to other law enforcement databases that support the DHS/CBP membership decision, and the law enforcement risk assessment worksheet that have been created during the background check and vetting process from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g)(1). Additionally, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(k)(2), has exempted records created during the background check and vetting process from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

CBP will not assert any exemptions with regard to accessing or amending an individual's application data in a trusted or registered traveler program and/or final membership determination in the trusted traveler programs. However, this data may be shared with law enforcement and/or intelligence agencies pursuant to the published routine uses in the system of records notice, DHS/CBP–002 GES. The Privacy Act requires DHS maintain an accounting of such disclosures made pursuant to all routine uses. Disclosing the fact that a law enforcement and/or intelligence agency has sought particular records may affect ongoing law enforcement activity. As such, the Secretary of Homeland Security, pursuant to 5 U.S.C. 552a(j)(2) and (k)(2) has exempted these records from (c)(3), (e)(8), and (g)(1) of the Privacy Act, as is necessary and appropriate to protect this information. When a record received from another system has been exempted in that source system, DHS will claim the same exemptions for those records that are claimed for the original primary systems of records from which they originated and claims any additional exemptions set forth here.

Exemptions from these particular subsections are justified, on a case-by-case

basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) and (4) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsection (e)(2) (Collection of Information from Individuals) because requiring that information be collected from the subject of an investigation would alert the subject to the nature or existence of the investigation, thereby interfering with that investigation and related law enforcement activities.

(e) From subsection (e)(3) (Notice to Subjects) because providing such detailed information could impede law enforcement by compromising the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(f) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

(g) From subsection (e)(5) (Collection of Information) because with the collection of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely, and complete. Compliance with subsection (e)(5) would preclude DHS agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

(h) From subsection (e)(8) (Notice on Individuals) because compliance would interfere with DHS's ability to obtain, serve, and issue subpoenas, warrants, and other law enforcement mechanisms that may be filed under seal and could result in disclosure of investigative techniques, procedures, and evidence.

(j) From subsection (g)(1) (Civil Remedies) to the extent that the system is exempt from other specific subsections of the Privacy Act.

* * * * *

Dated: December 31, 2012.

Jonathan R. Cantor,

Acting Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2013–00800 Filed 1–17–13; 8:45 am]

BILLING CODE 9111–14–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2013–01]

Request for Comment on Enforcement Process

AGENCY: Federal Election Commission.

ACTION: Request for comments.

SUMMARY: The Federal Election Commission is requesting comment on certain aspects of its enforcement process. First and foremost, the Commission welcomes public comment on whether this agency is doing an effective job in enforcing the Act and Commission regulations. Additionally, the Commission is currently reviewing and seeks public comment on: Its policies, practices, and procedures during the enforcement process stage set forth in 2 U.S.C. 437g(a)(1), prior to the Commission's determination of whether there is ''reason to believe'' that a person has committed, or is about to commit, a violation of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq. (''FECA'' or ''the Act'') and/or the Commission's implementing regulations; and the Commission's authority under 2 U.S.C. 437g(a)(5) to seek civil penalties from respondents pursuant to a finding of ''probable cause to believe'' that a respondent has violated the Act and/or Commission regulations, as well as the Commission's practice of seeking civil penalties prior to a finding of probable cause.

DATES: Comments must be received on or before Friday, April 19, 2013. The Commission will determine at a later date whether to hold a hearing.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via email to *process@fec.gov.* Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Commission Secretary, 999 E Street NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter, and of each commenter if filed jointly, or they will not be considered. The Commission will post comments on its Web site at the conclusion of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Gura, Deputy Associate General Counsel for Enforcement, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background

I. Past Commission Hearings and Enforcement Process Reforms

The Commission is currently reviewing, and seeks public comment on, certain enforcement policies, practices, and procedures. The Commission will use the comments received to determine whether its policies, practices, or procedures should be adjusted, and whether rulemaking in these areas is advised. The Commission has made no decisions in these areas and may choose to take no action. The Commission last conducted a comprehensive review of its enforcement policies, practices, and procedures, among other issues, in late 2008 and early 2009. *See* Agency Procedures, 73 FR 74494 (Dec. 8, 2008). Comments filed in the 2008/2009 review, as well as a transcript of the public hearing, are available on the Commission's Web site at *http://www.fec.gov/law/policy/enforcement/publichearing011409.shtml.* Subsequent to that review, the Commission adopted or formalized several procedures

pertaining to the advisory opinion, audit, enforcement, and reports analysis processes, as well as providing greater transparency of the agency's enforcement procedures. These procedures include, in chronological order:

• The Commission instituted a program that provides political committees that are audited pursuant to the Act with the opportunity to have a hearing before the Commission prior to the Commission's adoption of a Final Audit Report. Similar to the Commission's program for hearings at the probable cause stage of the enforcement process, audit hearings provide audited committees with the opportunity to present oral arguments to the Commission directly and give the Commission an opportunity to ask relevant questions prior to adopting a Final Audit Report. *See* Commission's Procedural Rules for Audit Hearings, 74 FR 33140 (July 10, 2009), available at *http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-12.pdf.*

• The Commission adopted a new agency procedure that provides respondents in internally generated enforcement matters brought under the Act with notice of the referral and an opportunity to respond thereto, prior to the Commission's consideration of whether there is reason to believe that a violation of the Act has been or is about to be committed by such respondent. This program provides respondents procedural protections similar to those of respondents in complaint-generated matters. *See* Commission's Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 FR 38617 (Aug. 4, 2009), available at *http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-18.pdf.*

• The Commission amended its procedures for probable cause hearings to provide that Commissioners may ask questions designed to elicit clarification from the Office of General Counsel (''OGC'') or Office of the Staff Director during the hearings. These hearings, if the request is granted, take place before the Commission considers the General Counsel's recommendation on whether or not to find probable cause to believe a violation has occurred. *See* Amendment of Agency Procedures for Probable Cause Hearings, 74 FR 55443 (Oct. 28, 2009), available at *http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-24.pdf.*

• The Commission resumed its practice of placing all First General Counsel's Reports on the public record, whether or not the recommendations in these First General Counsel's Reports are adopted by the Commission. The Commission will place all First General Counsel's reports on the public record in closed matters prospectively and retroactively, while allowing the Commission to reserve the right to redact portions as necessary. *See* Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 FR 66132 (Dec. 14, 2009), available at *http://www.fec.gov/law/cfr/ej_compilation/2009/notice_2009-28.pdf.*

• The Commission adopted, made public, and recently updated a ''Guidebook for Complainants and Respondents on the FEC Enforcement Process'' (''Current Enforcement Guidebook''). This guide was first approved and placed on the Commission's Web site in December 2009 and updated in May 2012. *See http://www.fec.gov/em/respondent_guide.pdf.* The Current Enforcement Guidebook summarizes the Commission's general enforcement policies and procedures and provides a step-by-step guide through the Commission's enforcement process. It is designed to assist complainants and respondents and to educate the public concerning FEC enforcement matters.

• The Commission issued a directive providing written guidelines on providing status reports to respondents and the Commission in enforcement matters and accelerating the processing of matters that are statute of limitations-sensitive. *See* FEC Directive 68, Enforcement Procedures (Dec. 31, 2009), available at *http://www.fec.gov/em/directive_68.pdf.*

• The Commission issued a directive on how the Office of Compliance may seek formal or informal legal guidance from OGC regarding questions of law that arise from the review of reports filed with the Commission or in the course of an audit of a political committee. *See* FEC Directive 69, FEC Directive on Legal Guidance to the Office of Compliance, available at *http://www.fec.gov/directives/directive_69.pdf.*

• The Commission issued a directive on how the Audit staff prepares and the Commission considers audit reports produced during the various stages of an audit. *See* FEC Directive 70, FEC Directive on Processing Audit Reports (Apr. 26, 2011), available at *http://www.fec.gov/directives/directive_70.pdf.*

• The Commission established a formal procedure to provide respondents in enforcement matters with relevant documents and other information obtained as a result of an investigation during the enforcement process. These documents and information are generally available by request from the respondent when the Commission enters into conciliation or proceeds to the probable cause stage of the enforcement process. *See* Agency Procedure for Disclosure of Documents in the Enforcement Process, 76 FR 34986 (June 15, 2011), available at *http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-06.pdf.*

• The Commission adopted a procedure providing for a means by which persons and entities may have a legal question considered by the Commission earlier in both the report review process and the audit process. Specifically, when the Office of Compliance requests that a person or entity take corrective action during the report review or audit process, if the person or entity disagrees with the request based upon a material dispute on a question of law, the person or entity may seek Commission consideration of the issue pursuant to this procedure. *See* Commission's Policy Statement Regarding a Program for Requesting Consideration of Legal Questions by the Commission, 76 FR 45798 (Aug. 1, 2011), available at *http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-11.pdf.*

• The Commission adopted procedures to formalize the agency's practice, following probable cause briefs, of providing respondents with a copy of OGC's notice to the Commission advising the Commission whether it intends to proceed with its recommendation to find probable cause. Additionally, these procedures allow a respondent to request an opportunity to reply to the notice, if the notice contains new facts or new legal arguments. *See* Agency Procedure Following the Submission of Probable Cause Briefs by the Office of General Counsel, 76 FR 63570 (October 13, 2011), available at *http://www.fec.gov/law/cfr/ej_compilation/2011/notice_2011-15.pdf.*

• The Commission announced that it is now beginning to provide respondents an explanation in writing of the method used to determine the Commission's opening settlement offers at the conciliation stage of certain enforcement matters. *See http://www.fec.gov/press/press2012/20120112openmeeting.shtml.*

• The Commission recently made public several documents relating to its enforcement and compliance practices following a November 3, 2011 oversight hearing before the Subcommittee on Elections of the House of

Representatives Committee on House Administration. Those documents included various enforcement materials, including the 1997 enforcement manual (which has not been formally updated and contains much information that has been superseded), Reports Analysis Division procedures, and Audit Division documents. *See* Documents on Enforcement & Compliance Practices, available at *http://www.fec.gov/law/procedural_materials.shtml.*

II. Ongoing Reviews of Enforcement Procedures

The 1997 enforcement manual recently placed on the Commission's Web site was compiled as an informal internal guide not intended for public release, was never formally reviewed or adopted by the Commission, was seldom updated, and has been largely superseded. OGC is now in the process of drafting and making public an enforcement procedures manual (''Enforcement Procedures Manual'' or ''Manual'') to guide the Enforcement Division during the course of the agency's enforcement process. The purpose of the Manual is to aid enforcement staff in the consistent, fair, effective and efficient performance of their important public responsibilities in administering the Act, with the goal of serving as a reliable source of information regarding all aspects of the enforcement process. The Commission is seeking public comment on whether certain of its policies, practices and procedures related to the enforcement process should be adjusted, whether rulemaking in this area is advised, and what other considerations should be given to the contents of the Manual. The Commission has made no decisions on these issues and may choose to take no action.

III. General Goals

The FECA grants to the Commission ''exclusive jurisdiction with respect to civil enforcement'' of the provisions of the Act and Chapters 95 and 96 of Title 26. 2 U.S.C. 437c(b)(1). Enforcement matters may be initiated by the Commission as a result of complaints from the public, referrals from the Reports Analysis and Audit Divisions, referrals from other agencies, and *sua sponte* submissions. Enforcement matters are generally administered by the Office of General Counsel pursuant to the procedures set forth in 2 U.S.C. 437g, but are also processed by the Office of Alternative Dispute Resolution and the Office of Administrative Review. *See* 2 U.S.C. 437g(a)(4)(C); 11 CFR 111.30–111.46; *http://www.fec.gov/em/adr.shtml; http://www.fec.gov/af/af.shtml.* During the enforcement process, the Office of General Counsel reviews and makes recommendations to the Commission regarding the disposition of enforcement matters, and investigates and conciliates matters on behalf of the Commission. Stages of the enforcement process may include Reason to Believe (''RTB''), an investigation, pre-probable cause conciliation, probable cause, probable cause conciliation, and litigation. The Current Enforcement Guidebook provides a full description of the Commission's administrative enforcement process. *See http://www.fec.gov/em/respondent_guide.pdf.*

The Commission specifically seeks comment from complainants and respondents who directly interact with the FEC, committee treasurers, and other parties who may become involved in the enforcement process. The Commission seeks general comments on whether the agency is effectively enforcing the Act and Commission regulations and whether certain of the FEC's enforcement procedures and practices unduly limit or expand procedural protections and, if so, how those enforcement procedures might be improved to increase efficiency and adequately address the Commission's interest in enhancing compliance with the Act. The Commission is not interested, with respect to this proceeding, in complaints or compliments about individual matters or FEC employees, and it seeks input only on structural, procedural, and policy issues.

In that regard, the Commission also seeks comment about practices and procedures used by other administrative agencies when acting in an enforcement capacity. For example, do such agencies provide greater or lesser procedural protections? The Commission is also interested in any studies, surveys, research or other empirical data that might support changes in its enforcement procedures, as well as any relevant judicial decisions pertaining to administrative agencies.

The Commission requests those who submit comments to be cognizant that certain proposals may implicate statutory requirements, such as confidentiality mandates. *See* 2 U.S.C. 437g(a)(12). Thus, the Commission would appreciate participants specifying in their written remarks whether their proposals are compatible with current statutes or would require legislative action.

Topics for Specific Comments

As stated, as an initial matter, the Commission requests public comment on whether this agency is doing an effective job of enforcing the Act and Commission regulations.

IV. Enforcement Process at the Pre-RTB Stage

The Act provides that complaints alleging a violation of the Act or Commission regulations shall be in writing, signed and sworn to by the person filing the complaint, notarized, and made under penalty of perjury. 2 U.S.C. 437g(a)(1). Respondents who are alleged in a complaint to have committed such a violation have the opportunity to respond in writing as to the allegations. *Id.* Following the receipt of a response, the General Counsel may recommend to the Commission whether or not to find RTB that there has been a violation of the Act. 11 CFR 111.7(a). Commission regulations also empower ''the General Counsel [to] recommend in writing that the Commission find reason to believe * * *, '' not only based on a complaint, but also ''[on] the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities.'' 11 CFR 111.8(a).

Following an affirmative vote of four or more of its members determining that there is RTB that a respondent has committed, or is about to commit, a violation, the Commission ''shall make an investigation of such alleged violation.'' 2 U.S.C. 437g(a)(2). An RTB finding is not a finding that the respondent violated the Act. It simply means that the Commission believes a violation may have occurred. An RTB finding is generally followed by either an investigation of the matter or an offer of pre-probable cause conciliation.[1]

A. Complaint Generated Matters

Most of the Commission's enforcement matters are externally generated based on complaints submitted by individuals pursuant to the requirements of 2 U.S.C. 437g(a)(1). Prior to the Commission's RTB determination in a complaint-generated matter, OGC makes a recommendation to the Commission as to whether, based on the complaint(s) and response(s) in a given matter, there is sufficient information to support an RTB finding. In the course of developing its RTB recommendation, OGC may reference publicly available information, including public information not contained in either the complaint(s) or

[1] *See* Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 FR 12545, 12545–46 (Mar. 16, 2007).

response(s).[2] Public sources for these additional facts have included, among other things, Internet Web sites (most frequently, the Commission's own Web site), media reports, subscription databases, public information filed with other governmental entities, and respondents' own public statements and Web sites.[3] Additionally, OGC, in its RTB recommendations to the Commission, analyzes the facts presented in the case under all relevant legal theories, not solely those theories specifically articulated in the complaint or addressed in the response.

The Commission seeks comment on two of OGC's current practices related to the pre-RTB stage of the enforcement process as it is set forth under 2 U.S.C. 437g(a) and Part 111 of the Commission's regulations.

First, in a complaint-generated matter, do the Act and Commission regulations contemplate a Commission finding of RTB based on, or that takes into account, publicly available information not referenced or included in the complaint and response? Do the statute and regulations contemplate a Commission finding of RTB based solely on the allegations and information set forth in the complaint(s) and response(s)? Do the statute and regulations require the Commission to ignore publicly available information that may be material to the issue of RTB? Would that include public information disclosed as required by the Act and posted on the Commission's own Web site? Should exculpatory facts obtained by the Commission at the pre-RTB stage be considered along with the pending complaint?

The Commission's practice of considering material not specifically referenced or included in a complaint is supported by the case law. In the *In re FECA Litigation* decision,[4] the U.S. District Court for the District of Columbia interpreted 2 U.S.C. 437g(a)(1) and (a)(2) as *requiring* the Commission ''to take into consideration *all available information* concerning the alleged wrongdoing'' when making its RTB determination in a complaint-generated matter. 474 F. Supp. at 1046 (emphasis added). *See also Antosh* v. *FEC,* 599 F. Supp. 850 (D.D.C. 1984) (holding that Commission's dismissal of a complaint was arbitrary and capricious where the Commission failed to consider relevant information available in a committee's disclosure reports revealing that alleged violations were ''more egregious than the Commission realized''). 599 F. Supp. at 855.

Should the Commission, through OGC, maintain a practice consistent with the case law? If the Commission ''may not rely *solely* on the facts presented by the sworn complaint when deciding whether to investigate,'' what is the minimum factual information it must consider when making an RTB determination pursuant to 2 U.S.C. 437g(a)(2)? For example, does the current practice afford respondents sufficient opportunity to address facts and legal theories not contained in the complaint in the course of the Commission's deliberations on finding RTB?

Also, does the current practice conflict with the statutory and regulatory language that the Commission ''shall make an investigation of such alleged violation'' after a finding of RTB by an affirmative four votes of the Commission? Does the use of facts obtained from Internet searches (including the Commission's own Web site), respondents' own public statements and Web sites, media reports, subscription databases, and public information filed with the Commission or other governmental entities in the Commission's deliberations constitute an investigation that must be preceded by a finding of RTB? Concerning the use of facts obtained from the public record, should the Commission draw guidance from the evidentiary practice in litigation of taking judicial notice? Would such facts include those created or controlled by the respondent, such as information on a respondent's own Web site or a respondent's other public statements?

Second, do the Act and Commission regulations contemplate—or implicitly require—a Commission finding of RTB in appropriate circumstances based on legal theories not alleged in the complaint?

In making an RTB recommendation to the Commission, OGC may include legal theories related to the facts of the case that were not specifically alleged in the complaint or addressed in the response, but which are directly related to the facts alleged. Do the statute and regulations require the Commission to ignore additional potential violations that are supported by the facts but not specifically alleged in the complaint? OGC has recently adopted the practice of notifying respondents of such legal theories and affording respondents with an opportunity to respond. Does OGC's current practice afford respondents sufficient opportunity to address additional legal theories not specifically contained in the complaint in the course of the Commission's deliberations on finding RTB? Does the requirement that the Commission ''set forth the factual basis for such alleged violation,'' 2 U.S.C. 437g(a)(2), adequately ensure the fairness of the enforcement process by providing respondents an opportunity to address these additional legal theories after a reason to believe finding?

B. Internally Generated Matters

Alternatively, the Act provides that RTB may be found ''on the basis of information ascertained in the normal course of carrying out [the Commission's] supervisory responsibilities.'' *See* 2 U.S.C. 437g(a)(2). As noted, the Commission's regulations further provide that, ''[o]n the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, or on the basis of a referral from an agency of the United States or of any state, the General

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[2] *See, e.g., id.* at 12546 (relying on ''publicly available information'' in making determination at pre-RTB stage); *see also* Enforcement Procedure 1992–10 (Subject: News Articles), Enforcement Procedure 1989–6 (Subject: Miscellaneous Information), available at *http://www.fec.gov/pdf/Additional_Enforcement_Materials.pdf* (''Where publically available information from state election reports or from state or federal agencies is needed in the context of a MUR, you do not have to wait until RTB has been found to seek that information. You should try and obtain that information before RTB and include it in your analysis.'').

[3] The 1997 Enforcement Manual provided the following, non-comprehensive list of publicly available sources to be consulted before OGC made its initial recommendation: WESTLAW/LEXIS; Dun & Bradstreet; Newspaper Articles; FEC Press Office; Martindale Hubbell; State Corporate Divisions; State Ethics/Political Reporting Agencies; and Reference Material. *See* 1997 Enforcement Manual, Chapter 2 at 5–6, *available at http://www.fec.gov/pdf/1997_Enforcement_Manual.pdf.*

The Commission may, on occasion, receive non-public information from a governmental agency (typically the U.S. Department of Justice) that may serve as a basis for an internally generated complaint or related to a complaint-generated matter in which the Commission has not yet made any findings. However, under the Commission's Procedure for Notice to Respondents in Non-Complaint Generated Matters (described *supra*), a DOJ or other law enforcement agency referral will be provided to the respondent if OGC intends to initiate an enforcement proceeding based on it. 74 FR 38617–18. In cases where, due to law enforcement purposes, the referral document may not be provided to a respondent, OGC will provide the respondent with a letter containing sufficient information regarding the facts and allegations to afford the respondent an opportunity to show that no action should be taken. *Id.* at 38618.

[4] 474 F. Supp. 1044, 1046 (D.D.C. 1979) (''[I]t seems clear that the Commission must take into consideration all available information concerning the alleged wrongdoing. In other words, the Commission may not rely solely on the facts presented by the sworn complaint when deciding whether to investigate. Although the facts provided in a sworn complaint may be insufficient, when coupled with other information available to the Commission gathered either through similar sworn complaints or *through its own work* the facts may merit a complete investigation * * * *[I]t is clear that a consideration of all available information material is vital to a rational review of Commission decisions.''*) (emphasis added).

Counsel may recommend in writing that the Commission find [RTB] that a person or entity has committed or is about to commit a violation'' of the Act or regulations. 11 CFR 111.8(a).

The primary types of internally generated matters are (a) those based on referrals from within the Commission (internally generated from RAD or the Audit Division), (b) those based on referrals from other government agencies, and (c) those that are part of ongoing matters. The Commission also processes *sua sponte* submissions, i.e., voluntary submissions made by persons who believe they may have violated campaign finance laws, but which may contain allegations against other parties that result in a separate enforcement matter with additional respondents.

Before the Commission votes on OGC's recommendations as to any referral, respondents will have an opportunity to review and respond to the referral. *See* Commission's Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 FR 38617 (Aug. 4, 2009). The statute and Commission regulations do not restrict what information the Commission may consider in its supervisory responsibilities.[5]

Additionally, in Directive 6, entitled ''Handling of Internally Generated Matters,'' the Commission in 1978 specified the following non-exhaustive sources as falling within the scope of 2 U.S.C. 437g(a)(2): (1) Referrals from the Commission's operating divisions (i.e., Audit, Reports Analysis, and Public Disclosure); (2) referrals from other government agencies and government documents made available to the public or to the Commission; (3) Commission-authorized non-routine reviews of reports and other documents, provided that it is based on a uniform policy of review of a particular category of candidates or other reporting entities or a category of reports, for the purpose of ascertaining specific types of information; and (4) news articles and similar published sources, considering such factors as the particularity with which the alleged violations are set out in such sources and whether such allegations are supported by in-house documents. *See* Directive 6, *available at http://www.fec.gov/directives/directive_06.pdf.*

Does the current practice of bringing to the Commission's attention media reports and publicly available information filed with the Commission or other governmental entities comport with Directive 6 with respect to the permissible sources of information the Commission may consider in its RTB determination? Does Directive 6 itself properly set forth the scope of information the Commission may consider in its RTB determination pursuant to the statute and regulations? Are there other sources of information that the Commission needs or should consider in its normal course during the pre-RTB stage, beyond those in Directive 6?

At the RTB stage, OGC's recommendations may take into account the types of information referred to in Directive 6. Should the reliance on this type of information in the Directive 6 context—that is, internally generated matters—inform OGC's recommendations in complaint-generated matters? Should OGC use relevant publicly available information to support its recommendations, or do the statute, regulations, Directive 6, or other Commission procedures or policies require such information to form the basis of a separate (or complementary) internally generated matter? What benefits and drawbacks would result from generating an additional enforcement matter beyond the complaint-generated matter compared with relying on such information in assessing the complaint? Under the Commission's recently formalized procedures discussed above, should respondents continue to be informed of, and given the opportunity to respond to, relevant publicly available information that OGC may use to support its RTB recommendations? *See* Agency Procedure for Notice to Respondents in Non-Complaint Generated Matters, 74 FR 38617 (Aug. 4, 2009). Should OGC's recently implemented informal policy of doing so be formalized by the Commission?

C. Specific Proposals

In light of the issues discussed above, the Commission seeks comment on several approaches the agency could take with respect to OGC's pre-RTB process, as well as any approach not set forth below.

1. Approaches To Use of Factual Information Beyond Complaint

The Commission could maintain its current approach as reflected in Directive 6 and the *Policy Statement on the Initial Stages of Enforcement.* What are the advantages and disadvantages to this current practice?

Another approach the Commission could consider is to discontinue its current practice of taking into consideration in its RTB determination any relevant publicly available information that is not specifically included in complaints and responses. Assuming that Directive 6 is consistent with the Act and Commission regulations, and notwithstanding that it currently applies only to internally generated matters, should the Directive limit OGC's use of publicly available information not included in complaints and responses? For example, Directive 6 states that non-routine reviews of reports or other documents (''reports and other documents'' is not defined) available to the Commission require ''specific prior approval of the Commission.'' Moreover, even with Commission authorization, such reviews are appropriate only for a ''particular category of candidates or other reporting entities or a review of a category of reports for specific types of information.'' In other words, should Commission-authorized reviews of reports or other documents outside the scope of complaints be generalized and not be used to supplement particular complaints?

Additionally, Directive 6 states that news articles and other similar published accounts may constitute the source of internally generated MURs, depending on such factors as the ''particularity with which the alleged violations are set out in the article'' and ''supported by in-house documents.'' Unlike reviews of internal Commission reports and documents, Directive 6 does not address whether news articles and similar materials may be used to supplement existing complaints because the Directive primarily addresses internally generated matters. The Commission requests comment on whether these aspects of Directive 6 suggest that the Commission should refrain from considering relevant public information that is not specifically set forth in complaints and responses. How should Directive 6 be amended to achieve greater efficiency and fairness? What if the Commission uncovers facts that are exculpatory and undercut the allegations? Should the Commission ignore all relevant public information regardless of whether it is inculpatory or exculpatory? If the Commission may institute enforcement actions based on reviews of news media, are there other constraints on which articles or allegations can give rise to enforcement actions? For example, would unsourced or anonymous allegations constitute a ''complaint of a person whose identity is not disclosed,'' which would preclude the Commission from taking

[5] The regulations do specify that, prior to taking action against any person who has failed to file certain disclosure reports, the Commission shall notify that person. *See* 11 CFR 111.8(c).

action on those allegations? *See* 2 U.S.C. 437g(a)(1).

Assuming, under either approach, that the Commission maintains its practice of using news articles as a basis for internally generated enforcement matters, the Commission seeks comment on whether separate internally generated matters should be initiated on the basis of information outside a complaint that OGC gathers during the pre-RTB process, whereupon a separate notification letter would be sent to respondents setting forth the additional information as well as legal theories that OGC is considering. Should OGC be required to receive specific prior approval of the Commission in order to take into consideration relevant public information outside a complaint during the pre-RTB process? Should Directive 6 be modified to provide OGC with authority to consider relevant publicly available information? The Commission requests comment on whether such an approach, if adopted, should be limited in the scope of the additional facts and legal theories that OGC may consider and ask respondents to address. In other words, should there be a requirement that such additional information and/or theories be closely related or pertinent to the original complaint?

2. Scope of Legal Theories Presented in Complaint

The Commission recognizes that complainants may not possess broad or detailed knowledge of the Act or regulations and that the regulations merely require a complaint to recite facts, whether on the basis personal knowledge or information and belief, that describe a violation of law under the Commission's jurisdiction (citations to the law and regulations are not necessary but helpful), similar to notice proceedings in civil litigation. Accordingly, the Commission seeks comment as to when legal theories supporting OGC's RTB recommendations should be considered violations alleged in the complaint or whether they are otherwise appropriate to use to support the recommendations. For example, if there is a secondary violation that flows from a set of facts alleged, but the complaint does not specifically allege that violation, should the Commission consider an RTB recommendation on the secondary violation (e.g., when the complaint alleges that a corporate contribution was made in the form of a coordinated advertisement, but the same facts also show that the cost of the ad was not disclosed as required by 2 U.S.C. 434 and did not contain a disclaimer as required by 2 U.S.C. 441d)? If not, should the Commission seek further input from a complainant to determine whether he or she intended to allege a potential secondary violation based on the facts presented in the complaint? Under what circumstances should the Commission consider seeking further input from complainants?

Alternatively, the Commission could retain its existing approach of integrating relevant publicly available information and/or additional legal theories not specifically included in complaints and responses into existing complaint-generated matters. However, the Commission is considering whether and under what circumstances to apprise respondents of such information or theories. One such approach was discussed, but not voted on (and remains pending before the Commission), at the open meeting of December 1, 2011. *See* ''Agency Procedure for Notice to Named Respondents in Enforcement Matters of Additional Material Facts and/or Additional Potential Violations,'' dated November 10, 2011, *available at http://www.fec.gov/agenda/2011/mtgdoc_1165.pdf.* Under that proposal, a respondent would be given written notice by OGC in the event that OGC intends to include in its RTB recommendation to the Commission (1) any additional facts or information known to OGC and not created by or controlled by the respondent, which are deemed to be material to the RTB recommendation, and (2) any potential violation of the Act and/or the regulations that may not have been specifically alleged in the complaint or included in the referral notification, and the facts and arguments supporting the RTB recommendation on the additional potential violation. The proposal specified that, within 10 days from receipt of the OGC notice, the respondent may submit a written statement demonstrating why the Commission should take no action based on the additional material facts or with regard to any potential violation. *See id.*

The Commission requests comment on the merits of the above-mentioned approaches, as well as any others, including whether they are consistent with the enforcement process set forth in the Act and regulations, and which if any should be adopted.

V. Civil Penalties and Other Remedies

A. Background

After the Commission finds RTB, conducts an investigation, and finds probable cause to believe that a respondent has violated the Act and Commission regulations, the Act requires the Commission to attempt to enter into a conciliation agreement with respondents. 2 U.S.C. 437g(a)(4). This conciliation agreement may include a requirement that the respondent pay a civil penalty. 2 U.S.C. 437g(a)(5). Conciliation agreements may require respondents to pay civil penalties in the following amounts:

- For violations that are not knowing and willful, a penalty not to exceed the greater of $7,500 or an amount equal to any contribution or expenditure involved in the violation;
- For violations that are knowing and willful, a penalty not to exceed the greater of $16,000 or an amount equal to 200 percent of any contribution or expenditure involved in the violation;
- For knowing and willful violations of 2 U.S.C. 441f (contributions made in the name of another), a penalty not less than 300 percent of the amount involved in the violation and not more than the greater of $60,000 or 1,000 percent of the amount involved in the violation.

2 U.S.C. 437g(a)(5)(A) and (B). The dollar amounts set forth above are indexed for inflation. *See* 28 U.S.C. 2461; *see also* 11 CFR 111.24.

Although the Commission is not required to enter into settlement negotiations unless and until it makes a finding of probable cause, as a matter of practice, when appropriate, the Commission attempts to settle matters with respondents prior to such a finding (''pre-probable cause conciliation''). 11 CFR 111.18(d). In most cases the Commission will have already made an RTB finding; however, it may also enter into mutually acceptable ''fast-track'' settlements prior to any finding for persons who file complete *sua sponte* submissions and fully cooperate with the Commission, as described in the Commission's Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 FR 16695 (Apr. 5, 2007), also available at *http://www.fec.gov/law/cfr/ej_compilation/2007/notice_2007-8.pdf.* The Commission generally will propose civil penalties at the pre-probable cause stage based on the same schedule set forth in the Act, as well the Commission's own precedents (explained more fully below), with the exception that the Commission generally will offer a 25 percent pre-probable cause ''discount'' to incentivize early settlement.

The Commission recently has announced that it is providing to respondents, in writing, the method used to determine the Commission's

opening settlement offers at the conciliation stage of certain enforcement matters. *See* News Release, Jan. 12, 2012, available at *http://www.fec.gov/press/press2012/20120112openmeeting.shtml.* Should discussions of how opening settlement offers are calculated be included in enforcement documents made public at the close of a matter, or should such calculations be redacted pursuant to the provisions of 2 U.S.C. 437g(a)(4)(B)(i)? Would it be fair for all who are subject to enforcement proceedings before the Commission to know how the Commission has dealt with penalties as to those similarly situated?

As discussed above, the Commission recently made available to the public several internal documents relating to the enforcement process, including a chart entitled, ''Calculating Opening Settlement Offers for Non-Knowing and Willful Violations'' available at *http://www.fec.gov/pdf/Additional_Enforcement_Materials.pdf.* This chart is a compilation of the base formulas that have been used by the Commission to calculate opening settlement offers in prior enforcement MURs. OGC created the chart to ensure that its recommendations regarding civil penalty amounts were consistent with the Commission's previous decisions regarding opening settlement offers. Depending on the circumstances of the matter (including aggravating and mitigating factors), OGC has recommended, and the Commission has authorized, penalties either higher or lower than those set forth in the chart. The information in the chart reflects opening settlement offers and not amounts that result after negotiations with a respondent. Moreover, this chart reflects past practice and does not necessarily reflect the most current practice at the Commission, given that the Commission may use its discretion to apply a new base formula for a particular violation. Final Conciliation Agreements approved by the Commission, which are the product of negotiations between OGC staff and respondents that result in mutually acceptable settlements, may contain civil penalties that are lower than the Commission's opening offers. The Commission makes final settlement amounts public by placing approved Conciliation Agreements on its Web site.

As set forth in the released chart, OGC generally recommends that the Commission approve agreements with opening offers based on formulas previously approved by the Commission. The civil penalty information below has been compiled from the above-described chart (superseded violations are omitted; knowing and willful violations generally result in a multiplier being added to the following penalties):

- Violations of 2 U.S.C. 432(b)(2) (collecting agent's failure to timely forward contributions)—20 percent of the amount of the contributions at issue.
- Violations of U.S.C. 432(b)(3) (commingling of campaign funds)—no standard practice.
- Violations of 2 U.S.C. 432(c)(5) (recordkeeping)—base statutory penalty when part of more significant reporting violations.
- Violations of 2 U.S.C. 432(d) (preservation of records)—no separate penalty for violations arising out of same transactions.
- Violations of 2 U.S.C. 432(e)(1) (late filing of statement of candidacy)—$500.
- Violations of 2 U.S.C. 432(h)(1) (campaign depositories)—no standard practice.
- Violations of 2 U.S.C. 432(h)(2) (excess cash disbursements)—no standard practice.
- Violations of 2 U.S.C. 433 (late or non-filing of statements of organization)—$500 for authorized committees when violation arises in context of late statement of candidacy; $0 for unauthorized committees that are found to be political committees, plus applicable penalty for failure to file reports.
- Violations of 2 U.S.C. 434(a) (failure to file/timely file reports)—administrative fines plus 25 percent; pre-probable cause discount does not apply.
- Violations of 2 U.S.C. 434(b) (failure to report or properly report transactions)—the greater of 15 or 20 percent of the amount at issue, or the base statutory penalty, with a maximum cap of $250,000; with respect to taking the gross or net amount for misstatements of financial activity, the Commission has used both approaches. (For knowing and willful reporting violations, the penalty is the greater of $11,000 or 200 percent of the amount in violation.) For reporting errors resulting from misappropriation of committee funds, the Commission generally has used administrative fines plus 25 percent, but has not penalized committees that can show they had all of the internal controls set forth in the Commission's 2007 safe harbor (72 FR 16695 (Apr. 5, 2007)). For self-reported increased activity cases, the Commission also generally has applied administrative fines plus 25 percent, with no pre-probable cause discount, in accordance with a policy adopted by the Commission in executive session on March 16, 2007. (The policy may be found at page 224 of the PDF file available at *http://www.fec.gov/pdf/Additional_Enforcement_Materials.pdf.*)
- Violations of 2 U.S.C. 434(c) (failure to file 24-hour independent expenditure reports)/434(g) (failure to file 48-hour independent expenditure reports)—administrative fines plus 25 percent, with no pre-probable cause discount.
- Violations of 2 U.S.C. 438(A)(4) (prohibition on sale and use of contributor information)—no standard practice.
- Violations of 2 U.S.C. 439a(b) (personal use of campaign funds)—100% of amount in violation.
- Violations of 2 U.S.C. 441a(a)(1) and (2) (making excessive contributions)—50 percent of excessive amount when not refunded; 25 percent of excessive amount when refunded.
- Violations of 2 U.S.C. 441a(a)(3) (making contributions in excess of annual/biennial limits)—100% of excessive amount.
- Violations of 2 U.S.C. 441a(f) (receipt of excessive contributions)—50 percent of excessive amount when not refunded or not cured by redesignation/reattribution; 25 percent of excessive amount when refunded or cured by redesignation/reattribution. (In several recent matters, the Commission's practice may have been to apply a 20 percent penalty for excessive contributions cured by redesignation/reattribution.)
- Violations of 2 U.S.C. 441b (making and accepting prohibited corporate contributions)—50 percent of contribution when not refunded; 25 percent when refunded. An additional base statutory penalty is added if the contributor is a government contractor (2 U.S.C. 441c).
- Violations of 2 U.S.C. 441b/114.2(f) (corporate facilitation)—100 percent of amount of facilitated contributions for facilitator; 50 percent of unrefunded facilitated contributions for recipient.
- Violations of 2 U.S.C. 441d(a) (missing disclaimer)—20 percent of cost of communication or $5,500 if cost is unavailable.
- Violations of 2 U.S.C. 441d(c) (incomplete disclaimer)—10 percent of cost of communication or $2,750 if cost is unavailable.
- Violations of 2 U.S.C. 441d(d) (''stand by your ad'' disclaimer)—25 percent of cost of communication.
- Violations of 2 U.S.C. 441e (foreign national contributions)—100 percent of contribution amount.
- Violations of 2 U.S.C. 441e (contributions in the name of another)—the greater of 100 percent of

contribution amount or base statutory penalty.

- Violations of 2 U.S.C. 441h (fraudulent misrepresentation of campaign authority)—no standard practice.
- Violations of 2 U.S.C. 441i(e)(1)(A) (Federal candidates soliciting, accepting, directing, transferring, or spending non-Federal funds)—no standard practice.

In addition, particularly in the context of reporting violations, OGC has recommended the following mitigating factors in some cases:

- Respondent cooperates in rectifying the violations.
- Inaccurate or incomplete reports were amended after the complaint or referral but before RTB.
- The matter was a *sua sponte* submission.
- Missing information from a report was disclosed nevertheless in another report before the election.
- Respondent lacks knowledge of Commission rules and procedures.

OGC also has recommended the following aggravating factors:

- Respondent previously entered into a conciliation agreement or was reminded or cautioned of the same or similar violations.
- A reporting error or omission was made on an election-sensitive report.

B. Comments Sought

1. Penalty Formulas

The Act speaks of a penalty ''amount equal to any contribution or expenditure involved in the violation.'' 2 U.S.C. 437g(a)(5)(A). In the context of knowing and willful violations of 2 U.S.C. 441f, the Act more generally refers to ''the amount involved in the violation.'' 2 U.S.C. 437g(a)(5)(B). Based on the Act, the Commission frequently uses the concept of ''amount in violation'' (''AIV'') in determining penalties. For example, for a misreporting violation, the Commission may consider the AIV to be the amount of financial activity not reported or misreported, and derive a penalty based on the AIV. The Commission seeks comment on whether the use of AIV is proper and/or consistent with the Act. Are there any violations for which AIV is not appropriate? What is the appropriate determination of AIV (*e.g.,* is the cost of a communication or the breadth of distribution an appropriate measure of AIV in the context of a disclaimer or reporting violation)?

Although the Commission has made variations of civil penalty calculations public, both through release of OGC's compiled civil penalty chart and through letters accompanying conciliation agreements, should the Commission continue to make public ongoing developments regarding civil penalties? If so, in what form should the Commission release this information: in a chart, through individual letters, or in some other manner? Would it be preferable for the Commission to adopt a chart—or guidelines—binding on itself and its staff? Finally, the Commission requests comments on any and all of the specific penalty formulas referenced above. Are the penalties appropriate for the violations?

2. Disgorgement

The Commission also requests comment on its practice of seeking disgorgement in addition to penalties for certain violations.

Disgorgement is a form of equitable relief that seeks to deprive a wrongdoer of unjust enrichment. *SEC* v. *First Financial Corp.,* 890 F.2d 1215, 1231 (D.C. Cir. 1989). The Act authorizes the Commission to seek equitable relief in court if it is unable to correct or prevent a violation of the Act. 2 U.S.C. 437g(a)(6); *FEC* v. *Christian Coalition,* 965 F. Supp. 66, 70–72 (D.D.C. 1997). Beyond its power to seek equitable relief in court, the Commission is required to ''attempt * * * to correct or prevent such violation by informal methods of conference, conciliation, and persuasion * * *'' 2 U.S.C. 437g(a)(4)(A). Thus, disgorgements required through the enforcement process may be viewed both as a derivative of the Commission's authority to seek equitable relief in court and as a means of ''correcting or preventing'' violations under the Act.

In the context of Commission enforcement actions, when the Commission determines that a committee has accepted or received a prohibited contribution in violation of the Act, the Commission has asked the committee to disgorge the contribution to the U.S. Treasury once the committee learns the contribution was improper, in addition to paying a civil penalty based on a percentage of the amount of the prohibited contribution. In the context of excessive contributions, the Commission occasionally also has offered the committee that received the excessive contribution the option to refund the excessive amount or to disgorge it to the U.S. Treasury, in addition to paying a civil penalty based on a percentage of the excessive amount. However, in matters involving the receipt of prohibited or excessive contributions made in the name of another, *see* 2 U.S.C. 441f, the Commission generally does not make findings against recipient committees when they have not had knowledge of the true source of funds.

Typically, the Commission's proposed conciliation agreements for respondents who made an impermissible contribution require the respondent to waive its right to a refund and request the recipient committee to disgorge the amount of the contribution to the U.S. Treasury.[6] If the recipient committee were allowed to keep a prohibited or excessive contribution, then the Commission would, in essence, be permitting the committee to use impermissible funds to influence elections. Also, since the civil penalty will generally be a lower figure than the amount of impermissible funds, a committee that has violated the Act could effectively use those funds to pay the penalty.

In *Fireman* v. *U.S.,* 44 Fed. Cl. 528 (1999), the plaintiff was prosecuted and pled guilty to making contributions in the names of others and making excessive contributions to two federal candidate committees, served a criminal sentence, and paid a $5 million fine. In addition, the Commission directed the candidate committees that accepted the excessive contributions to disgorge the $69,000 excessive amount of the plaintiff's contributions. *Id.* at 530. The plaintiff sought to recover the $69,000 amount under the theory of illegal exaction. *Id.* at 534. In ruling on the government's motion to dismiss for failure to state a claim under Federal Rules of Civil Procedure Rule 12(b)(6), the Court of Federal Claims held that the plaintiff had stated a proper cause of action. *Id.* at 538. Solely for the purpose of settling the action, the government and the plaintiff subsequently entered into a settlement whereby the government agreed to return the $69,000 to the plaintiff. *See Fireman* v. *U.S., available at http://www.fec.gov/law/litigation_CCA_F.shtml#fireman.*

In light of the *Fireman* litigation, is the Commission's practice of seeking disgorgement of prohibited or excessive contributions proper? Should it make a difference if the Commission asks the source of the excessive or prohibited

[6] In these contexts, the Commission has sought disgorgement when it has received a waiver from the contributor. Statement of Policy Regarding Self-Reporting of Campaign Finance Violations (Sua Sponte Submissions), 72 FR 16695, 16697 (Apr. 5, 2007) (assessing sufficiency of *sua sponte* submission based on, *inter alia,* ''whether an organization or individual respondent waived its claim to refunds of excessive or prohibited contributions and instructed recipients to disgorge such funds to the [United States] Treasury'') (basing reduction of civil penalty on ''[a]ny appropriate refunds, transfers, and disgorgements'' as a basis for assessing compliance with *sua sponte* policy).

contribution to voluntarily waive its right to any refund? Is it appropriate for the Commission, when negotiating with the source of the impermissible contribution, to enter into an agreement that requires the source to voluntarily waive its right to a refund and to notify all recipient committees of its waiver? Should the recipient committees instead be directed to return the impermissible contribution to the original source? Should disgorgement be considered an ''equitable remedy'' as opposed to a fine or penalty, and therefore not limited by the general five-year statute of limitations at 28 U.S.C. 2462, which by its terms applies only to civil fines, penalties and forfeitures? Does the pronouncement in *FEC* v. *Christian Coalition,* 965 F. Supp. at 71, that 28 U.S.C. 2462 ''provides no such shield from declaratory or injunctive relief'' apply to disgorgement?

3. Penalty Schedule

The Commission also seeks comment on whether reliance on a penalty schedule would be appropriate, particularly in light of the courts' admonitions that ''[t]he statutory language 'makes clear [that] [t]he assessment of civil penalties is discretionary.''' *FEC* v. *Kalogianis,* 2007 WL 4247795 at *6 (M.D. Fla. 2007) (quoting *FEC* v. *Friends of Jane Harman,* 59 F. Supp. 2d 1046, 1058 (C.D. Cal. 1999)); *see also FEC* v. *Ted Haley Cong. Comm.,* 852 F.2d 1111, 1116 (9th Cir. 1988) (''A court's discretion on civil penalties is reviewed under an abuse of discretion standard.''). In order to ensure consistency, should a penalty chart be viewed as a standard from which deviations must be justified? Would the penalty chart outlined above provide the Commission sufficient discretion to consider the particulars of a violation? Would the use of the chart result in unfair treatment of respondents, particularly novice and unsophisticated actors? Are the mitigating and aggravating factors set forth in OGC's internal guidance appropriate? Should other factors, such as whether the candidate won or lost the election (or dropped out of the race), the margin of victory or defeat, intent to run again in the future, or campaign resources, be considered? Could consistency be maintained through an alternative approach to penalty calculation, or are the current opening offer formulas needed to maintain consistency? Are other options available under the Act?

Should the Commission not accept civil penalties less than a certain percentage of the amount in violation, to ensure that penalties exceed the ''cost of doing business'' for the particular respondent involved? *See, e.g.,* MUR 5440 (The Media Fund) (civil penalty approximately 1% of amount in violation of over $55 million). Do low civil penalties in Commission settlements, which are generally made public at the close of a matter long after the election at issue is over, erode compliance incentives and encourage potential violators to ignore the Act and Commission regulations?

The total civil penalties in OGC enforcement matters has decreased substantially over the past several fiscal years, as follows: $5,563,069 in 2006; $4,038,478 in 2007; $2,385,043 in 2008 (the Commission lacked a quorum for approximately 6 months in 2008 and was thus unable to take actions such as accepting settlements and closing enforcement cases); $807,100 in 2009; $672,200 in 2010; and $527,125 in 2011. *See http://www.fec.gov/press/press2011/FEC_Joint_Statement-Nov3.pdf* at 11; *http://www.fec.gov/em/enfpro/enforcestatsfy03-08.pdf; http://www.fec.gov/em/enfpro/enforcestatsfy09-10.pdf.* Should the Commission be concerned about the downward trend in the collection of civil penalties, or can the decrease be explained by factors other than the Commission's enforcement decisions (*e.g.,* court cases striking down portions of the Act and regulations; increased use of Alternative Dispute Resolution)?

In the context of penalties sought by the Commission in litigation pursuant to 2 U.S.C. 437g(a)(6) due to unsuccessful attempts at conciliation, the courts have set forth the following factors for determining the appropriate penalty: (1) The good or bad faith of the respondents; (2) the injury to the public; (3) the respondent's ability to pay; and (4) the necessity of vindicating the authority of the responsible federal agency. *FEC* v. *Furgatch,* 869 F.2d 1256 (9th Cir. 1989) (affirming a $25,000 penalty sought by the Commission); *FEC* v. *Kalogianis,* 2007 WL 4247795 (M.D. Fla. 2007) (reducing a nearly $300,000 penalty sought by the Commission to $7,000); and *FEC* v. *Harman,* 59 F. Supp. 2d 1046 (C.D. Cal. 1999) (holding that payment of a penalty and disgorgement were not required due to technical nature of violations).

Additionally, the courts have cited defendant's state of mind when committing the violation. *Kalogianis,* 2007 WL 4247795 at *6; *Harmon,* 59 F. Supp. 2d at 1058. Does the penalty chart in its current form provide for sufficient consideration of these factors? Should these factors, set forth by the courts in the context of enforcement matters that have proceeded to litigation, also be applied to the Commission's probable cause conciliation process under 2 U.S.C. 437g(a)(5), as well as the Commission's practice of seeking pre-probable cause conciliation? Would the Commission be better served by replacing the current penalty chart with an approach that begins at a baseline of zero and builds up to an appropriate penalty based on the factors identified by the courts? Alternatively, instead of using penalty formulas that, as reflected in the current schedule, may be substantially lower than the statutory penalties, should the Commission start with the penalties set forth at 2 U.S.C. 437g(a)(5) and work downward based on mitigating factors? Also, should the Commission continue its current policy of offering a 25% pre-probable cause discount to the calculated penalty? Does a 25% discount appropriately incentivize early settlement or would respondents be sufficiently motivated to settle at the RTB stage with a lesser or no discount?

VI. Alternative Dispute Resolution

A. Background

The Commission established the Alternative Dispute Resolution Office (''ADRO'') in October 2000 as authorized by the Administrative Dispute Resolution Act of 1996, 5 U.S.C. 571–584, which required Federal agencies take steps to promote the use of ADR. The Commission's ADR program was designed to enhance compliance by encouraging settlements outside the agency's regular enforcement context. By expanding the tools for resolving complaints and internal referrals, the program was aimed at improving the Commission's ability to process complaints and resolving matters more rapidly using fewer resources. Other benefits include saving costs and time for respondents whose cases are processed by ADRO. Respondents are afforded the opportunity to settle cases before the Commission makes any finding of a violation, providing an attractive incentive to engage in good faith negotiations with ADRO. The Commission has included a comprehensive description of its ADR program on the Web site. See *http://www.fec.gov/em/adr.shtml.*

Although the Commission received several comments on the ADR program during its 2009 enforcement hearing, no substantive changes have been made to the program since that time. *See* Agency Procedures Recommendations, available at *http://www.fec.gov/law/policy/enforcement/2009/recommendationsummary.pdf.* For

example, a recommendation to set guidelines for negotiating penalties and other remedial measures has yet to be considered by the Commission. *See id.* at 2. Accordingly, the Commission believes it may be beneficial to revisit certain of those issues and to address other relevant ADR topics.

B. Proposals and Issues To Consider

1. Commission Approval or Rejection of ADR Settlements

From the time the ADR program was implemented in 2000, the Commission's only options when reviewing ADR settlements have been either to (1) accept the agreement without revisions or (2) reject the agreement in its entirety and dismiss the matter. This policy has the advantage of giving ADRO wide latitude to fashion agreements without Commission involvement—thereby speeding up the process—while providing respondents with a unique incentive by assuring that any agreement they sign will represent the end of the case (respondents may be more likely to use the ADR program if they can be confident their settlements are not subject to renegotiation). The obvious disadvantage is that Commission is boxed in; since it cannot direct ADR to renegotiate an agreement it finds unpalatable, its role as final agency arbiter is arguably undermined. Also, a respondent may be unduly benefited if, for example, an agreement with a stiff penalty is dismissed because the Commission does not like certain language contained therein.

The Commission seeks comment on its ''accept or dismiss'' policy to determine whether the advantages outweigh the disadvantages and how the policy might be revised to strike a more appropriate balance. For example, the Commission could simply vote on whether to instruct ADRO to renegotiate problematic aspects of a settlement upon the motion of one Commissioner. If a more narrowly tailored approach is deemed preferable, ADRO could inform respondents at the start of higher priority ADR matters (*e.g.,* where the amount in violation appears to be above a particular amount) that the Commission reserves the right to direct ADRO to renegotiate any ADR settlement brought before it.

2. Civil Penalties

Similar to the civil penalty issues raised above concerning the traditional enforcement process, the Commission seeks comment on the penalty scheme used by ADRO so the Commission can better evaluate the program's effectiveness. The main objective should be to achieve a balance so that penalties are sufficiently low for respondents to prefer participating in the ADR program rather than being subject to OGC processing, yet high enough to deter future violations and promote compliance. The Commission recognizes that ADR tends to focus more on non-monetary ''behavioral'' remedies in its settlements and may offer a wider array of settlement options to respondents than does OGC (*e.g.,* attendance at a Commission-sponsored workshop), but the importance of securing civil penalties to modify behavior should not be understated, even in cases where the amounts in violation are comparatively low. Although respondents may be quick to make counteroffers with very small and often no penalties, the Commission is not necessarily served well by accepting such offers. In order for terms of settlement to serve as meaningful deterrents, the penalty should at least exceed the ''cost of doing business'' for the particular respondent involved. There still may be sound reasons why ADR settlements often contain no or minimal penalty amounts, but perhaps there should be a fuller airing of the reasons for accepting such terms so that the Commission can determine whether the proper balance of program objectives is being achieved and maintained.

As it has recently done with OGC's civil penalty calculations as discussed above, the Commission is considering whether to apprise respondents of its ''opening offer settlement'' formulas for the typical violations it encounters. ADRO currently employs a penalty formula scheme resembling a scaled-back version of the formulas used by OGC. After a respondent agrees in writing to ''buy in'' to the ADR process, ADRO generally communicates an opening offer by telephone (in contrast with OGC-drafted written agreements containing opening offers approved by the Commission) and negotiates terms to include in a written settlement. Although the ADR program was set up to operate without extensive Commission involvement—thus promoting faster resolution of cases—it may nevertheless be in the Commission's interest for ADRO to inform it of the parameters for negotiation before it begins settlement negotiations. Currently, both the opening and negotiated figures are simultaneously presented to the Commission along with an agreement already signed by the respondent; the Commission does not have any prior opportunity to review the opening offer as it does with OGC reports recommending conciliation. The Commission could consider having ADRO provide a proposed penalty amount in its assignment memorandum to the Commission, since the amount in violation is generally clear at that time. The memoranda could be circulated on a no-objection basis to maintain efficiency (it is currently circulated on an informational basis). The Commission recognizes that including such information may increase the likelihood of Commission objections and thus slow down the ADR process; accordingly, the Commission seeks comment on how to maintain adequate oversight of ADRO's civil penalty regime.

VII. Other Issues

The Commission welcomes comments on other issues relevant to these enforcement policies and procedures, including any comments concerning how the FEC might increase the fairness, transparency, efficiency and effectiveness of the Commission.

Dated: January 11, 2013.

On behalf of the Commission.

Donald F. McGahn II,

Vice Chairman, Federal Election Commission.

[FR Doc. 2013–00959 Filed 1–17–13; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0018; Directorate Identifier 2010–SW–060–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter Deutschland GmbH (Eurocopter) Model MBB–BK 117 C–2 helicopters. This proposed AD would require determining if a certain serial-numbered bevel gear is installed in the tailrotor intermediate gear box (IGB). If such a bevel gear is installed in the IGB, this AD would require recording the bevel gear's reduced life limit in the Airworthiness Limitations section of the maintenance manual and on the component history card or equivalent IGB record. If the bevel gear's life limit has been reached or exceeded, this AD

would require, before further flight, replacing the bevel gear with an airworthy bevel gear. This proposed AD is prompted by the discovery that the tooth foot fillets in certain bevel gears fell below the minimum dimensions required in the design documents to ensure safe functioning of the bevel gear until reaching its approved life limit. The proposed actions are intended to prevent failure of a bevel gear before reaching its currently approved life limit, failure of the IGB, and subsequent loss of helicopter control.

DATES: We must receive comments on this proposed AD by March 19, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

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

For service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.eurocopter.com/techpub.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD No. 2010–0096, dated May 25, 2010, to correct an unsafe condition for Eurocopter Model MBB–BK 117 C–2 helicopters. EASA advises that during a recent review of the production documents for the bevel gears of the IGB, it was discovered that certain production batch numbers have tooth foot fillets below the required minimum values that would ensure the approved life limits for this part.

FAA's Determination

These helicopters have been approved by the aviation authority of Germany and are approved for operation in the United States. Pursuant to our bilateral agreement with Germany, EASA, its technical representative, has notified us of the unsafe condition described in its AD. We are proposing this AD because we evaluated all known relevant information and determined that an unsafe condition is likely to exist or develop on other products of the same type design.

Related Service Information

Eurocopter has issued Alert Service Bulletin No. MBB BK117 C–2–04A–005, Revision 2, dated April 28, 2010 (ASB). The ASB specifies determining whether certain serial-numbered bevel gears are installed in the IGB. The ASB specifies recording the reduced life limit for each affected bevel gear on the log card of the IGB and on the list of life-limited parts. If a bevel gear has one of the serial numbers listed in Table 1 of the ASB, the ASB specifies filling out a reply form and copying and sending it to Eurocopter. The ASB also specifies sending the IGB to a certified overhaul facility for replacing the bevel gear if it has reached or exceeded its life limit. EASA classified this ASB as mandatory and issued AD No. 2010–0096, dated May 25, 2010, to ensure the continued airworthiness of these helicopters.

Proposed AD Requirements

This proposed AD would require, within 30 days after the effective date of this AD:

- Determining if a certain part-numbered and serial-numbered bevel gear is installed in the IGB, and recording the reduced life limit of the bevel gear on the component history card or equivalent record of the IGB.
- If the bevel gear life limit has been reached or is exceeded, before further flight, replacing the bevel gear with an airworthy bevel gear.
- Revising the Airworthiness Limitations section of the maintenance manual by reducing the retirement life for each IGB bevel gear, part number (P/N) 4639 310 065, having a serial number listed in Table 1 of the ASB, to the life limit listed in Table 1 of the ASB.

Differences Between This Proposed AD and the EASA AD

This proposed AD does not require sending a copy of the form in the ASB to the manufacturer. This proposed AD does not require sending the IGB to an overhaul facility. Also, this proposed AD does not specify a single ferry flight not to exceed 20 hours time-in-service to a maintenance facility if the bevel gear has exceeded the reduced life limit.

Costs of Compliance

We estimate that this proposed AD would affect 107 helicopters of U.S. registry and that the labor rate would average $85 per work-hour. We also estimate that it would take about a half hour to determine whether the IGB is affected and to enter the reduced life limit on the component history card or the equivalent record and to revise the Airworthiness Limitations section of the maintenance manual. Based on these figures, we estimate that the cost per helicopter would total about $43, about $4,601 for the U.S. fleet.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed, I certify this proposed regulation:

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

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

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Eurocopter Deutschland GmbH Helicopters: Docket No. FAA–2013–0018; Directorate Identifier 2010–SW–060–AD.

(a) Applicability

This AD applies to Model MBB–BK 117 C–2 helicopters with a bevel gear, part number (P/N) 4639 310 065, installed in the tail rotor intermediate gear box (IGB), P/N 4639 002 007, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a bevel gear, failure of the tail rotor IGB, and subsequent loss of control of the helicopter.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(d) Required Actions

Within 30 days, do the following:

(1) Determine if a bevel gear with a serial number (S/N) listed in Table 1 of Eurocopter Alert Service Bulletin MBB BK117 C–2–04A–005, Revision 2, dated April 28, 2010 (ASB), is installed in the IGB.

(i) If a bevel gear listed in Table 1 of the ASB is installed in the IGB, record the reduced life limit of the bevel gear onto the component history card or equivalent record of the IGB.

(ii) If the bevel gear life limit has been reached or is exceeded, before further flight, replace the bevel gear with an airworthy bevel gear.

(2) Revise the Airworthiness Limitations section of the maintenance manual by reducing the retirement life for each IGB bevel gear, P/N 4639 310 065, that has a S/N listed in Table 1 of the ASB to the life limit corresponding to that S/N.

(e) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Chinh Vuong, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5110; email *chinh.vuong@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(f) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency AD 2010–0096, dated May 25, 2010.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 6520, Tail Rotor Gearbox.

Issued in Fort Worth, Texas, on January 9, 2013.

Kim Smith,

Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2013–01004 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0962; Directorate Identifier 2012–CE–033–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a Notice of Proposed Rulemaking (NPRM) that would have applied to certain Cessna Aircraft Company Models 172RG, R182, TR182, FR182, 210N, T210N, 210R, T210R, P210N, P210R, and T303 airplanes. The proposed airworthiness directive (AD) would have required you to inspect the aircraft's hydraulic power pack wiring for incorrect installation, and if needed, correct the installation. Since issuance of the NPRM, the FAA has re-evaluated this airworthiness concern and determined that an unsafe condition does not exist that would warrant AD action. This withdrawal does not prevent the FAA from initiating future rulemaking on this subject.

FOR FURTHER INFORMATION CONTACT: Richard Rejniak, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; phone: (316) 946–4128; fax: (316) 946–4107; email: *richard.rejniak@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a Notice of Proposed Rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on September 11, 2012 (77 FR

55770). That NPRM proposed to require you to inspect the aircraft's hydraulic power pack wiring for incorrect installation, and if needed, correct the installation.

Since issuance of the NPRM, in light of the comments received on the NPRM, the FAA re-evaluated the details that went into the determination of the unsafe condition for this concern. Based on new information discovered during the re-evaluation, we determined that:

- An unsafe condition warranting AD action does not exist; and
- The associated level of risk does not warrant AD action.

To further mitigate this concern from recurring, the FAA may take another airworthiness action such as a special airworthiness information bulletin (SAIB) to recommend the actions contained in the proposed rule and capture potential concerns identified by the public during the comment period.

Withdrawal of this NPRM constitutes only such action and does not preclude the agency from issuing future rulemaking on this issue, nor does it commit the agency to any course of action in the future.

Regulatory Findings

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

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

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket No. FAA–2012–0962, published in the **Federal Register** on September 11, 2012 (77 FR 55770), is withdrawn.

Issued in Kansas City, Missouri, on January 14, 2013.

James Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–01000 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 3, 22, 30 and 140

RIN 3038–AD88

Extension of Comment Period for the Rulemaking Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Extension of comment period.

SUMMARY: On November 14, 2012, the Commodity Futures Trading Commission (''Commission'') published in the **Federal Register** a notice of proposed rulemaking (the ''Customer Protection Proposal'') [1] to adopt new regulations and amend existing regulations to require enhanced customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for futures commission merchants (''FCMs''). The Customer Protection Proposal also addressed certain related issues concerning derivatives clearing organizations (''DCOs'') and chief compliance officers (''CCOs''). In order to provide interested parties with an additional opportunity to comment on the Customer Protection Proposal, the Commission is extending the comment period for the Customer Protection Proposal.

DATES: The comment period for the Customer Protection Proposal is extended until February 15, 2013.

ADDRESSES: You may submit comments, identified by RIN 3038–AD88, by any of the following methods:

- Agency Web site, via its Comments Online process at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site, and submit all comments through the ''submit comment'' link associated with this extension.
- *Mail:* Send to Natise Stowe, Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations, 17 CFR 145.9.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Division of Swap Dealer and Intermediary Oversight: Gary Barnett, Director, 202–418–5977, *gbarnett@cftc.gov;* Thomas Smith, Deputy Director, 202–418–5495, *tsmith@cftc.gov;* Ward P. Griffin, Associate Chief Counsel, 202–418–5425, *wgriffin@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; 202–418–5648; or Kevin Piccoli, Deputy Director, 646–746–9834, *kpiccoli@cftc.gov,* 140 Broadway, 19th Floor, New York, NY 10005.

Division of Clearing and Risk: Robert B. Wasserman, Chief Counsel, 202–418–5092, *rwasserman@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581. Office of the Chief Economist: Camden Nunery, Economist, *cnunery@cftc.gov,* 202–418–5723, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

The protection of customers—and the safeguarding of money, securities or

[1] *See* Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations, 77 FR 67866 (Nov. 14, 2012).

[2] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2012). Commission regulations are accessible on the Commission's Web site, *www.cftc.gov.*

other property deposited by customers with an FCM—is a fundamental component of the Commission's disclosure and financial responsibility framework. Section 4d(a)(2) [3] of the Commodity Exchange Act (''Act'') [4] requires each FCM to segregate from its own assets all money, securities and other property deposited by futures customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets. Section 4d(a)(2) further requires an FCM to treat and deal with futures customer funds as belonging to the futures customer, and prohibits an FCM from using the funds deposited by a futures customer to margin or extend credit to any person other than the futures customer that deposited the funds. Section 4d(f) of the Act, which was added by section 724(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act, requires, subject to certain exceptions, each FCM to segregate from its own assets all money, securities and other property deposited by Cleared Swaps Customers to margin transactions in Cleared Swaps.

The Commission issued the Customer Protection Proposal because market events had illustrated both the need to: (i) Require that care be taken about monitoring excess segregated and secured funds, and the conditions under and the extent to which such funds may be withdrawn; and (ii) place appropriate risk management controls around the other risks of the business to help relieve (A) the likelihood of an exigent event or, (B) if such an event occurs, the likelihood of a failure to prepare for such an event, which in either case could create pressures that might result in an inappropriate withdrawal of customer funds. Although the Commission stated that it believed that existing regulations provide an essential foundation to fostering a well-functioning marketplace, wherein customers are protected and institutional risks are minimized, it noted that recent events had demonstrated the need for additional measures to effectuate the fundamental purposes of the statutory provisions discussed above. Further, the Commission believed that, concurrently with the enhanced responsibilities for FCMs contained in the Customer Protection Proposal, the oversight and examination systems should be enhanced to mitigate risks and effectuate the statutory purposes.

[3] 7 U.S.C. 6d(a)(2).

[4] 7 U.S.C. 1 *et seq.*

II. Reopening and Extension of Comment Periods and Request for Comment

Subsequent to issuing the Customer Protection Proposal, the Commission has received a number of comments from interested parties requesting that the Commission extend the comment period for the proposal. Of particular note are the requests of the futures industry's self-regulatory organizations, which have requested an extension to the comment period to provide additional time for all interested parties to evaluate the costs and benefits of the Customer Protection Proposal, and to propose alternative measures to provide increased customer protection and enhanced monitoring of FCMs.

In light of the comments received, the Commission is extending the comment period of the Customer Protection Proposal to provide the public with an additional opportunity to comment on the proposal's provisions. Given the emphasis of the comments received thus far on the potential costs of the Customer Protection Proposal, the Commission specifically seeks comments providing quantitative information addressing the costs and benefits of the proposed rulemaking.

All comments that were received after the close of the originally established comment period of the Customer Protection Proposal will be treated as if they were received during the extended comment period and need not be resubmitted.

Issued in Washington, DC, this 11th day of January 2013, by the Commission.

Stacy D. Yochum,

Counsel to the Executive Director.

[FR Doc. 2013–00820 Filed 1–17–13; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 888

[Docket No. FDA–2011–N–0661]

Effective Date of Requirement for Premarket Approval for Two Class III Preamendments Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the following two class III preamendments devices: Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis; and hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis. The Agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements and the benefits to the public from the use of the devices. In addition, FDA is announcing the opportunity for interested persons to request that the Agency change the classification of any of the aforementioned devices based on new information. This action implements certain statutory requirements.

DATES: Submit either electronic or written comments on the proposed order by April 18, 2013. FDA intends that, if a final order based on this proposed order is issued, anyone who wishes to continue to market the device will need to file a PMA or a notice of completion of a PDP within 90 days of the publication of the final order. See section X of this document for the proposed effective date of a final order based on this proposed order.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0661, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *FAX:* 301–827–6870.
- *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2011–N–0661 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://*

www.regulations.gov and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michael Ryan, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, Rm. 1615, Silver Spring, MD 20993–0002, 301–796–6283.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), among other amendments, establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807.

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification (510(k)) procedures to such a preamendments device or to a device within that type (both the preamendments and substantially equivalent devices are referred to as preamendments class III devices) may be marketed without submission of a PMA until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval. Section 515(b)(1) of the FD&C Act directs FDA to issue an order requiring premarket approval for a preamendments class III device.

On July 9, 2012, FDASIA was enacted. Section 608(b) of FDASIA (126 Stat. 1056) amended section 515(b) of the FD&C Act changing the process for requiring premarket approval for a preamendments class III device from rulemaking to an administrative order.

Section 515(b)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order requiring premarket approval for a preamendments class III device, the following must occur: Publication of a proposed order in the **Federal Register**; a meeting of a device classification panel described in section 513(b) of the FD&C Act; and consideration of comments from all affected stakeholders, including patients, payors, and providers. FDA has held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to metal/metal hip systems, and therefore, has met this requirement under section 515(b)(1) of the FD&C Act. As explained further in section IV of this document, a meeting of a device classification panel described in section 513(b) of the FD&C Act took place in 2001 to discuss whether metal/metal hip systems should be reclassified or remain in class III and the panel recommended that the devices remain in class III because there was insufficient information to establish special controls. FDA is not aware of new information that would provide a basis for a different recommendation or findings. Indeed, the additional information received since the 2001 panel meeting and discussed further in section IV of this document highlights the need to review these devices under a PMA and reinforces the recommendation and findings of the panel.

Section 515(b)(2) of the FD&C Act provides that a proposed order to require premarket approval shall contain: (1) The proposed order, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed order and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed order, consideration of any comments received, and a meeting of a device classification panel described in section 513(b) of the FD&C Act, issue a final order to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate

reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

A preamendments class III device may be commercially distributed without a PMA or a notice of completion of a PDP until 90 days after FDA issues a final order (a final rule issued under section 515(b) of the FD&C Act prior to the enactment of FDASIA is considered to be a final order for purposes of section 501(f) of the FD&C Act (21 U.S.C. 351(f))) requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. For metal/metal hip systems, the preamendments class III devices that are the subject of this proposal, the later of these two time periods is the 90-day period. Since these devices were classified in 1987, the 30-month period has expired (52 FR 33686 at 33706, September 4, 1987). Therefore, if the proposal to require premarket approval for metal/metal hip systems is finalized, section 501(f)(2)(B) of the FD&C Act requires that a PMA or a notice of completion of a PDP for such device be filed within 90 days of the date of issuance of the final order. If a PMA or notice of completion of a PDP is not filed for such device within 90 days after the issuance of a final order, the device would be deemed adulterated under section 501(f) of the FD&C Act.

Also, a preamendments device subject to the order process under section 515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final order requiring the filing of a PMA for the device. At that time, an IDE is required only if a PMA or notice of completion of a PDP has not been filed. If the manufacturer, importer, or other sponsor of the device submits an IDE application and FDA approves it, the device may be distributed for investigational use. If a PMA or notice of completion of a PDP is not filed by the later of the two dates, and the device is not distributed for investigational use under an IDE, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334) if its distribution continues. Other enforcement actions include, but are not limited to, the following: Shipment of devices in interstate commerce will be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA or notice of completion of a PDP has been filed and may determine that such a request is appropriate for the class III devices that are the subject of this proposed order, if finalized.

In accordance with section 515(b) of the FD&C Act, interested persons are being offered the opportunity to request reclassification of two types of metal/metal hip systems, the preamendments class III devices that are the subject of this proposal.

II. Dates New Requirements Apply

In accordance with section 515(b) of the FD&C Act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the Agency for two preamendments class III devices, hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis, and hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis, within 90 days after issuance of any final order based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III device during FDA's review of the PMA or notice of completion of the PDP provided that the PMA or notice of completion of the PDP is timely filed. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the FD&C Act, the Agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the Agency finds that ''the continued availability of the device is necessary for the public health.''

FDA intends that under § 812.2(d), the publication in the **Federal Register** of any final order based on this proposal will include a statement that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions from the requirements of the IDE regulations for preamendments class III devices in § 812.2(c)(1) and (c)(2) will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA or notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or notice of completion of a PDP for a class III device is not filed with FDA within 90 days after the date of issuance of any final order requiring premarket approval for the device, the device would be deemed adulterated under section 501(f) of the FD&C Act. The device may be distributed for investigational use only if the requirements of the IDE regulations are met. The requirements for significant risk devices include submitting an IDE application to FDA for review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued under § 812.30. FDA, therefore, recommends that IDE applications be submitted to FDA at least 30 days before the end of the 90-day period after the issuance of the final order to avoid interrupting any ongoing investigations.

III. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the FD&C Act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that these devices have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the devices.

These findings are based on the reports and recommendations of the advisory committee (panel) for the classification of these devices along with information submitted in response to the 515(i) Order (74 FR 16214, April 9, 2009), and any additional information that FDA has obtained. Additional information regarding the risks as well as classification associated with these device types can be found in the following proposed and final rules and notices published in the **Federal Register**: 47 FR 29052 (July 2, 1982), 52 FR 33686 (September 4, 1987), 54 FR 550 (January 6, 1989), 59 FR 23731 (May 6, 1994), and 67 FR 57024 (September 6, 2002).

IV. Devices Subject to This Proposal

A. Hip Joint Metal/Metal Semi-Constrained, With a Cemented Acetabular Component, Prosthesis (21 CFR 888.3320)

1. Identification

A hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis is a two-part device intended to be implanted to replace a hip joint. The device limits

translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral and an acetabular component, both made of alloys, such as cobalt-chromium-molybdenum. This generic type of device is limited to those prostheses intended for use with bone cement (21 CFR 888.3027).

2. Summary of Data

The 1982 Orthopedic Device Classification Panel (the 1982 Panel) recommended that while general controls alone were not sufficient, sufficient information existed to establish a performance standard to provide a reasonable assurance of safety and effectiveness for metal/metal hip systems. FDA disagreed with the 1982 Panel's recommendation and classified the devices as class III stating insufficient information existed to support the conclusion that performance standards or general controls will provide reasonable assurance of the safety and effectiveness of these devices.

On August 8, 2001, the Orthopaedic and Rehabilitation Devices Panel (the Panel) recommended five to two that the hip joint metal/metal semi-constrained prostheses (cemented and uncemented) not be reclassified from class III to class II. The Panel concluded the following:

- There was insufficient clinical and preclinical testing information to establish special controls.
- The length and rate of long-term patient followup data were inadequate to demonstrate that special controls would provide reasonable assurance of the safety and effectiveness of these devices.
- In terms of preclinical testing, the Panel also concluded that validation of wear simulation, non-ideal preclinical wear testing, and biological evaluation of metallic wear debris generated by the device were not established. The particle size of the metallic wear debris generated by these devices is substantially smaller than the particle size of the metallic wear debris generated by other hip joint prostheses and the short-and long-term biological effects from human retrievals or preclinical evaluation of these smaller size metallic wear particles are unknown.

FDA agreed with the Panel and believes the Panel's concerns are still relevant today. Current wear testing methods for metal/metal bearings are limited, and importantly can underestimate bearing wear by an order of magnitude compared to clinical outcomes. There are also no standardized wear methods or consensus among researchers for investigating joint micro-separation, dislocation, cup deformation, demanding gait activities and third-body abrasion. In addition, there is a lack of wear measurements from retrieved metal/metal bearings, so it is a challenge to correlate wear rates from modern devices to adverse events demonstrated clinically like pseudotumors. To complicate matters further, metal/metal bearings have shown unpredictable wear trends in simulator testing, which have not been explained. Therefore, it is a challenge to introduce sufficient special controls to mitigate the risks of modern metal/metal hip devices. The summary of information provided in response to FDA's order issued under sections 515(i) and 519 of the FD&C Act (21 U.S.C. 360e(i) and 360i) (refer to docket FDA–2009–M–0101) is not adequate to identify special controls sufficient to ensure safety and effectiveness and therefore not adequate to support reclassification of metal/metal hip systems.

Recent reports and evaluations further support that reclassification of metal/metal hip systems is not appropriate. The United Kingdom's (UK) Medicines and Healthcare Products Regulatory Agency (MHRA) published several alerts in 2010 outlining concerns associated with metal/metal hip systems, including soft tissue reactions (Ref. 1). The final report, published in October 2010, outlines that acetabular cup angle, femoral head size, and metal ion levels are all risk factors that will affect the outcome of metal/metal hip systems. Moreover, a recent publication in the *Journal of Bone and Joint Surgery* outlines case reports of arthroprosthetic cobaltism in metal/metal hip patients (Ref. 2).

The Australian Orthopaedic Association National Joint Replacement Registry's Hip and Knee Arthroplasty Annual Report of 2010 states that the ''metal/metal bearing surface has the highest risk of revision compared to all other bearing surfaces.'' The report found the cumulative percent revision rate at 7 years is 6.3 percent for metal/metal, compared to 4.0 percent for ceramic/ceramic, 3.7 percent for ceramic/polyethylene and 4.2 percent for metal/polyethylene (Ref. 3).

In December 2011, the American Academy of Orthopedic Surgeons (AAOS) published ''Modern Metal-on-Metal Hip Implants: A Technology Overview'' (Ref. 4). The AAOS overview provides a summary of clinical outcomes in patients with metal/metal hip systems in comparison to other bearing surface combinations, addresses patient, implant, and surgical factors that may predict successful and unsuccessful outcomes of metal/metal hip systems and discusses the prevalence of adverse clinical problems from metal/metal hip systems in comparison to other bearing surface combinations. The report concludes that ''analyses conducted on objective patient-oriented outcomes by two joint registries indicate that, overall, patients who receive metal-on-metal total hip arthroplasty and hip resurfacing are at greater risk for revision than patients who receive total hip arthroplasty using a different bearing surface combination.'' The report references the aforementioned Australian registry.

A recent article published in a scientific journal raised serious concerns about the failure rates of metal/metal hip systems for the UK population (Ref. 5). This peer-reviewed journal article presented the following findings regarding primary metal/metal total hip replacements: (1) Increased failure rate at 5 years for metal/metal total hip replacements related to larger head sizes; (2) significantly higher risk for revision in female patients (Note: In the United States, labeling includes warnings to discourage the use of metal/metal total hip replacements in females of child bearing age); and (3) revisions for dislocation in men with metal/metal hip replacements were slightly lower, showing some benefit to larger head sizes.

These reports, as well as recent recalls of devices from the U.S. market, have indicated that preclinical testing currently used to support marketing clearance of these devices has not been sufficient to mitigate the risks associated with these devices and identify potential clinically-relevant failure modes. These reports suggest that additional study is necessary before special controls can be identified and these devices can be reclassified.

3. Risks to Health

a. *Loss or reduction of joint function.* Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in the loss or reduction of joint function due to excessive wear, fracture, deformation of the device components, or loosening of the device in the surgical cavity.

b. *Adverse tissue reaction.* Inadequate biological or mechanical properties of the device or its breakdown products, such as its lack of biocompatibility, may result in an adverse tissue reaction due to dissolution or wearing away of the

articulating surfaces of the device and the release of materials from the device to the surrounding tissues and the systemic circulation.

c. *Increased risk of premature device failure.* Elevated adverse event rates for these devices may lead to an increased risk of premature revision.

d. *Infection.* The presence of the prosthesis within the body may lead to an increased risk of infection.

The distinctive risks associated with metal/metal total hip replacements in comparison to other types of bearing surfaces are the wear particles generated and release of metal ions. These wear particles and metal ions may cause adverse tissue reactions in addition to the standard osteolysis seen with different bearings for total hip replacements and may lead to an increased risk of premature device revision. These adverse tissue reactions include metallosis, hypersensitivity/allergy, tumor (pseudo) or aseptic lymphocyte dominated vasculitis associated lesion (ALVAL).

4. Benefits of the Device

The hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis is intended to be implanted to replace a hip joint. Like other artificial hip devices on the market, the potential benefits intended from implantation of the device are relief of disabling pain and restoration of joint function, which may result in a return to daily activities and an improved quality of life. Metal/metal hip prostheses offer the potential to be especially beneficial in young, active patients.

B. Hip Joint Metal/Metal Semi-Constrained, With an Uncemented Acetabular Component, Prosthesis (21 CFR 888.3330)

1. Identification

A hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis is a two-part device intended to be implanted to replace a hip joint. The device limits translation and rotation in one or more planes via the geometry of its articulating surfaces. It has no linkage across-the-joint. This generic type of device includes prostheses that consist of a femoral and an acetabular component, both made of alloys, such as cobalt-chromium-molybdenum. The femoral component is intended to be fixed with bone cement. The acetabular component is intended for use without bone cement (21 CFR 888.3027).

2. Summary of Data

The 1982 Panel recommended that while general controls alone were not sufficient, sufficient information existed to establish a performance standard to provide a reasonable assurance of safety and effectiveness for metal/metal hip systems. FDA disagreed with the 1982 Panel's recommendation and classified the devices as class III stating that insufficient information existed to support the conclusion that performance standards or general controls will provide reasonable assurance of the safety and effectiveness of these devices.

On August 8, 2001, the Panel recommended five to two that the hip joint metal/metal semi-constrained prostheses (cemented and uncemented) not be reclassified from class III to class II. The Panel concluded the following:

- There was insufficient clinical and preclinical testing information to establish special controls.
- The length and rate of long-term patient followup data were inadequate to demonstrate that special controls would provide reasonable assurance of the safety and effectiveness of these devices.
- In terms of preclinical testing, the Panel also concluded that validation of wear simulation, non-ideal preclinical wear testing, and biological evaluation of metallic wear debris generated by the device were not established. The particle size of the metallic wear debris generated by these devices is substantially smaller than the particle size of the metallic wear debris generated by other hip joint prostheses and the short-and long-term biological effects from human retrievals or preclinical evaluation of these smaller size metallic wear particles are unknown.

FDA agreed with the Panel and believes the Panel's concerns are still relevant today. Current wear testing methods for metal/metal bearings are limited, and importantly can underestimate bearing wear by an order of magnitude compared to clinical outcomes. There are also no standardized wear methods or consensus among researchers for investigating joint micro-separation, dislocation, cup deformation, demanding gait activities, and third-body abrasion. In addition, there is a lack of wear measurements from retrieved metal/metal bearings, so it is a challenge to correlate wear rates from modern devices to adverse events demonstrated clinically like pseudotumors. To complicate matters further, metal/metal bearings have shown unpredictable wear trends in simulator testing, which have not been explained. Therefore, it is a challenge to introduce sufficient special controls to mitigate the risks of modern metal/metal hip devices. The summary of information provided in response to FDA's order issued under sections 515(i) and 519 of the FD&C Act (refer to docket FDA–2009–M–0101) is not adequate to identify special controls sufficient to ensure safety and effectiveness and therefore not adequate to support reclassification of metal/metal hip systems.

Recent reports and evaluations further support that reclassification of metal/metal hip systems is not appropriate. The MHRA published several alerts in 2010 outlining concerns associated with metal/metal hip systems, including soft tissue reactions. The final report, published in October 2010, outlines that acetabular cup angle, femoral head size, and metal ion levels are all risk factors that will affect the outcome of metal/metal hip systems (Ref. 1). Moreover, a recent publication in the *Journal of Bone and Joint Surgery* outlines case reports of arthroprosthetic cobaltism in metal/metal hip patients (Ref. 2).

The Australian Orthopaedic Association National Joint Replacement Registry's Hip and Knee Arthroplasty Annual Report of 2010 states that the ''metal/metal bearing surface has the highest risk of revision compared to all other bearing surfaces.'' The report found the cumulative percent revision rate at 7 years is 6.3 percent for metal/metal, compared to 4.0 percent for ceramic/ceramic, 3.7 percent for ceramic/polyethylene and 4.2 percent for metal/polyethylene (Ref. 3).

In December 2011, AAOS published ''Modern Metal-on-Metal Hip Implants: A Technology Overview'' (Ref. 4). The AAOS overview provides a summary of clinical outcomes in patients with metal/metal hip systems in comparison to other bearing surface combinations, addresses patient, implant and surgical factors that may predict successful and unsuccessful outcomes of metal/metal hip systems and discusses the prevalence of adverse clinical problems from metal/metal hip systems in comparison to other bearing surface combinations. The report concludes that ''analyses conducted on objective patient-oriented outcomes by two joint registries indicate that, overall, patients who receive metal-on-metal total hip arthroplasty and hip resurfacing are at greater risk for revision than patients who receive total hip arthroplasty using a different bearing surface combination.'' The report references the aforementioned Australian registry.

A recent article published in a scientific journal raised serious concerns about the failure rates of metal/metal hip systems for the UK population (Ref. 5). This peer-reviewed journal article presented the following findings regarding primary metal/metal total hip replacements: (1) Increased failure rate at 5 years for metal/metal total hip replacements related to larger head sizes; (2) significantly higher risk for revision in female patients (Note: In the United States, labeling includes warnings to discourage the use of metal/metal total hip replacements in females of child bearing age); and (3) revisions for dislocation in men with metal/metal hip replacements were slightly lower, showing some benefit to larger head sizes.

These reports, as well as recent recalls of devices from the U.S. market, have indicated that preclinical testing currently used to support marketing clearance of these devices has not been sufficient to mitigate the risks associated with these devices and identify potential clinically-relevant failure modes. These reports suggest that additional study is necessary before special controls can be identified and these devices can be reclassified.

3. Risks to Health

a. *Loss or reduction of joint function.* Improper design or inadequate mechanical properties of the device, such as its lack of strength and resistance to wear, may result in the loss or reduction of joint function due to excessive wear, fracture, deformation of the device components, or loosening of the device in the surgical cavity.

b. *Adverse tissue reaction.* Inadequate biological or mechanical properties of the device or its breakdown products, such as its lack of biocompatibility or resistance to wear, may result in an adverse tissue reaction due to dissolution or wearing away of the articulating surfaces of the device and the release of materials from the device to the surrounding tissues and the systemic circulation.

c. *Increased risk of premature device failure.* Elevated adverse event rates for these devices may lead to an increased risk of premature revision.

d. *Infection.* The presence of the prosthesis within the body may lead to an increased risk of infection.

The distinctive risks associated with metal/metal total hip replacements in comparison to other types of bearing surfaces are the wear particles generated and release of metal ions. These wear particles and metal ions may cause adverse tissue reactions in addition to the standard osteolysis seen with different bearings for total hip replacements and may lead to an increased risk of premature device revision. These adverse tissue reactions include metallosis, hypersensitivity/allergy, tumor (pseudo) or ALVAL.

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V. PMA Requirements

A PMA for these devices must include the information required by section 515(c)(1) of the FD&C Act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA must include valid scientific evidence to demonstrate reasonable assurance of the safety and effectiveness of the device for its intended use (see § 860.7(c)(1) (21 CFR 860.7(c)(1))). Valid scientific evidence is ''evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use * * *. Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness.'' (see § 860.7(c)(2)).

VI. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA, and must follow the procedures outlined in section 515(f) of the FD&C Act. A PDP must provide, among other things: (1) A description of the device, (2) preclinical trial information (if any), (3) clinical trial information (if any), (4) a description of the manufacturing and processing of the device, (5) the labeling of the device, and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought.

VII. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA or notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(D) of the FD&C Act to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the FD&C Act.

A request for a change in the classification of these devices is to be in the form of a reclassification petition containing the information required by 21 CFR 860.123, including new information relevant to the classification of the device.

VIII. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Paperwork Reduction Act of 1995

This proposed order refers to collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

The collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231. The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120. The effect of this order, if finalized, is to shift certain devices from the 510(k) premarket notification process to the PMA process. To account for this change, FDA intends to transfer some of the burden from OMB control number

0910–0120, which is the control number for the 510(k) premarket notification process, to OMB control number 0910–0231, which is the control number for the PMA process. FDA estimates that it will receive seven new PMAs as a result of this order, if finalized. Based on FDA's most recent estimates, this will result in a 2,421 hour burden increase. FDA also estimates that there will be seven fewer 510(k) submissions as a result of this order, if finalized. Based on FDA's most recent estimates, this will result in a 318 hour burden decrease. Therefore, on net, FDA expects a burden hour increase of 2,103 due to this proposed regulatory change.

The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078.

X. Proposed Effective Date

FDA is proposing that any final order based on this proposed order become effective 90 days after date of publication of the final order in the **Federal Register**.

XI. Comments

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

XII. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Medicines and Healthcare Products Regulatory Agency (MHRA), ''Report of the Expert Advisory Group Looking at Soft Tissue Reactions Associated With Metal-on-Metal Hip Replacements,'' October, 2010.
2. Tower, S. S., ''Arthroprosthetic Cobaltism: Neurological and Cardiac Manifestations in Two Patients with Metal-on-Metal Arthroplasty: A Case Report,'' *Journal of Bone and Joint Surgery,* 92, 2847–2851, 2010.
3. Australian Orthopaedic Association National Joint Replacement Registry, *Hip and Knee Arthroplasty Annual Report 2010.* Adelaide: Australian Orthopaedic Association, 2010.
4. American Academy of Orthopedic Surgeons (AAOS), ''Modern Metal-on-Metal Hip Implants: A Technology Overview,'' December 2011.
5. A.J. Smith, et al., ''Failure Rates of Stemmed Metal-on-Metal Hip Replacements: Analysis of Data From the National Joint Registry of England and Wales,'' *Lancet,* 2012:S0140–6736(12)60353–5, March 13, 2012.

List of Subjects in 21 CFR Part 888

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 888 be amended as follows:

PART 888—ORTHOPEDIC DEVICES

■ 1. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 888.3320 is amended by revising paragraph (c) to read as follows:

§ 888.3320 Hip joint metal/metal semi-constrained, with a cemented acetabular component, prosthesis.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **Federal Register**], for any hip joint metal/metal semi-constrained prosthesis with a cemented acetabular component that was in commercial distribution before May 28, 1976, or that has, on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **Federal Register**], been found to be substantially equivalent to any hip joint metal/metal semi-constrained prosthesis with a cemented acetabular component that was in commercial distribution before May 28, 1976. Any other hip joint metal/metal semi-constrained prosthesis with a cemented acetabular component shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

■ 3. Section 888.3330 is amended by revising paragraph (c) to read as follows:

§ 888.3330 Hip joint metal/metal semi-constrained, with an uncemented acetabular component, prosthesis.

* * * * *

(c) *Date PMA or notice of completion of PDP is required.* A PMA or notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **Federal Register**], for any hip joint metal/metal semi-constrained prosthesis with an uncemented acetabular component that was in commercial distribution before May 28, 1976, or that has, on or before [A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE **Federal Register**], been found to be substantially equivalent to any hip joint metal/metal semi-constrained prosthesis with an uncemented acetabular component that was in commercial distribution before May 28, 1976. Any other hip joint metal/metal semi-constrained prosthesis with an uncemented acetabular component shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: January 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–01006 Filed 1–17–13; 8:45 am]

BILLING CODE 4160–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 10–90; DA 12–2075]

Connect America Fund

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission seeks comment on procedures to determine what areas are eligible for Connect America Phase II funding and how carriers may elect to accept or decline a statewide commitment in Connect America Phase II.

DATES: Comments are due on or before February 19, 2013 and reply comments are due on or before March 4, 2013. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: You may submit comments, identified by WC Docket No. 10–90, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://*

fjallfoss.fcc.gov/ecfs2/. Follow the instructions for submitting comments.

• *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ryan Yates, Wireline Competition Bureau, (202) 418–0886 or TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Federal Communications Commission's (Commission) Public Notice in WC Docket No. 10–90, and DA 12–2075, released December 27, 2012. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is also available on the Commission's web site at *http://www.fcc.gov.*

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

• Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.

○ For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet email. To get filing instructions, filers should send an email to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

○ Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

• Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

○ The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

○ Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

○ U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street SW., Room CY–B402, Washington, DC 20554; Web site: *www.bcpiweb.com;* phone: 1–800–378–3160. Furthermore, two copies of each pleading must be sent to Charles Tyler, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–A452, Washington, DC 20554; email: *Charles.Tyler@fcc.gov* and one copy to Ryan Yates, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street SW., Room 5–B441A, Washington, DC 20554; email: *Ryan.Yates@fcc.gov.*

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *www.bcpiweb.com,* by email at *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (tty), or by facsimile at (202) 488–5563.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov;* phone: (202) 418–0530 or TTY: (202) 418–0432.

I. Introduction

1. The Commission has delegated to the Wireline Competition Bureau (Bureau) the task of developing a forward-looking cost model to determine support levels to be offered to price cap carriers in Phase II of the Connect America Fund. The Bureau recently announced the availability of version one of the Connect America Cost Model, which provides the ability to calculate costs using a variety of different inputs and assumptions.

2. The Bureau expects to solicit additional public comment on the cost model through its ongoing Virtual Workshop, which focuses on technical model design and input issues, and public notices, which will focus on other issues relating to implementation of Phase II, before finalizing the Connect America Cost Model.

3. In this Public Notice, the Bureau proposes procedures to provide an opportunity for parties to challenge whether census blocks that are identified as eligible to receive Phase II support are in fact unserved by an unsubsidized competitor. We also seek comment on procedures relating to the election of price cap carriers to accept Phase II support in exchange for making a statewide commitment.

II. Discussion

A. Procedures for Challenging Whether an Area Is Served by an Unsubsidized Competitor

4. The Commission directed the Bureau, after the cost model is adopted,

to ''publish a list of all eligible census blocks'' (specifically, those census blocks in price cap territories below the extremely high-cost threshold but above the funding threshold) and provide an opportunity for parties to ''challenge the determination of whether or not areas are unserved by an unsubsidized competitor.'' We propose to utilize the following procedures to allow interested parties to make such challenges when we adopt a final model and seek comment on these proposed procedures.

5. The Commission concluded that ''it would be appropriate to exclude any area served by an unsubsidized competitor,'' and it delegated to the Bureau ''the task of implementing the specific requirements of this rule.'' Consistent with the directive in the *USF/ICC Transformation Order,* 76 FR 73830, November 29, 2011, we propose to publish a list of eligible census blocks classified by the cost model as unserved by an unsubsidized competitor offering service that meets the broadband performance obligations for Phase II. For purposes of this determination, the Commission has defined an unsubsidized competitor as one that is offering terrestrial fixed broadband with an advertised speed of 4 Mbps downstream and 1 Mbps upstream. Consistent with the approach adopted by the Commission for Connect America Phase I, we propose to use 3 Mbps downstream and 768 kbps upstream as a proxy for 4 Mbps downstream and 1 Mbps upstream in developing this initial list because that information is readily available from other data sources. Likewise, for administrative simplicity, we propose that to the extent a party is challenging the classification of a particular census block, it may present evidence demonstrating the block in question is served by service providing 3 Mbps downstream and 768 kbps upstream.

6. We expect the final Connect America Cost Model we adopt will use the National Broadband Map reflecting State Broadband Initiative (SBI) data as of June 2012, potentially supplemented with other data sources. Once we publish the relevant list of unserved census blocks with costs between the extremely high-cost threshold and the funding threshold shown in the model, we propose that interested parties would then have an opportunity to challenge that list. Specifically, challengers would submit revisions and other potential corrections to the list of eligible census blocks where coverage by unsubsidized competitors is either overstated (i.e., census blocks are listed as served where they are in fact unserved) or understated (i.e., census blocks are listed as unserved when they are in fact served). We propose that parties contending the Bureau's original classification as served or unserved is accurate would have an opportunity to submit evidence to rebut the challenge.

7. Commenters seeking to challenge the eligibility of a particular area for funding would be required to list specific census blocks that are inaccurately classified as served or unserved by an unsubsidized competitor, along with a brief statement and supporting evidence demonstrating that those census blocks are inaccurately reported. We propose not to process any challenge that lacks some evidentiary showing regarding the census block in question; a challenge that merely asserts the area is or is not served would not be sufficient. Challenges to a census block's eligibility may be based on any or all of the Commission's broadband performance metrics—speed, latency, and/or capacity (i.e., minimum usage allowance). Challenges may also be based on non-performance metrics that affect the availability of broadband in a census block. For example, if the provider of broadband in that census block only offers service to business customers and not residential customers, the status of that block as served may be challenged.

8. Consistent with our proposal above, we propose that to be deemed served, a census block must have access to broadband with speeds of at least 3 Mbps downstream and 768 kbps upstream. Proposed examples of potential types of probative evidence regarding the availability of broadband service meeting the speed requirements established by the Commission include, but are not limited to, more recent SBI data than that used in version of the model adopted by the Bureau; maps or printouts of Web sites indicating coverage for a particular area accompanied by an officer certification that such materials reflect current conditions; printouts of billing information for customers within the particular census block, with identifying customer information appropriately masked; engineering analyses or drive tests; explanations of methodologies for determining coverage; and certifications by one or more individuals as to the veracity of the material provided. What other information regarding the speed of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map?

9. The Commission specified in the *USF/ICC Transformation Order* that latency should be sufficiently low as to enable real-time applications, such as Voice over Internet Protocol (VoIP). Proposed examples of potential types of probative evidence regarding latency include, but are not limited to, documentation that a provider is actually offering voice service to customers in the relevant area, such as a printout of a Web site showing voice service availability at a particular address in the census block accompanied by an officer certification, or a sworn declaration from one or more customers within the census block that they subscribe to voice from that provider. What other information regarding the latency of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map?

10. The Commission delegated to the Wireline Competition Bureau and Wireless Telecommunications Bureau the task of adopting capacity or ''minimum usage allowance'' requirements for recipients of Phase II support. Proposed examples of potential types of probative evidence regarding minimum usage include, but are not limited to, a printout of a Web site showing market offerings meeting the minimum usage requirement accompanied by an officer certification, or a sworn declaration from one or more customers within the census block that they subscribe to a service offering meeting the minimum usage allowance requirement. What other information regarding the capacity of alleged service offerings would be readily available to potential challengers or parties seeking to maintain the classification of an area as shown on the National Broadband Map? Should we require one or more of these evidentiary showings for a challenge to be deemed complete as filed?

11. We propose that all certifications regarding evidence supporting or opposing a challenge be signed by an individual with relevant knowledge (such as officer of the company making or opposing the challenge, or a representative of the state mapping agency) certifying that the information presented is accurate to the best of his or her knowledge.

12. To assist in the development of a more complete record, we also seek comment on how to ensure that potentially interested parties are aware of the opportunity for public input. For instance, should a purported unsubsidized competitor challenging the classification of a block as unserved (and therefore eligible for funding) be required to serve a copy of its challenge

on the price cap carrier? If a price cap carrier believes a particular census block should be on the list of blocks eligible for funding (because it is not served), should it be required to serve a copy of its challenge by overnight delivery on any entity shown as serving the block on the National Broadband Map?

13. We intend to conduct this challenge process in an expeditious fashion. We propose that after the release of the list of census blocks, parties would have 45 days to file challenges to the list. Parties wishing to rebut such challenges would have an additional 20 days to submit evidence supporting their contentions. We seek comment on whether this proposed time frame adequately serves our goal of providing a meaningful opportunity for challenge, while concluding this challenge process in a reasonable timeframe. We propose that all evidence regarding the status of a particular census block must be filed within this timeframe; any evidence filed after these dates will be deemed untimely. Strict adherence to these deadlines is necessary to provide an adequate opportunity for the party that contends the classification as served or unserved is accurate to respond to all evidence submitted by the challenger within the reply comment timeframe, and in order for this administrative process to be completed expeditiously.

14. At the close of the challenge timeframe, we propose that where the Bureau finds that it is more likely than not that a census block is inaccurately classified as served or unserved, we would modify the classification of that census block for purposes of finalizing the census blocks that will be eligible for a price cap carrier statewide commitment under the Connect America Phase II program. In the event that both the challenger and the opponent provide credible evidence regarding the status of a particular block, we propose that the default determination will be however the block is classified on the National Broadband Map at the time the challenge is resolved. We recognize the practical difficulties that may ensue in situations where one party says service exists and the other party says service does not exist. Because it may be difficult and expensive for the party contending that service does not exist to prove a negative, we propose that the most expedient solution in such situations is to rely upon the most current available map data.

15. We propose that, in making its determinations, the Bureau would consider whether the challenger took steps to bring the alleged errors in the National Broadband Map to the attention of the relevant state mapping authority and the outcome of any such efforts. It is possible that the December 2012 SBI data may become available shortly before or after the forward looking cost model is adopted, and therefore challengers may wish to present evidence of the more recent classification on the National Broadband Map in their challenges. If December 2012 SBI data is available at the time the Bureau resolves these challenges, we propose to rely upon the December 2012 classification.

16. While the Bureau will rely on updates to the available SBI data, we propose to focus on evidence regarding current broadband availability at the time we resolve the challenge, and not on announced market expansion plans that may occur at some future date. We note that announced deployment plans may change for business and other reasons, and if we were to exclude a census block area based on announced plans to extend service to that block, that could provide an opportunity for potential competitors to engage in strategic behavior to eliminate support for a particular census block, without an assurance that the competitor will actually serve the block at a future date.

17. We also propose that the Bureau only include on the preliminary list of blocks eligible for funding those census blocks that are completely unserved. We further propose to treat partially served census blocks as served and therefore not eligible for funding in Phase II. We anticipate that entertaining challenges with respect to potentially many thousands of individual census blocks could be a significant undertaking by itself, and we are concerned that the administrative burden of permitting challenges at the sub-census block level would outweigh the potential benefits. We therefore propose to conduct the challenge process at the census block level. To the extent commenters believe that we should entertain sub-census block challenges, they should describe with specificity how their proposed process would work, and in particular how we would ensure compliance with build out requirements in partially served census blocks.

18. We seek comment on all these proposals and on any alternatives. If commenters believe different procedures would better serve the Commission's goal of targeting support to areas without unsubsidized competitors, they should provide a detailed description of their preferred alternative. We welcome suggested alternatives that minimize the impact of these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

B. Procedures for Implementing the Price Cap Carrier Election To Make a Statewide Commitment

19. We propose that after reviewing any public comment, the Bureau will publish a revised list of census blocks and a revised list of support amounts associated with each eligible area that will be offered to price cap carriers. We seek comment on whether the election period should be 90 days from the date of release of the finalized list, which would be the same as the time period provided to price cap carriers for electing to accept incremental support for Connect America Phase I. In the alternative, should the time period for price cap carriers to elect to make a statewide commitment in Phase II be longer, such as 120 days, due to the complexity of the decisions individual carriers will need to make? We also seek comment on requiring the submissions either electing or declining support to be submitted on a confidential basis prior to the deadline for election. Should carriers be allowed or required to make confidential submissions? In the event that such submissions were afforded confidentiality, we propose that the Bureau would announce all statewide elections on a single date shortly after the close of the election period.

20. We propose that a carrier electing to accept the statewide commitment would submit a letter, signed by an officer of the company, by the deadline specifying that it agrees to meet the Commission's requirements in exchange for receiving support in amounts set forth in the final Bureau public notice. To the extent a letter of credit or other form of security is required to ensure compliance with these obligations, we propose to require its submission within ten days of exercising the statewide commitment.

21. We seek comment on what information carriers should be required to submit along with their acceptance notices. Should such carriers be required to specify the technology or combination of technologies they intend to deploy in a particular state, at the wire center or census block level? Should carriers also be required to provide information such as geocoded latitude and longitude location information, along with census block and wire center information, for the specific locations where they intend to provide service meeting the 6 Mbps downstream/1.5 Mbps upstream

requirement, as determined by the Bureau? Should carriers be required at the time of acceptance to submit a preliminary plan showing the census blocks and/or wire centers, and associated number of locations, where they anticipate meeting the third year 85 percent build-out milestone? What other information should be required in the initial acceptance notices in order to ensure the Commission has the tools it needs to monitor compliance with performance obligations? Should the Commission afford confidential treatment to any of the information required to be submitted after the Bureau announces the acceptance by carriers of funding on a statewide level?

22. We propose that a carrier declining to accept a statewide commitment in a particular state would file a letter by the deadline specifying that it is declining funding. Alternatively, a carrier failing to file a letter by the deadline could be deemed as having declined funding.

23. We seek comment on all these proposals and on any alternatives. To the extent commenters believe that other procedures would better serve the Commission's goals, they should provide a detailed description of their proposal for the statewide commitment process. We welcome suggested alternatives that minimize the impact of these proposals on small businesses, as well as comments regarding the cost and benefits of implementing these proposals.

III. Procedural Matters

A. Initial Regulatory Flexibility Act Analysis

24. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Public Notice. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Public Notice. The Commission will send a copy of the Public Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the Public Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

B. Need for, and Objectives of, the Proposed Rules

25. The Public Notice seeks comment on issues related to the implementation of Phase II of Connect America. As discussed in the *USF/ICC Transformation Order,* the rapid and efficient deployment of broadband is crucial for our nation's growth. The proposals contained in this public notice will help to achieve the Commission's goal of making broadband accessible to all Americans.

26. The Bureau is currently in the process of developing a cost model for Phase II of Connect America. The Commission directed the Bureau to publish a list of census blocks that would be eligible for support under the cost model, and to provide an opportunity for parties to make challenges to that list. This Public Notice seeks comment on how to conduct such a challenge process and what data should be used in that process. The Bureau plans to publish a list of census blocks that are within the cost model's funding threshold but are unserved by broadband with speeds of 3 Mbps downstream and 768 kbps upstream. Parties could then submit comments challenging the accuracy of that list.

27. The Public Notice proposes that parties could make challenges based on the fact that a purported unsubsidized competitor is or is not meeting the broadband performance requirements for speed, latency, or capacity. The Public Notice also suggests various forms of evidence that could be submitted to support these contentions. Assertions that are offered without supporting evidence would not be considered. Where the Bureau finds its more likely than not that a census block is inaccurately classified as served or unserved, that census block's status would be altered accordingly for the purposes of Phase II eligibility.

28. Under the system proposed in the Public Notice, parties challenging the eligibility of a particular census block would be required to serve a copy of their challenge on the entity purportedly serving that block. That entity would then have an opportunity to respond and provide evidence rebutting that challenge. In the event that both the challenger and the respondent provide credible information supporting their claims, the census block's status would be determined based on its current status on the most recent version of National Broadband Map available at the time the list of eligible areas is finalized.

29. The Public Notice also sets limits on the types of challenges considered. First, only wholly unserved census blocks would be eligible for Phase II support. Therefore, under the proposed system, sub-census block challenges would not be considered. Second, challenges and rebuttals must be based on current broadband availability, not announced deployment plans.

30. In addition to seeking comment on issues related to the Phase II challenge process, the Public Notice also seeks comment on procedures for implementing the process of price cap carriers' election to receive support in exchange for a commitment to serve all eligible areas within a state. Comment is sought on what time period should be used in this process. The Public Notice also seeks comment on what information a carrier should be required to submit when accepting a statewide commitment.

C. Legal Basis

31. The legal basis for any action that may be taken pursuant to the Public Notice is contained in sections 1, 4(i), 4(j), 214, and 218, of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996.

D. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

32. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

33. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

34. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

35. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the Public Notice.

36. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the Public Notice.

37. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

38. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the Public Notice.

39. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1,000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

40. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

41. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the

SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

42. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

43. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the Public Notice.

44. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation.'' This industry also includes establishments ''primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems; or * * * providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

45. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the Public Notice.

46. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the Public Notice.

47. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

48. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1,000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had

employment of 1,000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Public Notice.

49. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

50. In this Public Notice, the Bureau seeks public comment on procedures for implementing Connect America Phase II. Certain proposals could result in additional reporting requirements.

51. If the Bureau implements the Phase II challenge process articulated above, commenters, including small entities, wishing to participate would be required to comply with the listed reporting and evidentiary standards. This includes filing a challenge along with supporting evidence and serving a copy of the challenge on any challenged party within a specified timeframe. Similarly, if the Bureau implements the proposed statewide commitment process, any small entity that is either accepting or declining a statewide commitment would be subject to additional reporting requirements.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

52. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

53. The Public Notice seeks comment from all interested parties. The Commission is aware that some of the proposals under consideration may impact small entities. Small entities are encouraged to bring to the Commission's attention any specific concerns they may have with the proposals outlined in the Public Notice, and the Commission will consider alternatives that reduce the burden on small entities.

54. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the Public Notice, in reaching its final conclusions and taking action in this proceeding. The reporting requirements in the Public Notice could have an impact on both small and large entities. The Commission believes that any impact of such requirements is outweighed by the accompanying public benefits. Further, these requirements are necessary to ensure that the statutory goals of Section 254 of the Act are met without waste, fraud, or abuse.

55. In the Public Notice, the Commission seeks comment on several issues and measures that may apply to small entities in a unique fashion. Small entities may be more likely to face challenges to their service areas, and thus be required to comply with the reporting requirements above in order to have their rebuttals considered. The Bureau will consider comments from small entities as to whether a different standard should apply.

G. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

56. None.

H. Initial Paperwork Reduction Act of 1995 Analysis

57. 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).

I. Ex Parte Presentations

58. *Permit-But-Disclose.* The proceeding this Public Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule section 1.1206(b). In proceedings governed by rule section 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Federal Communications Commission.

Trent B. Harkrader,

Division Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 2013–01048 Filed 1–17–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R7–ES–2012–0033; 70120–1113–0000–C3]

RIN 1018–AW57

Endangered and Threatened Wildlife and Plants; Proposed Establishment of a Nonessential Experimental Population of Wood Bison in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; availability of draft environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in cooperation with the State of Alaska, propose to establish a nonessential experimental population of wood bison in central Alaska, in accordance with section 10(j) of the Endangered Species Act of 1973, as amended. This proposal, if made final, would also establish provisions under which wood bison in Alaska would be managed. We are seeking comments on this proposal and on our draft environmental assessment, prepared pursuant to the National Environmental Policy Act of 1969, as amended, which analyzes the potential environmental impacts associated with the proposed reintroduction.

DATES: To ensure that we are able to consider your comments on this proposed rule, they must be received or postmarked on or before March 19, 2013. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by March 4, 2013.

ADDRESSES: *Comments:* You may submit written comments and other information on this proposed rule or on the draft Environmental Assessment (EA) by either one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Search for docket FWS–R7–ES–2012–0033 and then follow the instructions for submitting comments. We request that comments be submitted though *http://www.regulations.gov* whenever possible.

U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R7–ES–2012–0033; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

Copies of Documents: This proposed rule and the draft EA are available at *http://www.regulations.gov* at Docket No. FWS–R7–ES–2012–0033. In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Fish and Wildlife Service Regional Office, Fisheries and Ecological Services, at 1011 East Tudor Road, Anchorage, AK 99503. Additional background and supporting information is provided in the Alaska Department of Fish and Game (ADF&G) Environmental Review of Wood Bison Restoration in Alaska (ADF&G 2007), which can be accessed online at: *http://www.adfg.alaska.gov/index.cfm?adfg=woodbison.management.*

FOR FURTHER INFORMATION CONTACT: Sonja Jahrsdoerfer, 1011 East Tudor Road, Anchorage, AK 99503, (907) 786–3323, or email *woodbison-AK@fws.gov.* If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Under the Endangered Species Act, the Service may establish an experimental population, allowing for the reintroduction of a species to its former range with special rules that allow for some of the management requirements of the ESA to be relaxed to facilitate acceptance by local landowners and managers. The Alaska Department of Fish and Game (ADF&G) proposes to reintroduce wood bison (*Bison bison athabascae*) into one or more of three areas within their historical range in central Alaska (Yukon Flats, Minto Flats, and the lower Innoko/Yukon River area). If this proposed rule is adopted, the Alaska Department of Fish and Game (ADF&G) would have primary management responsibility for leading and implementing the wood bison restoration effort, in cooperation with the Service. ADF&G would serve as the lead agency in the reintroduction and subsequent management of wood bison in Alaska; however, ADF&G would continue to coordinate with the Service on these restoration efforts. Management of populations in the NEP area would be guided by provisions in: (1) The associated special rule; (2) the EA for this action and ADF&G's environmental review; and (3) management plans developed for each area by ADF&G with involvement of landowners and other stakeholders. The rule would also allow for future regulated hunting based on sustained yield principles, once the herds are deemed sufficiently resilient to support such.

Public Comments

To ensure that any final action resulting from this proposed rule will be as effective as possible and that the final EA on the proposed action will evaluate all potential issues associated with this action, we invite the public, including Tribal and other government agencies, the scientific community, industry, and other interested parties, to submit relevant information for our consideration. Comments on the proposed rule and the draft EA that will be most useful are those that are supported by data or peer-reviewed studies and those that include citations to, and analyses of, applicable laws and regulations. Please include sufficient information with your comments to allow us to authenticate any scientific or commercial data you reference or provide. We particularly seek comments concerning:

(1) Any information on the biological or ecological requirements of wood bison;

(2) Current or planned activities in the proposed nonessential experimental population (NEP) area;

(3) Current or planned management of the NEP population; and

(4) Any information concerning the boundaries of the proposed NEP area.

We will take into consideration all comments and additional information we receive in order to determine whether to issue a final rule to implement this proposed action and whether to prepare a finding of no significant impact or an environmental impact statement. Comments we receive may lead to a final rule that differs from this proposal.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. Comments submitted to *http://www.regulations.gov* must be received before midnight (Eastern Time) on the date specified in the **DATES** section. All comments, whether submitted in hard copy or via *http://www.regulations.gov,* become part of the supporting record and will be posted on the Web site. You may request at the top of your document that we withhold personal identifying information from public review; however, we cannot guarantee that we will be able to do so. Please note that comments submitted to *http://www.regulations.gov* are not immediately viewable. The system

receives comments immediately, but they are not publically viewable until we post them.

All electronic and hard copy comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov* and also by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Fisheries and Ecological Services, Anchorage, AK (see **ADDRESSES**).

Public Hearings

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) provides for public hearings on this proposed rule, if requested. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section by the date shown in the **DATES** section.

Background

Legislative

Under Canada's Species at Risk Act (SARA) (Ministry of Justice, Canada, *http://laws-lois.justice.gc.ca*), the wood bison is listed as threatened, having been reclassified from endangered to threatened status in 1988. In the United States, the wood bison was first listed under the Endangered Species Conservation Act of 1969 as endangered (see 35 FR 8491, June 2, 1970). The Canadian National Wood Bison Recovery Team petitioned the Service to reclassify the wood bison as threatened, and on February 8, 2011, we published in the **Federal Register** (1) a 12-month finding indicating that the petitioned action was warranted, and (2) a proposed rule to reclassify the wood bison as a threatened species (76 FR 6734). On May 3, 2012 the status of the wood bison was reclassified to threatened (86 FR 26191).

Under the ESA, species listed as endangered or threatened are afforded protection largely through the prohibitions of section 9, the requirements of section 7, and corresponding implementing regulations. Section 9 of the ESA and its implementing regulations at 50 CFR 17.21 and 17.31, in part, prohibit any person subject to the jurisdiction of the United States to take (''take'' includes to harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect, or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce, any listed species. The term 'harm' is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns such as breeding, feeding, or sheltering. It also is illegal to knowingly possess, sell, deliver, carry, transport, or ship any wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Section 7 of the ESA and its implementing regulations at 50 CFR part 402 outline the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitats. Under section 7(a)(1) of the ESA, all Federal agencies are directed to use their authorities in furtherance of the purposes of the ESA by carrying out programs for the conservation of endangered or threatened species. Section 7(a)(2) of the ESA states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the ESA does not affect activities undertaken on private lands unless they are authorized, funded, or carried out by a Federal agency.

Congress amended the Endangered Species Act of 1973, in 1982, with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as ''experimental populations.'' Under section 10(j) of the ESA, the Secretary of the Interior can designate reintroduced populations established outside the species' current range as ''experimental.'' Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to treat the population as threatened, regardless of the species' designation elsewhere in its range. A threatened designation allows us discretion in devising management programs and special regulations for the population. Further, when we promulgate a section 10(j) rule for a species, the regulations at 50 CFR 17.31 that extend most section 9 prohibitions to threatened species do not apply, as the generic regulations are superseded by the section 10(j) rule, which contains the specific prohibitions and exemptions necessary and appropriate to conserve that species.

As experimental populations uniformly carry ''threatened'' status, section 4(d) of the ESA applies. Section 4(d) of the ESA allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. Although the ESA limits the type of regulated take available for the conservation of threatened species, the Secretary is granted broad flexibility in promulgating ''special'' regulations under section 4(d) of the ESA to protect threatened species, and may allow for direct take, as has been done in the past, for example, with with Gila trout (71 FR 40657, July 18, 2006).

Based on the best available information, we must determine whether experimental populations are ''essential'' or ''nonessential'' to the continued existence of the species. Experimental populations, whether essential or nonessential, are treated as a threatened species. However, for section 7 interagency cooperation purposes only, an NEP located outside of a National Wildlife Refuge or National Park is treated as a species proposed for listing.

When NEPs are located outside a National Wildlife Refuge or National Park Service unit, only two provisions of section 7 of the ESA apply: Section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2) of the ESA. Section 7(a)(4) requires Federal agencies to confer (rather than consult, as required under section 7(a)(2)) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. A conference results in conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. However, because an NEP is by definition not essential to the continued existence of the species, it is very unlikely that we would ever determine jeopardy for a project impacting a species within an NEP. Thus, regulations for NEPs may be developed to be more compatible with routine human activities in the reintroduction area.

Animals used to establish an experimental population may be obtained from a source or donor population provided their removal is not likely to jeopardize the continued existence of the species and appropriate permits have been issued in accordance with 50 CFR 17.22. In 2008, 53 wood bison were imported into Alaska after necessary permits and approvals were obtained. The primary original source of Alaska's wood bison is a captive-bred population at Elk Island National Park (EINP), Alberta, Canada, which was propagated for the purpose of providing disease-free stock for reestablishing

populations in other parts of the species' original range (Gates *et al.* 2001, p. 15). These animals are presently maintained at the Alaska Wildlife Conservation Center (AWCC) in Portage, Alaska, where additional, disease-free, wood bison (obtained as a result of an illegal import in 2003) are also held.

Canada's ''National Recovery Plan for the Wood Bison'' includes the specific goal of reestablishing at least four viable populations of 400 or more wood bison in Canada (Gates *et al.* 2001, pp. 32–33). This plan supports fostering the ''restoration of wood bison in other parts of their original range and in suitable habitat elsewhere'' but sets no discrete goals for recovery in other parts of the species' range. The Wood Bison Recovery Team places a high priority on the reintroduction of wood bison to Alaska (Gates *et al.* 2001, pp. 32–33). The reestablishment of free-ranging, disease-free wood bison in Alaska would contribute to the overall conservation of wood bison in North America. However, future loss of a wood bison NEP from Alaska would not reduce the likelihood of the species' survival in its current range in Canada, which encompasses the only populations Canada evaluates when considering the status of the species for listing purposes under SARA. Consequently, because their loss would not appreciably reduce the likelihood of survival of the species in the wild, the Service finds that any wood bison populations established in Alaska would meet the definition of ''nonessential'' (*see* 50 CFR 17.80(b)). Therefore, we propose to designate a nonessential experimental population of wood bison in Alaska.

Biological

Members of the family Bovidae, wood bison are the largest native terrestrial mammal in the western hemisphere, with adult bulls weighing 2,000 pounds (900 kilograms) or more (Reynolds *et al.* 2003, p. 1015). Wood bison are somewhat larger than the other extant bison subspecies in the United States, the plains bison (*B. b. bison*), and are distinguished by a more pronounced hump, forward-falling display hair on the head, reduced chaps and beard, and different variegation and demarcation on the cape (van Zyll de Jong *et al.* 1995, pp. 393–396). Specimen collections and historical accounts indicate that the historical range of wood bison included much of Interior and Southcentral Alaska, and the Yukon, the western Northwest Territories, and northern Alberta and British Columbia in Canada (Stephenson *et al.* 2001, pp. 135–136; Reynolds *et al.* 2003, pp. 1012–1013). Wood bison are predominantly grazers, foraging mainly on grasses and sedges that occur in northern meadows (Larter and Gates 1991, p. 2679).

Wood bison were present in Alaska for most of the last 5,000 to 10,000 years (Stephenson *et al.* 2001, pp. 125, 145–146). Detailed historical accounts from Athabascan elders in Alaska describe how bison were hunted and used and indicate that bison were an important source of food for Athabascan people before the population declined to low levels within the last few hundred years (Stephenson *et al.* 2001, pp. 128–134). The most recent recorded sightings of wood bison in Alaska were from the early 1900s, of small groups or single animals in northeastern Alaska (Stephenson *et al.* 2001, pp. 129–134). Factors leading to the extirpation of wood bison from Alaska most likely included unregulated hunting by humans, along with the isolation of subpopulations caused by changes in habitat distribution during the late Holocene (Stephenson *et al.* 2001, pp. 146–147).

Wood bison were largely extirpated from Alaska and much of their original range in Canada by about 1900 (Stephenson *et al.* 2001, p. 140). At that time, only a few hundred animals existed in northeastern Alberta. Intensive conservation efforts in Canada beginning around 1900 are principally responsible for preventing the species' extinction (Gates *et al.* 2001, pp. 11–21). However, the translocation of surplus plains bison into Wood Buffalo National Park in the 1920s (Carbyn *et al.* 1993, pp. 25–27) resulted in some genetic dilution of wood bison, as well as the introduction of domestic cattle diseases into this population (Gates *et al.* 2001, p. 35). Cattle diseases, including bovine brucellosis and bovine tuberculosis, are still a management concern in some herds in Canada (Gates *et al.* 2010, pp. 28–32; USDA 2008, p. 10). The susceptibility of wood bison and other native ungulates to these diseases underscores the importance of rigorous disease-testing protocols prior to releasing wood bison in Alaska (ADF&G–ADEC 2008).

Recovery Efforts

Recovery efforts in Canada have been very successful. There are approximately 10,000 free-ranging wood bison in Canada today, including about 4,500 in 7 free-ranging, disease-free herds and 5,000 in 4 free-ranging herds that are not disease-free. In 1978, there was 1 free-ranging, disease-free herd with 300 individuals, the MacKenzie herd. By 2000, when the last Canadian status review was conducted, the number of disease-free herds had grown to 6, with a total of approximately 2,800 individuals. Since 2000, an additional herd has been established, bringing the total number of herds to 7, and the number of disease-free, free-ranging bison has increased to approximately 4,500. Four of the herds have a population of 400 or more, meeting one of the primary recovery goals. An additional 300 animals are held in a publicly owned captive herd (Elk Island National Park herd) that is maintained for conservation purposes (*http://www.pc.gc.ca/pn-np/ab/elkisland/natcul/natcul1/b/ii.aspx,* viewed October 12, 2011). There are also 45 to 60 commercial wood bison operations in Canada, with approximately 500 to 700 animals (Canadian Wildlife Service, unpublished data 2009). Although commercial wood bison herds are not a part of Canada's recovery programs, their existence indicates that wood bison will propagate readily, given sufficient space and proper nutrition.

The National Wood Bison Recovery Plan, prepared by Canada's National Wood Bison Recovery Team, is currently being updated (Wilson, Environment Canada, 2011, pers. comm.). In addition, the State of Alaska has outlined plans for wood bison restoration and will complete detailed management plans developed with public input, for each bison release area before wood bison are reestablished. If this proposal is adopted, any wood bison reintroduced to Alaska would be designated as nonessential to recovery and experimental.

Role of Regulated Hunting in Recovery

Regulated hunting has been used in Canada since 1987 to manage wood bison herds and is consistent with the recovery goals in the Canadian wood bison recovery plan. Herds with regulated harvest have increased in size (76 FR 6734, February 8, 2011). For example, the Mackenzie herd, which was established in 1963, first supported harvest in 1987 and now has grown to approximately 2,000 head, supporting an annual harvest of approximately 40 animals (*http://www.enr.gov.nt.ca/_live/pages/wpPages/Mackenzie_Bison.aspx,* viewed October 14, 2011). Regulated hunting has been used to (1) maintain herd size within the carrying capacity of the landscape; (2) reduce the potential for the spread of disease; (3) address public safety concerns near roads; and (4) increase community support for reestablished wood bison herds. Where hunting is allowed, it can lead to increased revenue for monitoring and management of the herds.

Sustainable levels of hunting of wood bison in Alaska would serve some of these same purposes, particularly securing the support of project sponsors (e.g., ADF&G, local communities, and nongovernmental organizations involved in the project). Because reintroduction of wood bison to Alaska depends heavily on this support, including provisions for hunting as a future management option is an essential component of this proposed rule. Moreover, provisions for future regulated hunting will assure landowners and development interests that the reintroduction of wood bison would not interfere with natural resource development or other human activities. Without such assurances, the reintroduction of wood bison to Alaska is unlikely to be acceptable to the public, development interests, or the Alaska State Legislature. Thus, we believe that the opportunity for Alaska to contribute to the overall recovery and conservation of wood bison will be lost if provisions for hunting are not included in this rulemaking.

Alaska Reintroduction Goals and Objectives

The proposed reintroduction of wood bison to Alaska is patterned after the successful reintroductions made in Canada. The goal of the Alaska wood bison restoration project is to reestablish one to three free-ranging populations. In addition to contributing to the conservation and recovery of wood bison in North America, objectives of the Alaska reintroduction effort include (1) restoring a key indigenous grazing animal to northern ecosystems; (2) restoring biological and habitat diversity and natural processes; (3) increasing the total number of wood bison in free-ranging, disease-free herds, thereby enhancing the overall survival of the species in the wild; (4) providing a basis for sustainable development, including opportunities for local tourism, and, in the future, hunting and other guiding businesses; and (5) reestablishing the historical cultural connection between bison and Alaska residents (ADF&G 2007, pp. 2–3).

Although many private landowners within the proposed NEP area have indicated support for the presence of wood bison on their lands in the future, some major private landowners have expressed concerns about the potential legal and regulatory burdens related to the ESA and wood bison, including effects on other resource development activities. Provisions of the proposed special rule would ensure that the reintroduction of wood bison would not impede existing or potential future resource development activities.

Wood bison would be released only after a suitable management framework has been developed by the State in cooperation with landowners, land managers, the Service, conservation organizations, and Tribal and local governments. Because the reintroduction sites in Alaska are remote and roadless and create logistical and economical challenges for traditional management approaches (e.g., herding, fencing), the most feasible means of population control in the future, if it were needed, would likely be regulated hunting. Hunters in Alaska are accustomed to accessing (e.g., bush planes, float planes) and traveling (e.g., snow machines, off-road vehicles, hiking) in roadless areas and represent a feasible and economical method of population control. As mentioned above, wood bison in some herds in northern Canada are legally harvested under Territorial or Provincial hunting regulations, and regulated harvest is considered one of the primary management tools in conservation of the species.

Experience with bison reintroductions elsewhere indicates that reintroduced wood bison populations in Alaska are likely to prosper in the areas where the State of Alaska proposes to restore the species (ADF&G 2007, pp. 11–12). However, temporary fluctuations in numbers may occur, which would not constitute a reason to reevaluate or change the NEP status. We do not intend to change the NEP designation unless the wood bison is no longer listed as endangered or threatened under the ESA, in which case the NEP designation would be discontinued.

Source of Stock

In June 2008, under permits obtained from the Service, U.S. Department of Agriculture, Canadian Wildlife Service, and the State of Alaska, 53 wood bison were translocated from the disease-free EINP herd to a temporary holding facility at the AWCC, where they joined a small existing herd that was confiscated in 2003 after being imported illegally. As of October 2011, more than 100 wood bison were at AWCC. All of these animals have been subjected to a rigorous disease-testing protocol while preparations are made for release of free-ranging wood bison in Alaska (ADF&G–ADEC 2008).

Reintroduction Sites

ADF&G has identified three areas that would provide suitable habitat for wood bison. These sites were selected based on intensive evaluations of potential habitat conducted in seven areas in Interior Alaska between 1993 and 2006 (Berger *et al.* 1995, pp. 1–9; ADF&G 1994, pp. 10–14; Gardner *et al.* 2007, pp. 1–24). Following the recommendations of Canada's Wood Bison Recovery Team, suitable release sites should: (1) Support a minimum population of 400 bison, (2) be separate from areas inhabited by plains bison, and (3) not have conflicting land uses such as agriculture (Gardner *et al.* 2007, p. 2). Based on forage availability, three areas in Alaska—the Yukon Flats, Minto Flats, and lower Innoko/Yukon River—were determined suitable to support viable populations of wood bison (ADF&G 2007, p. 27). The Yukon Flats offers the best habitat and can support in excess of 2,000 bison (Berger *et al.* 1995, p. 8). Minto Flats offers abundant forage, but the area is relatively small, and access to wet habitats may be limited during summer. The lower Innoko/Yukon River area offers suitable habitat that could possibly support 400 or more wood bison (Gardner *et al.* 2007, p. 8). Characteristics of each selected reintroduction site are described in more detail in the draft EA associated with this proposed action (see **ADDRESSES** for information on obtaining a copy of the draft EA).

Locations of the three potential wood bison reintroduction sites and boundaries of the proposed NEP are shown in Figure 1 (below). The boundaries of the proposed NEP represent our interpretation of the best available information on the extent of the wood bison's historical occurrence in Alaska. This historical range includes substantial areas with little or no suitable bison habitat, interspersed with localized areas that would provide high-quality habitat. By proposing this large area for NEP designation, we do not imply that most or all of the area within the NEP boundary is suitable habitat for wood bison.

Reintroduction Procedures

In conformance with recommendations of bison geneticists and conservation biologists, about 40 captive-raised wood bison should be released at a single site within the NEP area in the first year of the program, and a similar number may be released at each of two additional sites in subsequent years. Additional bison may be released in each area if stock and funding are available. Released wood bison would be excess to the needs of captive-breeding herds at EINP and AWCC, and their release would not affect the genetic diversity of the captive wood bison populations. Wood bison released in Alaska would be tagged with

passive radio frequency tags, and some bison would be radio-collared. Population monitoring would include telemetry studies and aerial population surveys to determine and monitor population size, productivity, and movements.

A temporary holding facility consisting of up to 5 to 10 fenced acres (2 to 4 hectares), a small camp, and a supply of hay would be provided at each release site. Ideally, wood bison would be transported to the site in late winter or early spring and held for several weeks prior to release to allow them to acclimate in their new location. A more detailed review of reintroduction procedures is included in the draft EA (see **ADDRESSES** for information on obtaining a copy of the draft EA).

ADF&G, the Service, and reintroduction cooperators would evaluate the success of each reintroduction effort and apply knowledge gained to subsequent efforts, thereby increasing the efficiency and long-term success in wood bison restoration in Alaska. ADF&G would work with various cooperators to monitor population growth and movements, and to conduct basic long-term environmental monitoring.

Legal Status of Reintroduced Populations

Based on the current legal and biological status of the species and the need for management flexibility, and in accordance with section 10(j) of the ESA, the Service proposes to designate all wood bison released in Alaska as members of the NEP. Such designation allows us to establish a special rule for management of wood bison in Alaska, thus avoiding the general section 9 prohibitions that would otherwise limit our management options. The legal and biological status of the species and the need for management flexibility resulted in our decision to propose the NEP designation for wood bison reintroduced into Alaska.

The proposed section 4(d) special rule associated with this proposed NEP designation would further the conservation of wood bison by allowing their reintroduction to a large area within their historical range. The special rule would provide assurances to landowners and development interests that the reintroduction of wood bison would not interfere with natural resource development or other human activities. Without such assurances, the reintroduction of wood bison to Alaska would not be acceptable to the public, development interests, or the Alaska State Legislature. Except as provided for under section 10(e) of the ESA or as described in the proposed section 4(d) special rule associated with this proposed NEP rule, take of any member of Alaska's wood bison NEP would be prohibited under the ESA.

Geographic Extent of the Proposed Rule

The proposed geographic extent for the Alaska wood bison NEP includes the Yukon, Tanana, and Kuskokwim River drainages in northern Alaska (refer to Figure 1 in the rule portion of this document). Section 10(j) of the ESA requires that an experimental population be geographically separate from other wild populations of the same species. Because wild wood bison no longer exist in Alaska, the reintroduced herd(s) would not overlap with any existing wild wood bison population. Wood bison herds established in Alaska would be separated from the nearest wild population in Canada (Aishihik herd in Yukon) by at least 450 miles (725 kilometers) of mostly hilly or mountainous terrain, which would deter long-distance movements between herds.

All released wood bison and their offspring would likely remain in areas adjacent to release sites and well within the boundaries of the NEP area due to the presence of prime habitat (extensive meadow systems that will provide an abundance of preferred forage for bison) and surrounding geographic barriers. The geographic area being proposed for NEP designation represents what ADF&G believes to be the maximum geographic extent to which bison populations might expand if they are reestablished in Alaska.

Management

(a) Authority and planning. If this proposed rule is adopted, ADF&G would serve as the lead agency in the reintroduction and subsequent management of wood bison in Alaska; however, ADF&G would continue to coordinate with the Service on these restoration efforts. If this proposed rule is adopted, the Service would delegate management authority to ADF&G, contingent upon periodic reporting in conformity with Federal regulations. Management of populations in the NEP area would be guided by provisions in: (1) The associated special rule; (2) the EA for this action and ADF&G's environmental review; and (3) management plans developed for each area by ADF&G with involvement of landowners and other stakeholders.

The ADF&G would use public planning processes to develop implementation and management plans for wood bison restoration. Planning groups would include representatives from local communities, regional population centers, landowners, Alaska Native interests, wildlife conservation interests, industry, and State and Federal agencies as appropriate for each area. Draft management plans would be circulated for public review, and final plans would be presented to the Alaska Board of Game and Federal Subsistence Board for review and approval. More detailed information on wood bison reintroduction and management is provided in the EA associated with this proposed action (see **ADDRESSES** for information on obtaining a copy of the draft EA).

(b) Population monitoring. Reintroduced wood bison populations would be monitored annually and during important seasonal periods. Biological data necessary for long-term bison management would be obtained from annual spring population surveys, fall or winter composition counts, and monitoring of herd movements. Bison populations are relatively easy to monitor because of their visibility, gregarious nature, and fidelity to seasonal ranges (ADF&G 2007, p. 12).

Through public outreach programs, ADF&G would inform the public and other State and Federal agencies about the presence of wood bison in the NEP area. Reports of injured or dead wood bison would be required to be provided to ADF&G (see the draft EA for contact information) for a determination of the cause of injury or death.

(c) Disease monitoring and prevention. Because of the extensive disease-testing programs at EINP (U.S. Department of Agriculture 2008, pp. 5–13) and at AWCC (ADF&G–ADEC 2008), the risk of reintroduced wood bison being infected with serious diseases is negligible. The ADF&G would continue to obtain samples for disease testing as opportunities arise in connection with future wood bison radio-collaring efforts or harvests. In the unlikely event that a disease posing a significant threat to wood bison, other wildlife, or humans were to occur, the situation would be addressed through appropriate management actions, including vaccination or other veterinary treatment, culling, or removal of an entire herd, as described in the draft EA.

(d) Genetics. Wood bison selected for reintroduction are excess to the needs of the captive populations in Canada. The ultimate goal is to reestablish wild wood bison populations in Alaska with founding animals that are as genetically diverse as possible. Population objectives for each area would be developed during public management planning efforts, and would consider

conservation guidelines for population and genetic management.

(e) Mortality. Based on experience in reestablishing bison in other northern habitats, wood bison mortality is expected to be minimal after release (Gates and Larter 1990, p. 235). Public education, to be conducted by ADF&G for each release, would help reduce potential sources of human-caused mortality. Based on the results of previous releases of disease-free wood bison, it is unlikely that predator management would be needed to allow populations to be successfully reestablished. A review of predator-prey interactions (ADF&G 2007, p. 43) is available online at: *http://www.adfg.alaska.gov/static/species/speciesinfo/woodbison/pdfs/er_no_appendices.pdf.*

Section 10 of the ESA authorizes the Secretary of the Interior to permit ''incidental take,'' which is take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity, such as recreation, livestock grazing, oil and gas or mineral exploration and development, timber harvesting, transportation, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. If this proposed rule is made final, a person could take a wood bison within the NEP area provided that the take is: (1) Unintentional, and (2) not due to negligent conduct. Such incidental take would not constitute ''knowing take,'' and neither the Service nor the State would pursue legal action. If we have evidence of knowing (i.e., intentional) take of a wood bison that is not authorized, we would refer matters to the appropriate authorities for prosecution.

Highway vehicles and trains can pose a risk to bison (Rowe 2007, p. 8). In Alaska, the only area where vehicle collisions might occur is in the vicinity of the Minto Flats, where the Parks Highway and the Alaska Railroad border the southeastern edge, and the Elliot Highway approaches the northern edge of the area. There are currently no roads in the Yukon Flats or lower Innoko/Yukon River area. However, roads could be constructed within these areas in the future to support resource developments or for other purposes.

If this proposed rule is adopted, regulations to prohibit hunting until it would be sustainable would be developed and enforced by the appropriate law enforcement entity with jurisdiction for the area. Public education and enforcement activities would reduce the risk of illegal hunting. Based on results of similar efforts in Canada, we expect a low rate of natural or incidental mortality (Gates *et al.* 2001, pp. 30–40). If significant illegal mortality does occur in any given year, the State would develop and implement measures to reduce the level of mortality to the extent possible.

(f) Special handling. If this proposed rule is adopted, ADF&G biologists, Service employees, and authorized agents acting on behalf of ADF&G or the Service may handle wood bison: (1) For scientific purposes; (2) to relocate bison to avoid conflict with human activities; (3) for conservation purposes; (4) to relocate wood bison to other reintroduction sites; (5) to aid sick, injured, or orphaned wood bison; and (6) to salvage dead wood bison. The Service would work with ADF&G to determine appropriate procedures for handling all sick, injured, orphaned, and dead wood bison.

(g) Potential for conflict with oil and gas development, mineral development, recreation, and other human activities. Several natural resource development projects that could be important to Alaska's economy are located within or near the three potential wood bison restoration sites. There is ongoing exploration and potential oil and gas development in the Minto Flats and Yukon Flats areas, and potential for a gold mine in an area about 30 to 40 miles (48 to 64 kilometers) east of the expanse of potential wood bison habitat near the lower Innoko/Yukon River area (Liles 2010, p. 1; U.S. Department of the Interior 2005, pp. 1–18; Barrick/Novagold 2008). However, wood bison are relatively tolerant of human activity and resource development activities (ADF&G 2007, p. 47; Fortin and Andruskiw 2003, p. 811). They are mobile and adaptable animals that can use a variety of habitats. Their large size and social nature also make them relatively easy to monitor (e.g., by aerial surveys) and manage.

Because wood bison will be introduced as an NEP, we expect their establishment will not preclude or conflict with the development of oil, gas, and mineral resources or other human activities. Minor conflicts between livestock grazing or agriculture and wood bison management might eventually occur in the southeast corner of the Minto Flats, where a few small agricultural operations exist. Such conflicts would be addressed through negotiations and cooperative habitat management between ADF&G and landowners (DuBois and Rogers 2000, pp. 17–24). Agricultural activities on private lands within the proposed NEP area would continue without additional restrictions during implementation of wood bison restoration activities. We do not expect adverse impacts to wood bison in the proposed NEP area from hunting of other species; furbearer trapping; recreational activities, such as boating, snow machining, off-road vehicle use, or camping; or other resource gathering activities, such as fishing, firewood cutting, berry picking, or logging.

(h) Protection of wood bison. ADF&G would employ accepted animal husbandry practices to promote the welfare of wood bison during captive holding and release (Weinhardt 2005, pp. 2–21). Releasing wood bison in areas with little human activity and development would minimize the potential for accidental, human-related bison mortality, such as collisions with highway vehicles.

(i) Public awareness and cooperation. If this proposed rule is adopted, ADF&G would work with the Service and other organizations to continue to inform the general public about the effort to restore wood bison to parts of their original range. Through the efforts of ADF&G and others, there is already widespread public and agency awareness of the program on State, national, and international levels (ADF&G 2007, pp. 18–25 and Appendix D). Designation of the NEP in Alaska would provide assurance of management flexibility to landowners, agencies, and other interests in the affected areas. As described above, through the application of management provisions set forth in the proposed special rule, we do not expect wood bison reintroductions to impede future human activity and development in Alaska.

Findings

Based on the best scientific and commercial data available (in accordance with 50 CFR 17.81), the Service finds that reintroducing wood bison to Alaska and the associated protective measures and management practices under this proposed rulemaking would further the conservation of the species. The nonessential experimental population status is appropriate for wood bison taken from captive populations and released in Alaska because loss of a wood bison NEP from Alaska would not reduce the likelihood of the species' survival in its current range in Canada and would not appreciably reduce the likelihood of survival of the species in the wild. The Service additionally finds that the less stringent section 7(a)(4) conference requirements associated with the nonessential designation do not pose a threat to the recovery and continued existence of wood bison. An NEP designation provides important

assurances to stakeholders and the State in regards to regulatory compliance requirements relating to a listed species. This conservation effort would not occur without such assurances (Draft EA 2010, p. iii).

Hunting is an important management tool for the long-term conservation of wood bison on the landscape because it will be the primary means by which herd size can be maintained within the carrying capacity of the reintroduction site(s). In addition, biologically sustainable harvest can help build support for wood bison conservation among constituents. Given that introduced wood bison will be determined to be nonessential, experimental populations, hunting will be an allowed take based on sustained yield principles established by the Alaska Department of Fish and Game with the Service. This finding only applies to the specific circumstances relating to establishing an NEP of wood bison in Alaska.

Peer Review

In conformance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three specialists to solicit comments on the scientific data and assumptions relating to the supporting biological and ecological information for this NEP proposed rule. The purpose of such review is to ensure that the final NEP designation decision is based on the best scientific information available, as well as to ensure that reviews by appropriate experts and specialists are included in the rulemaking review process.

Required Determinations

Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (5 U.S.C. 801 *et seq.*), whenever a Federal agency publishes 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 government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The 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. We certify that, if adopted, this rule would not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area affected by this rule consists of State, Federal, and private lands in interior and western Alaska. Reintroduction of wood bison associated with this proposed rule would not have any significant effect on recreational activities in the NEP area. We do not expect any closures of roads, trails, or other recreational areas. We do not expect wood bison reintroduction activities to affect the status of any other species, or other resource development actions within the release area (Fortin and Andruskiw 2003, p. 804). In addition, this proposed rulemaking is not expected to have any significant impact on private activities in the affected area. The designation of an NEP for wood bison in Alaska would significantly reduce the regulatory requirements associated with the reintroduction of wood bison, would not create inconsistencies with other agency actions, and would not conflict with existing or future human activities, including other resource development, or Tribal and public use of the land. This proposed rule, if made final, would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

Lands within the NEP area that would be affected if this proposed rule is adopted include the Yukon, Tanana, and Kuskokwim River drainages within Alaska. Many private landowners have indicated support for the presence of wood bison on their lands in the future. However, some major private landowners have expressed concerns about the potential legal and regulatory burdens related to the ESA and wood bison, including effects on other resource development activities, such as the possibility of natural gas extraction in an area near the southern end of the Minto Flats State Game Refuge, the potential for petroleum-related developments on the Yukon Flats, and mineral development adjacent to the lower Innoko/Yukon River area. The proposed special rule includes provisions to ensure that the reintroduction of wood bison would not impede these or any other existing or potential future resource development activities.

The existence of a wood bison NEP in Alaska would not interfere with actions taken or planned by other agencies. Federal agencies most interested in this proposed rulemaking include the Service, the Bureau of Land Management, the National Park Service, and the Bureau of Indian Affairs. The U.S. Forest Service has provided land to help support bison in captivity prior to release. This proposed rulemaking is consistent with the policies and guidelines of the other Department of the Interior bureaus. Because of the substantial regulatory relief provided by the NEP designation, we believe the reintroduction of wood bison in the areas described would not conflict with existing or future human activities on public lands administered by these agencies.

This proposed rule, if made final, would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule would not raise novel legal or policy issues. The Service has previously designated experimental populations of other species at numerous locations throughout the nation.

On the basis of this information, as stated earlier, we certify that, if adopted, this rule would not have a significant economic effect on a substantial number of small entities.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), if adopted, the proposed NEP

designation would not place any additional requirements on any city, village, borough, or other local municipalities. The proposed specific sites where the NEP of wood bison would occur include predominantly State, Federal, and private lands in interior and western Alaska. Many landowners and agencies have expressed support for this project. The State has expressed support for accomplishing the reintroduction through an NEP designation. Accordingly, the NEP would not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required.

The NEP designation for wood bison in Alaska would not impose any additional management or protection requirements on the State or other entities. ADF&G has determined that restoring wood bison to Alaska is a high priority, and has voluntarily undertaken all efforts associated with this proposed restoration project. Since this rulemaking does not require that any action be taken by local or State government or private entities, we have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.,* that this rulemaking would not impose a cost of $100 million or more in any given year on local or State governments or private entities (i.e., it is not a ''significant regulatory action'' under this Act).

Takings (E.O. 12630)

In accordance with Executive Order 12630, we have determined that the establishment of a wood bison NEP would not have significant takings implications. Designating reintroduced populations of federally listed species as NEPs significantly reduces the ESA's regulatory requirements with respect to that species within the NEP. Under NEP designations, the ESA requires a Federal agency to confer with the Service if the agency determines its action within the NEP area is likely to jeopardize the continued existence of the reintroduced species. However, even if a proposed Federal agency action would completely eliminate a reintroduced species from an NEP, the ESA would not compel the agency to deny a permit or cease any activity as long as the Service does not foresee that the activity may jeopardize the species' continued existence throughout its range. Furthermore, the results of a conference are advisory and do not restrict agencies from carrying out, funding, or authorizing activities. Additionally, the proposed section 4(d) special rule stipulates that unintentional take (including killing or injuring) of the reintroduced wood bison would not be a violation of the ESA, when such take is incidental to an otherwise legal activity (e.g., oil and gas development, mineral extraction).

Multiple-use management of lands within the NEP area by government, industry, or recreational interests would not change as a result of the NEP designation. Because of the substantial regulatory relief provided by NEP designations, we do not believe the proposed reintroduction of wood bison would conflict with existing human activities or hinder public use of the NEP area. Private landowners and others who live in or visit the NEP area would be able to continue to conduct their usual resource-gathering activities. The State of Alaska, through ADF&G, is a strong supporter of wood bison reintroduction under the NEP designation and has led the development and implementation of the restoration effort. A takings implication assessment is therefore not required because this rule: (1) Would not effectively compel a property owner to suffer a physical invasion of property, and (2) would not deny economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation of a listed species) and would not present a barrier to any reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the 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. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in the State of Alaska. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments would not change, and fiscal capacity would not be substantially directly affected. The proposed special rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Alaska. The State endorses the NEP designation as the most feasible way to pursue wood bison restoration in Alaska, and we have cooperated with ADF&G in preparing this proposed rule. Therefore, this proposed rule does not have significant Federalism effects or implications that would warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new information collection requirements, and a submission under the Paperwork Reduction Act (PRA) is not required. The Office of Management and Budget has approved the reporting requirements associated with experimental populations and has assigned OMB Control Number 1018–0095, expiring on May 31, 2014. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

In compliance with all provisions of the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*), we have analyzed the impact of this proposed rule. Based on this analysis and any new information resulting from public comment on the proposed action, we will determine if there are any significant impacts or effects caused by this rule. We have prepared a draft EA on this proposed action and have made it available for public inspection: (1) In person at the U.S. Fish and Wildlife Service's Regional Office (see **ADDRESSES**), and (2) online at *http://www.regulations.gov*. All appropriate NEPA documents will be finalized before this rule is finalized.

Government-to-Government Relationship With Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior Manual Chapter 512 DM 2, the Service, through ADF&G, has coordinated closely with the Tribal governments near potential release sites throughout development of this project and rulemaking process. The Service has extended an invitation for consultation to all Tribes within the

NEP area and will fully consider information received through the Government-to-Government consultation process, as well as all comments submitted during the public comment period by Tribal members or Tribal entities on the proposed NEP designation and wood bison reintroduction.

Energy Supply, Distribution, or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this proposed rule is not expected to significantly affect energy supplies, distribution, and use, it is not a significant energy action. Therefore, no Statement of Energy Effects is required.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are not clearly written, which sections or sentences are too long, and the sections where you feel lists or tables would be useful, etc.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* and upon request from the Fish and Wildlife Service's Regional Office, Fisheries and Ecological Services (see **ADDRESSES**).

Author

The primary authors of this proposed rule are Judy Jacobs, U.S. Fish and Wildlife Service, Anchorage, AK, and Bob Stephenson, Alaska Department of Fish and Game, Fairbanks, AK.

Administrative Changes to the ESA List at 50 CFR 17.11(h)

In preparing this proposed rule, we noted two errors in entries in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h); both are in the ''Special rules'' column. The entry for the special rule for slender chub (*Erimystax cahni*) includes a reference to ''17.84(sr)''; this reference should be to ''17.84(s)''. The entry for the special rule for bull trout (*Salvelinus confluentus*) includes a reference to ''17.84(v)''; this reference should be to ''17.84(w)''.

These entries are in no way related to this special rule concerning wood bison. However, to correct these errors in the Code of Federal Regulations, we must publish a rulemaking document in the **Federal Register**. Therefore, we are using this rulemaking action as the vehicle for making these corrections. Accordingly, we have proposed to revise these entries in the rule portion of this document. These changes are noncontroversial and purely administrative in nature.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entries for ''Bison, wood'' under ''Mammals'' and ''Chub, slender'' and ''Trout, bull'' under ''Fishes'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	* *		*	*	
Bison, wood ..	*Bison bison athabascae*.	Canada, Alaska	Entire	T	3, 803	NA	NA
Bison, wood ..	*Bison bison athabascae*.	Canada, Alaska	U.S.A. (Alaska)	XN	.....	NA	17.84(x)
*	*	*	* *		*	*	
FISHES							
*	*	*	* *		*	*	
Chub, slender	*Erimystax cahni*.	U.S.A. (TN, VA)	Entire, except where listed as an experimental population.	T	28	17.95(e)	17.44(c)
Chub, slender	*Erimystax cahni*.	U.S.A. (TN, VA)	U.S.A. (TN—specified portions of the French Broad and Holston Rivers; see 17.84(s)(1)(i)).	XN	.....	NA	17.84(s)

Species		Historical range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	* *		*	*	
Trout, bull	*Salvelinus confluentus*.	U.S.A. (AK, Pacific NW into CA, ID, NV, MT) Canada (NW Territories).	U.S.A., coterminous (lower 48 states), except where listed as an experimental population.	T	637, 639E, 659, 670	17.95(e)	17.44(w), 17.44(x)
Trout, bull	*Salvelinus confluentus*.	U.S.A. (AK, Pacific NW into CA, ID, NV, MT) Canada (NW Territories).	Clackamas River subbasin and the mainstem Willamette River, from Willamette Falls to its points of confluence with the Columbia River, including Multnomah Channel.	XN	.....	NA	17.84(w)
*	*	*	* *		*	*	

■ 3. Amend § 17.84 by adding a new paragraph (x) to read as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(x) Wood bison *(Bison bison athabascae).*

(1) Wood bison within the area identified in paragraph (x)(2)(i) of this section are members of a nonessential experimental population (NEP) and will be managed primarily by the State of Alaska, in cooperation with the Service, in accordance with this rule and the respective management plans.

(2) *Where are wood bison in Alaska designated as an NEP?*

(i) The boundaries of the NEP area encompass the Yukon, Tanana, and Kuskokwim River drainages in Alaska (Figure 1). The NEP area includes much of the wood bison's historical range in Alaska, and the release sites are within the species' historical range. The NEP area is defined as follows: the Yukon River drainage from the United States–Canada border downstream to its mouth; the Tanana River drainage from the United States–Canada border downstream to its confluence with the Yukon River; and the Kuskokwim River drainage from its headwaters downstream to its mouth at the Bering Sea.

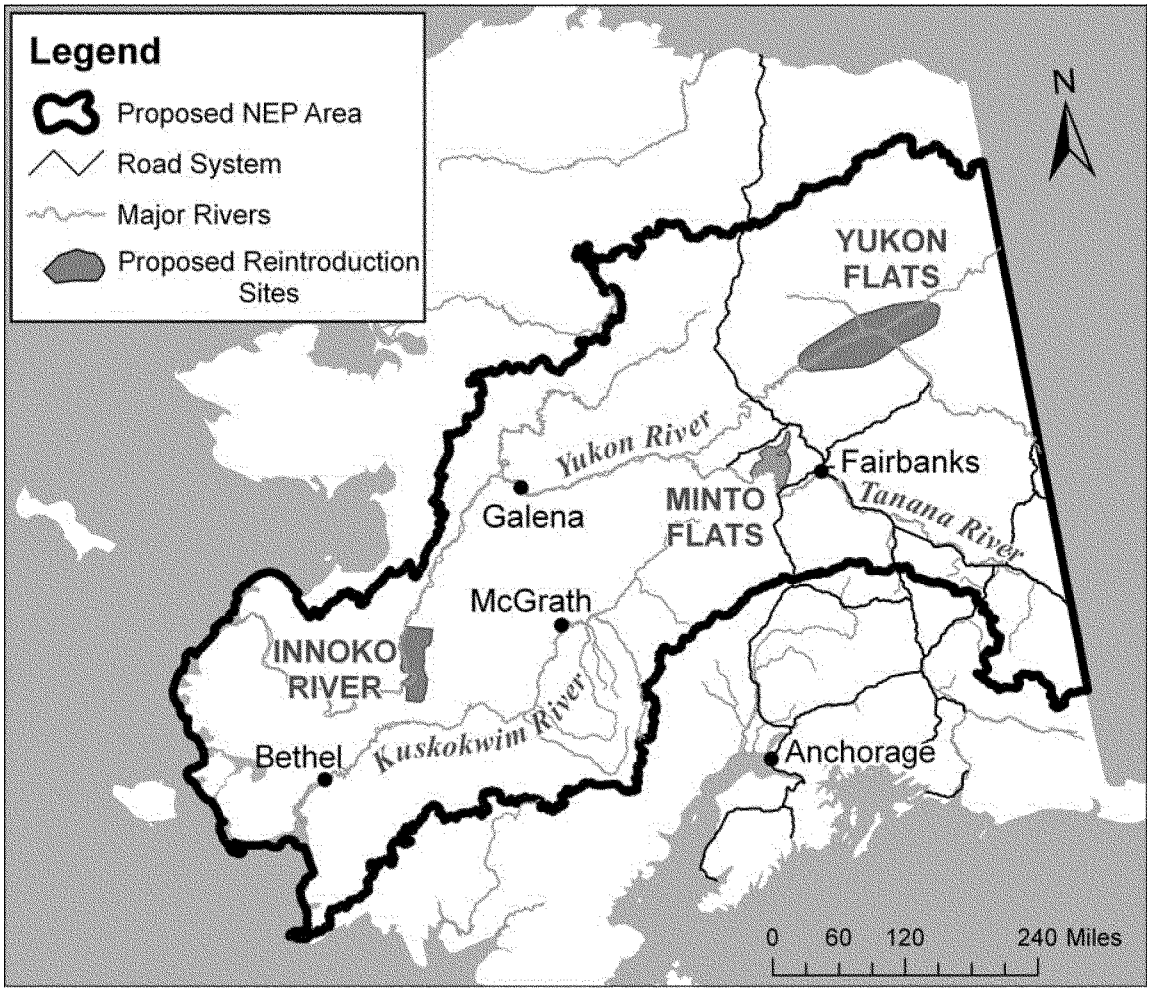

Figure 1. Boundaries of the wood bison NEP (black line) and location of the three sites for wood bison reintroduction in Alaska (gray areas).

(ii) Any wood bison found within the Alaska wood bison NEP area, and reintroduction sites within this area, will be considered part of the NEP. The bison will be managed by the State of Alaska (ADF&G) to prevent establishment of any population outside the NEP area.

(3) *Under what circumstances might an Alaska wood bison NEP be eliminated?*

(i) We do not anticipate eliminating all individuals within an Alaska wood bison NEP unless:

(A) The State deems the reintroduction efforts a failure or most members of reintroduced populations have disappeared for any reason;

(B) Monitoring of wood bison in Alaska indicates appreciable harm to other native wildlife, such as the introduction of disease or other unanticipated environmental consequences associated with their presence; or

(C) Legal or statutory changes reduce or eliminate the State's ability to complete the restoration effort as designed and intended in its management plans, with the management flexibility and protection of other land uses (including other resource development) provided in this NEP designation.

(ii) If any of the circumstances listed in paragraph (x)(3)(i) of this section occur, some or all wood bison may be removed from the wild in Alaska by any method deemed practicable by the State, including lethal removal. If the reintroduction of wood bison under this nonessential experimental designation is discontinued for any reason and no action is taken by the Service and the State to change the designation, all remaining wood bison in Alaska will retain their NEP status.

(4) *Which agency is the management lead for wood bison in Alaska?* The Alaska Department of Fish and Game (ADF&G) will have primary responsibility for leading and implementing the wood bison restoration effort, in cooperation with the Service, and will keep the Service apprised of the status of the effort on an ongoing basis. The Service will retain responsibility for ensuring compliance with all provisions of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), including compliance with section 7 for actions occurring on National Wildlife Refuge and National Park Service lands.

(5) *What take of wood bison is allowed in the NEP area?* In the following instances, wood bison may be taken in accordance with applicable State fish and wildlife conservation laws and regulations:

(i) Hunting will be an allowed take based on sustained yield principles established by the ADF&G.

(ii) A wood bison may be taken within the NEP area, provided that such take is not willful, knowing, or due to negligence, or is incidental to and not the purpose of the carrying out of an otherwise lawful activity, including but not limited to recreation (e.g., trapping, hiking, camping, or shooting activities); forestry; agriculture; oil and gas exploration and development and associated activities; construction and maintenance of roads or railroads, buildings, facilities, energy projects, pipelines, and transmission lines of any kind; mining; mineral exploration; travel by any means, including vehicles, watercraft, snow machines, or aircraft; tourism; and other activities that are in accordance with Federal, State, and local laws and regulations and specific authorizations. Such conduct is not considered intentional or ''knowing take'' for purposes of this regulation, and neither the Service nor the State will take legal action for such conduct. Any cases of ''knowing take'' will be referred to the appropriate authorities for prosecution.

(iii) Any person with a valid permit issued by the Service under 50 CFR 17.32 or by ADF&G may take wood bison for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the ESA. Additionally, any employee or agent of the Service or ADF&G designated for such purposes, acting in the course of official duties, may take a wood bison in the wild in the NEP area if such action is necessary:

(A) For scientific purposes;

(B) To relocate a wood bison to avoid conflict with human activities;

(C) To relocate a wood bison if necessary to protect the wood bison;

(D) To relocate wood bison within the NEP area to improve wood bison survival and recovery prospects or for genetic purposes;

(E) To relocate wood bison from one population in the NEP area into another, or into captivity;

(F) To aid or euthanize a sick, injured, or orphaned wood bison;

(G) To dispose of a dead wood bison, or salvage a dead wood bison for scientific purposes;

(H) To relocate wood bison that have moved outside the experimental population back into the experimental population; or

(I) To aid in law enforcement investigations involving wood bison.

(iv) Any person may take a wood bison in defense of the individual's life or the life of another person. The Service, the State, or our designated agent(s) may also promptly remove any wood bison that the Service, the State, or our designated agent(s) determine to be a threat to human life or safety. Any such taking must be reported within 24 hours to the location identified in paragraph (x)(5)(vi) of this section.

(v) In connection with otherwise lawful activities, including but not limited to the use and development of land, provided at paragraph (x)(5)(ii) of this section, the Federal Government, the State, municipalities of the State, other local governments, Native American Tribal Governments, and all landowners and their employees or authorized agents, tenants, or designees may harass wood bison in the areas defined in paragraph (x)(2)(i) of this section, provided that all such harassment is by methods that are not lethal or physically injurious to wood bison and is reported within 24 hours to the location identified in paragraph (x)(5)(vi) of this section.

(vi) Any taking pursuant to paragraph (x)(5)(ii) of this section must be reported within 14 days by contacting the Alaska Department of Fish and Game, 1300 College Road, Fairbanks, AK 99701; (907) 459–7206. The ADF&G will determine the most appropriate course of action regarding any live or dead specimens.

(6) *What take of wood bison is not allowed in the NEP area?*

(i) Except as expressly allowed in paragraph (x)(5) of this section, all the provisions of 50 CFR 17.31(a) and (b) apply to the wood bison identified in paragraph (x)(1) of this section.

(ii) Any manner of take not described under paragraph (x)(5) of this section is prohibited in the NEP area.

(iii) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever any of the identified wood bison, or parts thereof, that are taken or possessed in a manner not expressly allowed in paragraph (x)(5) of this section or in violation of the applicable State or local fish and wildlife laws or regulations or the ESA.

(iv) You may not attempt to commit, solicit another to commit, or cause to be committed any offense except the take expressly allowed in paragraph (x)(5) of this section.

(7) *How will the effectiveness of the reestablishment be monitored?* The ADF&G will monitor the population status of reintroduced bison herds at least annually and document productivity, survival, and population size. The Service or other Federal agencies may also be involved in population monitoring, particularly where National Refuge System or Bureau of Land Management lands are involved. Tribal governments or other organizations may also participate in population monitoring and other management activities. Depending on available resources, monitoring may occur more frequently, especially during the first few years of reestablishment efforts. This monitoring will be conducted primarily through aerial surveys and will be accomplished by State or Service employees, through cooperative efforts with local governments, or by contracting with other appropriate species experts.

Dated: January 2, 2013.

Michael J. Bean,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 2013–00692 Filed 1–17–13; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 78, No. 13
Friday, January 18, 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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Recreation Resource Advisory Committees

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to re-establish the Recreation Resource Advisory Committees.

SUMMARY: The Secretary of Agriculture intends to re-establish the charter for five Forest Service Recreation Resource Advisory Committees (Recreation RACs) pursuant to Section 4 of the Federal Lands Recreation Enhancement Act, which passed into law as part of the 2005 Consolidated Appropriations Act (Pub. L. 108–447) on December 8, 2004. The Recreation RACs operate in the Pacific Northwest, Pacific Southwest, Eastern, Southern Regions of the Forest Service and the State of Colorado. The purpose is to provide advice and recommendations on recreation fees to both the Forest Service and the Bureau of Land Management (BLM) as appropriate.

FOR FURTHER INFORMATION CONTACT: Julie Cox, National Recreation RAC Coordinator, USDA Forest Service, Pacific Northwest Region, 333 SW 1st Avenue, Portland, OR 97208, (503) 808–2984.

SUPPLEMENTARY INFORMATION:

Background

The Federal Lands Recreation Enhancement Act (REA), signed in December 2004, directs the Secretary of Agriculture, the Secretary of the Interior, or both to establish Recreation RACs, or use existing advisory committees to perform the duties of Recreation RACs, in each State or region for Federal recreation lands and waters managed by the Forest Service or the BLM. These committees make recreation fee program recommendations on implementing or eliminating standard amenity fees; expanded amenity fees; and noncommercial, individual special recreation permit fees; expanding or limiting the recreation fee program; and fee-level changes.

The REA grants flexibility to Recreation RACs by stating that the Secretaries:

- May have as many additional Recreation RACs in a State or region as the Secretaries consider necessary;
- Shall not establish a Recreation RAC in a State if the Secretaries determine, in consultation with the Governor of the State, that sufficient interest does not exist to ensure that participation on the committee is balanced in terms of the points of view represented and the functions to be performed; or
- May use a resource advisory committee established pursuant to another provision of law and in accordance with that law.

The Forest Service and BLM elected to jointly use existing BLM RACs in the states of Arizona, Idaho, the Dakotas, Montana, Nevada, New Mexico, and Utah. The Forest Service also chartered new Recreation RACs for the Forest Service Pacific Northwest, Pacific Southwest, Eastern and Southern Regions and for the State of Colorado. The Forest Service is using an existing advisory board for the Black Hills National Forest in South Dakota. In addition, the Governors of three states—Alaska, Nebraska and Wyoming—requested that their states be exempt from the Recreation RAC requirement, and the Secretary concurred with the exemptions.

Membership

Members were initially appointed to the Forest Service established Recreation RACs in February 2007 for the four regions, and July 2007 for the one state. Each Recreation RAC consists of 11 members that are representative of the following interests:

(1) Five persons who represent recreation users and that include, as appropriate, persons representing—

(a) Winter motorized recreation such as snowmobiling;

(b) Winter nonmotorized recreation such as snowshoeing, cross-country and downhill skiing, and snowboarding;

(c) Summer motorized recreation such as motorcycling, boating, and off-highway vehicle driving;

(d) Summer nonmotorized recreation such as backpacking, horseback riding, mountain biking, canoeing, and rafting; and

(e) Hunting and fishing.

(2) Three persons who represent interest groups that include, as appropriate—

(a) Motorized outfitters and guides;

(b) Nonmotorized outfitters and guides; and

(c) Local environmental groups.

(3) Three persons who are—

(a) State tourism official representing the State;

(b) A representative of affected Indian tribes; and

(c) A representative of affected local government interests.

The Recreation RAC members elect and determine chair and co-chair responsibility. The Forest Service Regional Foresters or designee for each identified Recreation RAC shall serve as the designated Federal official under sections 10(e) and (f) of the Federal Advisory Committee Act (5 U.S.C. App. II).

Equal opportunity practices in accordance with United States Department of Agriculture (USDA) policies shall be followed in all appointments to the committee. To help ensure that the recommendations of the committee have taken into account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent women, men, racial and ethnic groups, and persons with disabilities.

Dated: January 8, 2013.

Gregory Parham,

Acting Assistant Secretary of Administration.

[FR Doc. 2013–01018 Filed 1–17–13; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0098]

Notice of Request for Extension of Approval of an Information Collection; Tuberculosis Testing of Imported Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for tuberculosis testing of imported cattle from Mexico.

DATES: We will consider all comments that we receive on or before March 19, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0098-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0098, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0098* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for tuberculosis testing of imported cattle, contact Dr. Langston Hull, Staff Veterinary Medical Officer, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737; (301) 851–3363. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Tuberculosis Testing of Imported Cattle from Mexico.

OMB Number: 0579–0224.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals and animal products to prevent the introduction into and dissemination within the United States of livestock diseases and pests. APHIS regulates the importation of animals and animal products into the United States. Regulations concerning the importation of animals are contained in 9 CFR part 93. Subpart D of part 93 pertains to the importation of ruminants, including cattle.

The regulations in subpart D include requirements to ensure that cattle imported into the United States from Mexico are free of bovine tuberculosis. The importation of these cattle involve information collection activities, such as the USDA, APHIS, Veterinary Services (VS) Application for Import or in Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs) (VS Form 17–129) and USDA, APHIS, VS Declaration of Importation (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs) (VS Form 17–29). In addition, subpart D requires that cattle be accompanied by a health certificate and that the application for the import permit list the specific locations of all premises that the cattle to be imported have been on. Lastly, subpart D requires tickicidal dip certification and certification regarding the tuberculosis history of the herd of origin for the cattle destined for export to the United States. This information is necessary to allow APHIS to ensure that the cattle to be imported from Mexico are free of tuberculosis, thereby protecting the health of the U.S. livestock.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.844 hours per response.

Respondents: Salaried veterinary officers of the Mexican Government from the exporting region, veterinary officials of exporting regions approved by Mexico's national animal health service, exporters, and U.S. cattle importers.

Estimated annual number of respondents: 81,851.

Estimated annual number of responses per respondent: 1.335.

Estimated annual number of responses: 109,255.

Estimated total annual burden on respondents: 92,215 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of January 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–01021 Filed 1–17–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0111]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Cut Flowers From Countries With Chrysanthemum White Rust

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of cut flowers from countries with chrysanthemum white rust.

DATES: We will consider all comments that we receive on or before March 19, 2013.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2012–0111–0001.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0111, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2012–0111* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of cut flowers from countries with chrysanthemum white rust, contact Mr. William Aley, Senior Regulatory Policy Specialist, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale MD 20737; (301) 851–2130. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Cut Flowers from Countries with Chrysanthemum White Rust.

OMB Number: 0579–0271.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of cut flowers from certain parts of the world as provided in ''Subpart—Cut Flowers'' (7 CFR 319.74–1 through 319.74–4).

Chrysanthemum white rust (CWR) is a serious disease in nurseries that can cause complete loss of chrysanthemum crops within greenhouses. The causal agent is *Puccinia horiana* Henn., which is a filamentous fungus and obligate parasite. At this time, CWR is not established in the United States.

In accordance with the regulations for cut flowers, APHIS allows the importation of cut flowers from countries with CWR into the United States under certain conditions. These conditions involve the use of information collection activities, including a phytosanitary certificate and additional declaration, box labeling, and production site registration.

Cut flowers must be accompanied by a phytosanitary certificate or equivalent documentation with an additional declaration stating that the place of production as well as the consignment have been inspected and found free of *Puccinia horiana.* In addition, box labels must identify the registered production site.

The information collection activities of a phytosanitary certificate and box labeling were approved by the Office of Management and Budget (OMB) under control number 0579–0271. However, when comparing the regulations with the information collection activities, we found that production site registration was omitted from previous information collections. The addition of production site registration will result in an increase in total estimated annual burden from 636 hours to 646 hours.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2503 hours per response.

Respondents: Importers of chrysanthemum cut flowers, nurseries, registered production sites, and the national plant protection organizations of exporting countries.

Estimated annual number of respondents: 1,045.

Estimated annual number of responses per respondent: 2.470.

Estimated annual number of responses: 2,581.

Estimated total annual burden on respondents: 646 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of January 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–01016 Filed 1–17–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2012–0101]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Importation of Fruit From Thailand into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the importation of fruit from Thailand.

DATES: We will consider all comments that we receive on or before March 19, 2013.

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

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0101-0001.*

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0101, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0101* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of fruit from Thailand into the United States, contact Mr. Andrew Wilds, Trade Director, PPQ, APHIS, 4700 River Road, Unit 140, Riverdale MD 20737; (301) 851–2275. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of fruit from Thailand into the United States.

OMB Number: 0579–0308.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, APHIS regulates the importation of fruits and vegetables into the United States from certain parts of the world as provided in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–56).

In accordance with § 319.56–47, litchi, longan, mango, mangosteen, pineapple, and rambutan from Thailand may be imported into the United States under certain conditions to prevent the introduction of plant pests into the United States. These conditions involve the use of information collection activities, including production area registration, phytosanitary certificate with an additional declaration statement, and labeling.

Shipments of litchi, longan, mango, mangosteen, pineapple, and rambutan must be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit have been treated with irradiation in Thailand in accordance with the regulations, and in the case of litchi, that the fruit have been inspected and found to be free of *Peronophythora litchi.* In addition, cartons in which litchi and longans are packed must be stamped to indicate that the fruit must not be imported into or distributed in Florida.

The information collection activities of a phytosanitary certificate and labeling were approved by the Office of Management and Budget (OMB) under control number 0579–0308. However, when comparing the regulations with the information collection activities, we found that the registration of production areas was omitted from previous information collections. This has resulted in a change of the estimated total annual burden from 78 hours to 398 hours.

We are asking OMB to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.41458 hours per response.

Respondents: Importers of fruit from Thailand and the national plant protection organization of Thailand.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 96.

Estimated annual number of responses: 960.

Estimated total annual burden on respondents: 398 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 14th day of January 2013.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2013–01019 Filed 1–17–13; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will meet in Hamilton, Montana. The purpose of the meeting is project discussion and presentations.

DATES: The meeting will be held January 22, 2013 at 6:30 p.m.

ADDRESSES: The meeting will be held at 1801 N. First Street. Written comments should be sent to Bitterroot National Forest Supervisor's Office, 1801 N. 1st, Hamilton, MT 59840. Comments may also be sent via email to *jmlubke@fs.fed.us* or via facsimile to 406–363–7159.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 1801 N. 1st, Hamilton, MT. Visitors are encouraged to call ahead to 406–363–7100 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Dan Ritter, District Ranger, 406–777–7410 or Joni Lubke, RAC coordinator, 406–363–7182.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring concerns to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by January 21, 2013 will have the opportunity to address the Council at those sessions.

Dated: January 7, 2013.

Julie K. King,

Forest Supervisor.

[FR Doc. 2013–00990 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Social Capital Survey of Northeast Groundfish (SCSN) Fishery Sector Participants.

OMB Control Number: None.

Form Number(s): NA.

Type of Request: Regular submission (request for a new information collection).

Number of Respondents: 151.

Average Hours per Response: 20 minutes.

Burden Hours: 50.

Needs and Uses: This request is for a new information collection.

Quota allocations to groups of self-selecting permit holders (known as sector allocations) are increasingly being considered as a way to provide fishermen with greater control and flexibility in their fishing businesses while achieving efficiency gains. This new approach, which devolves substantial management responsibilities to groups of fishermen, represents a potential transformation in the relationship among permit holders as well as the relationship between permit holders and fisheries governance structures.

We expect that the success of sectors is likely to be shaped by the strength of the relationships between permit holders including their degree of trust and collaboration. We also expect that successful sectors will build norms and networks that enable collective action over time. The value of these relationships is commonly referred to in social and economic literature.

A baseline of existing social capital in the groundfish fishery in the Northeast Region was conducted in 2010 by the Gulf of Maine Research Institute. This survey, to be conducted twice over the next six years, will follow up on this earlier initiative and will enable researchers to measure the change in the types and strength of relationships between groundfish permit holders in the Northeast. This work will inform our understanding of how best to design collaborative management structures in support of sustainable fisheries in the region and nationally.

Affected Public: Business or other for-profit organizations.

Frequency: Twice in the next six years.

Respondent's Obligation: Voluntary.

OMB Desk Officer: *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: January 14, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–00964 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–3–2013]

Foreign-Trade Zone 68—El Paso, TX, Application for Subzone, Expeditors International of Washington, Inc., El Paso, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of El Paso, grantee of FTZ 68, requesting special-purpose subzone status for the facilities of Expeditors International of Washington, Inc., located in El Paso, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on January 7, 2013.

The proposed subzone would consist of the following sites: *Site 1* (2.94 acres)—1450 Pullman Drive, El Paso; and, *Site 2* (4.02 acres)—1313 Don Haskins Drive, El Paso. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 68.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 27, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to March 14, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: January 7, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–01034 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–107–2012]

Approval of Subzone Status, Coamo Property & Investments, LLC, Coamo, PR

On October 9, 2012, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Puerto Rico Trade & Export Company, grantee of FTZ 61, requesting subzone status subject to the existing activation limit of FTZ 61 on behalf of the proposed operator, Coamo Property & Investments, LLC, in Coamo, Puerto Rico.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (77 FR 63289–63290, 10/16/12). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 61L is approved,

subject to the FTZ Act and the Board's regulations, including Section 400.13 and further subject to FTZ 61's 1,821.07-acre activation limit.

Dated: January 1, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–01036 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–70–2012]

Foreign-Trade Zone 265—Conroe, TX; Authorization of Production Activity; Bauer Manufacturing, Inc. (Pile Drivers and Boring Machinery), Conroe, TX

On September 12, 2012, the City of Conroe, Texas, grantee of FTZ 20, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of Bauer Manufacturing, Inc., within FTZ 265—Site 1, in Conroe, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (77 FR 58354, 9–20–2012). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: January 11, 2013.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2013–00948 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Procedures for Importation of Supplies for Use in Emergency Relief Work

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 19, 2013.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Hardeep K. Josan, Office of the Chief Counsel for Import Administration, Room 3622, U.S. Department of Commerce; telephone: 202–482–0835; fax: 202–482–4912; *hardeep.josan@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The regulations (19 CFR 358.101 through 358.104) provide procedures for requesting the Secretary of Commerce to permit the importation of supplies, such as food, clothing, and medical, surgical, and construction, for use in emergency relief work free of antidumping and countervailing duties.

Before importation, a written request shall be submitted by the person in charge of sending the subject merchandise from the foreign country or by the person for whose account it will be brought into the United States. The request should include the following information: Department antidumping and/or countervailing duty order case number; producer of the merchandise; detailed description of the merchandise; current Harmonized Trade System (HTS) number; price in the United States; quantity; proposed date and port of entry; mode of transport; person for whose account the merchandise will be brought into the U.S.; destination; use of the merchandise at the designated destination; and any additional information the person would like the Secretary to consider.

Authority: 19 U.S.C. 1318(a). There are no proposed changes to this information collection.

II. Method of Collection

Three copies of the request must be submitted in writing to the Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230.

III. Data

OMB Control Number: 0625–0256.

Form Number(s): None.

Type of Review: Regular submission (extension to a currently approved collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 10.

Estimated Total Annual Cost to Public: $150.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 15, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–01042 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943]

Oil Country Tubular Goods From the People's Republic of China: Rescission of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from the United States Steel Corporation (''U.S. Steel'' or ''Petitioner''), a domestic producer and Petitioner in the underlying investigation of this case, and Wuxi Seamless Oil Pipe Co., Ltd. (''WSP''), a producer of subject merchandise from the People's Republic of China (''PRC''), the Department of Commerce (the ''Department'') initiated

an administrative review of the antidumping duty order on oil country tubular goods (''OCTG'') from the PRC. The period of review is May 1, 2011 through April 30, 2012. Based on the timely withdrawal of the request for review submitted by both U.S. Steel and WSP, we are now rescinding this administrative review.

DATES: *Effective Date:* January 18, 2013.

FOR FURTHER INFORMATION CONTACT: Brendan Quinn or Eugene Degnan, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5848 or (202) 482–0414, respectively.

Background

On May 1, 2012, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on OCTG from the PRC for the period May 1, 2011 through April 30, 2012.[1] On May 31, 2012, the Department received a timely request from U.S. Steel to conduct an administrative review of 247 PRC companies in accordance with 19 CFR 351.213(b).[2] In addition, WSP requested that the Department conduct an administrative review of its company.[3] Pursuant to these requests, on July 10, 2012, in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''), the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review.[4]

Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if the party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. In this case, on July 10 and September 20, 2012, WSP and Petitioner timely withdrew each of their requests for a review, respectively.[5] Therefore, the Department is rescinding the administrative review of the antidumping duty order on OCTG from the PRC covering the period May 1, 2011 through April 30, 2012, in accordance with 19 CFR 351.213(d)(1).

Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit or bonding rate of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained in the APO itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: January 10, 2013.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2013–01045 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 77 FR 25679 (May 1, 2012).

[2] *See* Petitioner's submission entitled, ''Oil Country Tubular Goods from the People's Republic of China: Request for Administrative Review,'' dated May 31, 2012.

[3] *See* WSP's submission entitled, ''Oil Country Tubular Goods from China: Request for Administrative Review,'' dated May 31, 2012.

[4] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 77 FR 40565 (July 10, 2012).

[5] *See* WSP's submission entitled, ''Oil Country Tubular Goods from China: Withdrawal of Request for Administrative Review,'' dated July 10, 2012; and Petitioner's submission entitled, ''Certain Oil Country Tubular Goods from the People's Republic of China,'' dated September 20, 2012.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Preliminary Rescission of Antidumping Duty New Shipper Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 18, 2013.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review (NSR) of the antidumping duty order on certain preserved mushrooms from the People's Republic of China (PRC). The NSR covers Shandong Yinfeng Rare Fungus Corporation Ltd. (Yinfeng) for the period of review (POR) February 1, 2011, through January 31, 2012. The Department has preliminarily determined that Yinfeng did not satisfy the regulatory requirements for a NSR. Therefore, the Department is preliminarily rescinding this NSR. We invite interested parties to comment on this preliminary rescission of review.

FOR FURTHER INFORMATION CONTACT: Mark Flessner or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–6312 or (202) 482–0649, respectively.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The certain preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis.* The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, and 0711.51.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. For the complete scope, *see Certain Preserved Mushrooms From the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 77 FR 55808 (September 11, 2012).

Methodology

The Department has conducted this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.214. For a full description of the methodology underlying our conclusions, *see* ''Decision Memorandum for Preliminary Results of Antidumping Duty New Shipper Review: Certain Preserved Mushrooms from the People's Republic of China,'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Preliminary Decision Memorandum), dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://iaaccess.trade.gov*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Rescission of NSR

Based on information that Yinfeng submitted after the initiation of the NSR, the Department has preliminarily determined that Yinfeng did not meet the minimum requirements in its request for an NSR under 19 CFR 351.214(b)(2)(iv)(C). Therefore, the Department preliminarily determines that it is appropriate to rescind the NSR for Yinfeng.

Assessment Rates

Yinfeng's entries will are currently subject to the PRC-wide rate. Although the Department intends to rescind the NSR for Yinfeng, the Department is currently conducting an administrative review for the POR February 1, 2011, through January 31, 2012, which could include the entries subject to this NSR.[1] Accordingly, if the Department proceeds with a final rescission of this NSR, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend entries during the period February 1, 2011, through January 31, 2012, of subject merchandise exported by Yinfeng until CBP receives instructions relating to the administrative review covering the period February 1, 2011, through January 31, 2012.

Cash Deposit Requirements

Effective upon publication of the final rescission or the final results of this NSR, we will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Yinfeng. If we proceed to a final rescission of this NSR, the cash deposit rate will continue to be the *ad valorem* PRC-wide rate for Yinfeng. If we issue final results of the NSR for this respondent, we will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Comments

Interested parties are invited to comment on these preliminary results and submit written arguments or case briefs within 30 days after the date of publication of this notice, unless otherwise notified by the Department.[2] Parties are reminded that written comments or case briefs are not the place for submitting new factual material. Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later.[3] Parties who submit case or rebuttal briefs are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited.

Any interested party who wishes to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days after the day of publication of this notice. A request should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed.[4] Issues raised in the hearing will be limited to those raised in case briefs. The Department will issue the final rescission or final results of NSR, including the results of our analysis of issues raised in any briefs, within 90 days after the date on which the preliminary rescissions were issued, unless the deadline for the final results is extended.[5]

Notification to Importers

This notice serves as a preliminary reminder to the importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice is published in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214(f).

Dated: January 10, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

Failure to satisfy new shipper regulatory requirements—Yinfeng
Rescission of NSR

[FR Doc. 2013–01040 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Basic Requirements for Special Exemption Permits and Authorizations To Take, Import, and Export Marine Mammals, Threatened and Endangered Species, and for Maintaining a Captive Marine Mammal Inventory Under the Marine Mammal Protection, the Fur Seal, and the Endangered Species Acts

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 19, 2013.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part, and Deferral of Administrative Review,* 77 FR 19179, 19182 (March 30, 2012).

[2] *See* 19 CFR 351.309(c)(ii).

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.310(c).

[5] *See* 19 CFR 351.214(i).

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Amy Sloan, (301) 427–8401 or *Amy.Sloan@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for a revision and extension of a currently approved information collection.

The Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.;* MMPA), Fur Seal Act (16 U.S.C. 1151 *et seq.;* FSA), and Endangered Species Act (16 U.S.C. 1531 *et seq.;* ESA) prohibit certain activities affecting marine mammals and endangered and threatened species, with exceptions. Pursuant to section 104 of the MMPA and Section 10 of the ESA, special exception permits can be obtained for scientific research and enhancing the survival or recovery of a species or stock of marine mammals or threatened or endangered species. Section 104 of the MMPA also includes permits for commercial and educational photography of marine mammals; import and capture of marine mammals for public display; and, Letters of Confirmation under the General Authorization for scientific research that involves minimal disturbance to marine mammals. The regulations implementing permits and reporting requirements under the MMPA and FSA are at 50 CFR part 216; the regulations for permit requirements under the ESA are at 50 CFR part 222. The required information in this collection is used to evaluate the impacts of the proposed activity on protected species; to make the determinations required by the MMPA, ESA and their implementing regulations prior to issuing a permit; and to establish appropriate permit conditions. Inventory reporting pertaining to marine mammals in public display facilities is required by the MMPA.

This information collection applies to protected species for which NMFS is responsible, including the marine mammal species of cetaceans (whales, dolphins and porpoises), pinnipeds (seals and sea lions), sea turtles (in water), white abalone, black abalone, smalltooth sawfish, largetooth sawfish (imports only), shortnose sturgeon, and Atlantic sturgeon. The information collection may be used for proposed listed species (*e.g.,* corals).

The currently approved application and reporting requirements are being revised to include submission of Letters of Intent under the General Authorization via the existing online application system, Authorizations and Permits for Protected Species (APPS). Respondents can currently only apply for scientific research and enhancement permits using APPS. This revision also includes adding Atlantic sturgeon and largetooth sawfish. NMFS listed Atlantic sturgeon as endangered or threatened under the ESA on April 6, 2012 (77 FR 5914 and 77 FR 5580). Largetooth sawfish, which live outside of U.S. waters, were listed as endangered on August 11, 2011 (76 FR 40822). ESA Section 10 permits are required for taking or importing these ESA-listed species for scientific research or enhancement purposes.

A number of coral species have been proposed to be listed or reclassified under the ESA by NMFS (77 FR 73220). If such listings take effect, the scientific research and enhancement application instructions may be revised to clarify information pertaining to taking ESA-listed coral species. However, revisions pertaining to corals would not occur until and if a final listing rule was published.

II. Method of Collection

Permit applications, permit reports, and inventory reports are available in paper or electronic versions (online or via email). Respondents may submit all applications and forms by email, mail, or facsimile. Respondents may also submit scientific research and enhancement permit applications via an online application system, APPS.

III. Data

OMB Control Number: 0648–0084.

Form Number: None.

Type of Review: Regular submission (revision and extension of a currently approved collection).

Affected Public: Non-profit institutions; universities; Federal, State, local, or tribal governments; and business or other for-profit organizations.

Estimated Number of Respondents: 536.

Estimated Time per Response: Scientific research permit applications, 50 hours; public display permit applications, 30 hours; photography permit applications, 10 hours; General Authorization applications, 10 hours; major permit modification requests, 35 hours; minor permit modification requests, 3 hours; scientific research permit reports, 12 hours; public display permit reports, 2 hours; photography permit reports, 2 hours; General Authorization reports, 8 hours; public display inventory reporting, 2 hours; and recordkeeping, 2 hours per permit or authorization type (including permits for scientific research, public display, photography, General Authorization; and retention or transfer of rehabilitated animals).

Estimated Total Annual Burden Hours: 7,730.

Estimated Total Annual Cost to Public: $2,000 in recordkeeping/reporting costs.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 14, 2013.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2013–00965 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC446

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Highly Migratory Species Committee (HMS) will hold a public meeting.

DATES: The meeting will be held on February 4, 2013 beginning at 10 a.m.

ADDRESSES: The meeting will be held via webinar with a listening station at the Council office. Webinar access details will be posted at: *http://www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street, Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review and develop comments from the Council on Amendment 5 to the 2006 Consolidated Highly Migratory Species Fishery Management Plan. The proposed measures include changes to commercial quotas and species groups, the creation of several time/area closures, a change to an existing time/area closure, an increase in the recreational minimum size restrictions, and the establishment of recreational reporting for certain species of sharks. A summary of the measures is available at: *http://www.nmfs.noaa.gov/sfa/hms/newslist/2012/11-15-12_a5_proposed_rule_listserv.pdf.* The measures are being considered by the National Marine Fisheries Service (not by the Council) but because of potential impacts to constituents in the Mid-Atlantic area, the Council is considering submitting comments on the proposed measures. The public may also submit comments directly at: *http://www.regulations.gov/#!documentDetail;D=NOAA-NMFS-2012-0161-0013* until February 12, 2013.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

Dated: January 15, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–00974 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC442

South Atlantic Fishery Management Council (Council)—Public Meetings; Correction

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

ACTION: Correction to the notice of public hearing and scoping meetings.

SUMMARY: This document corrects an error made to the email address for written comments pertaining to the Scoping Process for Amendment 5 to the Dolphin Wahoo Fishery Management Plan. The original document published in the **Federal Register** on January 15, 2013, and all other information remains unchanged and will not be repeated in this document.

DATES: Written comments may also be directed to Bob Mahood, Executive Director, SAFMC (see Council address). Comments will be accepted until 5 p.m. on February 4, 2013.

ADDRESSES: *Council address:* South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone 843/571–4366 or toll free 866/SAFMC–10; Fax 843/769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 15, 2013, in FR Doc. 2013–00601, on page 2955, in the first column, item 3 is corrected to read as follows:

3. Written comments may be directed to Bob Mahood, Executive Director, SAFMC (see Council address) or via email to: *DWAmend5Comments@safmc.net.* Comments will be accepted until 5 p.m. on February 4, 2013.

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

Dated: January 15, 2013.

Tracey L Thompson,

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

[FR Doc. 2013–00998 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC445

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Meetings of the South Atlantic Fishery Management Council's Information & Education Advisory Panel (AP); Law Enforcement AP; Joint Meeting of the Information & Education AP and Law Enforcement AP; and meeting of the Marine Protected Area (MPA) Expert Workgroup.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) will hold the AP meetings and the MPA Expert Workgroup meeting in North Charleston, SC.

DATES: The meetings will be held from 1:30 p.m. on Monday, February 4, 2013 until 5 p.m. on Thursday, February 7, 2013. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Crowne Plaza Airport Hotel, 4381 Tanger Outlet Boulevard, North Charleston, SC 29418; telephone: (800) 503–5762 or (843) 744–4422; fax: (843) 744–4472.

Council Address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone 843/571–4366 or toll free 866/SAFMC–10; FAX 843/769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The items of discussion in the individual meeting agendas are as follows:

MPA Expert Workgroup Agenda: Monday, February 4, 2013, 1:30 p.m. until Wednesday, February 6, 2013, 12 p.m.

1. Receive a presentation on the reorientation of existing MPAs based on occurrence and habitat.

2. Review and revise recommendations based on data availability, assumptions and other considerations with a focus on reorienting existing MPAs in order to reduce bycatch of speckled hind and warsaw grouper in the South Atlantic Region.

3. Discuss timing and develop workgroup report.

Joint Information & Education AP and Law Enforcement AP Agenda: Wednesday, February 6, 2013, 1:30 p.m. until 5 p.m.

1. Receive an overview of Snapper Grouper Amendment 30, pertaining to the Vessel Monitoring System (VMS), as well as a review of the VMS fact sheet.

2. Receive a presentation on the mobile phone application for SAFMC regulations.

3. Receive a presentation on the status of the SAFMC Web site upgrade, including upgrades to the law enforcement sections of the Web site. This includes a Law Enforcement Frequently Asked Questions (FAQ) section.

4. Review updates on the NOAA Office of Law Enforcement (OLE) Web site and discuss communication improvements regarding regulatory and law enforcement issues with officers and field offices.

Information & Education AP Agenda, Thursday, February 7, 2013, 9 a.m. until 5 p.m.

1. Receive an overview and an update on the Marine Resource Education Program (MREP) project.

2. Receive an update on the Atlantic States Marine Fisheries Communication Group Social Media Workshop.

3. Discuss the SAFMC Web site upgrade, including the Web site format and types of necessary outreach materials.

4. Receive an overview of proposed outreach materials for 2013.

5. Receive an overview of the SAFMC Visioning Process for snapper grouper species.

6. Discuss strategic planning.

Law Enforcement AP Agenda, Thursday, February 7, 2013, 9 a.m. until 5 p.m.

1. Approve agenda and March 2012 AP meeting minutes.

2. Receive an update on the following recently completed and developing amendments pertaining to the Snapper Grouper (SG) Fishery Management Plan: Regulatory Amendment 13, pertaining to the revision of Annual Catch Limits (ACLs); Regulatory Amendment 15 (yellowtail snapper and grouper); Amendment 28 (red snapper); Amendment 18B and Regulatory Amendment 16 (golden tilefish); Regulatory Amendment 14 (management measures for the complex); and Regulatory Amendment 17 (MPAs).

3. Review SG Regulatory Amendment 18, regarding the adjustment of the ACL/sector ACLs for vermilion snapper and red porgy based on recently completed stock assessment updates for these species.

4. Review SG Amendment 27, which assumes management responsibility for Nassau grouper in the Gulf of Mexico, increases the number of crew members allowed on dual-permitted snapper grouper vessels (vessels that have both a federal South Atlantic Charter/Headboat Permit for snapper grouper species and a South Atlantic Unlimited or 225 pound SG Permit), addresses the issues of captain and crew retention of bag limit quantities of snapper grouper species, proposes changes to the existing snapper grouper framework procedure to allow for more timely adjustments to ACLs, and modifies management measures for blue runner.

5. Review SG Amendment 30, which considers VMS requirements for vessels with South Atlantic commercial snapper grouper permits. This action was initially included in a separate amendment but was recently transferred to its own separate amendment.

6. Review Joint Mackerel Amendment 19, which addresses bag limit sales of king mackerel, Spanish mackerel and cobia, including a potential new commercial permit requirement for cobia. The amendment also addresses permit requirements for king mackerel and Spanish mackerel.

7. Review Joint Mackerel Amendment 20, which includes evaluation of boundaries, allocations and transit provisions; considers a commercial quota for North Carolina king and Spanish mackerel; and modifies the framework procedure.

8. Review the Mackerel Framework Amendment, which considers size limits, transfer allowances and changes in commercial trip limits.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the council office (see **ADDRESSES**) 3 days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Dated: January 15, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–00973 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC449

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting.

DATES: The meeting will be held Tuesday, February 5, 2013 through Friday, February 8, 2013.

ADDRESSES: The meeting will be held at the Marriott Mobile, 3101 Airport Boulevard, Mobile, AL 36606; telephone: (251) 476–6400.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Bortone, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION:

Committees

Tuesday, February 5, 2013

8:30 a.m.–12:30 p.m.—The Full Council in a CLOSED SESSION will meet and interview the Executive Director applicants.

—Recess—

2 p.m.–4 p.m.—The Full Council in a CLOSED SESSION will continue interviewing applicants.

—Recess—

Wednesday, February 6, 2013

8:30 a.m.–12 noon and 1:30 p.m.–5:30 p.m.—The Reef Fish Management Committee will review a Scoping Document for Amendment 28—Red Snapper Allocations; take Final Action on Vermilion Snapper, Yellowtail Snapper and Venting Tool Framework Action; discuss For-Hire Red Snapper Days-at-Sea Pilot Program; review comments received on Scoping Document Amendment 39—Regional Management of Recreational Red Snapper; receive a summary from the Socioeconomic Scientific and Statistical Committee Meeting; and discuss Exempted Fishing Permits related to Reef Fish (if any).

The Reef Fish Committee will also discuss issues addressed during the January 7–8, 2013 Reef Fish Committee Meeting, that includes: Draft 2013 Red Snapper Framework Action; discussions of Red Snapper Allocation, Red Snapper IFQ 5-Year Review and Red Snapper Regional Management Issues; and, any open discussions pertaining to Red Snapper Management issues.

—Recess—

Immediately following the Committee Recess will be the Informal Question & Answer Session on Gulf of Mexico Fishery Management Issues.

Thursday, February 7, 2013

8:30 a.m.–9:30 a.m.—The Data Collection Committee will review a draft Framework Action to the Fishery Management Plans for Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagics of the Gulf of Mexico and South Atlantic Regions; review of Joint South Atlantic/Gulf of Mexico Generic Headboat Reporting in the South Atlantic Amendment; and discuss the Joint South Atlantic/Gulf of Mexico Generic Commercial Logbook Report Amendment.

9:30 a.m.–10 a.m.—The Shrimp Committee will review the 2011 Cooperative Texas Closure, the Preliminary Effort Report for 2012, and the Status Report on Electronic Logbook Program.

10 a.m.–10:30 a.m.—The Ad Hoc Restoration Committee will review funds for Restoration Activities; and receive a summary of RESTORE Meetings.

—Recess—

Council

Thursday, February 7, 2013

10:30 a.m.—The Council meeting will begin with a Call to Order and Introductions.

10:35 a.m.–10:50 a.m.—The Council will review the agenda and approve the minutes.

10:50 a.m.–11:30 a.m.—The Council will discuss Other Business items, as such: receive an update of the Marine Resource Education Program; receive a summary from the HMS Advisory Panel Meeting; review of the HMS Amendment Comments; receive updates to Examinations and Certificates of Compliance; receive summaries from the following meetings attended by Council members and staff: South Atlantic Fishery Management Council Meeting, Gulf of Mexico Large Ecosystems Meeting, Episodic Events Workshop, Gulf of Mexico Alliance PIT and Kemps Ridley Stock Assessment Workshop. The Council will also receive an update on Reorganization of Federal Fishing Regulations.

1 p.m.–1:15 p.m.—The Council will review Exempted Fishing Permits (EFP), if any.

1:15 p.m.–5 p.m.—The Council will receive public testimony on Framework Action to set the 2013 Red Snapper Quotas; the 2011 Cooperative Texas Shrimp Closures; Framework Action for Vermilion and Yellowtail Snapper ACL and Venting Tool Requirement; and Exempted Fishing Permits (EFPs), if any. The Council will also hold an open public comment period regarding any other fishery issues or concerns. People wishing to speak before the Council should complete a public comment card prior to the comment period.

Friday, February 8, 2013

8:30 a.m.–9 a.m.—The Council will review and deem changes to the Proposed Rule for the Fishery Management Plan for Regulating Offshore Marine Aquaculture in the Gulf of Mexico.

9:30 a.m.–9:45 a.m.—The Council will vote on Exempted Fishing Permits (if any).

9:45 a.m.–3:30 p.m.—The Council will receive committee reports from Data Collection, Shrimp, Ad Hoc Restoration, and Reef Fish. Review of Action Schedule items will follow from 3:30 p.m. to 3:45 p.m.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date/time established in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: January 15, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–01050 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC450

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) will convene a workshop to examine possibilities to improve management strategy concepts and elements currently in use for the Pacific sardine fishery.

DATES: The meeting will be held February 5–8, 2013.

ADDRESSES: The meeting will be held at the Scripps Institution of Oceanography, in the Edward W. ''Ted'' Scripps II Room of the Seaside Forum, 8610 Kennel Way, La Jolla, CA.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Kerry Griffin, Staff Officer; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The objectives of the workshop are as follows:

1. Evaluate the current management strategy with regard to the biological risk to sardine stocks. This approach includes reviewing and refining the mathematical specifications to develop a risk assessment projection model that could be used to evaluate different Fmsy proxies and trade-offs achieved by different parameterizations of appropriate harvest control rule elements.

2. Consider the possibility of new predictive relationships between sardine recruitment success and environmental parameters, and consider the proportion of the stock that occurs in U.S. waters under varying oceanographic regimes.

3. Review information on California Current ecosystem models and consider elements that would form the basis for a management strategy evaluation (MSE), and develop an initial plan for a process and schedule for a full MSE.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

This listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Dale Sweetnam (858) 546–7170, at least 5 days prior to the meeting date.

Dated: January 15, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–01051 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 130107013–3013–0]

RIN 0648–XC433

National Climate Assessment and Development Advisory Committee

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of availability for public comment.

SUMMARY: NOAA's Office of Oceanic and Atmospheric Research (OAR) publishes this notice on behalf of the National Climate Assessment and Development Advisory Committee (NCADAC) to announce the availability of a Draft Climate Assessment Report for public comment. This report, following revision and further review, will be submitted to the Federal Government for consideration in the Third National Climate Assessment.

DATES: Comments on this draft report must be received by 5:00 p.m. Eastern time on April 12, 2013.

ADDRESSES: The NCADAC Climate Assessment Report is available at *http://ncadac.globalchange.gov.*

Comments from the public will be accepted electronically at *http://ncadac.globalchange.gov.* Comments may be submitted only online and at this address; instructions for doing this are on the Web site.

All comments received will be considered by the relevant chapter authors and will become part of the public record once the final report is issued. However, until the report is finalized and released to the public, commenters' identities will not be shared with the authors. When the report is released in final form to the public, the comments, in association with the commenter's name, will be released alongside the author's Responses and will be available on *http://globalchange.gov.* No additional information a commenter submits as part of the registration process (such as an email address) will be disclosed publicly.

The final Climate Assessment Report will be available at the Web site mentioned above. The Department of Commerce will publish a notice informing the public of the final report when it is issued.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Designated Federal Officer, National Climate Assessment and Development Advisory Committee, NOAA, 1315 East-West Highway—R/NCADAC, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459) during normal business hours of 9 a.m. to 5 p.m. Eastern Time, Monday through Friday, or visit the NOAA NCADAC Web site at *http://www.nesdis.noaa.gov/NCADAC/index.html.*

SUPPLEMENTARY INFORMATION: The National Climate Assessment (NCA), which serves as a status report on climate change science and impacts, is conducted pursuant to the Global Change Research Act (GCRA) of 1990. The GCRA requires the government to provide a report to the President and the Congress every four years that integrates, evaluates, and interprets the findings of the U.S. Global Change Research Program (USGCRP). To assist the government in fulfilling this requirement, the Department of Commerce established the National Climate Assessment and Development Advisory Committee (NCADAC) in January 2011. The NCADAC is a federal advisory committee established under the Federal Advisory Committee Act of 1972 that is supported by the National Oceanic and Atmospheric Administration (NOAA). It develops and provides to the government proposed NCA Reports and advice regarding the sustained assessment process.

The NCA aims to incorporate advances in the understanding of climate science into larger social, ecological, and policy systems, and with this provide integrated analyses of impacts and vulnerability on sectors and regions of the U.S. The NCA discusses the effectiveness of mitigation and adaptation activities and identifies economic opportunities that may arise as the climate changes. It also serves to integrate scientific information from multiple sources and highlights key findings and significant gaps in knowledge.

The NCADAC welcomes all comments on the content of its Report at *http://ncadac.globalchange.gov.*

Dated: January 14, 2013.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–00957 Filed 1–17–13; 8:45 am]

BILLING CODE 3510–KD–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 2/18/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 11/9/2012 (77 FR 67343–67344), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing small entities to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 USC 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service

Service Type/Location: Mess Attendant Service and Cook Support, Two Seasons Dining Facility, 447 North Street, Building 2207, Eielson Air Force Base, AK.
NPA: Lakeview Center, Inc., Pensacola, FL.
Contracting Activity: Dept of the Air Force, FA5004 354 CONS LGC, Eielson AFB, AK.

Comments were received from two associations representing agencies and merchants authorized to provide full-food services to military dining facilities under the Randolph-Sheppard Act. Both associations expressed their belief that the mess attendant service and cook support project identified in this Procurement List addition should be considered a full-food service project subject to the Randolph-Sheppard Act.

The Air Force Performance Work Statement, as well as documentation from the contracting activity, confirms that the specific requirements of this project do not include full-food service or the operation of a cafeteria. Government personnel will operate and manage the dining facilities and the AbilityOne nonprofit agency will provide dining support services. When full-food service is not required and the Department of Defense needs dining support services, those services are appropriate for performance by a qualified AbilityOne nonprofit agency. Therefore, following its deliberative review of the suitability of this project, the Committee For Purchase From People Who Are Blind or Severely Disabled determined that the mess attendant service and cook support project does not involve full-food service and will be added to the Procurement List.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–01029 Filed 1–17–13; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add a product and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a service previously provided by such agency.

COMMENTS MUST BE RECEIVED ON OR BEFORE: 2/18/2013.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 USC 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product

NSN: MR 1145—Server, Gravy Boat
NPA: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency (DeCA), Fort Lee, VA
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Services

Service Type/Location: Custodial Service, Colorado Springs USARC, 4195 Foreign Trade Zone Blvd., Colorado Springs, CO.
NPA: Pueblo Diversified Industries, Inc., Pueblo, CO.
Contracting Activity: DEPT OF THE ARMY, W6QM MICC–ARCC NORTH, FORT MCCOY, WI
Service Type/Location: Mess Attendant Service, McConnell Air Force Base, KS.
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, TX.
Contracting Activity: Dept of the Air Force, FA4621 22 CONS LGC, McconnelL AFB, KS

The Nonprofit employees will perform specific tasks including preparation of menu boards, table bussing service, guest flow rate, service of food, replenishing of food, unloading, storing, and shelving of supplies, food preparation, cashier services, sanitation requirements, housekeeping services, ordering reimbursable consumables/supplies, waste management, grounds maintenance, preventative maintenance, maintenance and repair, conduct, hours of operation, contingency workload for contract cooks,

quality control program, phase-in, and in the event of contingency, perform all required tasks to include cooking to ensure continued service.

Deletion

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Facilities Maintenance, Yakima Training Center (YTC) and Multipurpose Range Complex, Multipurpose Training Range, Yakima, WA.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Army, W6QM MICC–JB Lewis-MC Chord, Fort Lewis, WA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2013–01028 Filed 1–17–13; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Notice of Intent To Prepare An Environmental Impact Statement (EIS) On the Proposal To Relocate the 18th Aggressor Squadron From Eielson Air Force Base (EAFB), Alaska to Joint Base Elmendorf-Richardson (JBER), Alaska and Rightsizing the Remaining Wing Overhead/Base Operating Support at Eielson AFB, AK

AGENCY: Pacific Air Forces, United States Air Force, DOD.

ACTION: Notice of Intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and Air Force policy and procedures (32 CFR part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an Environmental Impact Statement (EIS) considering a proposal to relocate the 18th Aggressor Squadron from Eielson AFB to Joint Base Elmendorf-Richardson and rightsizing the remaining Wing Overhead/Base Operating Support at Eielson.

Proposed Action: The Air Force proposes to relocate the 18th Aggressor Squadron (18 AGRS) from Eielson AFB (EAFB) to Joint Base Elmendorf-Richardson (JBER); 18 AGRS consists of 18 assigned F–16 aircraft and 3 back-up F–16s. This proposed relocation includes removing 623 military personnel from EAFB, transferring approximately 542 positions to JBER, and eliminating 81 positions. The Air Force proposes to reduce military and civilian authorizations at EAFB appropriate to the command structure required for the remaining operations. Current planning estimates call for an end-state of approximately 769 appropriated funds personnel at EAFB after FY15 (559 military and 210 civilian personnel).

EAFB will continue to host Red Flag and Distant Frontier training exercises with the 18 AGRS operating out of JBER under one of two possible alternatives:

Alternative 1: 18 AGRS would deploy to EAFB for the duration of the Red Flag exercises.

Alternative 2 The 18 AGRS F–16 aircraft would fly to and from the Joint Pacific Alaska Range Complex (JPARC) Military Operations Areas (MOAs) in the vicinity of EAFB on a daily basis during exercises, requiring aerial refueling. The participating F–16 aircraft would not routinely land at EAFB for refueling.

Both Alternatives would operate in the same air space as currently used for Red Flag and Distant Frontier exercises. Transient aircraft and personnel from outside of Alaska participating in these exercises would continue to deploy to and operate out of EAFB.

This EIS will also evaluate the impacts of the No Action Alternative: Keeping the 18 AGRS stationed at EAFB.

Scoping: In order to effectively define the full range of issues to be evaluated in the EIS, the Air Force will determine the scope of the analysis by soliciting comments from interested local, state and federal agencies, as well as interested members of the public.

The Air Force intends to hold scoping meetings as follows:

Dates	Locations
February 4–5, 2013	Anchorage and Mat-Su Boroughs, AK.
February 6–7, 2013	Fairbanks and North Pole, AK.

All meetings will be held from 6 p.m. to 8 p.m., AST. Specific dates, times, and locations for the scoping meetings will be published in local media a minimum of 15 days prior to the scoping meeting dates.

Public scoping comments will be accepted either verbally or in writing at the scoping meetings. Additional scoping comments will be accepted at any time during the EIS process. However, in order to ensure the Air Force has sufficient time to consider public input, scoping comments should arrive at the address below by March 1, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Allen Richmond, AFCEC/CZN, 2261 Hughes Ave., Ste. 155, Lackland AFB, TX 78236–9853, Telephone: (210) 395–8555.

Tommy W. Lee,

Acting Air Force Federal Register Officer, DAF.

[FR Doc. 2013–01013 Filed 1–17–13; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability of the Draft Finding of No Significant Impact and Final Programmatic Environmental Assessment for Army 2020 Force Structure Realignment

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of the draft Finding of No Significant Impact (FNSI) and final Programmatic Environmental Assessment (PEA) for Army force structure realignments that may occur from Fiscal Years (FYs) 2013–2020. The Army must achieve force reductions as it transitions from major combat operations in Iraq and Afghanistan, while reducing spending without sacrificing critical national defense capabilities. The draft FNSI considers a proposed action under which the Army's active duty end-strength would be reduced from 562,000 at the end of FY 2012 to 490,000 by FY 2020. The PEA analyzes two action alternatives: Alternative 1: Implement force reductions by inactivating a minimum of eight Brigade Combat Teams (BCTs) and realign other combat, combat support, and service support units between FY 2013 and FY 2020; and Alternative 2: Implement Alternative 1, inactivate additional BCTs, and reorganize remaining BCTs by adding an additional combat maneuver battalion and other units. The PEA also analyzes a No Action alternative under which the Army would not reduce the size of the force. The draft FNSI incorporates the PEA which does not identify any significant environmental impacts associated with either alternative, with the exception of socioeconomic impacts at some installations where a BCT is inactivated and smaller organizations realigned. The draft FNSI concludes that preparation of an Environmental Impact Statement (EIS) is not required. Final decisions as to which installations will see BCTs inactivated or units realigned have not been made. Additional site-

specific NEPA analysis may be required at some installations, depending on the size of the force realignment.

DATES: Submit comments on or before February 19, 2013.

ADDRESSES: Written comments should be sent to: Public Comments USAEC, Attention: IMPA–AE (Army 2020 PEA), 2450 Connell Road (Bldg 2264), Fort Sam Houston, Texas 78234–7664; or by email to *USARMY.JBSA.AEC.MBX@mail.mil.*

FOR FURTHER INFORMATION CONTACT: (210) 466–1590 or email: *USARMY.JBSA.AEC.MBX@mail.mil.*

SUPPLEMENTARY INFORMATION: Implementation of Army force realignment will occur over the course of several years to arrive by 2020 at an optimally configured force, reduced from an FY 2012 authorized end strength of 562,000 to 490,000. Reductions in Army Soldiers will also be accompanied by some reduction in civil service employees. These actions are being undertaken to reshape the Army's forces to meet more effectively national security requirements while reducing the Army's end-strength. Force realignment and some level of force reduction will impact most major Army installations. The implementation of this force rebalancing is necessary to allow the Army to operate in a reduced budget climate, while ensuring the Army can continue to support the nation's critical defense missions.

The PEA, upon which the draft FNSI is based, evaluates the largest potential force reduction scenarios, as well as growth scenarios from BCT restructuring, that could occur at select installations as a result of Army force restructuring. This range of potential installation reduction and growth (ranging from maximum losses of 8,000 military personnel to maximum increases of 3,000 at the Army's largest installations) was chosen for the environmental analysis to provide flexibility as future force structure realignment decisions are made; the specific locations where changes will occur have not been decided.

The PEA provides information to decision makers concerning potential environmental impacts, to include socioeconomic impacts, associated with stationing actions as these decisions are made in the coming years. The PEA analyzed the direct, indirect, and cumulative environmental impacts that may occur at 21 installations. These stationing sites were included in the PEA as they are sites that could experience a change in Soldiers and civilians that exceeds a total of 1,000 military personnel. The PEA analyzes the environmental impact of two Action alternatives to implement force reduction and realignment: Alternative 1: Implement Army force reductions and restructuring of BCTs, combat support units, and civilian support between FY 2013 and FY 2020; and Alternative 2: Implement Alternative 1, inactivate additional BCTs and also restructure remaining BCTs by adding an additional combat maneuver battalion and/or an engineer battalion. Force reductions that may occur as part of the proposed action include the inactivation of BCTs and combat support and combat service support units at Army and joint base installations. This reduction would include the inactivation of at least eight BCTs. In addition to these alternatives, the Army also evaluated a No Action alternative. The No Action alternative continues current force structure, and retains the active Army at the FY 2012 authorized end strength of 562,000. The No Action alternative allows for a comparison of baseline conditions with the environmental impacts of each of the two Action alternatives.

Environmental impacts associated with implementation of the two Action alternatives include impacts to air quality; airspace; cultural and biological resources; noise; soil erosion; wetlands; water resources; facilities; socioeconomics; energy demand; land use; hazardous materials and waste; and traffic and transportation. No significant environmental impacts are anticipated as a result of implementing either alternative associated with the proposed action, with the exception of socioeconomic impacts. Socioeconomic impacts are of particular concern to the Army because they affect communities around Army installations. Therefore, the PEA has a comprehensive analysis of the socioeconomic impacts to inform the decision makers and communities. Impacts could include reduced employment, income, regional population, and sales, and some of these impacts could be significant. An EIS is not required, however, when the only significant impacts are socioeconomic.

The draft FNSI finds that there are no significant environmental impacts with either Action alternative. Final decisions as to which alternative will be implemented or which installations will see reductions or unit realignments have not been made. Those decisions will be made based on mission-related criteria and other factors in light of the information contained in the PEA.

An electronic version of the PEA and draft FNSI is available for download at: *http://aec.army.mil/usaec/nepa/topics00.html.*

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–01003 Filed 1–17–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Programmatic Environmental Impact Statement for the Training Mission and Mission Support Activities at Fort Campbell, KY

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: The Department of the Army announces its intent to prepare a Programmatic Environmental Impact Statement (PEIS) to evaluate the impacts of current and future training and mission-related activities at Fort Campbell, Kentucky (portions of Fort Campbell are also located in Tennessee). The PEIS is being completed to meet the requirements of the National Environmental Policy Act (NEPA) to evaluate the environmental impacts of proposed alternatives for implementing the training and mission support activities at Fort Campbell, Kentucky. The PEIS will assess range construction, associated training and land management activities, and adjustments to military airspace to support Fort Campbell's training requirements. This PEIS analyzes portions of the Range Complex Master Plan which has been developed to address training and training facility requirements over the next 10 years.

ADDRESSES: Please send written comments to Mr. Gene Zirkle, NEPA/Wildlife Program Manager, Environmental Division, Building 2159 13th Street, Fort Campbell, KY 42223; or by email to *gene.a.zirkle.civ@mail.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Gene Zirkle at (270) 798–9854, during normal working business hours Monday through Friday, 7:30 a.m. to 4:00 p.m. C.S.T.; or by email to *gene.a.zirkle.civ@mail.mil.*

SUPPLEMENTARY INFORMATION: Fort Campbell must provide modernized live-fire ranges, quality maneuver training areas, the airspace necessary for the training of Army aviation units and unmanned aerial systems (UAS), and modern training facilities. The requirement to provide quality training support to Soldiers and units will continue into the future as mission requirements, military preparedness,

and Soldier/unit training requirements change. Fort Campbell must be prepared to meet future training requirements by providing modern training facilities and ranges.

As technology changes, new weapons, weapons systems, and unmanned systems are incorporated into tactical units. These technological advances dictate changes to how the Army trains, the space needed for maneuver training to include airspace, and new ranges to accommodate the live-fire training on new weapon systems. In addition, the installation must support training of other military services as well as training of various federal organizations.

Fort Campbell's ranges and training lands require routine maintenance, modernization, and in some cases construction of new facilities to continue to provide Soldiers with a high quality training environment. These types of activities will continue into the future as mission requirements, military preparedness, and Soldier training requirements change.

A range of reasonable alternatives will be analyzed in the PEIS. Five alternatives have been identified to meet the requirements of the proposed action. Alternative 1 would provide for site-specific range construction projects needed to support the live-fire training on the installation. Alternative 2 would create adaptable use zones (AUZ) to facilitate future range modernization and construction. Alternative 3 would implement routine range and training land actions to maintain and sustain the installation range and training land complex in an environmentally sound manner. This includes the formalization of environmental stewardship best management practices (BMPs). Alternative 4 would restructure and expand the current controlled airspace to accommodate the Army aviation units, UAS, and joint training with the U.S. Air Force. Alternative 5 would implement the above 4 alternatives as one consolidated alternative.

The PEIS will also consider a No Action alternative. Under the No Action alternative, none of the action alternatives would be implemented. Range use and training land management would continue under the status quo. Other reasonable alternatives identified during the scoping process will be considered for evaluation in the PEIS.

The proposed action would allow future development of Fort Campbell's training infrastructure that could have significant impacts to airspace, natural and cultural resources, water resources, and other environmental resources. Mitigation measures will also be identified for adverse impacts.

Scoping and public comments: Federally recognized Indian Tribes, federal, state, and local agencies, organizations, and the public are invited to be involved in the scoping process for the preparation of this PEIS by participating in meetings and/or submitting written comments. The scoping process will help identify possible alternatives, potential environmental impacts, and key issues of concern to be analyzed in the PEIS. Written comments will be accepted within 30 days of publication of the Notice of Intent in the **Federal Register**. Public meetings will be held in Clarksville, Tennessee and Hopkinsville, Kentucky. Notification of the times and locations for the scoping meetings will be published locally.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–01002 Filed 1–17–13; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement for the Missouri River Recovery Management Plan, Missouri River, United States

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, the U.S. Army Corps of Engineers (USACE), Kansas City and Omaha Districts, intend to prepare the Missouri River Recovery Management Plan (Plan) with integrated Environmental Impact Statement (EIS).

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed Plan, please contact Ms. Lisa Rabbe, Project Manager, by telephone: (816) 389–3837, by mail: 601 E. 12th Street, Kansas City, MO 64106, or by email: *Lisa.A.Rabbe@usace.army.mil,* or Mr. Randy Sellers, Project Manager, by telephone: (402) 995–2689, by mail: 1616 Capitol Avenue, Omaha, NE 68102–4901, or by email: *Randy.P.Sellers@usace.army.mil mailto:Gwyn.M.Jarrett@usace.army.mil.* For inquiries from the media, please contact the USACE Kansas City District Public Affairs Officer (PAO), Mr. David Kolarik by telephone: (816) 389–3486, by mail: 601 E. 12th Street, Kansas City, MO 64106, or by email: *David.S.Kolarik@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Through preparation of the Plan and EIS, USACE will develop a range of alternatives for the purposes of Missouri River recovery and mitigation. This federal action includes activities on the Missouri River and is designed to assist in the recovery of Missouri River species protected under the Federal Endangered Species Act (ESA). Mitigation actions address USACE's requirements pursuant to the 1958 Fish and Wildlife Coordination Act (Pub. L. 85–624), section 601(a) of the Water Resources Development Act (WRDA) of 1986, and section 334(a) and (b) of the WRDA of 1999, and Section 3176 of the WRDA 2007.

Section 3176 of WRDA 2007 expanded the USACE's authority to include recovery and mitigation activities on the Missouri River in the upper basin states of Montana, Nebraska, North Dakota, and South Dakota. The combination of recovery and mitigation activities is commonly referred to as the Missouri River Recovery Program.

In accordance with 40 CFR 1502.4 (c), this EIS will evaluate all proposals or parts of proposals similar in nature such that, in effect, they represent a single course of action. The Missouri River Recovery Management Plan EIS will assess and, where appropriate, supplement or update prior analysis made pursuant to the requirements listed above. The EIS will assess the cumulative effects and alternatives to accomplish the purposes of the ESA, the 1958 Fish and Wildlife Coordination Act (Pub. L. 85–624), section 601(a) of the Water Resources Development Act (WRDA) of 1986, and section 334(a) and (b) of the WRDA of 1999, and Section 3176 of the WRDA 2007. The federal actions which implement those authorities have been combined into one program and are being assessed together to effectively and efficiently carry out the multiple goals associated with the authorizations. Additionally to be addressed in this EIS, the USACE has received a proposal from the Missouri River Recovery Implementation Committee, recommending the agency perform an effects analysis and adaptive management of potential management actions on ESA listed species. Addressing this proposal will result in an analysis of management alternatives and adaptive management actions to benefit these species, and thus requires supporting environmental effects analyses which will be included in this Environmental Impact Statement.

The Missouri River Recovery Management Plan with integrated EIS will be narrower than the scope and purpose of the study from section 5018(a) of the Water Resources Development Act of 2007 (Missouri River Ecosystem Restoration Plan). That study included the additional purpose of ecosystem restoration and was inclusive of the entire Missouri River watershed, including tributaries, while this plan and EIS will focus exclusively on the purposes of recovery and mitigation and be limited primarily to the areas and objectives prescribed in the authorities listed above.

Scoping. Multiple phases of public, agency and Tribal government scoping meetings will be conducted throughout the Missouri River basin. Additional scoping phases are planned in order to address a preliminary range of alternatives and eventually to publish and solicit input on a draft EIS. Dates for these scoping phases have not yet been determined. General concerns, issues and needs related to the plan will be obtained throughout all scoping phases. Further information regarding when and where scoping meetings will be held as well as how written comments and suggestions concerning the EIS may be submitted will be found online at *http://www.moriver recovery.org* when that information is available.

Dated: January 10, 2013.

Randy Sellers,

Project Manager.

[FR Doc. 2013–00993 Filed 1–17–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice for the Great Lakes and Mississippi River Interbasin Study (GLMRIS)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Corps of Engineers (USACE), Chicago District has posted on *http://glmris.anl.gov/documents/interim/anscontrol/screening/index.cfm* aquatic nuisance species (ANS) Controls that can be used to prevent the transfer of algae, crustaceans, fish and plants via aquatic pathways. USACE is announcing a comment period to allow for the submission of information on available ANS Controls for these organism types.

In a December 8, 2010 notice of intent, **Federal Register** Notice (75 FR 76447), USACE announced it will prepare a feasibility report and an Environmental Impact Statement (EIS) for GLMRIS. GLMRIS is a feasibility study of the range of options and technologies that could be applied to prevent ANS transfer between the Great Lakes and Mississippi River basins through aquatic pathways. USACE is conducting GLMRIS in consultation with other federal agencies, Native American tribes, state agencies, local governments and non-governmental organizations. For additional information regarding GLMRIS, please refer to the project Web site *http://glmris.anl.gov.*

This notice announces a comment period during which USACE is asking the public to submit (i) information on ANS Controls that may be effective at preventing the transfer of fish, algae, crustaceans and plants in the CAWS but are missing from the USACE's lists of ANS Controls, or (ii) comments regarding the identified ANS Controls.

DATES: USACE will be accepting public comments through February 21, 2013. Please refer to the ''*ANS Control Screening Comment Period*'' section below for details on the information USACE is seeking during this comment period and instructions on comment submittal.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about GLMRIS, please contact USACE, Chicago District, Project Manager, Ms. Nicole Roach, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, or *by email: nicole.l.roach@usace.army.mil.*

For media inquiries, please contact USACE, Chicago District, Public Affairs Officer, Ms. Lynne Whelan, *by mail:* USACE, Chicago District, 111 N. Canal, Suite 600, Chicago, IL 60606, *by phone:* 312–846–5330 or *by email: lynne.e.whelan@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. *Background.* USACE is conducting GLMRIS in consultation with other federal agencies, Native American tribes, state agencies, local governments and non-governmental organizations. For GLMRIS, USACE will explore ANS Controls that could be applied to prevent ANS transfer between the Great Lakes and Mississippi River basins through aquatic pathways. In the *Aquatic Nuisance Species of Concern White Paper http://glmris.anl.gov/documents/ans/index.cfm,* USACE, in collaboration with our stakeholders, identified ANS of Concern and their corresponding organism types. These ANS of Concern and organism types were the initial focus of GLMRIS for the Chicago Area Waterway (CAWS). USACE identified over 90 options and technologies to prevent the transfer of the ANS of Concern via aquatic pathways *http://glmris.anl.gov/documents/interim/anscontrol/index.cfm.* The ANS Controls include, but are not limited to, hydrologic separation of the basins, modification of water quality or flow within a waterway, chemical application to ANS, collection and removal of ANS from a waterway, as well as other types of controls currently in research and development.

As part of the ongoing analysis and in collaboration with state and federal agencies, USACE refined the organism types warranting further consideration to the following: algae, crustaceans, fish and plants. Additionally, USACE in collaboration with governmental agencies and organizations screened the list of ANS Controls per organism type and has posted them for public review at *http://glmris.anl.gov/documents/interim/anscontrol/screening/index.cfm.*

USACE will formulate plans using of one or more of the screened ANS Controls in consideration of four criteria: completeness, effectiveness, efficiency, and acceptability. USACE will evaluate the effects of the alternative plans.

USACE is conducting GLMRIS in accordance with the National Environmental Policy Act (NEPA) and with the *Economic and Environmental Principles and Guidelines for Water and Related Land Resource Implementation Studies,* Water Resources Council, March 10, 1983.

2. *ANS Control Screening Comment Period.* The screened ANS Controls are found at *http://glmris.anl.gov/documents/interim/anscontrol/screening/index.cfm.* This notice announces a comment period during which USACE is asking the public to submit (i) information on ANS Controls that may be effective at preventing the transfer of fish, algae, crustaceans and plants in the CAWS but are missing from these lists, or (ii) comments regarding the identified ANS Controls.

The comment period runs through February 21, 2013, and comments may be submitted in the following ways:

- *GLMRIS project Web site:* Use the web form found at *www.glmris.anl.gov* through February 21, 2013;
- *Mail:* Mail written information to GLMRIS ANS Control Screening, 111 N. Canal, Suite 600, Chicago, IL 60606. Comments must be postmarked by February 21, 2013; and

• *Hand Delivery:* Comments may be hand delivered to the USACE, Chicago District office located at 111 N. Canal St., Suite 600, Chicago, IL 60606 between 8:00 a.m. and 4:30 p.m. Comments must be received by February 21, 2013.

Authority: This action is being undertaken pursuant to the Water Resources and Development Act of 2007, Section 3061, Pub. L. 110–114, 121 STAT. 1121, and NEPA of 1969, 42 U.S.C. 4321, *et seq.,* as amended.

Dated: January 10, 2013.

Roy J. Deda,

Deputy for Project Management, U.S. Army Corps of Engineers, Chicago District.

[FR Doc. 2013–01043 Filed 1–17–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Chief of Engineers Environmental Advisory Board; Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Chief of Engineers Environmental Advisory Board (EAB).

Date: February 15, 2013.

Time: 9:00 a.m. through 12:30 p.m.

Location: The ''Café Conference Room'' on the second floor of the Sandra Day O'Connor United States Courthouse (SDOCH), 401 West Washington Street, Phoenix, AZ 85003–21178.

Agenda: The Board will advise the Chief of Engineers on environmental policy, identification and resolution of environmental issues and missions, and addressing challenges, problems and opportunities in an environmentally sustainable manner. Discussions and presentations during this meeting will focus on energy and water security and sustainability, and flow management for sustainable river ecosystems. Following the discussions and presentations there will be a public comment period.

FOR FURTHER INFORMATION CONTACT: Mr. John C. Furry, Designated Federal Officer, Headquarters, U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314–1000; *john.c.furry@usace.army.mil,* Ph: (202) 761–5875.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. Any interested person may attend. However, all attendees will enter and exit SDOCH through the appropriate visitors security point(s). Attendees need to arrive in time to complete the security screening and arrive at the meeting room before 9:00 a.m.. Attendees should be prepared to present two forms of valid photo identification, one of which must be government issued identification, and to pass through a scanning unit. The primary purpose of this meeting is for the Chief of Engineers to receive the views of his EAB; however, up to thirty minutes will be set aside for public comment. Anyone who wishes to speak must register prior to the start of the meeting. Written comments may also be submitted during registration. Registration will be from 8:30 until 8:55 a.m. Please note that the Board operates under the provisions of the Federal Advisory Committee Act, as amended, so all submitted comments and public presentations may be treated as public documents and will be made available for public inspection, including, but not limited to, being posted on the Board's Web site.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2013–00995 Filed 1–17–13; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Co-Exclusive Licenses

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The Department of the Navy hereby gives notice of its intent to grant to Cobalt Technologies, Inc., Mountain View, CA and to Green Biologics, Inc., Ashland, VA, revocable, nonassignable, co-exclusive licenses to practice worldwide, the Government-owned inventions described and claimed in U.S. Patent No. 8,350,107; issued on January 8, 2013: Selective isomerization and oligomerization of olefin feedstocks for the production of turbine and diesel fuels.//U. S. Patent No. 8,344,196; issued on January 1, 2013: Selective isomerization and oligomerization of olefin feedstocks for the production of turbine and diesel fuel.//U.S. Patent No. 8,242,319: Selective isomerization and oligomerization of olefin feedstocks for the production of turbine and diesel fuels.//Patent Application Serial No. 13/433737: Water and contaminants removal from butanol fermentation solutions and/or broths using a brine solution.//Patent Application Serial No. 13/426294: Process and apparatus for the selective dimerization of terpenes and alpha-olefin oligomers with a single-stage reactor and a single-stage fractionation system.//Patent Application Serial No. 13/426347: Process and apparatus for the selective dimerization of terpenes and alpha-olefin oligomers with a single-stage reactor and a single-stage fractionation system.//Patent Application Serial No. 13/426393: Process and apparatus for the selective dimerization of terpenes and alpha-olefin oligomers with a single-stage reactor and a single-stage fractionation system.//Patent Application Serial No. 13/426118: New homogeneous metallocene Ziegler-Natta catalysts for the oligomerization of olefins in aliphatic-hydrocarbon solvents.//Patent Application Serial No. 13/426192: New homogeneous metallocene Ziegler-Natta catalysts for the oligomerization of olefins in aliphatic-hydrocarbon solvents.//Patent Application Serial No. 12/511796: Diesel and jet fuels based on the oligomerization of 1-butene.//Patent Application Serial No. 12/769757: Turbine and diesel fuels and methods of making the same.//Patent Application Serial No. 13/434474: A Process for the dehydration of aqueous bio-derived terminal alcohols to terminal alkenes.// Patent Application Serial No. 13/434668: A Process for the dehydration of aqueous bio-derived terminal alcohols to terminal alkenes. The Navy intends to grant no more than two co-exclusive licenses to the above inventions. The prospective co-exclusive licenses will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: Anyone wishing to object to the grant of these co-exclusive licenses must file written objections along with supporting evidence, if any, not later than February 4, 2013.

ADDRESSES: Written objections are to be filed with the Office of Research and Technology Applications, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road, Stop 6312, China Lake, CA 93555–6106.

FOR FURTHER INFORMATION CONTACT: Michael D. Seltzer, Ph.D., Office of Research and Technology Applications, Naval Air Warfare Center Weapons Division, Code 4L4000D, 1900 N. Knox Road, Stop 6312, China Lake, CA 93555–6106, telephone 760–939–1074, email: *michael.seltzer@navy.mil.*

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: January 11, 2013.

C. K. Chiappetta,

Lieutenant Commander, Office of the Judge Advocate General.

[FR Doc. 2013–00992 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanics

AGENCY: U.S. Department of Education, White House Initiative on Educational Excellence for Hispanics.

ACTION: Notice of an open conference call meeting.

SUMMARY: This notice sets forth the announcement of a conference call meeting of the President's Advisory Commission on Educational Excellence for Hispanics. The notice also describes the functions of the Commission. Notice of the meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of this meeting.

DATES: Wednesday, January 30, 2013.

Time: 4:00–5:30 p.m. Eastern Standard Time.

ADDRESSES: Conference Call. CALL NUMBER/ID: (712) 432–3900/ID–391333 (Listen-Only)

For members of the public who wish to convene in person and listen to the conference call meeting, please arrive at the U.S. Department of Education, Lyndon Baines Johnson Building, Room 1W103, 400 Maryland Avenue SW., Washington, DC no later than 3:30 p.m.

Please RSVP to *WhiteHousefor HispanicEducation@ed.gov* by Monday, January 28, 2013.

FOR FURTHER INFORMATION CONTACT: Marco A. Davis, Acting Executive Director, White House Initiative on Educational Excellence for Hispanics, 400 Maryland Ave. SW., Room 4W110, Washington, DC 20202; telephone: 202–453–7023.

SUPPLEMENTARY INFORMATION: The President's Advisory Commission on Educational Excellence for Hispanics (the Commission) is established by Executive Order 13555 (Oct. 19, 2010; reestablished December 21, 2012). The Commission is governed by the provisions of the Federal Advisory Committee Act (FACA), (Pub. L. 92–463; as amended, 5 U.S.C.A., Appendix 2) which sets forth standards for the formation and use of advisory committees. The purpose of the Commission is to advise the President and the Secretary of Education (Secretary) on all matters pertaining to the education attainment of the Hispanic community.

The Commission shall advise the President and the Secretary in the following areas: (i) Developing, implementing, and coordinating educational programs and initiatives at the Department and other agencies to improve educational opportunities and outcomes for Hispanics of all ages; (ii) increasing the participation of the Hispanic community and Hispanic-Serving Institutions in the Department's programs and in education programs at other agencies; (iii) engaging the philanthropic, business, nonprofit, and education communities in a national dialogue regarding the mission and objectives of this order; (iv) establishing partnerships with public, private, philanthropic, and nonprofit stakeholders to meet the mission and policy objectives of this order.

Agenda

The Commission will review draft reports summarizing activities of its subcommittees in 2012 and discuss ideas for Commission activities in 2013.

There will not be an opportunity for public comment during this meeting due to time constraints. However, members of the public may submit written comments related to the work of the Commission via *WhiteHousefor HispanicEducation@ed.gov* no later than Jan. 23, 2013. A recording of this meeting will be posted on the Commission's Web page at *http://www2.ed.gov/about/inits/list/hispanic-initiative/index.html* no later than Feb. 27, 2013.

Records are kept of all Commission proceedings and are available for public inspection at the office of the White House Initiative on Educational Excellence for Hispanics, U.S. Department of Education, 400 Maryland Ave. SW., Room 4W108, Washington, DC 20202, Monday through Friday (excluding Federal holidays) during the hours of 9 a.m. to 5 p.m.

Electronic Access to the Document: You may 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) on the Internet at: *www.ed.gov/fedregister/index.html.* To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. For questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at 202–512–0000.

Martha Kanter,

Under Secretary, Department of Education.

[FR Doc. 2013–01035 Filed 1–17–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

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), Hanford. 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:

Thursday, February 7, 2013, 8:30 a.m.–5:00 p.m.

Friday, February 8, 2013, 8:30 a.m.–3:00 p.m.

ADDRESSES: Red Lion Hanford House, 802 George Washington Way, Richland, WA 99352.

FOR FURTHER INFORMATION CONTACT: Tifany Nguyen, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA 99352; Phone: (509) 376–3361; or Email: *tifany.nguyen@rl.doe.gov.*

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

- Advice on the Draft Tri-Party Agreement Change Package.
- Overview of Tank Closure and Waste Management Final Environmental Impact Statement (TC&WMFEIS) and DOE responses to Hanford Advisory Board (HAB) advice on the TC&WMFEIS.
- Status from Executive Issues Committee issues managers regarding HAB draft recommendations for Board diversity and other Board effectiveness issues.
- Tri-Party Agreement Agencies Updates.
  - DOE, Richland Operations Office.
  - DOE, Office of River Protection.
  - State of Washington Department of Ecology.
  - U.S. Environmental Protection Agency.

• Committee reports.
• Board Member Orientation (for both new and current members/alternates).
• Board Business, including selection of new HAB Vice-Chair.

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, 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 Tifany Nguyen 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 agenda items should contact Tifany Nguyen 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 Tifany Nguyen's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/page.cfm/hab.*

Issued at Washington, DC on January 14, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–01001 Filed 1–17–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a combined meeting of the Environmental Monitoring, Surveillance and Remediation Committee and Waste Management Committee of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico (known locally as the Northern New Mexico Citizens' Advisory Board [NNMCAB]). 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, 2:00 p.m.–4:00 p.m.

ADDRESSES: NNMCAB Conference Room, 94 Cities of Gold Road, Pojoaque, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board, 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *msantistevan@doeal.gov.*

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.

Purpose of the Environmental Monitoring, Surveillance and Remediation Committee (EMS&R): The EMS&R Committee provides a citizens' perspective to NNMCAB on current and future environmental remediation activities resulting from historical Los Alamos National Laboratory operations and, in particular, issues pertaining to groundwater, surface water and work required under the New Mexico Environment Department Order on Consent. The EMS&R Committee will keep abreast of DOE–EM and site programs and plans. The committee will work with the NNMCAB to provide assistance in determining priorities and the best use of limited funds and time. Formal recommendations will be proposed when needed and, after consideration and approval by the full NNMCAB, may be sent to DOE–EM for action.

Purpose of the Waste Management (WM) Committee: The WM Committee reviews policies, practices and procedures, existing and proposed, so as to provide recommendations, advice, suggestions and opinions to the NNMCAB regarding waste management operations at the Los Alamos site.

Tentative Agenda

1. Approval of Agenda
2. Approval of Minutes of January 9, 2013
3. Old Business
4. New Business
5. Update from Executive Committee—Carlos Valdez, Chair
6. Update from DOE—Ed Worth, Deputy Designated Federal Officer
7. 2:45 p.m. Presentation by Andrew Green, Los Alamos National Security
   • Air Monitoring at the Los Alamos National Laboratory and Surrounding Sites
8. 3:45 p.m. Public Comment Period
9. 4:00 p.m. Adjourn

Public Participation: The NNMCAB's EMS&R and WM Committees welcome the attendance of the public at their combined committee meeting 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 Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Committees either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan 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 Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC on January 14, 2013.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2013–01038 Filed 1–17–13; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–49–000.

Applicants: Central Maine Power Company, Maine Electric Power Company.

Description: Central Maine Power Company and Maine Electric Power Company submit clarification to the November 30, 2012 Application for Authorization Under Section 203.

Filed Date: 1/4/13.

Accession Number: 20130104–5124.

Comments Due: 5 p.m. ET 1/18/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–015; ER10–2343–015; ER10–2319–014; ER10–2320–014; ER10–2317–013; ER10–2322–015; ER10–2324–014; ER10–2325–013; ER10–2332–014; ER10–2326–015; ER10–2327–016; ER10–2328–014; ER11–4609–013; ER10–2330–015.

Applicants: J.P. Morgan Ventures Energy Corporation, J.P. Morgan Commodities Canada Corporation, BE Alabama LLC, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Louisiana LLC, BE Rayle LLC, Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Central Power & Lime LLC, Triton Power Michigan LLC, Utility Contract Funding, L.L.C.

Description: JPMorgan Sellers Notice of Non-Material Change in Status re: Chisholm View Wind.

Filed Date: 1/11/13.

Accession Number: 20130111–5002.

Comments Due: 5 p.m. ET 2/1/13.

Docket Numbers: ER13–587–001.

Applicants: Carson Cogeneration Company LP.

Description: Amended Application for Order Accepting Initial MBR Tariff to be effective 2/1/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5113.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–746–000.

Applicants: Bruce Power Inc.

Description: 2nd Revised MBR to be effective 1/11/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5120.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–747–000.

Applicants: PJM Interconnection, L.L.C.

Description: Queue Position S–007, S–008, S–009, S–010; Original SA No. 3479 to be effective 12/11/2012.

Filed Date: 1/10/13.

Accession Number: 20130110–5126.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–748–000.

Applicants: Southern California Edison Company.

Description: Transmission Reassignment Tariff to be effective 1/12/2013.

Filed Date: 1/11/13.

Accession Number: 20130111–5000.

Comments Due: 5 p.m. ET 2/1/13.

Docket Number: ER13–749–000.

Applicants: Mega Energy of New England, LLC.

Description: Mega Energy of New England, LLC submits tariff filing per 35.12: Baseline New to be effective 3/7/2013.

Filed Date: 1/11/13.

Accession Number: 20130111–5053.

Comments Due: 5 p.m. ET 2/1/13.

Docket Numbers: ER13–750–000.

Applicants: New England Power Pool Participants Committee, ISO New England Inc.

Description: New England Power Pool Participants Committee submits tariff filing per 35.13(a)(2)(iii: Information Policy to be effective 3/13/2013.

Filed Date: 1/11/13.

Accession Number: 20130111–5054.

Comments Due: 5 p.m. ET 2/1/13.

Docket Numbers: ER13–751–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 2013–01–11 MDU Attachment O and GG to be effective 1/1/2013.

Filed Date: 1/11/13.

Accession Number: 20130111–5115.

Comments Due: 5 p.m. ET 2/1/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00982 Filed 1–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–277–001.

Applicants: DTE Electric Company.

Description: Deficiency Filing to be effective 1/1/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5035.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–737–000.

Applicants: PJM Interconnection, L.L.C.

Description: Notice of Cancellation of Second Revised SA Nos. 3154 and 3155—ER12–2503–000 to be effective 11/27/2012.

Filed Date: 1/10/13.

Accession Number: 20130110–5025.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–738–000.

Applicants: DTE Electric Company.

Description: Notice of Succession to be effective 1/1/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5044.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–739–000.

Applicants: Texpo Power, LP.

Description: New filing 1 to be effective 1/11/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5045.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–740–000.

Applicants: EnerPenn USA LLC.

Description: New Filing 1 to be effective 1/11/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5046.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–741–000.

Applicants: Bangor Hydro Electric Company, ISO New England Inc.

Description: Bangor Hydro Electric Company submits tariff filing per 35.13(a)(2)(iii: Oakfield Large Generator Interconnection Agreement to be effective 3/2/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5055.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–742–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2513 Generation Energy, Inc. GIA to be effective 12/14/2012.

Filed Date: 1/10/13.

Accession Number: 20130110–5058.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–743–000.

Applicants: PacifiCorp.

Description: PacifiCorp submits tariff filing per 35.15: Termination of BPA Umpqua Business Center Construction Agreement to be effective 3/14/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5060.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–744–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per

35.13(a)(2)(iii: Submission of Notice of Cancellation of 2432 TPW Madison, LLC to be effective 12/6/2012.

Filed Date: 1/10/13.

Accession Number: 20130110–5065.

Comments Due: 5 p.m. ET 1/31/13.

Docket Numbers: ER13–745–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2299R1 Rattlesnake Creek Wind Project, LLC GIA to be effective 12/12/2012.

Filed Date: 1/10/13.

Accession Number: 20130110–5089.

Comments Due: 5 p.m. ET 1/31/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 10, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00981 Filed 1–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP13–441–000.

Applicants: Texas Eastern Transmission, LP.

Description: Cleanup of NR and NCF Agreements—Jan 2013 to be effective 2/10/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5017.

Comments Due: 5 p.m. ET 1/22/13.

Docket Numbers: RP13–442–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: VPEM k5102095 Neg Rate 2–1–2013 to be effective 2/1/2013.

Filed Date: 1/10/13.

Accession Number: 20130110–5032.

Comments Due: 5 p.m. ET 1/22/13.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP13–236–001.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: Revised High Plains Park and Loan Filing to be effective 3/1/2013.

Filed Date: 1/9/13.

Accession Number: 20130109–5057.

Comments Due: 5 p.m. ET 1/22/13.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 10, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00983 Filed 1–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2331–014; ER10–2343–014; ER10–2319–013; ER10–2320–013; ER10–2317–012; ER10–2322–014; ER10–2324–013 ER10–2325–012; ER10–2332–013; ER10–2326–014; ER10–2327–015; ER10–2328–013; ER11–4609–012; ER10–2330–014.

Applicants: J.P. Morgan Ventures Energy Corporation, J.P. Morgan Commodities Canada Corporation, BE Alabama LLC, BE Allegheny LLC, BE CA LLC, BE Ironwood LLC, BE KJ LLC, BE Louisiana LLC, BE Rayle LLC, Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Central Power & Lime LLC, Utility Contract Funding, L.L.C., Triton Power Michigan LLC.

Description: JPMorgan Sellers Notice of Non-Material Change in Status re: Centennial Wind.

Filed Date: 1/9/13.

Accession Number: 20130109–5187.

Comments Due: 5 p.m. ET 1/30/13.

Docket Numbers: ER10–2794–011; ER10–2849–010; ER11–2028–011; ER12–1825–009; ER11–3642–009.

Applicants: EDF Trading North America, LLC, EDF Industrial Power Services (NY), LLC, EDF Industrial Power Services (IL), LLC, EDF Industrial Power Services (CA), LLC, Tanner Street Generation, LLC.

Description: Notice of Non-Material Change in Status of EDF Trading North America, LLC, et al.

Filed Date: 1/9/13.

Accession Number: 20130109–5133.

Comments Due: 5 p.m. ET 1/30/13.

Docket Numbers: ER10–2984–007.

Applicants: Merrill Lynch Commodities, Inc.

Description: Notice of Non-Material Change in Status of Merrill Lynch Commodities, Inc.

Filed Date: 1/9/13.

Accession Number: 20130109–5126.

Comments Due: 5 p.m. ET 1/30/13.

Docket Numbers: ER10–2985–009; ER10–3049–010; ER10–3051–010.

Applicants: Champion Energy Marketing LLC, Champion Energy Services, LLC, Champion Energy, LLC.

Description: Updated Market Power Analysis for the Southwest Region of Champion Energy Marketing LLC, et al.

Filed Date: 1/9/13.

Accession Number: 20130109–5169.

Comments Due: 5 p.m. ET 3/11/13.

Docket Numbers: ER13–112–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 2013–01–09 SA 2488 C009 Compliance to be effective 10/13/2012.

Filed Date: 1/9/13.

Accession Number: 20130109–5092.

Comments Due: 5 p.m. ET 1/30/13.

Docket Numbers: ER13–464–001.

Applicants: Arizona Public Service Company.

Description: Compliance Filing to APS Service Agreement No. 324, Amendment 1 to be effective 11/30/2012.

Filed Date: 1/9/13.
Accession Number: 20130109–5109.
Comments Due: 5 p.m. ET 1/30/13.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 10, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00980 Filed 1–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–752–000]

Energy Storage Holdings, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Energy Storage Holdings, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is February 4, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 14, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00979 Filed 1–17–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–749–000]

Mega Energy of New England, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Mega Energy of New England, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is February 4, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: January 14, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–00984 Filed 1–17–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9007–2]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed 01/07/2013 Through 01/11/2013 Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html*.

SUPPLEMENTARY INFORMATION: As of October 1, 2012, EPA will not accept paper copies or CDs of EISs for filing purposes; all submissions on or after October 1, 2012 must be made through e-NEPA.

While this system eliminates the need to submit paper or CD copies to EPA to meet filing requirements, electronic submission does not change requirements for distribution of EISs for public review and comment. To begin using e-NEPA, you must first register with EPA's electronic reporting site—*https://cdx.epa.gov/epa_home.asp*.

Draft EISs

EIS No. 20130002, Draft EIS, NRCS, 00, Henrys Fork Salinity Control Project Plan, Irrigation Improvements, Sweetwater and Uinta Counties, WY and Daggett and Summit Counties, WY, Comment Period Ends: 03/04/2013, Contact: Astrid Martinez 307–233–6750.

EIS No. 20130003, Draft EIS, NPS, CA, Tuolumne Wild and Scenic River Comprehensive Management Plan, Yosemite National Park, CA, Comment Period Ends: 03/18/2013, Contact: Kathleen Morse 209–379–1270.

EIS No. 20130005, Draft EIS, NPS, CA, Merced Wild and Scenic River Comprehensive Management Plan, Yosemite National Park, CA, Comment Period Ends: 04/18/2013, Contact: Kathleen Morse 209–579–1270.

EIS No. 20130007, Draft EIS, BLM, NV, Arturo Mine Project, Development, Elko County, NV, Comment Period Ends: 03/04/2013, Contact: John Daniel 775–753–0277.

Final EISs

Pursuant to 40 CFR 1506.10(b)(2), no decision on the proposed action evaluated in the following Final EISs shall be made or recorded by a Federal Agency until after 02/19/2013. However, an exception to this limitation may be made and a decision can be recorded at the same time the Final EIS is published where an agency decision is subject to a formal internal appeal or when the time period is waived.

EIS No. 20130004, Final EIS, NOAA, 00, Issuing Annual Quotas to the Alaska Eskimo Whaling Commission (AEWC) for a Subsistence Hunt on Bowhead Whales for the Years 2013 through 2017/2018, Contact: Steven K. Davis 907–271–3523.

EIS No. 20130006, Final EIS, NRC, MI, Enrico Fermi Unit 3 Combined License (COL) Application, Construction and Operation of a Power Reactor, U.S. Corp of Engineer 10 and 404 Permits, NUREG–2105, Monroe County, MI, Contact: Bruce Olson 301–415–3731.

EIS No. 20130008, Final EIS, NPS, 00, Blue Ridge Parkway General Management Plan, Implementation, Virginia and North Carolina, Contact: Chris Church 303–969–2276.

Amended Notices

EIS No. 20120362, Draft EIS, BLM, CA, Casa Diablo IV Geothermal Development Project, Mono County, CA, Comment Period Ends: 01/15/2013, Contact: Collin Reinhardt 760–872–5024.

Revision to FR Notice Published 11/16/2012; Extending Comment Period from 01/15/2013 to 01/30/2013.

Dated: January 15, 2013.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2013–01083 Filed 1–17–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9772–1]

Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revision for New York

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of New York is revising its approved Public Water System Supervision Program to adopt EPA's National Primary Drinking Water Regulations for one major rule and one correction. The EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, the EPA intends to approve these program revisions. All interested parties may request a public hearing.

DATES: A request for a public hearing must be submitted to the Regional Administrator at the address shown below February 19, 2013. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on her own motion, this determination shall become final and effective February 19, 2013. More information on requesting a public hearing can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region 2, 290 Broadway, New York, New York 10007–1866.

All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday, at the following offices: New York State Department of Health, Corning Tower, Empire State Plaza, Albany, New York 12237. U.S. Environmental Protection Agency—Region 2, 24th Floor Drinking Water Ground Water Protection Section, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Michael J. Lowy, Drinking Water Ground Water Protection Section, U.S. Environmental Protection Agency—Region 2, (212) 637–3830.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the United States Environmental Protection Agency (EPA) has determined to approve an application by the State of New York Department of Health to revise its Public Water Supply Supervision Primacy Program to incorporate regulations no less stringent than the EPA's National Primary Drinking Water Regulations (NPDWR) for National Primary Drinking Water Regulation: Ground Water Rule, Final Rule, promulgated by EPA November 8, 2006 (71 FR 65574), and the Correction promulgated by EPA November 21, 2006 (71 FR 67427).

The application demonstrates that New York has adopted drinking water regulations which satisfy the NPDWRs for the above. The USEPA has determined that New York's regulations are no less stringent than the corresponding Federal Regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, 40 U.S.C. 300g–2, and 40 CFR 142.10, 142.12(d) and 142.13.

This determination to approve New York's primacy program revision application is made pursuant to 40 CFR 142.12(d)(3). It shall become final and effective unless (1) a timely and appropriate request for a public hearing is received or (2) the Regional Administrator elects to hold a public hearing on her own motion. Any interested person, other than Federal Agencies, may request a public hearing.

If a substantial request for a public hearing is made within the requested thirty day time frame, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

Any request for a public hearing shall include the following information: (1) Name, address and telephone number of the individual, organization or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: January 2, 2013.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2013–01074 Filed 1–17–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

January 15, 2013.

TIME AND DATE: 2:00 p.m., Thursday, January 31, 2013.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *Wolf Run Mining Co.,* Docket No. WEVA 2007–600, et al. (Issues include whether the Administrative Law Judge erred in his negligence and unwarrantable failure analysis with regard to violations involving the failure to immediately report a mine explosion.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2013–01160 Filed 1–16–13; 4:15 pm]

BILLING CODE 6735–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Notice

January 15, 2013.

TIME AND DATE: 10:00 a.m., Thursday, January 31, 2013.

PLACE: The Richard V. Backley Hearing Room, Room 511N, 1331 Pennsylvania Avenue NW, Washington, DC 20004 (entry from F Street entrance).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument in the matter *Secretary of Labor* v. *Wolf Run Mining Co.,* Docket No. WEVA 2007–600, et al. (Issues include whether the Administrative Law Judge erred in his negligence and unwarrantable failure analysis with regard to violations involving the failure to immediately report a mine explosion.)

Any person attending this oral argument who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Emogene Johnson,

Administrative Assistant.

[FR Doc. 2013–01158 Filed 1–16–13; 4:15 pm]

BILLING CODE 6735–01–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 5, 2013.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Thomas Winkels, individually and as trustee of six McNeilus Family Trusts, and Donna McNeilus, individually,* all of Dodge Center, Minnesota, and Thomas Winkels; Myrlane Winkels, Dodge Center, Minnesota; Christopher Winkels, New Market, Minnesota; Sara Winkels, Dodge Center, Minnesota; and the six McNeilus Family Trusts, Dodge Center, Minnesota; comprise the Winkels and McNeilus Family Trust group, and Donna McNeilus; Justin McNeilus, Byron, Minnesota; Christina McNeilus, Dodge Center, Minnesota; and Kimberly McNeilus, Dodge Center, Minnesota; to join the McNeilus Family Shareholder Group; to acquire or retain voting shares of Sterling Financial Group, Inc., Rochester, Minnesota, and thereby indirectly acquire or retain voting shares of Sterling State Bank, Austin, Minnesota.

Board of Governors of the Federal Reserve System, January 15, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–01007 Filed 1–17–13; 8:45 am]

BILLING CODE 6210–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

Proposed Recommendations Regarding Money Market Mutual Fund Reform

AGENCY: Financial Stability Oversight Council.

ACTION: Proposed recommendation; extension of comment period.

SUMMARY: On November 19, 2012, the Financial Stability Oversight Council (''Council'') published in the **Federal Register** proposed recommendations regarding money market mutual funds (''MMFs'') pursuant to Section 120 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank

Act''), which authorizes the Council to issue recommendations to a primary financial regulatory agency to apply new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under the agency's jurisdiction.[1] The Council has determined that an extension of the comment period until February 15, 2013, is appropriate.

DATES: Comment due date: February 15, 2013.

ADDRESSES: You may submit comments by any of the methods identified in the proposed recommendations. Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Amias Gerety, Deputy Assistant Secretary for the Financial Stability Oversight Council, Department of the Treasury, at (202) 622–8716; Sharon Haeger, Office of the General Counsel, Department of the Treasury, at (202) 622–4353; or Eric Froman, Office of the General Counsel, Department of the Treasury, at (202) 622–1942.

SUPPLEMENTARY INFORMATION: Under Section 120 of the Dodd-Frank Act, if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of a financial activity or practice conducted by bank holding companies or nonbank financial companies could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial markets of the United States, or low-income, minority, or underserved communities, the Council may issue recommendations to the appropriate primary financial regulatory agencies to apply new or heightened standards and safeguards for such financial activity or practice.

On November 19, 2012, pursuant to Section 120 of the Dodd-Frank Act, the Council published in the **Federal Register** proposed recommendations that the Securities and Exchange Commission (SEC) proceed with structural reforms of MMFs. The proposed recommendations stated that the public comment period would close on January 18, 2013.

The Council notes that SEC staff issued a report on November 30, 2012, regarding MMFs (SEC Report). To allow the public more time to review, consider, and comment on the proposed recommendations, and to allow the public to consider the information in the SEC Report in conjunction with the proposed recommendations, the Council believes it is appropriate to extend the comment period. Accordingly, the Council is extending the deadline for submitting comments on the proposed recommendations from January 18, 2013, to February 15, 2013.

Dated: January 14, 2013.

Rebecca H. Ewing,

Executive Secretary, Department of the Treasury.

[FR Doc. 2013–01037 Filed 1–17–13; 8:45 am]

BILLING CODE 4810–25–P–P

[1] Public Law 111–203, 124 Stat. 1376 (2010).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–18521–60D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: OS, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary for Health (OASH), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting that ICR to OMB, OASH seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on the ICR must be received on or before March 19, 2013.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OASH–<ICRAS ID>–60D for reference.

Information Collection Request Title: Evaluation of Implementation of the Viral Hepatitis Action Plan.

Abstract: In response to the viral hepatitis epidemic in the United States, the Department of Health and Human Services (HHS) released the Action Plan for the Prevention, Care & Treatment of Viral Hepatitis (Action Plan) in May 2011 to provide a comprehensive strategic plan to address viral hepatitis B and C. Implementation of the Action Plan requires actions across a variety of agencies including national, state/local government, community-based organizations, and the private sector. The Evaluation of Implementation of the Viral Hepatitis Action Plan will assess state and local response to and activities that support the Action Plan, identify barriers to implementation and strategies to address these barriers, and inform future viral hepatitis efforts.

Need and Proposed Use of the Information: The purpose of this project is to evaluate the state and local response to and implementation of the Action Plan and examine viral hepatitis activities that are occurring in the four jurisdictions that have been pre-selected for the evaluation: Alabama, Massachusetts, New York, and Washington State. The information collected through the evaluation will position OASH to better understand implementation of the Action Plan at the state and local levels and barriers that might be occurring in the selected jurisdictions. The evaluation will also serve to examine the landscape of viral hepatitis activities that are taking place in the selected jurisdictions. The results of the evaluation will enable OASH to understand and identify potential strategies to strengthen local implementation of the Action Plan, address barriers, and inform future implementation efforts.

Likely Respondents: State Viral Hepatitis Prevention Coordinators (CDC-funded state health department staff); other state and local health department stakeholders such as HIV and Immunization Program staff; national organization representatives who are involved in viral hepatitis program development and advocacy; local viral hepatitis stakeholders including health care and substance abuse treatment providers, non-profit community-based organization staff and volunteers, and others identified by the State Viral Hepatitis Prevention Coordinator (see above).

Burden Statement: The estimated burden for data collection involves scheduling and conducting key informant interviews among a variety of stakeholder groups including the CDC-funded Adult Viral Hepatitis Prevention Coordinators, State and local health departments, community-based organizations, correctional facilities and healthcare providers. These interviews will be conducted in four states (Alabama, Massachusetts, New York and Washington). Up to twelve additional interviews will also be conducted with select national-level stakeholders. The total annual burden

hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Adult Viral Hepatitis Prevention Coordinators	4	1	1.5	6
State and local health departments	16	1	.75	12
Community-based organizations	12	1	.5	6
National organizations	12	1	.5	6
Correctional facilities	12	1	.5	6
Healthcare providers	12	1	.5	6
Total				42

OASH specifically requests comments on (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.

Darius Taylor,

Deputy Information Collection Clearance Officer.

[FR Doc. 2013–01022 Filed 1–17–13; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold a meeting. The meeting is open to the public. Pre-registration is required for both public attendance and comment. Individuals who wish to attend the meeting and/or participate in the public comment session should register at *http://www.hhs.gov/nvpo/nvac,* email *nvpo@hhs.gov,* or call 202–690–5566 and provide name, organization, and email address.

DATES: The meeting will be held on February 5–6, 2013. The meeting times and agenda will be posted on the NVAC Web site at *http://www.hhs.gov/nvpo/nvac* as soon as they become available.

ADDRESSES: U.S. Department of Health and Human Services, Hubert H. Humphrey Building, Room 800, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: National Vaccine Program Office, U.S. Department of Health and Human Services, Room 715–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. *Phone:* (202) 690–5566; *Fax:* (202) 690–4631; *email: nvpo@hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of Health and Human Services was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The National Vaccine Advisory Committee was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

Among the topics to be discussed at the NVAC meeting include the Affordable Care Act, pertussis, polio eradication, global vaccination, and HPV vaccine coverage. The meeting agenda will be posted on the NVAC Web site: *http://www.hhs.gov/nvpo/nvac* prior to the meeting.

Public attendance at the meeting is 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 National Vaccine Program Office at the address/phone listed above at least one week prior to the meeting. Members of the public will have the opportunity to provide comments at the NVAC meeting during the public comment periods on the agenda. Individuals who would like to submit written statements should email or fax their comments to the National Vaccine Program Office at least five business days prior to the meeting.

Dated: January 10, 2013.

Bruce Gellin,

Director, National Vaccine Program Office, Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. 2013–00950 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–277]

Notice of Development of Set 26 Toxicological Profiles

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the development of Set 26 Toxicological Profiles, which will consist of three updated profiles and two new profiles. Draft for Public Comment versions of these profiles will be available to the public on or about October 17, 2013. Electronic access to these documents will be available at the ATSDR Web site: *http://www.atsdr.cdc.gov/toxprofiles/index.asp.*

Set 26 Toxicological Profiles

The following toxicological profiles are now being developed:

Name	CAS
1. Trichloroethylene (UPDATE) ..	79–01–6
2. Tetrachloroethylene (UPDATE).	127–18–4
3. Hydrogen sulfide/Carbonyl sulfide (UPDATE).	7783–06–4 463–58–1
4. Glutaraldehyde (NEW)	111–30–8
5. Parathion (NEW)	56–38–2

SUPPLEMENTARY INFORMATION: The Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601 *et seq.*) amended the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or Superfund) (42 U.S.C. 9601 *et seq.*) by establishing certain requirements for ATSDR and the U.S. Environmental Protection Agency (EPA) with regard to hazardous substances that are most commonly found at facilities on the CERCLA National Priorities List (NPL). Among these statutory requirements is a mandate for the Administrator of ATSDR to prepare toxicological profiles for each substance included on the Priority List of Hazardous Substances (*www.atsdr.cdc.gov/SPL*). This list names 275 hazardous substances that pose the most significant potential threat to human health as determined by ATSDR and EPA. The availability of the revised list of the 275 priority substances was announced in the **Federal Register** on November 3, 2011 (76 FR 68193). For prior versions of the list of substances, see **Federal Register** notices dated April 17, 1987 (52 FR 12866); October 20, 1988 (53 FR 41280); October 26, 1989 (54 FR 43619); October 17, 1990 (55 FR 42067); October 17, 1991 (56 FR 52166); October 28, 1992 (57 FR 48801); February 28, 1994 (59 FR 9486); April 29, 1996 (61 FR 18744; November 17, 1997 (62 FR 61332); October 21, 1999 (64 FR 56792); October 25, 2001 (66 FR 54014); November 7, 2003 (68 FR 63098); December 7, 2005 (70FR 70284): and March 6, 2008 (73 FR 12178).

Notice of the availability of drafts of these five toxicological profiles for public review and comment will be published in the **Federal Register** on or about October 17, 2013, with notice of a 90-day public comment period for each profile, starting from the actual release date. Following the close of the comment period, chemical-specific comments will be addressed, and, where appropriate, changes will be incorporated into each profile.

FOR FURTHER INFORMATION CONTACT: Commander Jessilynn B. Taylor, Division of Toxicology and Human Health Sciences, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road NE., Mail Stop F–57, Atlanta, GA 30333, telephone 770–488–3313.

Dated: January 11, 2013.

Ken Rose,

Director, Office of Policy Planning and Evaluation, National Center for Environmental Health.

[FR Doc. 2013–00991 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–0600]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

CDC Model Performance Evaluation Program (MPEP) for Mycobacterium tuberculosis and Nontuberculous Mycobacteria Drug Susceptibility Testing OMB #0920–0600 (exp. 5/31/2013),—Revision—National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

As part of the continuing effort to support domestic public health objectives for treatment of tuberculosis (TB), prevention of multi-drug resistance, and surveillance programs, CDC is requesting approval from the Office of Management and Budget to continue data collection from participants in the Model Performance Evaluation Program for Mycobacterium tuberculosis and Non-tuberculous Mycobacterium Drug Susceptibility Testing. This revision request includes (a) Changing the title of the data collection to ''CDC Model Performance Evaluation (MPEP) for Mycobacterium tuberculosis Drug Susceptibility Testing'' to reflect that nontuberculous mycobacteria are no longer included in the test package; (b) replacement of Laboratory Enrollment Form with a Participant Biosafety Compliance Letter of Agreement; (c) revision of the Pre-shipment Email; (d) addition of Instructions to Participants Letter; (e) revision of the MPEP M. tuberculosis Results Worksheet; (f) entering survey results online using a modified data collection instrument; (g) modification of Reminder Email; (h) modification of Reminder Telephone Script; and (i) modification of the Aggregate Report Letter.

While the overall number of cases of TB in the U.S. has decreased, rates still remain high among foreign-born persons, prisoners, homeless populations, and individuals infected with HIV in major metropolitan areas. To reach the goal of eliminating TB, the Model Performance Evaluation Program for Mycobacterium tuberculosis and Non-tuberculous Mycobacterium Drug Susceptibility Testing is used to monitor and evaluate performance and practices among national laboratories performing M. tuberculosis susceptibility testing. Participation in this program is one way laboratories can ensure high-quality laboratory testing, resulting in accurate and reliable testing results.

By providing an evaluation program to assess the ability of the laboratories to test for drug resistant M. tuberculosis strains, laboratories also have a self-assessment tool to aid in optimizing their skills in susceptibility testing. The information obtained from the laboratories on susceptibility practices and procedures is used to establish variables related to good performance, assessing training needs, and aid with the development of practice standards.

Participants in this program include domestic clinical and public health laboratories. Data collection from laboratory participants occurs twice per

year. The data collected in this program will include the susceptibility test results of primary and secondary drugs, drug concentrations, and test methods performed by laboratories on a set of performance evaluation (PE) samples. The PE samples are sent to participants twice a year. Participants also report demographic data such as laboratory type and the number of tests performed annually.

There is no cost to respondents to participate other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Domestic Laboratory	Participant Biosafety Compliance Letter of Agreement.	93	2	5/60	16
	MPEP *Mycobacterium tuberculosis* Results Worksheet.	93	2	30/60	93
	Online Survey Instrument	93	2	15/60	47
Total			0		156

Dated: January 14, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2013–00988 Filed 1–17–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–0488]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Restriction on Interstate Travel of Persons (OMB Control No. 0920–0488, Exp. 3/31/2013)—Revision—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention is requesting OMB approval for a revision of the information collection, ''Restriction on Interstate Travel of Persons'' (OMB Control No. 0920–0488).

This information collection request is scheduled to expire on March 31, 2013. CDC is authorized to collect this information under 42 CFR 70.5 (Certain communicable diseases; special requirements). This regulation requires that any person who is in the communicable period for cholera, plague, smallpox, typhus, or yellow fever or having been exposed to any such disease is in the incubation period thereof, to apply for and receive a permit from the Surgeon General or his authorized representative in order to travel from one State or possession to another.

CDC is requesting changes to the forms used within this information collection. The changes involve splitting the current form into two separate forms based on the type of respondent: an ill traveler, or the master of a vessel or conveyance engaged in interstate travel. CDC is also adding the option of electronic reporting of illness.

Control of disease transmission within the States is considered to be the province of state and local health authorities, with Federal assistance being sought by those authorities on a cooperative basis without application of Federal regulations. The regulations in 42 Part 70 were developed to facilitate Federal action in the event of large outbreaks requiring a coordinated effort involving several states, or in the event of inadequate local control. While it is not known whether, or to what extent situations may arise in which these regulations would be invoked, contingency planning for domestic emergency preparedness is now commonplace. Should these situations arise, CDC will use the reporting and recordkeeping requirements contained in the regulations to carry out quarantine responsibilities as required by law. The total number of burden hours requested for this collection is 3,701.

There is no cost to respondents other than their time.

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Traveler	42 CFR 70.3 Application to the State of destination for a permit.	2,000	1	15/60
Attending physician	42 CFR 70.3 Copy of material submitted by applicant and permit issued by State health authority.	2,000	1	15/60
State health authority	42 CFR 70.3 Copy of material submitted by applicant and permit issued by State health authority.	8	250	6/60

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Master of a vessel or person in charge of a conveyance.	42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel (Paper Form if requested by CDC during public health emergency).	1,500	1	15/60
State health authority	42 CFR 70.4 Copy of material submitted to state or local health authority under this provision (Paper Form if requested by CDC during public health emergency).	20	75	6/60
Master of a vessel or person in charge of a conveyance.	42 CFR 70.4 Report by the master of a vessel or person in charge of conveyance of the incidence of a communicable disease occurring while in interstate travel (Radio or other telecommunication for routine reporting).	200	1	15/60
State health authority	42 CFR 70.4 Copy of material submitted to state or local health authority under this provision (Radio or other telecommunication for routine reporting).	200	1	15/60
Traveler	42 CFR 70.5 Application for a permit to move from State to State while in the communicable period.	3,750	1	15/60
Attending physician	42 CFR 70.5 Application for a permit to move from State to State while in the communicable period.	3,750	1	15/60

Dated: January 10, 2013.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director Centers for Disease Control and Prevention.

[FR Doc. 2013–00987 Filed 1–17–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Office for State, Tribal, Local and Territorial Support (OSTLTS) Meeting; Correction

SUMMARY: This document corrects a notice that was published in the **Federal Register** on January 7, 2013 (78 FR 949–950). The 10th Biannual Tribal Consultation session has been postponed to coincide with the summer 2013 meetings; the dates will be announced once they are determined. The Tribal Advisory Committee Meeting will be extended and held February 5, 6, and 7, 2013, from 8:00 a.m.–4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Kimberly Cantrell, Deputy Associate Director for Tribal Support, OSTLTS, via mail to 4770 Buford Highway NE., MS E–70, Atlanta, Georgia 30341 or email to *klw6@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 11, 2013.

John Kastenbauer, J.D.,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–00989 Filed 1–17–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC–2013–0001; NIOSH–134–B]

Update of NIOSH Nanotechnology Strategic Plan for Research and Guidance

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Request for Information: Update of NIOSH Nanotechnology Strategic Plan for Research and Guidance.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) seeks comment on the types of hazard identification and risk management research that should be considered for updating the NIOSH FY2013–FY2016 nanotechnology strategic plan. This draft strategic plan (*Protecting the Nanotechnology Workforce: NIOSH Nanotechnology Research and Guidance Strategic Plan 2013–2016*) can be found in Docket CDC–2013–0001 at *http://www.regulations.gov.*

DATES: Comments must be received March 19, 2013.

ADDRESSES: You may submit comments, identified by CDC–2013–0001 and Docket Number NIOSH–134–B, by either of the two following methods:

- *Federal erulemaking portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, MS–C34, 4676 Columbia Parkway, Cincinnati, OH 45226.

Instructions: All information received in response to this notice must include the agency name and docket number (CDC–2013–0001; NIOSH–134–B). All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. For access to prior background documents or previous comments received, go to *http://www.cdc.gov/niosh/docket/archive/docket134.html* and *http://www.cdc.gov/niosh/docket/archive/docket134A.html.*

FOR FURTHER INFORMATION CONTACT: Charles L. Geraci, NIOSH, Robert A. Taft Laboratories, MS–C14, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533–8339.

SUPPLEMENTARY INFORMATION:

Background

Since 2004, the National Institute for Occupational Safety and Health

(NIOSH) of the Centers for Disease Control and Prevention (CDC) has pioneered research on the toxicological properties and characteristics of nanoparticles. This research has involved characterizing occupationally relevant nanoparticles for predicting whether these particles pose a risk of adverse health effects and for providing guidance on controlling workplace exposures. In September 2005, NIOSH developed a strategic plan to further guide the Institute in identifying and prioritizing nanotechnology research. In 2009 this strategic plan [*http://www.cdc.gov/niosh/docs/2010-105*] was updated based on knowledge gained from results of ongoing NIOSH research [see Progress Toward Safe Nanotechnology in the Workplace; A Report from the NIOSH Nanotechnology Research Center *http://www.cdc.gov/niosh/docs/2007-123/*] and from the public and stakeholder input. NIOSH would like to build on the accomplishments of ongoing research [*http://www.cdc.gov/niosh/docs/2013-101/* and *http://www.cdc.gov/niosh/docs/2010-104/*] to develop strategic research goals and objectives for nanotechnology occupational safety and health research through 2016. NIOSH has identified 10 critical research areas for nanotechnology research and communication. These 10 critical research areas are (1) Toxicity and internal dose, (2) measurement methods, (3) exposure assessment, (4) epidemiology and surveillance, (5) risk assessment, (6) engineering controls and personal protective equipment (PPE), (7) fire and explosion safety, (8) recommendations and guidance, (9) global collaborations, and (10) applications.

NIOSH is considering focusing the overarching strategic research goals for these critical areas on 5 key objectives: (1) Increase understanding of new hazards and related health risks to nanomaterial workers; (2) Expand understanding of the initial hazard findings on engineered nanomaterials; (3) Support the creation of guidance materials to inform nanomaterial workers, employers, health professionals, regulatory agencies, and decision-makers about hazards, risks, and risk management approaches; (4) Support epidemiologic studies for nanomaterial workers, including medical and exposure studies; and 5) Assess and promote national adherence with risk management guidance.

NIOSH requests public input to address the following:

(1) What is the basis or rationale for priorities that NIOSH should give for studies of toxicity evaluation and/or workplace exposure characterization for engineered nanoparticles?

(2) What rationale can be provided for recommending needs and types of technical and educational guidance materials?

Dated: January 14, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2013–00994 Filed 1–17–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3278–N]

Medicare Program; Request for Information on Hospital and Vendor Readiness for Electronic Health Records Hospital Inpatient Quality Data Reporting; Extension of Comment Period

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information; extension of the comment period.

SUMMARY: This notice extends the comment period for a request for information (RFI) which was published in the January 3, 2013 **Federal Register** (78 FR 308). The RFI requests that hospitals, electronic health record (EHR) vendors, and other interested parties respond to questions regarding their readiness to conduct electronic reporting of certain patient-level data under the Hospital Inpatient Quality Reporting (IQR) Program using the Quality Reporting Document Architecture (QRDA) Category I. The comment period for the RFI, which would have ended on January 22, 2013, is extended to February 1, 2013.

DATES: The comment period for the request for information published in the January 3, 2013 **Federal Register** (78 FR 308) is extended to February 1, 2013.

ADDRESSES: In commenting, please refer to file code CMS–3278–NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3278–NC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–3278–NC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Maria Harr, (410) 789–6710.

SUPPLEMENTARY INFORMATION: In the January 3, 2013 **Federal Register** (78 FR 308), we published a document requesting information from hospitals, electronic health record (EHR) vendors, and other interested parties regarding hospital readiness to begin electronically reporting certain patient-level data under the Hospital Inpatient Quality Reporting (IQR) Program using the Quality Reporting Document Architecture (QRDA) Category I beginning with calendar year 2014 discharges.

Because of the scope of the requested information and inquiries received from several industry and professional organizations/associations regarding the need for additional time to respond to our request, we are extending the comment period until February 1, 2013.

Dated: January 15, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–01142 Filed 1–16–13; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0333]

Agency Information Collection Activities; Proposed Collection; Comment Request; Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice invites comments on the procedure by which both domestic and foreign bottled water manufacturers that sell bottled water in the United States maintain records of microbiological testing and corrective measures, in addition to existing recordkeeping requirements.

DATES: Submit either electronic or written comments on the collection of information by March 19, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Recordkeeping Requirements for Microbiological Testing and Corrective Measures for Bottled Water—21 CFR 129.35(a)(3)(i), 129.80(g), and 129.80(h) (OMB Control Number 0910–0658)—Extension

The bottled water regulations in parts 129 and 165 (21 CFR parts 129 and 165) require that if any coliform organisms are detected in weekly total coliform testing of finished bottled water, followup testing must be conducted to determine whether any of the coliform organisms are *Escherichia coli.* The adulteration provision of the bottled water standard (§ 165.110(d)) provides that a finished product that tests positive for *E. coli* will be deemed adulterated under section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(3)). In addition, the current good manufacturing practice (CGMP) regulations for bottled water in part 129 require that source water from other than a public water system (PWS) be tested at least weekly for total coliform. If any coliform organisms are detected in the source water, the bottled water manufacturers are required to determine whether any of the coliform organisms are *E. coli.* Source water found to contain *E. coli* is not considered water of a safe, sanitary quality and would be unsuitable for bottled water production. Before a bottler may use source water from a source that has tested positive for *E. coli,* a bottler must take appropriate measures to rectify or otherwise eliminate the cause of the contamination. A source previously found to contain *E. coli* will be considered negative for *E. coli* after five samples collected over a 24-hour period from the same sampling site are tested and found to be *E. coli* negative.

Description of Respondents: The respondents to this information collection are domestic and foreign bottled water manufacturers that sell bottled water in the United States.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
§ 129.35(a)(3)(i), § 129.80(h)	319 (bottlers subject to source water and finished product testing).	6	1,914	0.08	153
§ 129.80(g), § 129.80(h)	95 (bottlers testing finished product only).	3	285	0.08	23
§ 129.35(a)(3)(i), § 129.80(h)	3 (bottlers conducting secondary testing of source water).	5	15	0.08	1.2
§ 129.35(a)(3)(i), § 129.80(h)	3 (bottlers rectifying contamination).	3	9	.25	2
Total Annual Burden	.....	.....	.....	.....	179

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The current CGMP regulations already reflect the time and associated recordkeeping costs for those bottlers that are required to conduct microbiological testing of their source water, as well as total coliform testing of their finished bottled water products. We therefore conclude that any additional burden and costs in recordkeeping based on followup testing that is required if any coliform organisms detected in the source water test positive for *E. coli* are negligible. We estimate that the labor burden of keeping records of each test is about 5 minutes per test. We also require followup testing of source water and finished bottled water products for *E. coli* when total coliform positives occur. We expect that 319 bottlers that use sources other than PWSs may find a total coliform positive sample about 3 times per year in source testing and about three times in finished product testing, for a total of 153 hours of recordkeeping. In addition to the 319 bottlers, about 95 bottlers that use PWSs may find a total coliform positive sample about 3 times per year in finished product testing, for a total of 23 hours of recordkeeping. Upon finding a total coliform sample, bottlers will then have to conduct a followup test for *E. coli.*

We expect that recordkeeping for the followup test for *E. coli* will also take about 5 minutes per test. As shown in table 1 of this document, we expect that 3 bottlers per year will have to carry out the additional *E. coli* testing, with a burden of 1 hour. These bottlers will also have to keep records about rectifying the source contamination, for a burden of 2 hours. For all expected total coliform testing, *E. coli* testing, and source rectification, we estimate a total burden of 179 hours. We base our estimate on our experience with the current CGMP regulations.

Dated: January 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–01032 Filed 1–17–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0032]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice invites comments on the information collection provisions of the regulation requiring manufacturers, packers, and distributors of dietary supplements to notify us that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in the Federal Food, Drug, and Cosmetic Act (the FD&C Act).

DATES: Submit either electronic or written comments on the collection of information by March 19, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400T, Rockville, MD 20850, *domini.bean@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility;

(2) the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR 101.93 (OMB Control Number 0910–0331—Extension)

Section 403(r)(6) of the FD&C Act (21 U.S.C. 343(r)(6)) requires that FDA be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the FD&C Act. Section 403(r)(6) of the FD&C Act requires that FDA be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented, and who must certify that the information contained in the notice is complete and accurate, and that the notifying firm has substantiation that the statement is truthful and not misleading.

The procedural regulation for this program is codified at § 101.93 (21 CFR 101.93). Section 101.93 provides submission procedures and identifies the information that must be included in order to meet the requirements of section 403 of the FD&C Act.

Description of Respondents: Respondents to this collection of information include manufacturers, packers, or distributors of dietary supplements that bear section 403(r)(6) of the FD&C Act statements on their labels or labeling.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
101.93	2,200	1	2,200	0.75	1,650

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We believe that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the FD&C Act in submitting information regarding section 403(r)(6) of the FD&C Act statements on labels or in labeling of dietary supplements. We are requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. We estimate that, each year, approximately 2,200 firms will submit the information required by section 403 of the FD&C Act. We estimate that a firm will require 0.75 hours to gather the information needed and prepare a submission, for a total of 1,650 hours (2,200 × 0.75). This estimate is based on the average number of notification submissions received by us in the preceding 3 years.

Dated: January 14, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–01031 Filed 1–17–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

[DHS–2011–0108]

RIN 1601–ZA11

Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

AGENCY: Office of the Secretary, DHS.

ACTION: Notice.

SUMMARY: Under Department of Homeland Security (DHS) regulations, U.S. Citizenship and Immigration Services (USCIS) may approve petitions for H–2A and H–2B nonimmigrant status only for nationals of countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated by notice published in the **Federal Register**. That notice must be renewed each year. This notice announces that the Secretary of Homeland Security, in consultation with the Secretary of State, is identifying 59 countries whose nationals are eligible to participate in the H–2A and H–2B programs for the coming year. The list published today includes one new addition: Grenada.

DATES: *Effective Date:* This notice is effective January 18, 2013, and shall be without effect at the end of one year after January 18, 2013.

FOR FURTHER INFORMATION CONTACT: Francis Cissna, Office of Policy, Department of Homeland Security, Washington, DC 20528, (202) 447–3835.

SUPPLEMENTARY INFORMATION:

Background: Generally, USCIS may approve H–2A and H–2B petitions for nationals of only those countries that the Secretary of Homeland Security, with the concurrence of the Secretary of State, has designated as participating countries. Such designation must be published as a notice in the **Federal Register** and expires after one year. USCIS, however, may allow a national from a country not on the list to be named as a beneficiary of an H–2A or H–2B petition based on a determination that such participation is in the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F) and 8 CFR 214.2(h)(6)(i)(E).

In designating countries to include on the list, the Secretary of Homeland Security, with the concurrence of the Secretary of State, will take into account factors including, but not limited to: (1) The country's cooperation with respect to issuance of travel documents for citizens, subjects, nationals, and residents of that country who are subject to a final order of removal; (2) the number of final and unexecuted orders of removal against citizens, subjects, nationals, and residents of that country; (3) the number of orders of removal executed against citizens, subjects,

nationals, and residents of that country; and (4) such other factors as may serve the U.S. interest. *See* 8 CFR 214.2(h)(5)(i)(F)(1)(i) and 8 CFR 214.2(h)(6)(i)(E)(1).

In December 2008, DHS published in the **Federal Register** two notices, ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2A Visa Program,'' and ''Identification of Foreign Countries Whose Nationals Are Eligible to Participate in the H–2B Visa Program,'' which designated 28 countries whose nationals are eligible to participate in the H–2A and H–2B programs. *See* 73 FR 77,043 (Dec. 18, 2008); 73 FR 77,729 (Dec. 19, 2008). The notices ceased to have effect on January 17, 2010 and January 18, 2010, respectively. *See* 8 CFR 214.2(h)(5)(i)(F)(2) and 8 CFR 214.2(h)(6)(i)(E)(3). To allow for the continued operation of the H–2A and H–2B programs, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has published subsequent notices on an annual basis. *See* 75 FR 2,879 (Jan. 19, 2010) (adding 11 countries); 76 FR 2,915 (Jan. 18, 2011) (removing Indonesia and adding 15 countries); 77 FR 2,558 (Jan. 18, 2012) (adding five countries).

The Secretary of Homeland Security has determined, with the concurrence of the Secretary of State, that the 58 countries designated in the January 18, 2012 notice continue to meet the standards identified in that notice for eligible countries and therefore should remain designated as countries whose nationals are eligible to participate in the H–2A and H–2B programs. Further, the Secretary of Homeland Security, with the concurrence of the Secretary of State, has determined to add Grenada to the list. This determination is made taking into account the four factors identified above. The Secretary of Homeland Security also considered other pertinent factors including, but not limited to, evidence of past usage of the H–2A and H–2B programs by nationals of the country to be added, as well as evidence relating to the economic impact on particular U.S. industries or regions resulting from the addition or continued non-inclusion of specific countries.

Designation of Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs

Pursuant to the authority provided to the Secretary of Homeland Security under sections 214(a)(1), 215(a)(1), and 241 of the Immigration and Nationality Act (8 U.S.C. 1184(a)(1), 1185(a)(1), and 1231), I am designating, with the concurrence of the Secretary of State, nationals from the following countries to be eligible to participate in the H–2A and H–2B nonimmigrant worker programs:

Argentina
Australia
Barbados
Belize
Brazil
Bulgaria
Canada
Chile
Costa Rica
Croatia
Dominican Republic
Ecuador
El Salvador
Estonia
Ethiopia
Fiji
Grenada
Guatemala
Haiti
Honduras
Hungary
Iceland
Ireland
Israel
Jamaica
Japan
Kiribati
Latvia
Lithuania
Macedonia
Mexico
Moldova
Montenegro
Nauru
The Netherlands
Nicaragua
New Zealand
Norway
Papua New Guinea
Peru
The Philippines
Poland
Romania
Samoa
Serbia
Slovakia
Slovenia
Solomon Islands
South Africa
South Korea
Spain
Switzerland
Tonga
Turkey
Tuvalu
Ukraine
United Kingdom
Uruguay
Vanuatu

This notice does not affect the status of aliens who currently hold valid H–2A or H–2B nonimmigrant status. Persons holding such status, however, will be affected by this notice at the time they seek an extension of stay in H–2 classification, or a change of status (1) from another nonimmigrant status to H–2 status or (2) from one H–2 status to another.

Nothing in this notice limits the authority of the Secretary of Homeland Security or her designee or any other federal agency to invoke against any foreign country or its nationals any other remedy, penalty, or enforcement action available by law.

Janet Napolitano,

Secretary.

[FR Doc. 2013–00908 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application for Foreign Trade Zone and/or Status Designation, and Application for Foreign Trade Zone Activity Permit

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

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information: 1651–0029.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Foreign Trade Zone Admission and/or Status Designation, and Application for Foreign Trade Zone Activity Permit (CBP Forms 214, 214A, 214B, 214C and 216). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before March 19, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Foreign Trade Zone Admission and/or Status Designation, and Application for Foreign Trade Zone Activity Permit.

OMB Number: 1651–0029.

Form Number: CBP Forms 214, 214A, 214B, 214C and 216.

Abstract: Foreign trade zones (FTZs) are geographical enclaves located within the geographical limits of the United States but for tariff purposes are considered to be outside the United States. Imported merchandise may be brought into FTZs for storage, manipulation, manufacture or other processing and subsequent removal for exportation, consumption in the United States, or destruction. A company bringing goods into a zone has a choice of zone status (privileged/non-privileged foreign, domestic, or zone-restricted) which affects the way such goods are treated by Customs and Border Protection (CBP) and for tariff purposes upon entry into the customs territory of the U.S.

CBP Forms 214, 214A, 214B, and 214C, *Application for Foreign-Trade Zone Admission and/or Status Designation,* are used by companies that bring merchandise into a foreign trade zone to register the admission of such merchandise into FTZs, and to apply for the appropriate zone status. CBP Form CBP 216, *Foreign-Trade Zone Activity Permit,* is used by companies to request approval to manipulate, manufacture, exhibit or destroy merchandise in a foreign trade zone.

These FTZ forms are authorized by 19 U.S.C. 81 and provided for by 19 CFR 146.22, 146.32, 146.41, 146.44, 146.52, 146.53, and 146.66. These forms are accessible at: *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the burden hours or to CBP Forms 214, 214A, 214B, 214C and 216.

Type of Review: Extension (without change).

Affected Public: Businesses.

Form 214, Application for Foreign-Trade Zone Admission and/or Status Designation

Estimated Number of Respondents: 6,749.

Estimated Number of Annual Responses per Respondent: 25.

Estimated Total Annual Responses: 168,725.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 42,182.

Form 216, Application for Foreign-Trade Zone Activity Permit

Estimated Number of Respondents: 2,500.

Estimated Number of Annual Responses per Respondent: 10.

Estimated Total Annual Responses: 25,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,167.

Dated: January 14, 2013.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2013–01057 Filed 1–17–13; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–01]

Notice of Proposed Information Collection: Comment Request; Assisted Living Conversion Program (ALCP) for Eligible Multifamily Housing Projects and Emergency Capital Repair Program (ECRP)

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: March 19, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339)

FOR FURTHER INFORMATION CONTACT: Catherine Brennan, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–3000, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Assisted Living Conversion Program (ALCP) and Emergency Capital Repair Program (ECRP).

OMB Control Number, if applicable: 2502–0542.

Description of the need for the information and proposed use: The Assisted Living Conversion Program and the Emergency Capital Repair Program application submission requirements are necessary to assist

HUD in determining an applicant's eligibility and the capacity to carry out a successful conversion of a project or make the necessary emergency repairs. A careful evaluation of the application is conducted to ensure that the Federal Government's interest is protected and to mitigate any possibilities of fraud, waste, or misuse of public funds. The purpose of collecting the application submission information is for the Department to assess the applicant's worthiness, whether the projects meet statutory and regulatory requirements, or make sound judgments regarding the potential risk to the Government.

Agency form numbers, if applicable: SF–424, SF–424–Supplemental, HUD–424–CB, HUD–424–CBW, SF–LLL, HUD–2880, HUD–2991, HUD–2530, HUD–96010, HUD–96011, HUD–50080–ALCP, SF–425, HUD–50080–ECRP, HUD–92045, HUD–92046, and HUD–92047.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 805. The number of respondents is 31, the number of responses is 532, and the frequency of response is on yearly basis for the ALCP and for the ECRP is on as-submitted basis until exhaustion of funds.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: January 15, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–01060 Filed 1–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–06]

Manufactured Home Construction and Safety Standards Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Collection of this information will result in a better determination of reporting how Primary Inspection Agencies and manufacturers request certification labels, track payment, track production, refund monies, and report missing or damaged labels to the Department or its monitoring contractor.

DATES: *Comments Due Date: February 19, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov*, fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov*, or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and, (4) Minimize the burden of the collection of information on those who are to respond including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Manufactured Home Construction and Safety Standards Program.

OMB Control Number, if applicable: 2502–0233.

Description of the need for the information and proposed use: Collection of this information will result in a better determination of reporting how Primary Inspection Agencies and manufacturers request certification labels, track payment, track production, refund monies, and report missing or damaged labels to the Department or its monitoring contractor.

Agency form numbers, if applicable: Form HUD–101, IPIA Request for Labels; Form HUD–203, Lost Label Report; Form HUD–203B, Damage Label Report; Form HUD–301, Request and Payment for Labels; Form HUD–302, HUD Manufactured Home Monthly Production Report; Form HUD–303, Refunds due Manufacturer; and Form HUD–304, Adjustment Report.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours per response: The total number of burden hours is 2,230. The total number of respondents is 140, the total number of responses is 4,460, the frequency of response is on occasion, and the burden hours per response is 0.5.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 15, 2013.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–01063 Filed 1–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–04]

Notice of Proposed Information Collection for Public Comment: Survey of Manufactured (Mobile) Home Placements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date: February 19, 2013.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2528–0029) and

should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Email: *OIRA Submission @omb.eop.gov,* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *Colette.Pollard@hud.gov;* telephone (202) 402–3400,. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard. email.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

I. Abstract

The Survey of Manufactured (Mobile) Home Placements collects data on the characteristics of newly manufactured homes placed for residential use including number, sales price, location, and other selected characteristics. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report manufactured home sales and price information for the nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability. Furthermore, the Survey of Manufactured (Mobile) Home Placements serves as the basis for HUD's mandated indexing of loan limits. Section 2145 (b) of the Housing and Economic Recovery Act (HERA) of 2008 requires HUD to develop a method of indexing to annually adjust Title I manufactured home loan limits. This index is based on manufactured housing price data collected by this survey. Section 2145 of the HERA of 2008 also amends the maximum loan limits for manufactured home loans insured under Title I. HUD implemented the revised loan limits, as shown below, for all manufactured home loans for which applications are received on or after March 3, 2009.

Loan type	Purpose	Old loan limit	New loan limit
Manufactured home improvement loan ...	For financing alterations, repairs and improvements upon or in connection with existing manufactured homes.	$17,500	$25,090
Manufactured home unit(s)	To purchase or refinance a Manufactured Home unit(s)	48,600	69,678
Lot loan	To purchase and develop a lot on which to place a manufactured home unit.	16,200	23,226
Combination loan for lot and home	To purchase or refinance a manufactured home and lot on which to place the home.	64,800	92,904

II. Method of Collection

The methodology for collecting information on new manufactured homes involves contacting a monthly sample of new manufactured homes shipped by manufacturers. The units are sampled from lists obtained from the Institute for Building Technology and Safety. Dealers that take shipment of the selected homes are mailed a survey form for recording the status of the manufactured home. Each successive month, the dealer is contacted by telephone and provides updated status information about the home. Contact continues until the selected home is placed.

III. Data

OMB Control Number: 2528–0029.

Form Number: C–MH–9A.

Type of Review: Regular submission.

Affected Public: Business firms or other for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Time per Response: 30 min.

Estimated Total Annual Burden Hours: 3,000.

Estimated Total Annual Cost: $60,810.

Respondent's Obligation: Voluntary.

Legal Authority: Title 42 U.S.C. 5424 note, Title 13 U.S.C. Section 8(b), and Title 12, U.S.C., Section 1701z–1.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 15, 2013.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–01061 Filed 1–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5689–N–01]

Notice of Proposed Information Collection: Comment Request Rent Reform Demonstration (Task Order 1)

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 19, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Room 8230, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Jennifer Stoloff, Department of Housing and Urban Development, Office of Policy Development and Research, 451 7th Street SW., Room 8120, Washington,

DC 20410; telephone (202) 402–5723, (this is not a toll free number). Copies of the proposed data collection instruments and other available documents may be obtained from Dr. Stoloff.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including if the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Rent Reform Demonstration.

Description of the need for information and proposed use: The Department is conducting this study under contract with MDRC and its subcontractors (Branch Associates, The Bronner Group, Decision Information Resources, Quadel Consulting Corporation, and the Urban Institute). The project is a random controlled trial of a new alternative rent system. Families will be randomly assigned to either participate in the new/alternative rent system or to continue in the current system. Outcomes of the alternative system are hypothesized to be increases in earnings, more accurate reporting of earnings, and job retention. Random assignment will limit the extent to which selection bias drives observed results. The demonstration will document the progress of a group of Voucher holders, who will be drawn from both the current residents and new enrollees. The intent is to gain an understanding of the impact of the alternative rent system on the families as well as the administrative burden on Public Housing Agencies (PHAs). PHAs currently participating in the Moving to Work (MtW) Demonstration are being recruited to participate in this demonstration.

Data collection will include the families that are part of the treatment and control groups, as well as PHA staff. Data will be gathered through a variety of methods including informational interviews, direct observation, surveys, and analysis of administrative records. The work covered under this information request is for interviews and the baseline survey. Additional work will be undertaken in subsequent task orders and covered under a separate information collection request.

Members of the affected public:

PHA Staff	Approximately 25 (i.e., assuming up to 5 staff at up to 5 PHAs)
Families with housing vouchers, remaining in the current rent system (control group):	Up to 2,000.
Families with housing vouchers, enrolled in the alternative rent system (treatment group):	Up to 2,000.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Instrument	Number of respondents	Number responses per respondent	Average burden/response (in hours)	Total burden hours
Informed Consent Form (ICF)	4,000	1	Up to 15 minutes (or .25 hours)	*1,000 hours*.
Baseline Information Form (includes completion of the Contact Sheet).	4,000	1	30 minutes, on average (or .50 hours)	*2,000 hours*.
Tracking survey sample	4,000	1	Maximum of 30 minutes (or .50 hours), mainly to update contact information.	*2,000 hours*.
Preliminary data collection related to implementation of alternative rent model. Meeting could include: PHA case management staff, PHA data management staff, or other PHA staff involved in rent reform activities.	25 staff total (5 staff * 5 sites).	1	Meetings to be incorporated into technical assistance and monitoring visits, and projected to run 30–60 minutes.	*1,500 hours* (or 60 minutes * 25 staff).

Total: 6,500 hours.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: January 11, 2013.

Jean Lin Pao,

General Deputy Assistant Secretary for Policy Development and Research.

[FR Doc. 2013–01059 Filed 1–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5683–N–05]

Notice of Proposed Information Collection: Comment Request; Direct Endorsement Underwriter/HUD Reviewer—Analysis of Appraisal Report

AGENCY: Office of the Chief Information Officer, HUD Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department requires Direct Endorsement Underwriters to maintain responsibility for the appraisal and the

appraised value. When the DE Underwriter disagrees with the value conclusion and cannot reach the appraiser or the appraiser refuses to change the appraisal, the Department allows the DE Underwriter to make changes and requires the underwriter to do so on the HUD 54114. The information collected is used by FHA to monitor the quality of the lender's analysis of the appraisal report, identify areas of weakness for future training, and removing lenders that consistently exhibits careless underwriting and subsequently affect the risk to the Department.

DATES: *Comments Due Date:* February 19, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number (2502–0477) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Email: *OIRA Submission @omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email *Colette.Pollard@hud.gov;* telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title of Proposal: Direct Endorsement Underwriter/HUD Reviewer—Analysis of Appraisal Report.

OMB Control Number, if applicable: 2502–0477.

Description of the need for the information and proposed use: The Department requires Direct Endorsement Underwriters to maintain responsibility for the appraisal and the appraised value. When the DE Underwriter disagrees with the value conclusion and cannot reach the appraiser or the appraiser refuses to change the appraisal, the Department allows the DE Underwriter to make changes and requires the underwriter to do so on the HUD 54114. The information collected is used by FHA to monitor the quality of the lender's analysis of the appraisal report, identify areas of weakness for future training, and removing lenders that consistently exhibits careless underwriting and subsequently affect the risk to the Department.

Agency form numbers, if applicable: HUD–54114.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 27,916; the number of respondents is 127,000 generating approximately 127,000 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is .05 hour per response.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: January 15, 2013.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2013–01064 Filed 1–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5681–N–03]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a

suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Department of Army, Office of the Chief of Staff for Installation Management, 600 Army Pentagon, Room 5A128, Washington, DC, 20310, (571)-256–8145; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040 Washington, DC 20405, (202) 501–0084; (This is not toll-free numbers).

Dated: January 10, 2012.

Clifford Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 01/18/2013

Suitable/Available Properties

Building

New Jersey

Former SSA Trust Fund Bldg.
396 Bloomfield Ave.
Montclair NJ 07042
Landholding Agency: GSA
Property Number: 54201310004
Status: Unutilized
GSA Number: 1–G–NJ–0676
Comments: 7,183 sf.; office; vacant since March 2012

Oregon

Triangle Lake Bldgs.
22650 Mapleton-Junction City Hwy
Cheshire OR 97419
Landholding Agency: GSA
Property Number: 54201240015
Status: Excess
GSA Number: 9–I–OR–0801
Directions: fuel pump bldg.: 220 sf.; vehicle maint. bldg.: 1,526 sf.
Comments: off-site removal only; vacant for 180 mons. or 15 yrs.; conditions unknown

South Carolina

Former US Vegetable Lab
2875 Savannah Hwy
Charleston SC 29414
Landholding Agency: GSA
Property Number: 54201310001
Status: Excess
GSA Number: 4–A–SC–0609AA
Directions: headhouse w/3 greenhouses, storage bins
Comments: 6,400 sf.; lab; 11 yrs. vacant; w/in 100 yr. floodplain/floodway; however is contained; asbestos & lead based paint

Wisconsin

Building 739
East Q St.
Ft. McCoy WI 54656
Landholding Agency: Army
Property Number: 21201310001
Status: Unutilized
Comments: off-site removal only; 3,292 sf.; dining facility; good conditions; transferee must obtain real estate document to remove bldg; contact Army for more info.

Land

Washington

1.8 Ac. of the Richland FB N.
Parking Lot
825 Jadwin Ave.
Richland WA 99723
Landholding Agency: GSA
Property Number: 54201310002
Status: Excess
GSA Number: 9–G–WA–1263
Comments: 1.8; parking lot

[FR Doc. 2013–00701 Filed 1–17–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–EA–2013–N001: FF09X60000–FVWF97920900000–XXX]

Sport Fishing and Boating Partnership Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a public teleconference of the Sport Fishing and Boating Partnership Council (Council).

DATES: *Teleconference:* Monday, February 11, 2013; 3:30 p.m. to 4:30 p.m. (Eastern daylight time). For deadlines and directions on registering to listen to the teleconference, submitting written material, and giving an oral presentation, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Douglas Hobbs, Council Coordinator, 4401 North Fairfax Drive, Mailstop 3103–AEA, Arlington, VA 22203; telephone (703) 358–2336; fax (703) 358–2548; or email *doug_hobbs@fws.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that Sport Fishing and Boating Partnership Council will hold a teleconference.

Background

The Council was formed in January 1993 to advise the Secretary of the Interior, through the Director of the Service, on nationally significant recreational fishing, boating, and aquatic resource conservation issues. The Council represents the interests of the public and private sectors of the sport fishing, boating, and conservation communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council, appointed by the Secretary of the Interior, includes the Service Director and the president of the Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from State agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries

resource conservation, Native American tribes, aquatic resource outreach and education, and tourism. Background information on the Council is available at *http://www.fws.gov/sfbpc*.

Meeting Agenda

The Council will hold a teleconference to:

- Consider and approve recommendations to the Director of the Fish and Wildlife Service for funding Fiscal Year 2013 Boating Infrastructure Grant Program project proposals.
- Conduct other miscellaneous Council business.

The final agenda will be posted on the Internet at *http://www.fws.gov/sfbpc.*

Public Input

If you wish to—	You must contact the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) no later than—
Listen to the teleconference	Thursday, January 31, 2013.
Submit written information or questions before the teleconference for the council to consider during the teleconference.	Thursday, January 31, 2013.
Give an oral presentation during the teleconference	Thursday, January 31, 2013.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the Council to consider during the teleconference. Written statements must be received by the date listed in ''Public Input'' under **SUPPLEMENTARY INFORMATION**, so that the information may be made available to the Council for their consideration prior to this teleconference. Written statements must be supplied to the Council Coordinator in one of the following formats: One hard copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, MS PowerPoint, or rich text file).

Giving an Oral Presentation

Individuals or groups requesting to make an oral presentation during the teleconference will be limited to 2 minutes per speaker, with no more than a total of 15 minutes for all speakers. Interested parties should contact the Council Coordinator, in writing (preferably via email; see **FOR FURTHER INFORMATION CONTACT**), to be placed on the public speaker list for this teleconference. To ensure an opportunity to speak during the public comment period of the teleconference, members of the public must register with the Council Coordinator. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Council Coordinator up to 30 days subsequent to the teleconference.

Meeting Minutes

Summary minutes of the teleconference will be maintained by the Council Coordinator (see **FOR FURTHER INFORMATION CONTACT**) and will be available for public inspection within 90 days of the meeting and will be posted on the Council's Web site at *http://www.fws.gov/sfbpc.*

Stephen Guertin,

Deputy Director.

[FR Doc. 2013–00978 Filed 1–17–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N005; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before February 19, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in

support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Stephen Dunbar, Loma Linda University, Loma Linda, CA; PRT–90697A

The applicant requests a permit to import biological specimens of hawksbill sea turtles (*Eretmochelys imbricata*) collected from wild populations in Honduras. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: KHJ Property Management LLC, Del Rio, TX; PRT–93972A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: KHJ Property Management LLC, Del Rio, TX; PRT–93422A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) and addax (*Addax nasomaculatus*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Greenville Zoo, Greenville, SC; PRT–92474A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the family Lemuridae to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Romeo Boone, Carrizo Springs, TX; PRT–92665A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the scimitar-horned oryx (*Oryx dammah)* to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Romeo Boone, Carrizo Springs, TX; PRT–92666A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Surprise Spring Foundation, Prescott, AZ; PRT–93748A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*), Galapagos tortoise (*Chelonoidis nigra*), and spotted pond turtle (*Geoclemys hamiltonii*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: DRS Family Partnership LP, Pearsall, TX; PRT–93920A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: DRS Family Partnership LP, Pearsall, TX; PRT–93921A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), and red lechwe (*Kobus leche*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Campo de Rio Medio, Corpus Christi, TX; PRT–91310A

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess scimitar-horned oryx (*Oryx dammah*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: David Horton, University Heights, OH; PRT–93472A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*), yellow-spotted river turtle (*Podocnemis unifilis*), and spotted pond turtle (*Geoclemys hamiltonii*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: James Wall, Greer, SC; PRT–89822A

The applicant requests a permit to import a sport-hunted trophy of two male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Honolulu Zoo, Honolulu, HI; PRT–94141A

The applicant requests a permit authorizing interstate and foreign commerce and export of two male and three female tartaruga turtles (*Podocnemis expansa*) from their captive-bred facility in Honolulu, Hawaii to Africam Zoo in Puebla, Mexico for the purpose of enhancement of the survival of the species.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under

the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David Gainer, Victoria, TX; PRT–93273A

Applicant: Charles Collins, North Palm Beach, FL; PRT–93485A

Applicant: Ray Holder, Madison, MS; PRT–93576A

Applicant: Joseph Herold, Bronte, TX; PRT–93939A

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2013–01039 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts authorized by OMB Control Number 1076–0111. This information collection expires May 31, 2013.

DATES: Submit comments on or before March 19, 2013.

ADDRESSES: You may submit comments on the information collection to Linda Ketcher, 1849 C Street NW., Mail Stop 4513, Washington, DC 20240; facsimile: (202) 208–5113; email: *Linda.Ketcher@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Linda Ketcher, (202) 513–7610.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs (BIA) is seeking comments on the information collection conducted under 25 CFR 23.13, implementing the Indian Child Welfare Act (25 U.S.C. 1901 *et seq.*). The information collection allows BIA to receive written requests by State courts that appoint counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding when appointment of counsel is not authorized by State law. The applicable BIA Regional Director uses this information to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the BIA in accordance with the Indian Child Welfare Act.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) Ways we could minimize the burden of the collection of the information on the respondents.

Please note that an agency may not conduct or sponsor, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section. Before including your address, phone number, email address or other personally identifiable 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.

III. Data

OMB Control Number: 1076–0111.

Title: Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts, 25 CFR 23.13.

Brief Description of Collection: This information is required in order for States to receive payment for counsel appointed to indigent Indian parents or custodians in involuntary child custody proceedings under 25 CFR 23.13. The information is collected to determine applicant eligibility for services.

Type of Review: Extension without change of currently approved collection.

Respondents: State courts eligible for payment of attorney fees pursuant to 25 CFR 23.13.

Number of Respondents: 4 per year.

Estimated Time per Response: 2 hours for reporting and 1 hour for recordkeeping.

Frequency of Response: Once, on occasion.

Estimated Total Annual Hour Burden: 12 hours.

Estimated Total Annual Cost: $0.

Dated: January 14, 2013.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2013–00976 Filed 1–17–13; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Proposed Point Molate Resort and Casino for the Guidiville Band of the Pomo Indians, Contra Costa County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA), as lead agency, intends to cancel all work on an Environmental Impact Statement (EIS) for the BIA Federal action of approving the fee-to-trust transfer and casino project located within Contra Costa County, California.

DATES: This cancellation is effective January 18, 2013.

FOR FURTHER INFORMATION CONTACT: John Rydzik, (916) 978–6051, Pacific Regional Office, Bureau of Indian Affairs, 2800 Cottage Way, Sacramento, California 95825.

SUPPLEMENTARY INFORMATION: The BIA is canceling work on the EIS because the Department of the Interior has denied the application to take the land into trust pursuant to a negative Indian lands determination and there is no longer an application pending with the BIA. The Notice of Intent to prepare the draft EIS, which included a description of the proposed action, was published in the **Federal Register** on March 11, 2005 (70 FR 12229–12230). A public scoping meeting was held on March 31, 2005, and public hearings were held on August 12, 2009, and September 17, 2009; the meeting and hearings were held in Richmond, California. The Notice of Availability of the Draft EIS was published in the **Federal Register** on July 10, 2009 (74 FR 33236). A Final EIS for this project was not filed with Environmental Protection Agency.

Authority

This notice is published pursuant to section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508) and the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: January 10, 2013.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2013–01062 Filed 1–17–13; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVE0000 L51100000.GN0000 LVEMF1200580; 12–08807; MO# 4500036816; TAS: 14X5017]

Notice of Availability of the Draft Environmental Impact Statement for the Arturo Mine Project, Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA) and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Arturo Mine Project and by this notice is announcing the opening of the public comment period.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Arturo Mine Project Draft EIS within 45 days following the date the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. The BLM will announce future meetings and any other public involvement activities at least 15 days in advance through public notices, news media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Arturo Mine Project by any of the following methods:

- *Email: ArturoMiningEIS@blm.gov.*
- *Fax:* 775–753–0255; or
- *Mail:* Bureau of Land Management, Arturo Mine Project, Attention: John Daniel, Project Manager, 3900 Idaho Street, Elko, NV 89801.

Copies of the Arturo Mine Project Draft EIS are available in the BLM Elko District Office at the above address; and on line at *http://www.blm.gov/nv/st/en/fo/elko_field_office/blm_information/nepa/nepa_archives/NEPA_Front.html.*

FOR FURTHER INFORMATION CONTACT: John Daniel, Project Manager, telephone: 775–753–0277; address: 3900 Idaho Street, Elko, NV 89801; email: *ArturoMiningEIS@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: Barrick-Dee Mining Venture Inc., proposes to develop the Arturo Mine Project by expansion of the existing open-pit Dee Gold Mine which is currently in closure and reclamation. The Dee Gold Mine is 45 miles northwest of Elko in Elko County, Nevada. The proposed project would create approximately 2,774 acres of surface disturbance on public lands administered by the BLM. While dewatering is not proposed for this project, pit lakes would form as a result of cessation of dewatering at Goldstrike Mine, located approximately 8 miles to the southeast. An updated inventory of lands with wilderness characteristics was used for this project to inform the analysis of the EIS.

The project proposal would include the expansion of the existing open pit from one to three lobes, construction of two new waste-rock disposal storage facilities, a new heap leach facility, new support facilities to include an office, substation and associated power transmission lines, water wells, water distribution and sewer systems, landfill, mined material stockpile, communications site, stormwater control features, haul roads and an access road, and continued surface exploration.

Mill-grade ore would be transported to the Barrick Gold Mining, Inc.'s Goldstrike Mine using the Bootstrap Mine Haul Road and would be processed at the existing mill facilities located approximately 8 miles to the southeast of the proposed project. Low-grade ore would be processed on-site at the proposed heap leach pad and associated processing facilities. Mine operations and processing would continue for approximately 10 years, followed by an estimated 3 years of site closure and reclamation. Reclamation would occur concurrently with mining to the extent possible.

Cooperating agencies in the development of the EIS include the Nevada Department of Wildlife, the Environmental Protection Agency (EPA), and the Elko County Board of Commissioners. The Nevada Department of Widlife is concerned about loss of mule-deer and Greater Sage-Grouse habitat associated with mine disturbance. The EPA has previously raised concerns about potentially acid-generating material which may impact water resources, and the Elko County Board of Commissioners have raised concerns about economic impacts to local communities, including impacts to livestock grazing.

The notice of intent for the proposed project was published in the **Federal Register** on June 21, 2010. Dear Interested Party letters were mailed to 244 interested parties including tribes, Federal, State and local agencies.

The BLM received a total of 15 written comment submissions containing 140 individual items during the public scoping period. Most of the comments the BLM received were from Federal and State agencies.

Key issues identified by individuals, groups, and governmental entities during the scoping process include: Wildlife concerns (potential impacts to sage-grouse habitat and mule deer migration); cultural resources; livestock movement; access; discharges to surface water; air quality (including mercury); and impacts to stream drainages, seeps and springs resulting from groundwater drawdown. Additionally, the BLM received some comments in general support of the project.

Comments received during the scoping period were addressed and evaluated, and appropriate issues are incorporated into the draft EIS as project alternatives. These alternatives include partial pit backfilling, a single waste-rock storage facility, the no-action alternative, and the proposed project. The preferred alternative for the Arturo draft EIS is the proposed project.

Please note that public comments and information submitted including names, street addresses, and email addresses of persons who submit comments will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your

personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10.

Kenneth Miller,

Manager, Elko District Office.

[FR Doc. 2013–00952 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM940000. L1420000.BJ0000]

Notice of Filing of Plats of Survey, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, thirty (30) calendar days from the date of this publication.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, 301 Dinosaur Trail, Santa Fe, New Mexico. Copies may be obtained from this office upon payment. Contact Marcella Montoya at 505–954–2097, or by email at *mmontoya@blm.gov,* for assistance. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours.

SUPPLEMENTARY INFORMATION:

Indian Meridian, Oklahoma (OK)

The plat, in nine sheets, representing the dependent resurvey and survey in Township 15 North, Range 19 East, of the Indian Meridian, accepted December 19, 2012, for Group 67 OK.

New Mexico Principal Meridian, New Mexico (NM)

The plat, representing the dependent resurvey and survey in Township 11 North, Range 2 East, of the New Mexico Principal Meridian, accepted December 20, 2012, for Group 1003 NM.

The supplemental plat, in Township 15 North, Range 17 West, of the New Mexico Principal Meridian NM, accepted December 4, 2012.

The supplemental plat, in Township 15 North, Range 16 West, of the New Mexico Principal Meridian NM, accepted November 29, 2012.

El Paso County, Texas (TX)

The plat, representing the metes and bounds survey of parcel 1 and Parcel 2 of the Ysleta Del Sur Pueblo-Tigua Reservation, within the Socorro Grant, El Paso County, Texas, accepted October 31, 2012, for Group 12 TX.

These plats are scheduled for official filing 30 days from the notice of publication in the **Federal Register**, as provided for in the BLM Manual Section 2097—Opening Orders. Notice from this office will be provided as to the date of said publication.

If a protest against a survey, in accordance with 43 CFR 4.450–2, of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest.

A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Bureau of Land Management New Mexico State Director stating that they wish to protest.

A statement of reasons for a protest may be filed with the Notice of Protest to the State Director or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Robert A. Casias,

Deputy State Director, Cadastral Survey/ GeoSciences.

[FR Doc. 2013–00986 Filed 1–17–13; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF00000 L13110000.XH0000]

Notice of Public Meeting, Farmington District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM), Farmington District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting dates are February 20–21, 2013, at the BLM Farmington District Office, 6251 College Blvd., Farmington, New Mexico 87402, from 8:30 a.m. to 4:30 p.m. on both days. The public may send written comments to the RAC at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Papich, BLM Farmington District Office, 6251 College Blvd., Farmington, NM 87402, telephone 505–564–7620. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 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 10-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico. Planned meeting agenda items include discussion of a proposed amendment to the Farmington Field Office Resource Management Plan that would revise how the Farmington Field Office manages the BLM Glade Run Recreation Area. The RAC also will receive an update on a delayed wild horse gather within the BLM Farmington Field Office administrative area and discuss how the Field Office could begin planning to maximize the number of horses adopted locally by the public after the gather.

Other items on the meeting agenda include discussion of BLM Taos Field Office transportation planning. Taos and Farmington field office staff also are scheduled to discuss BLM management of the Old Spanish National Historic Trail. There also will be a presentation by BLM firefighters on the outlook for the 2013 fire season.

At 1:30 p.m. on Thursday, February 21, there will be a one-hour public comment period. In addition to comments made by members of the public attending the meeting, public comments also can be made by telephone through a conference call hook-up at the meeting that will project comments made over the telephone through a speakerphone so that all those in the meeting room may listen. To make a reservation to comment by telephone, contact Bill Papich at the BLM Farmington District Office and he will provide you with a phone number to call just prior to the public comment period. Mr. Papich can be contacted at

505–564–7620, or by email at *bpapich@blm.gov.* The BLM is limited to 15 callers hooking up to the BLM conference call system during the public comment period. Mr. Papich will accept reservations to comment by phone on a first come, first serve basis.

All RAC meetings are open to the public. Depending on the number individuals wishing to comment and the time available for comments, the time for individual comments may be limited.

Dave Evans,

District Manager.

[FR Doc. 2013–00977 Filed 1–17–13; 8:45 am]

BILLING CODE 4310–VB–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0097]

Commercial Wind Lease Issuance on the Atlantic Outer Continental Shelf Offshore Delaware

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Availability of a Commercial Lease of Submerged Lands for Renewable Energy on the Outer Continental Shelf Offshore Delaware.

SUMMARY: BOEM has issued a commercial wind energy lease to Bluewater Wind Delaware LLC (Bluewater) for an area of the Outer Continental Shelf (OCS) offshore Delaware. The purpose of this notice is to inform the public of the availability of the executed lease.

The total acreage of the lease area is approximately 96,430 acres. The lease area comprises 11 full OCS blocks and 95 sub-blocks and lies within Official Protraction Diagram Salisbury NJ18–05.

The lease and supporting documentation, including notices that solicited competitive interest and environmental compliance documentation, can be found online at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Delaware.aspx.*

To obtain a single printed copy of the lease, you may contact BOEM, Office of Renewable Energy Programs, 381 Elden Street HM–1328, Herndon, Virginia 20170–4817, or at (703) 787–1320.

Authority: This Notice of the Availability (NOA) of a commercial wind lease is published pursuant to 30 CFR 585.231(h), which implements subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)(3)).

FOR FURTHER INFORMATION CONTACT: Ms. Erin Trager, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170–4817, (703) 787–1320 or *erin.trager@boem.gov.*

Dated: January 8, 2013.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2013–01005 Filed 1–17–13; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2932]

Certain Electronic Bark Control Collars; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Bark Control Collars,* DN 2932; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Radio Systems Corporation on January 14, 2013. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic bark control collars. The complaint names as respondent Sunbeam Products, Inc. d/b/a Jarden Consumer Solutions of FL.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper

copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2932'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: January 14, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–00963 Filed 1–17–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On January 3, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Oregon in the lawsuit entitled *United States* v. *Granite Construction Company,* No. 3:13–cv–00012–ST. The proposed Consent Decree entered into by the United States and the company resolves the United States' claims against Granite for civil penalties and injunctive relief pursuant to the Clean Water Act, 33 U.S.C. 1319. Under the terms of the Consent Decree, Granite will pay the United States a civil penalty of $735,000, for excessive discharges of stormwater pollutants into tributaries of the Yaquina River. These discharges occurred during the construction of the Highway 20 expansion project from Pioneer Mountain to Eddyville. In addition, Granite Construction has agreed to implement a new stormwater control training program for its Oregon-based supervisors to prevent future failures. The company will ensure that all of its on-site managers are trained in stormwater control and that a special stormwater pollution control manager is assigned to all of its Oregon construction sites.

The publication of this notice opens a period for public comment on the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Granite Construction Company,* DJ Ref. No. 90–5–1–10539. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email ...	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $8.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Acting Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–01054 Filed 1–17–13; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On January 10, 2013, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Central District of California in the lawsuit entitled *United States* v. *Pacific Gas & Electric Company,* Civil Action No. EDCV13–00074–VAP(OPx).

The United States filed this lawsuit on behalf of the Department of the Interior under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The complaint requests recovery of costs that the United States incurred responding to releases of hazardous substances at the Pacific Gas & Electric Topock Gas Compressor Station Site, located approximately 15 miles southeast of Needles, California, in San Bernadino County. The complaint also seeks injunctive relief. Under the proposed Consent Decree the defendant PG&E agrees to pay the United States' response costs incurred and to be incurred in connection with the response actions at the Site and to perform the groundwater remedial action that the Department of Interior selected for the site. In return, the United States agrees not to sue the defendant PG&E under sections 106 and 107 of CERCLA.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Pacific Gas & Electric Company,* Civil Action No. EDCV13–00074–VAP (OPx) (USDC C.D. Cal.), D.J. Ref. No. 90–11–3–07240/4. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email ...	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $63.25 (25 cents per page

reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $19.50.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2013–01033 Filed 1–17–13; 8:45 am]

BILLING CODE 4410–15–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2012–10 CRB SD 2011]

Distribution of 2011 Satellite Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2011 satellite royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2011 satellite royalty funds.

DATES: Comments are due on or before February 19, 2013.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street, NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Lakeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On December 12, 2012, representatives of the Phase I claimant categories (the ''Phase I Claimants'') [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2011 satellite royalty funds pursuant to section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). That section requires that the Judges publish a notice in the **Federal Register** seeking responses to the motion for partial distribution to ascertain whether any claimant entitled to receive such fees has a reasonable objection to the requested distribution before ruling on the motion. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2011 satellite royalty funds to the Phase I Claimants. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2011 satellite royalty funds at Phase I or Phase II with respect to those funds that would remain if the motion for partial distribution is granted.

The Motion of the Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: January 15, 2013.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2013–01023 Filed 1–17–13; 8:45 am]

BILLING CODE 1410–72–P

[1] The ''Phase I Claimants'' are Program Suppliers, Joint Sports Claimants, Broadcaster Claimants Group, Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), and Devotional Claimants. In Phase I of a satellite royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by satellite systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial broadcaster-owned programming, religious programming, and music. Public Television Claimants, Canadian Claimants, and National Public Radio, which traditionally have received Phase I shares of cable royalties, do not claim Phase I shares of the satellite royalty funds. In Phase II of a satellite royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2012–9 CRB CD 2011]

Distribution of the 2011 Cable Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice requesting comments.

SUMMARY: The Copyright Royalty Judges are soliciting comments on a motion of Phase I claimants for partial distribution in connection with the 2011 cable royalty funds. The Judges are also requesting comments as to the existence of Phase I and Phase II controversies with respect to the distribution of 2011 cable royalty funds.

DATES: Comments are due on or before February 19, 2013.

ADDRESSES: Comments may be sent electronically to *crb@loc.gov.* In the alternative, send an original, five copies, and an electronic copy on a CD either by mail or hand delivery. Please do not use multiple means of transmission. Comments may not be delivered by an overnight delivery service other than the U.S. Postal Service Express Mail. If by mail (including overnight delivery), comments must be addressed to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If hand delivered by a private party, comments must be brought to the Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If delivered by a commercial courier, comments must be delivered to the Congressional Courier Acceptance Site located at 2nd and D Street NE., Washington, DC. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–403, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Lakeshia Keys, Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: Each year cable systems must submit royalty payments to the Register of Copyrights as required by the statutory license set forth in section 111 of the Copyright Act for the retransmission to cable subscribers of over-the-air television and radio broadcast signals. *See* 17 U.S.C. 111(d). These royalties are then distributed to copyright owners whose works were included in a qualifying transmission and who timely filed a

claim for royalties. Allocation of the royalties collected occurs in one of two ways. In the first instance, these funds will be distributed through a negotiated settlement among the parties. 17 U.S.C. 111(d)(4)(A). If the claimants do not reach an agreement with respect to the royalties, the Copyright Royalty Judges (''Judges'') must conduct a proceeding to determine the distribution of any royalties that remain in controversy. 17 U.S.C. 111(d)(4)(B).

On December 12, 2012, representatives of the Phase I claimant categories (the ''Phase I Parties'') [1] filed with the Judges a motion requesting a partial distribution of 50% of the 2011 cable royalty funds pursuant to Section 801(b)(3)(C) of the Copyright Act. 17 U.S.C. 801(b)(3)(C). Under that section of the Copyright Act, before ruling on a partial distribution motion the Judges must publish a notice in the **Federal Register** seeking responses to the motion to ascertain whether any claimant entitled to receive such royalty fees has a reasonable objection to the proposed distribution. Consequently, this Notice seeks comments from interested claimants on whether any reasonable objection exists that would preclude the distribution of 50% of the 2011 cable royalty funds to the Phase I Parties. The Judges must be advised of the existence and extent of all such objections by the end of the comment period. The Judges will not consider any objections with respect to the partial distribution motion that come to their attention after the close of that period.

The Judges also seek comment on the existence and extent of any controversies to the 2011 cable royalty funds at Phase I or Phase II with respect to those funds that would remain if the partial distribution is granted.

The Motion of Phase I Claimants for Partial Distribution is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

[1] The ''Phase I Parties'' are the Program Suppliers, Joint Sports Claimants, Public Television Claimants, Commercial Television Claimants (represented by National Association of Broadcasters), Music Claimants (represented by American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc.), Canadian Claimants Group, National Public Radio, and Devotional Claimants. In Phase I of a cable royalty distribution proceeding, royalties are allocated among certain categories of broadcast programming that have been retransmitted by cable systems. The categories have traditionally been movies and syndicated television series, sports programming, commercial and noncommercial broadcaster-owned programming, religious programming, music, public radio programming, and Canadian programming. In Phase II of a cable royalty distribution proceeding, royalties are allocated among claimants within each of the Phase I categories.

Dated: January 15, 2013.

Suzanne Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2013–01024 Filed 1–17–13; 8:45 am]

BILLING CODE 1410–72–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meetings: January 2013

TIME AND DATES: All meetings are held at 2:00 p.m.

Wednesday, January 16;
Thursday, January 17;
Wednesday, January 23;
Thursday, January 24;
Wednesday, January 30;
Thursday, January 31.

PLACE: Board Agenda Room, No. 11820, 1099 14th St., NW., Washington DC 20570

STATUS: Closed.

MATTERS TO BE CONSIDERED: Pursuant to § 102.139(a) of the Board's Rules and Regulations, the Board or a panel thereof will consider ''the issuance of a subpoena, the Board's participation in a civil action or proceeding or an arbitration, or the initiation, conduct, or disposition * * * of particular representation or unfair labor practice proceedings under section 8, 9, or 10 of the [National Labor Relations] Act, or any court proceedings collateral or ancillary thereto.'' See also 5 U.S.C. 552b(c)(10).

CONTACT PERSON FOR MORE INFORMATION: Gary Shinners, Deputy Executive Secretary. (202) 273–3737.

Dated: January 16, 2013.

Gary Shinners,

Deputy Executive Secretary.

[FR Doc. 2013–01203 Filed 1–16–13; 4:15 pm]

BILLING CODE 7545–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05154; NRC–2013–0009]

License Amendment Request for Analytical Bio-Chemistry Laboratories, Inc., Columbia, MO

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: Peter J. Lee, Ph.D., CHP, Health Physicist, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III Office, U.S. Nuclear Regulatory Commission, Lisle, Illinois 60532; telephone: 630–829–9870; fax number: 630–515–1078; email at *pjl2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Materials License No. 24–13365–01 issued to Analytical Bio-Chemistry Laboratories, Inc. (the licensee), to authorize the release of the licensee's sanitary lagoon and the surrounding effluent discharge area for unrestricted use. Once released, these areas will no longer be subject to the license, and licensed activities will not be permitted therein. The licensee's facility is located at 7200 E. ABC Lane, Columbia, Missouri, approximately six miles east of Columbia and immediately north of I–70. The site is approximately 56 acres in size and is zoned as planned office, general industrial, and controlled industrial districts in central Boone County. The NRC has prepared the following environmental assessment (EA) of this proposed license amendment in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), and Part 51 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.'' Based on this EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. Therefore, the license amendment will be issued following the publication of the EA and FONSI in this notice.

II. Environmental Assessment

The licensee is a contract research organization that conducts research, development, and manufacturing of pharmaceuticals and agricultural chemicals. Operation at the licensee's site began in 1968. The licensee's facility is bounded by residential, agricultural and commercially zoned areas which appear to be in a stable phase of growth. The Missouri Department of Natural Resources (MDNR) issued Construction Permit number 26–1030 on May 15, 1986, authorizing the construction of a single 13,500 square foot surface lagoon with 540 linear feet of 2-inch diameter piping to accommodate an average flow of 10,000 gallons per day. The lagoon, application area and drain field were constructed on the west side of the site and comprised approximately 28 acres. The licensee's sanitary lagoon was operated from 1986 until 2004, at which

time the site was connected to the local publicly owned treatment works. During its operating years, the sanitary lagoon served as the sole sewer for the site. It was primarily used for sanitation, but it also received rinsates from laboratories, which contained some radio-labeled compounds, primarily carbon-14. Effluent from the sanitary lagoon was discharged to the site through two systems of pipes overlaying gravel beds. This lagoon system was regulated by MDNR under the National Pollutants Discharge Elimination System (NPDES) permit number MO–0104591. The lagoon was drained in 2011 and backfilled with clean soil in February 2012.

The licensee requested this license amendment in letters dated September 30, 2011; January 3, 2012; March 1, 2012; and October 24, 2012. The licensee has conducted final status surveys of the sanitary lagoon and the surrounding effluent discharge area. The results of these surveys along with other supporting information were provided to the NRC to demonstrate that the criteria in 10 CFR 20.1402 for unrestricted release have been met.

Section 51.30 requires that an EA for proposed actions shall identify the proposed action and describe the need for the proposed action, the alternatives to the proposed action, and the environmental impacts of the proposed action and alternatives as appropriate. In this case, the proposed action is to amend Materials License No. 24–13365–01 issued to the licensee, to authorize the release of the licensee's sanitary lagoon and the surrounding effluent discharge area for unrestricted use. The proposed action is needed in order to make the sanitary lagoon and the surrounding effluent discharge area unrestricted property. The alternative to this proposed action is to keep the sanitary lagoon and the surrounding effluent discharge area under the control of Materials License No. 24–13365–01. The only potential environmental impact that differs between the proposed action and the alternative is the potential radiation and chemical exposure of the public from making the property unrestricted. Therefore, the following EA evaluates the potential environmental impacts from radiation and chemical exposure. It finds that the proposed action to release the sanitary lagoon and the surrounding effluent discharge area for unrestricted use will not have a significant effect on the quality of the human environment and thus that a FONSI, rather than an environmental impact statement, for the proposed action is appropriate.

For the surrounding effluent discharge area of the sanitary lagoon, the licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in section 20.1402 by using the screening value of 12 picocuries per gram (pCi/g) for carbon-14 (C–14) as described in NUREG–1757, ''Consolidated Decommissioning Guidance,'' Volume 1 as the radionuclide-specific derived concentration guideline levels (DCGL) for surface soil. The areas surrounding the lagoon—the drain field, application field, downslope, creek and sewer line—have been characterized by the licensee. The licensee collected soil samples in a biased manner to sample the areas with highest expected contamination, with drain field and application area samples taken near the discharge piping, and downslope samples from the surface that would have had the most exposure to the lagoon effluent. The mean concentration of the collected samples was 6 pCi/g, therefore, the actual mean concentration of the areas surrounding the lagoon will be well below the screening value of 12 pCi/g. Also, based on the soil sampling results from the surrounding effluent discharge area of the sanitary lagoon, the high contamination areas were near the discharge piping. Therefore, the remainder of the site is characterized by a very low level of C–14 in the clay soil, which has been effectively immobilized near the distribution piping or soil surface, and is expected to continue to diminish in concentration slowly over the coming years, principally through the topographically-driven lateral flow of water. No measurable levels of C–14 in either soil or water are found beneath the clay layer. Since the mean concentration of the effluent discharge area of the sanitary lagoon is well below the section 20.1402 requirement for unrestricted release, the proposed action, with respect to radiation exposure in the effluent discharge area, will not have a significant effect on the quality of the human environment.

For the closure of the sanitary lagoon, the licensee elected to use the Residual Radioactivity Version 6.5 (RESRAD) computer code, with the site-specific parameters to demonstrate compliance with 10 CFR 20.1402 for unrestricted release. In NUREG–1757, the NRC found the use of RESRAD acceptable to estimate radiation doses and risks from residual radioactive materials. The bottom of the lagoon consists of compacted clay, which serves as the liner to contain C–14. The placement of sediment and soil backfill is consistent with Missouri Risk-Based Corrective Action requirements for lagoon closure. Therefore, the contaminant of C–14 is now contained in the lagoon placement and is estimated through the use of RESRAD to have a maximal dose of 0.2 mrem per year. This dose is well below the section 10 CFR 20.1402 unrestricted release limit of 25 mrem per year. Since the dose of the sanitary lagoon is well below the section 20.1402 requirement for unrestricted release, the proposed action, with respect to radiation exposure in the sanitary lagoon, will not have a significant effect on the quality of the human environment.

Nine monitoring wells were installed over time for radiochemical sampling purposes. Wells were placed in the maximally contaminated areas as well as outside the contaminated area and medial to the contaminated area, based on the direction of the water flow. Throughout this area, the soil consists of clay on the top layer, and a layer of shale in most cases underlying the clay, unless the limestone bedrock is directly underneath the clay. Sampling includes wells screened in either clay or shale, as well as some screened simultaneously in both matrices. All measurable levels result from the collection of water samples screened in the clay layer of soil, and none from water samples screened in the shale layer. Results from the various wells were compared to the EPA 40 CFR 141.66, ''Maximum Contaminant Levels for Radionuclides'' limit of 4 mrem/year, which is equivalent to 2000 pCi/L for C–14. The highest result obtained—532 pCi/L—was from the most shallow well in the most exposed region consistent with the operation of the lagoon. The mean concentration was 126 pCi/L. Additionally, the site lies within Special Area 1 as defined by the Missouri State Revised Code at 10 CSR 23–3.090. According to this regulation, any well placed in this area must ''Set no less than 80 feet of casing, extending not less than 30 feet into bedrock.'' As a result of this Missouri requirement, the water in the shallow water table is not available for human consumption. Therefore, since, as determined by the water sampling, C–14 contamination is only limited to the shallow water table above the shale layer and since this water is not available for human consumption, the proposed action will not result in any human exposure to groundwater contaminated with C–14. Thus, the proposed action, with respect to radiation in groundwater, will not have a significant effect on the quality of the human environment.

The lagoon site was thoroughly investigated for the presence of any

chemical residues. This included sampling of the lagoon sediment, surrounding area and monitoring wells. The scope of the sampling was developed by Foth Infrastructure and Environment in close consultation with the MDNR. With the exceptions of methylene chloride and 2-methyl-4-chlorophenoxyaceticacid (MCPA) found in the sediment and the lagoon floor, all required analytes were either absent or below the acceptable concentrations. The measurable presence of methylene chloride and MCPA were taken into account for the final grading plan. The executed grading plan, including a buffer of soil at least three feet thick over the top of and lateral to any sediment mixture in the sanitary lagoon, was adequate to prevent any unacceptable exposure pathway based on Missouri Risk-Based Corrective Actions. Since there is no unacceptable chemical exposure pathway from the lagoon placement, the proposed action, with respect to chemical exposure, will not have a significant effect on the quality of the human environment.

Based on the above discussion, the Commission has determined under NEPA and the Commission's regulations in Subpart A of 10 CFR part 51, that the proposed license amendment does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an environment impact statement is not required. The Commission concludes that the proposed action to grant a license amendment is authorized by law will not endanger life, property, or the common defense and security and is otherwise in the public interest as it will allow the licensee to release its sanitary lagoon and the surrounding effluent discharge area for unrestricted use.

The staff consulted with the MDNR, and the MDNR had no comments on the proposed license amendment.

III. Finding of No Significant Impact

The NRC has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for the license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The references related to this Notice and, if applicable, their ADAMS accession numbers are:

1. Analytical Bio-Chemistry Laboratories, Inc., Licensee amendment request and supplemental information, September 30, 2011 (ML112770525); January 3, 2012 (ML120060510); March 1, 2012 (ML120650756); October 24, 2012 (ML12303A009);
2. Code of Federal Regulations, Title 10, Part 20, Subpart E, ''Radiological Criteria for License Termination,''
3. Code of Federal Regulations, Title 10, Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,''
4. NUREG–1757, ''Consolidated Decommissioning Guidance,''
5. RESRAD, Environmental Assessment Division, Argonne National Laboratory.

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Lisle, Illinois, this 11th day of January, 2013.

For the Nuclear Regulatory Commission.

Christine A. Lipa,

Chief, Materials Control, ISFSI, and Decommissioning Branch, Division of Nuclear Materials Safety, Region III.

[FR Doc. 2013–01011 Filed 1–17–13; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: RI 25–15, Notice of Change in Student's Status

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0042, Notice of Change in Student's Status. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on August 15, 2012 at Volume 77 FR 49028 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until February 19, 2013. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 25–15, Notice of Change in Student's Status, is used to collect sufficient information from adult children of deceased Federal

employees or annuitants to assure that the child continues to be eligible for payments from OPM.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Notice of Change in Student's Status.

OMB: 3206–0042.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 2,500.

Estimated Time per Respondent: 20.

Total Burden Hours: 835.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2013–01047 Filed 1–17–13; 8:45 am]

BILLING CODE 6325–38–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–32 and CP2013–41; Order No. 1622]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Express Mail Contract 13 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 22, 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:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Express Mail Contract 13 to the competitive product list.[1] The Postal Service asserts that Express Mail Contract 13 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–32.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–41. *Request.* To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective one business day following the day that the Commission issues all necessary regulatory approval. *Id.* at 3. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment E.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–32 and CP2013–41 to consider the Request pertaining to the proposed Express Mail Contract 13 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 22, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lawrence E. Fenster to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–32 and CP2013–41 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lawrence E. Fenster is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 22, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–00945 Filed 1–17–13; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Express Mail Contract 13 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 11, 2013 (Request).

POSTAL REGULATORY COMMISSION

[Docket No. MC2013–31 and CP2013–40; Order No. 1621]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 51 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* January 22, 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:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 51 to the competitive product list.[1] It asserts that Priority Mail Contract 51 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–31.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–40.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective the day after the Commission issues all regulatory approvals. *Id.* at 5. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D at 1.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–31 and CP2013–40 to consider the Request pertaining to the proposed Priority Mail Contract 51 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 22, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–31 and CP2013–40 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Bzhilyanskaya is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than January 22, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2013–00944 Filed 1–17–13; 8:45 am]

BILLING CODE 7710–FW–P

[1] Request of the United States Postal Service to Add Priority Mail Contract 51 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, January 11, 2013 (Request).

POSTAL SERVICE

Product Change—Express Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 18, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 11, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Express Mail Contract 13 to Competitive Product*

List. Documents are available at *www.prc.gov,* Docket Nos. MC2013–32, CP2013–41.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–00962 Filed 1–17–13; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* January 18, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on January 11, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 51 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–31, CP2013–40.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–00958 Filed 1–17–13; 8:45 am]

BILLING CODE 7710–12–P

RECOVERY ACCOUNTABILITY AND TRANSPARENCY BOARD

Agency Information Collection Activities: Renewal of Currently Approved Collection; Comment Request

Correction

In notice document 2012–30952, appearing on page 76097, in the issue of Wednesday, December 26, 2012, make the following correction:

In the first column, under the heading **DATES**, in the second and third lines, ''February 22, 2013'' should read ''February 25, 2013''.

[FR Doc. C1–2012–30952 Filed 1–17–13; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Eco Global Corporation, Execute Sports, Inc., FacePrint Global Solutions, Inc., FinancialContent, Inc., and Firstgold Corp.; Order of Suspension of Trading

January 16, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Eco Global Corporation because it has not filed any periodic reports since the period ended September 30, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Execute Sports, Inc. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FacePrint Global Solutions, Inc. because it has not filed any periodic reports since the period ended June 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of FinancialContent, Inc. because it has not filed any periodic reports since the period ended December 31, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Firstgold Corp. because it has not filed any periodic reports since the period ended October 31, 2009.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on January 16, 2013 through 11:59 p.m. EST on January 30, 2013.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2013–01151 Filed 1–16–13; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68645; File No. SR–MIAX–2012–05]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the MIAX Options Fee Schedule

January 14, 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 December 31, 2012, Miami International Securities Exchange LLC (''Exchange'' or ''MIAX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to establish membership and system connectivity fees applicable to Members and non-Members using services provided by MIAX. While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated that the proposed monthly Port Fees and the proposed monthly Member Participant Identifier Fee be implemented beginning January 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish membership and system connectivity fees applicable to Members and non-Members using services provided by MIAX.

Membership Fees:

MIAX will assess Membership fees for Applications and Trading Permits.

a. Application for MIAX Membership

A one-time application fee based upon the applicant's status as either an Electronic Exchange Member (''EEM'') or as a Market Maker will be assessed by MIAX. Applicants for MIAX Membership as an EEM will be assessed a one-time Application Fee of $2,500.00. Applicants for MIAX Membership as a Market Maker will be assessed a one-time Application Fee of $3,000.00. The difference in the fee charged to EEMs and Market Makers reflects the additional review and processing effort needed for Market Maker applications. MIAX's one-time application fees are similar to and generally lower than one time application fees in place at the Chicago Board Options Exchange, Incorporated (''CBOE'') ($3,000 for an individual applicant and $5,000 for an applicant organization) and at the International Securities Exchange, LLC (''ISE'') ($7,500 for a Primary Market Maker, $5,500 for a Competitive Market Maker and $3,500 for an Electronic Access Member).

Applicants for MIAX membership that apply for membership on or before January 31, 2013 will not be assessed a fee for such application. MIAX believes that this will provide incentive for potential applicants to submit early applications, which should result in maximizing potential order flow and liquidity as MIAX begins trading, all to the benefit of the investing public. Applicants for MIAX membership that apply for membership on or after February 1, 2013 will be subject to the Membership Application Fees described above.

b. Trading Permits

MIAX will issue Trading Permits that confer the ability to transact on MIAX. There is no limit on the number of Trading Permits that may be issued by MIAX; however MIAX has the authority to limit or decrease the number of Trading Permits it has determined to issue provided it complies with the provisions set forth in Rule 200(a) and Section 6(c)(4) of the Exchange Act.[3]

MIAX will assess monthly fees for Trading Permits depending upon the category of Member that is issued a particular trading permit. EEMs will be assessed a monthly fee of $1,000 for a Trading Permit. Registered Market Makers (''RMMs'') will be assessed $3,000.00 per month for a Trading Permit for an RMM assignment in up to 100 option classes, $4,500.00 per month for a Trading Permit for an RMM assignment in up to 250 option classes, or $6,000.00 per month for a Trading Permit for an RMM assignment in all option classes listed on MIAX.

For the calculation of the monthly RMM Trading Permit Fees, the number of classes is defined as the greatest number of classes the RMM was assigned to quote in on any given day within the calendar month.

Primary Lead Market Makers (''PLMMs'') and Lead Market Makers (''LMMs'') will be assessed the same monthly Trading Permit fees applicable to RMMs described above. In addition to the RMM Trading Permit fees, PLMMs and LMMs will be assessed an additional $1,000.00 per month for a Trading Permit. Thus, an LMM or PLMM will be assessed $4,000.00 per month for a Trading Permit for an LMM or PLMM assignment in up to 100 option classes, $5,500.00 per month for a Trading Permit for an LMM or PLMM assignment in up to 250 option classes, or $7,000.00 per month for a Trading Permit for an LMM or PLMM assignment in all option classes listed on MIAX.

MIAX monthly Trading Permit Fees are generally lower than monthly trading permit fees in place at CBOE and the NASDAQ OMX PHLX LLC (''PHLX''). The $1,000 monthly Trading Permit fee assessed to EEMs is lower than the CBOE's monthly electronic access trading permit fee ($1,600) and the PHLX's monthly permit fee for members ($2,000). The Monthly Trading Permit Fees assessed to MIAX Market Makers is readily comparable to and lower than the monthly fees in place at PHLX for Remote Streaming Quote Traders ($5,000 per month for less than 100 classes, $8,000 per month for more than 100 classes and less than 999 classes, and $11,000 per month for 1,000 or more classes).

Members receiving Trading Permits during the month will be assessed Trading Permit Fees according to the above schedule, except that the calculation of the Trading Permit fee for the first month in which the Trading Permit is issued will be pro-rated based on the number of trading days occurring after the date on which the Trading Permit was in effect during that first month divided by the total number of trading days in such month multiplied by the monthly rate.

Testing and Certification Fees:

a. API Testing and Certification Fee

Members

MIAX will assess a one-time Application Programming Interface (''API'') testing and certification fee on EEMs and Market Makers. An API makes it possible for Member software to communicate with MIAX software applications, and is subject to Member testing with, and certification by, MIAX. API testing and certification includes for EEMs testing all available order types, new order entry, order management, order throughput and mass order cancellation. For Market Makers, API testing and certification also includes testing of all available quote types, quote throughput, quote management and cancellation, Aggregate Risk Manager settings and triggers, and confirmation of quotes within the trading engines.

The one-time MIAX API Testing and Certification fees are based upon the category of Member being tested and certified. EEMs will be assessed a one-time API Testing and Certification fee of $1,000.00. Market Makers will be assessed a one-time API Testing and Certification fee of $2,500.00. The fee represents costs incurred by the Exchange as it works with each Member while testing and certifying that the Member's software systems communicate properly with MIAX. MIAX has set a one-time fee rather than an hourly rate used by some of the other exchanges so MIAX Members will know the full cost for the service prior to beginning to use such services. Until recently, PHLX charged hourly fees for use of its testing facility—a fee of $285 per hour for active connection testing during normal operating hours and $333 per hour for testing after normal hours.[4] MIAX's one-time fees are comparable and more cost effective to the Members than hourly rates at other exchanges.

In order to provide an incentive to prospective Members to apply early for

[3] For a complete description of MIAX Trading Permits, *see* MIAX Rule 200. *See also* 15 U.S.C. 78(f)(c)(4).

[4] *See* Securities Exchange Act Release No. 63257 (November 5, 2010) 75 FR 69493 (November 12, 2010) (SR–PHLX 2010–155) Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Fees Assessed for Use of the Testing Facility.

membership and to engage in API testing and certification such that they will be able to trade options on MIAX as soon as possible, API Testing and Certification fees will be waived for all EEMs and Market Makers that apply for MIAX membership and complete API testing and certification on or before January 31, 2013. EEMs and Market Makers that apply for MIAX membership or complete API testing and certification on or after February 1, 2013 are subject to the Member API Testing and Certification Fees as described above.

Non-Members

MIAX will assess a one-time API Testing and Certification fee of $5,000.00 on third party vendors [5] and Service Bureaus [6] whose software interfaces with MIAX software. As with Members, an API makes it possible for third party vendors' and Service Bureaus' software to communicate with MIAX software applications, and is subject to testing with, and certification by, MIAX. The higher fee charged to such non-Members reflects the greater amount of time spent by MIAX employees testing and certifying non-Members. It has been MIAX's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges; generally fewer questions and issues arise during the testing and certification process. Also, because third party vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for a single Member.

b. Member Network Testing and Certification Fee

As described below under Connectivity Fees, MIAX will establish electronic communication connections with Members and will assess Members a one-time Testing and Certification Fee of $1,000.00 per Member for a one Gigabit connection, and $4,000.00 per Member for a ten Gigabit connection. Members will not be charged a Testing and Certification Fee for any additional connections they obtain since the additional connections will be from the same source and will have the same internal technology.

c. Non-Member Network Testing and Certification Fee

MIAX will establish electronic connections with and will assess Service Bureaus and Extranet Providers [7] a one-time Testing and Certification Fee of $2,000.00 for the initial one Gigabit connection and $1,000 for each additional one Gigabit connection. In addition, MIAX will assess Service Bureaus and Extranet Providers a Testing and Certification Fee of $6,000.00 for the initial ten Gigabit connection and $4,000.00 for each additional ten Gigabit connection.

The Member and non-Member Network Testing and Certification fees represent installation and support costs incurred by the Exchange as it works with each Member and non-Member to make sure there are appropriate electronic connections with MIAX. MIAX has set a one-time fee for testing so MIAX Members and non-Members will know the full cost for the service prior to beginning to use such services. The higher fee charged to non-Members reflects the greater amount of time spent by MIAX employees testing and certifying non-Members. It has been MIAX's experience that Member network connectivity testing takes less time than non-Member network connectivity testing because Members have more experience testing these systems with exchanges; generally fewer questions and issues arise during the testing and certification process. In addition, non-Members are charged a discounted Network Testing and Certification Fee for additional connections because each connection will be used by different customers of the non-Member Service Bureaus and Extranet Providers and will need to be individually tested requiring more Exchange resources for testing and certification.

Connectivity Fees:

MIAX will assess fees to Members, Service Bureaus, and Extranet Providers for electronic connections [8] between those entities and MIAX. The Connectivity fees are based upon the amount of bandwidth that will be used by the Member, Service Bureau, or Extranet Provider. MIAX currently offers connectivity with one (1) Gigabit, which connects the Member, Service Bureau, or Extranet Provider to MIAX using a copper cable, and ten (10) Gigabits, using fiber optic connections.

a. Member Network Connectivity Fee

MIAX will assess a monthly Member Network Connectivity fee of $1,000 for a one Gigabit connection, and $5,000 for a ten Gigabit connection. MIAX charges a higher fee for a ten Gigabit connection due the higher costs of the fiber optic connection. MIAX's monthly Member Network Connectivity fee is comparable to monthly fees charged for similar connectivity at CBOE ($1,250 for a one Gigabit connection and $4,500 for a ten Gigabit connection) and PHLX ($2,100 for a one Gigabit connection and $5,000 for a ten Gigabit connection).

The first monthly Member Network Connectivity fee for all Members will be assessed on a pro-rata basis, which is the number of trading days remaining in the month divided by the total number of trading days in the first month in which the fee was in effect multiplied by the monthly rate. Thereafter, the Member Network Connectivity fee will be pro-rated for new Members based on the number of trading days on which the Member used the connectivity in its first month of trading on MIAX, divided by the total number of trading days in such month multiplied by the monthly rate.

b. Non-Member Network Connectivity Fee

MIAX will assess a monthly non-Member Network Connectivity fee to Service Bureaus and Extranet Providers of $2,000.00 for a one Gigabit connection, and $10,000.00 for a ten Gigabit connection. MIAX's monthly Non-Member Network Connectivity fee is comparable to monthly fees charged for similar connectivity at CBOE ($2,500 for a one Gigabit connection and $7,500 for a ten Gigabit connection). MIAX assesses a higher fee to Service Bureaus and Extranet Providers than to Members to reflect the fact that Service Bureaus and Extranet Providers serve as conduits to MIAX Members and non-Members that do not have their own proprietary systems or do not directly connect to MIAX. The Service Bureaus and Extranet Providers recover the cost of the MIAX Network Connectivity fee

[5] Third party vendors are subscribers of MIAX's market and other data feeds, which they in turn use for redistribution purposes. Third party vendors do not provide connectivity and therefore are not subject to Network testing and certification.

[6] A Service Bureau is a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system. The technology and technology services supplied by Service Bureaus includes both software applications and connectivity, thus Service Bureaus are subject to both API testing and certification and Network testing and certification.

[7] An Extranet Provider is a technology provider that connects with MIAX systems and in turn provides such connectivity to MIAX participants that do not connect directly with MIAX. Extranet Providers do not provide software interfaces with MIAX software applications, thus Extranet Providers are not subject to API testing and certification.

[8] For purposes of this proposed rule change, the terms ''connectivity'' and ''connections'' refer to the physical connections between Member and non-Member electronic networks and the MIAX systems.

from their customers, resulting in a lower overall fee to Members and non-Members using the services of such third party providers.

The non-Member Network Connectivity fee for the first month of trading on MIAX will be assessed on a pro-rata basis in the same manner as the Member Network Connectivity fee described above.

c. Pass-Through of External Connectivity Fees

MIAX will assess External Connectivity fees to Members and non-Members that establish connections with MIAX through a third-party. Fees charged to MIAX by third-party external vendors on behalf of a Member or non-Member connecting to MIAX (including cross-connects),[9] will be passed through to the Member or non-Member. External Connectivity fees include one-time set-up fees and monthly charges charged to MIAX by a third-party.

The purpose of the External Connectivity fee is to recoup costs incurred by MIAX in establishing connectivity with external vendors acting on behalf of a Member or non-Member. MIAX will only pass-through the actual costs it is charged by the third-party external vendors.

d. Port Fees

Once network connectivity is established, MIAX will assess fees for access and services used by Members, Service Bureaus and Extranet Providers. Known as ''Ports'', MIAX provides two types: a Financial Information Exchange (''FIX'') Port,[10] which allows Members to electronically send orders in all products traded on the Exchange and the MIAX Express Interface (''MEI'') [11] Port, which allows Market Makers to submit electronic quotes to the Exchange. MIAX will assess monthly MEI Port fees on Market Makers based upon the number of MIAX matching engines [12] used by the Market Maker. Each Market Maker will be allocated two MEI quoting ports for each matching engine they use. For example, a Market Maker that wishes to make markets in just one symbol would require the two MEI quoting ports in a single matching engine; a Market Maker wishing to make markets in all symbols traded on MIAX would require the two MEI quoting ports in each of the Exchange's matching engines. The FIX Port and the MEI Port each include access to MIAX's primary and secondary data centers and its disaster recovery center. The proposed monthly Port Fees described below are scheduled to be implemented beginning January 1, 2013.

FIX Port Fees

MIAX will assess monthly FIX Port fees on Members based upon the number of FIX Ports used by the Member submitting orders to MIAX. Although one FIX Port gives access to all products traded on MIAX, some Members may choose to use more than one FIX Port. MIAX will assess a monthly FIX Port fee of $250.00 for the first FIX Port provided to the user, $150.00 per FIX Port for the second through fifth FIX Port provided to the user (if applicable), and $50.00 per FIX Port for the sixth FIX Port and any additional FIX Ports provided to the user (if applicable). MIAX's monthly FIX Port fees are comparable to the Order Entry Port Fee charged by PHLX ($500 per month per mnemonic with no discount for multiple Ports), which includes a fee for assigning and maintaining mnemonics. MIAX charges a separate fee for assigning and maintaining mnemonics (known as Member Participant Identifier or ''MPID''). Taken together, the MIAX monthly FIX Port and the MPID fees are less than the PHLX's monthly Order Entry Port Fee.

MEI Port Fees

MIAX will assess a monthly MEI Port fee of $1,000.00 for the first matching engine on which the Market Maker has the two ports, $500.00 each for the second through fifth matching engines on which the Market Maker has the two ports (if applicable), and $250.00 each for the sixth matching engine and any additional matching engines on which the Market Maker has the two ports (if applicable).

MEI Port fees will be capped at $1,000 per month per Market Maker until the first full calendar month during which MIAX lists and trades options overlying at least 100 underlying securities. Once MIAX begins listing and trading options overlying at least 100 underlying securities, MIAX will assess MEI Port fees as described above. MEI Port fees will be assessed for the entire month during which MIAX begins trading, regardless of the number of trading days that have already occurred during such month prior to the commencement of trading on MIAX. MEI Port fees will be assessed on a month-by-month basis.

e. MPID Fees

MIAX will assess monthly Member Participant Identifier (''MPID'') [13] fees on EEMs, based upon the number of MPIDs assigned to a particular EEM in a given month. EEMs will be assessed a monthly MPID fee of $200.00 for the first MPID assigned, $100.00 each for the second through fifth MPID assigned, and $50.00 each for the sixth MPID and any additional MPIDs assigned. MIAX assess MPID fees to cover the administrative costs it incurs in assigning and managing these identifiers for each EEM. As discussed above, MIAX's monthly MPID fee together with its FIX Port fee are similar to and lower than the PHLX's monthly Order Entry Port fee. The proposed monthly MPID Fees described above are scheduled to be implemented beginning January 1, 2013.

2. Statutory Basis

MIAX believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act [15] in particular, in that it is an equitable allocation of reasonable fees and other charges.

The Exchange believes its one-time Membership Application fees are reasonable, equitable and not unfairly discriminatory. As described in the Purpose section, the one-time application fees are comparable to application fees in place at other options exchanges and are designed to recover costs associated with the processing of such applications. Market Maker applicants are charged slightly more than EEM applicants because of the additional work involved in processing a Market Maker's application. MIAX believes it is

[9] A ''cross-connect'' occurs when the affected third-party system is sited at the same data center where MIAX systems are sited, and the third-party connects to MIAX through the data center, rather than connecting directly to MIAX outside of the data center.

[10] A FIX Port is an interface with MIAX systems that enables the Port user (typically an EEM or a Market Maker) to submit orders electronically to MIAX.

[11] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit electronic quotes to MIAX.

[12] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines will process option classes with multiple root symbols, and other matching engines will be dedicated to one single option root symbol (for example, options on SPY will be processed by one single matching engine that is dedicated only to SPY options). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

[13] An MPID is a code used in the MIAX system to identify the participant to MIAX and to the participant's Clearing Member respecting trades executed on MIAX. Participants may use more than one MPID.

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and 78f(b)(5).

reasonable and equitable to waive the fee to applicants who apply for membership on or before January 31, 2013. The waiver of such fees provides incentives to interested applicants to apply early for MIAX membership, which provides MIAX with potential order flow and liquidity providers as it begins operations. The waiver will apply equally to all applicants.

The Exchange believes its Trading Permit fees are reasonable, equitable and not unfairly discriminatory. The Trading Permit fees are lower than comparable fees at other exchanges as described in the Purpose section above. The differentiation between Trading Permit fees charged to EEMs and Market Makers reflects the additional Exchange access provided to Market Makers and the additional technical, regulatory and administrative costs associated with Market Makers' use of the Exchange and its services.

MIAX believes its API and Network Testing and Certification fees are a reasonable allocation of its costs and expenses among its Members and other persons using its facilities since it is recovering the costs associated with providing such infrastructure testing and certification services. MIAX believes it is reasonable, equitable and not unfairly discriminatory to assess different API and Network Testing and Certification fees to EEMs and Market Makers. The interface between Market Maker quoting software and MIAX systems is assessed higher API and Network Testing and Certification fees because the Market Maker software interface is more complex and has more functionality to validate than the EEM's software interface requiring an increased level of support and expertise. MIAX therefore believes that the higher Member API and Network Testing and Certification fees applicable to Market Makers are not unfairly discriminatory.

Additionally, MIAX believes it is reasonable, equitable and not unfairly discriminatory to assess different API and Network Testing and Certification fees to Members and non-Members. The higher fee charged to non-Members reflects the greater amount of time spent by MIAX employees testing and certifying non-Members. It has been MIAX's experience that Member testing takes less time than non-Member testing because Members have more experience testing these systems with exchanges; generally fewer questions and issues arise during the testing and certification process. Also, with respect to API testing and certification because third party vendors and Service Bureaus are redistributing data and reselling services to other Members and market participants the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for Members. In addition, MIAX believes it is reasonable, equitable and not unfairly discriminatory to assess non-Members a discounted Network Testing and Certification Fee for additional connections because each connection will be used by different customers of the non-Member Service Bureaus and Extranet Providers and will need to be individually tested requiring more Exchange resources for testing and certification. Members will not be charged for additional connections because additional network testing and certification will generally not be necessary since the additional connections will be from the same source and will have the same internal technology.

The Exchange believes that the proposed Connectivity Fees in general constitute an equitable allocation of fees, and are not unfairly discriminatory, because they allow the Exchange to recover costs associated with offering access through the network connections and access and services through the Ports, responding to customer requests, configuring MIAX systems, programming API user specifications and administering the various services. Access to MIAX market will be offered on fair and non-discriminatory terms. The proposed Connectivity Fees are also expected to offset the costs MIAX incurs in maintaining, and implementing ongoing improvements to the trading systems, including connectivity costs, costs incurred on gateway software and hardware enhancements and resources dedicated to gateway development, quality assurance, and technology support. The Exchange believes that its proposed fees are reasonable in that they are competitive with those charged by other exchanges. MIAX assesses a higher fee to Service Bureaus and Extranet Providers than to Members to reflect the fact that Service Bureaus and Extranet Providers serve as conduits to MIAX Members and/or non-Members that do not have their own proprietary systems or do not directly connect to MIAX. For the one monthly Network Connectivity Fee charged by MIAX, Service Bureaus and Extranet Provider may in turn provide connectivity to a number of Members and/or non-Members. The Service Bureaus and Extranet Providers recover the cost of the MIAX Network Connectivity Fee, plus a premium, from their customers, which can still result in a lower overall fee to each Member and/or non-Member using the services of such third party providers. In allocating its costs among Members and users of its services, MIAX believes it is equitable to seek to recover a greater portion of those costs from Service Bureaus and Extranet Providers who profit from the reselling of those Network Connectivity services.

MIAX believes it is reasonable, equitable and not unfairly discriminatory to pass-through External Connectivity fees to Members and non-Members that establish connections with MIAX through a third-party. MIAX will only pass-through the actual costs it is charged by third-party external vendors. MIAX believes it is reasonable and equitable to recover costs charged it on behalf of a Member or non-Member that establishes connections with MIAX through a third party.

MIAX believes it is reasonable, equitable and not unfairly discriminatory to assess FIX and MEI Port Fees on Members who use such services—the FIX Port enables Members to submit orders electronically to the Exchange for processing and the MEI Port enables Market Makers to submit quotes to the Exchange for processing. The amount charged for the MEI Port is higher because it is more complex and has more functionality than the FIX Port. Therefore, MIAX believes the higher fee for the MEI Port is not unfairly discriminatory. The Exchange believes that its proposed fees are reasonable in that they are competitive with those charged by other exchanges.

The Exchange believes its fees for MPIDs are reasonable, equitable and not unfairly discriminatory in that they apply to all EEMs assigned MPID equally and allow the Exchange to recover operational and administrative costs in assigning and maintaining such services. The Exchange believes that its proposed fees are reasonable in that they are competitive with those charged by other exchanges.

The Exchange believes that it is appropriate to include in this fee filing fees being assessed on non-Members such as the Connectivity fees and the API and Network Testing and Certification fees described above. Recent amendments to paragraph (A) of Section 19(b)(3) [16] of the Exchange Act now allow all self-regulatory organization rule proposals establishing or changing dues, fees or other charges to become immediately effective upon filing regardless of whether such dues, fees or other charges are imposed on

[16] 15 U.S.C. 78s(b)(3)(A).

members of the self-regulatory organization, non-members, or both.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must establish fees that are competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed amendments to the MIAX Options Fee Schedule appropriately reflect this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Unilateral action by MIAX in establishing fees for services provided to its Members and others using its facilities will not have an impact on competition. As a new entrant in the already highly competitive environment for equity options trading, MIAX does not have the market power necessary to set prices for services that are unreasonable or unfairly discriminatory in violation of the Exchange Act. MIAX's proposed fees for Membership and Systems Connectivity, as described herein, are comparable to and generally lower than fees charged by other options exchanges for the same or similar services.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither 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–MIAX–2012–05 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–MIAX–2012–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–MIAX–2012–05 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00967 Filed 1–17–13; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A)(ii).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68657; File No. SR–CHX–2012–19]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Alter Fee Schedule Relating to Port Charges

January 15, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on December 31, 2012, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') 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

CHX proposes to amend Exchange Rules and its Schedule of Participant Fees and Assessments (the ''Fee Schedule'') to alter fees relating to port charges. The Exchange proposes to implement the fee change on January 1, 2013. The text of this proposed rule change is available on the Exchange's Web site at *http://www.chx.com/rules/proposed_rules.htm,* 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

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

Through this filing, the Exchange proposes to amend its Schedule of Fees and Assessments (the ''Fee Schedule'') to amend its cap on port charges. Under the current Fee Schedule, the Exchange does not assess a port charge under two circumstances: (1) When a Participant Firm accesses the Exchange's Matching System through Brokerplex, or (2) when a Participant Firm executes an average daily volume of 5 million or more provide shares in the Matching System during the month. As under the current rules, the Exchange's proposed rule change will not assess a port charge to those Participant Firms who access the Exchange's Matching System through Brokerplex. The Exchange proposes only to alter the second scenario relating to the average daily volume cap.

Specifically, the Exchange proposes to lower the threshold average daily volume of provide shares in the Matching System from five (5) million to one (1) million and to cap the port charges to the greatest number of ports in either CHX data center.[4] Under the proposed rule, if a Participant Firm executes an average daily volume of one (1) million or more provide shares in the Matching System during the month, the Exchange proposes to cap the charges equal to the greatest number of ports in either CHX data center. The ports would continue to be counted per CHX clearing ''give-up.'' [5] For example, a Participant Firm that qualified for the cap by achieving the one (1) million average daily provide share level and had four ports in CHX's Chicago data center and three ports in CHX's New Jersey data center would only be assessed a $400/port for the four ports in Chicago.

The Exchange believes the proposed port fee changes are appropriate to attract liquidity and increase revenue to the Exchange while encouraging connections in both of CHX's data centers. The Exchange believes the rule change will promote disaster preparedness among CHX Participant Firms as Participant Firms will have access to multiple ports at the Exchange. Under the current rules, Participant Firms that have multiple connections in both of CHX's data centers but do not achieve an average daily volume of five (5) million or more provide shares in the Matching System for the month could have significant port fees. The Exchange believes that by lowering the average daily volume requirement to a more modest one (1) million provide shares, a larger number of Participant Firms will be incentivized to supply liquidity and qualify for the port charge cap. The Exchange also believes that imposing a cap on port charges at this more modest level will encourage more Participant firms to establish connections in both data centers while also allowing the exchange to receive at least some port charges from all Participant Firms.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(4) of the Act [7] in particular. The Exchange believes that the proposed amendments to the Fee Schedule are necessary to attract liquidity and increase revenue to the Exchange while encouraging Participant Firms to establish connections at both CHX data centers. Section 6(b)(4) states that exchange rules must ''provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.'' The Exchange proposes to amend its fee schedule to impose a cap on port charges for those Participant Firms that average one (1) million or more daily provide share levels as an equitable solution to incentivize Participant Firms to provide liquidity on the Exchange. The Exchange believes that such change will allow for fees that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers since the rules will apply only to those Participant Firms that incur significant costs from having ports at multiple locations. Further, imposing a cap on port charges at a more modest level will encourage more Participant firms to establish connections in both data centers while also allowing the exchange to receive at least some port charges from all Participant Firms.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposed change will promote Participant Firms to provide liquidity on the Exchange regardless of their type or size, for example. Those Participant Firms who conduct more trading specifically on the Exchange will qualify for the port charge cap regardless of firm type or size. Even if the rule was construed to favor firms that may have the capacity to provide large amounts of liquidity, the Exchange believes that encouraging trading in a marketplace through fee caps is not an undue burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act as the marketplace will benefit from the increased liquidity. Further, the Exchange believes that, aside from encouraging liquidity on the Exchange, the establishment of ports in both data centers by Participant Firms in order to qualify for the port charge caps will promote disaster preparedness among Participant Firms that provides a benefit to the industry. The Exchange believes by diversifying the number of access ports to the Exchange, Participant Firms will be better prepared in the event of potential disaster situations.

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) [8] of the Act and subparagraph (f)(2) of Rule 19b–4 [9] thereunder, because it establishes a due, fee, or other charge imposed by CHX.

[4] The Exchange currently has two data centers; one in New Jersey and one in Chicago.

[5] A give-up is a clearing identifier associated with a Participant Firm. Participant Firms may have multiple clearing identifiers. Under the proposed rule, Participant Firms will be charged a port fee per give-up or clearing identifier per port.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CHX–2012–19 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–CHX–2012–19. 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–CHX–2012–19 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01027 Filed 1–17–13; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68650; File No. SR–FINRA–2013–001]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Cross-References and Make Other Non-Substantive Changes Within FINRA Rules and By-Laws

January 14, 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 3, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update cross-references and make other non-substantive changes within certain FINRA rules and By-Laws, primarily as the result of approval of new consolidated FINRA rules.

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

FINRA is in the process of developing a consolidated rulebook (''Consolidated FINRA Rulebook'').[5] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive changes in the Consolidated FINRA Rulebook.

The proposed rule change would make several such changes, as well as certain other non-substantive changes unrelated to the adoption of rules in the Consolidated FINRA Rulebook. First, the proposed rule change would update rule cross-references and make other non-substantive changes to reflect the adoption of new consolidated FINRA communications with the public rules. On March 29, 2012, the SEC approved a proposed rule change to adopt NASD Rules 2210 and 2211 and NASD Interpretive Materials 2210–1 and 2210–3 through 2210–8 as FINRA Rules 2210 and 2212 through 2216, with several

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)

[4] 17 CFR 240.19b–4(f)(6).

[5] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

changes.[6] The new rules will be implemented on February 4, 2013. As such, the proposed rule change would update references to the new rule numbers in FINRA Rules 0150 (Application of Rules to Exempted Securities Except Municipal Securities), 2111 (Suitability), 2220 (Options Communications), 6630 (Applicability of FINRA Rules to Securities Previously Designated as PORTAL Securities), 9217 (Violations Appropriate for Disposition Under Plan Pursuant to SEA Rule 19d–1(c)(2)), 9551 (Failure to Comply with Public Communication Standards) and 9610 (Application).

Second, the proposed rule change similarly would update the rule references in FINRA Rules 2214 (Requirements for the Use of Investment Analysis Tools) and 9610 as the result of adoption of new consolidated FINRA Rules 2111 (Suitability) and 5123 (Private Placement of Securities), respectively.[7]

Third, the proposed rule change would make additional non-substantive changes as a result of new definitions in FINRA Rule 2210.[8] That rule combines the current definitions of ''sales literature,'' ''advertisement'' and ''independently prepared reprint'' into a single category of ''retail communications.'' Accordingly, the proposed rule change makes corresponding changes in the rulebook where the current terms are used: Section 13, Schedule A to the FINRA By-Laws (Review Charge for Communications Filed or Submitted), FINRA Rules 2130 (Approval Procedures for Day-Trading Accounts), 2220 (Options Communications),[9] 2270 (Day-Trading Risk Disclosure Statement), 3160 (Networking Arrangements Between Members and Financial Institutions) and NASD Rule 3010 (Supervision).[10]

Fourth, the proposed rule change would make technical changes to FINRA Rules 2210 (Communications with the Public) and 4210 (Margin Requirements) to reflect FINRA Manual style convention changes and FINRA Rule 3230 (Telemarketing) to reflect changes adopted in a recent FINRA proposed rule change regarding telemarketing.[11]

Finally, FINRA is proposing to make non-substantive changes to certain other rules. FINRA is proposing to delete paragraph (c) (Aggregate Volume Match) of FINRA Rules 7240A and 7340 (Trade Report Processing) relating to the FINRA/Nasdaq Trade Reporting Facility (''FINRA/Nasdaq TRF'') and OTC Reporting Facility (''ORF''), respectively. The aggregate volume match functionality was eliminated when the facilities were migrated to a new operating platform in 2007, but the rules were inadvertently not updated to reflect the system changes. In addition, FINRA is proposing to re-designate paragraph (d) of FINRA Rules 7240A and 7340 as paragraph (c), and to replace the reference to 5:15 p.m. with 8:00 p.m. in this paragraph. The reference to 5:15 p.m. was inadvertently not amended when the system closing time for the FINRA/Nasdaq TRF and ORF was extended to 8:00 p.m. in 2006.[12]

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be February 4, 2013.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[13] 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 the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change brings clarity and consistency to FINRA rules without adding any burden on firms.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

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

[6] *See* Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR–FINRA–2011–035).

[7] *See* Securities Exchange Act Release No. 63325 (November 17, 2010), 75 FR 71479 (November 23, 2010) (Order Approving File No. SR–FINRA–2010–039); and Securities Exchange Act Release No. 67157 (June 7, 2012), 77 FR 35457 (June 13, 2012) (Order Approving File No. SR–FINRA–2011–057).

[8] *See* Securities Exchange Act Release No. 66681 (March 29, 2012), 77 FR 20452 (April 4, 2012) (Order Approving File No. SR–FINRA–2011–035).

[9] New FINRA Rule 2210(a)(2) defines ''correspondence'' as any written (including electronic) communication that is distributed or made available to 25 or fewer retail investors within any 30 calendar-day period. The proposed change to Rule 2220(b) would delete the requirement for principal approval for correspondence that is distributed to 25 or more existing retail customers within a 30 calendar-day period that makes any financial or investment recommendation or otherwise promotes the product or service of a member. Under the new communications with the public rule, communications distributed to more than 25 retail investors within any 30 calendar-day period that include such recommendations or promotions would be considered retail communications and therefore subject to the principal approval requirement. As such, the proposed change to Rule 2210(b) does not substantively change the scope of options communications that would require principal approval.

[10] FINRA Rules 2130 and 2270 impose approval procedures and disclosure requirements, respectively, on a member that is ''promoting a day-trading strategy.'' For purposes of the rules, a member shall be deemed to be ''promoting a day trading strategy'' if ''* * * it affirmatively endorses a 'day trading strategy,' as defined in [the Rules] through advertising, its Web site, trading seminars or direct outreach programs. For example, a member generally shall be deemed to be 'promoting a day-trading strategy' if its advertisements address the benefits of day trading, rapid fire trading, or momentum trading, or encourage persons to trade or profit like a professional trader.'' The proposed rule change would change ''advertisements'' in the example provided to ''retail communications.'' FINRA believes that any member that currently uses sales literature or independently prepared reprints to promote day trading would be subject to the existing rule, and thus the change would not expand the scope of the rule. In addition, Rules 2130 and 2270 both provide that members may submit advertisements to FINRA's Advertising Department for guidance on whether the content constitutes ''promoting a day-trading strategy.'' FINRA believes it consistent with the changes to the communications with the public rules to allow members to now submit ''retail communications'' for such guidance.

[11] *See* Securities Exchange Act Release No. 66279 (January 30, 2012), 77 FR 5611 (February 3, 2012) (Order Approving File No. SR–FINRA–2011–059).

[12] *See* Securities Exchange Act Release No. 54772 (November 17, 2006), 71 FR 68665 (November 27, 2006) (Notice of Filing and Immediate Effectiveness of File No. SR–NASD–2006–120).

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

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–FINRA–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–FINRA–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, 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–2013–001 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00969 Filed 1–17–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68648; File No. SR–Phlx–2013–02]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Reduce the Fees Assessed for Certain Co-location Services

January 14, 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 PHLX LLC (''PHLX'' 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

The Exchange proposes to reduce the fees assessed under Section X(a) of the PHLX Fee Schedule for certain co-location services. PHLX is proposing that the implementation date of the proposed rule change will be January 2, 2013. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com,* at PHLX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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 Section X(a) of the PHLX Fee Schedule 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 Phlx 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

[16] 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 Phlx'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
High Density	7,000	4,500
Super High Density	13,000	8,000

New cabinets shall be assessed standard installation fees.

Phlx 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.

Phlx'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 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, Phlx has greater flexibility to discount fees for lower density cabinets, on a per kilowatt basis.

Phlx 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, Phlx 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. Phlx believes that the proposed rule change reflects this competitive environment because it is designed to ensure that the charges for use of the Phlx 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] PHLX 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–Phlx–2013–02 on the subject line.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–02. 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–Phlx–2013–02, and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–01026 Filed 1–17–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68633; File No. SR–FINRA–2013–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Interim Form for Funding Portals Under the Jumpstart Our Business Startups Act

January 11, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 10, 2013, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to adopt the Interim Form for Funding Portals (''IFFP''). The IFFP is an online form for prospective intermediaries that intend to apply for membership with FINRA as funding portals (''prospective funding portal members'') pursuant to Title III of the Jumpstart Our Business Startups Act (the ''JOBS Act''). FINRA is inviting prospective funding portal members, on a voluntary basis, to submit information to FINRA using the IFFP until FINRA and the SEC adopt final rules with respect to registered funding portals.

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

The JOBS Act[4] is aimed at increasing American job creation and economic growth and, in furtherance of that aim, contains provisions relating to securities offered or sold pursuant to crowdfunding.[5] Intermediaries in transactions involving the offer or sale of securities for the account of others pursuant to the crowdfunding exemption must, among other things, register with the SEC as a funding portal[6] or broker and must register with an applicable self-regulatory organization.[7]

The SEC is considering rules to require registration of funding portals and to implement the provisions of the JOBS Act.[8] FINRA is developing rules that would apply to SEC-registered funding portals that become FINRA members, although the precise nature of FINRA's rules will depend upon the rules that the SEC adopts.[9] Pending the implementation of these FINRA and SEC rules, FINRA invites prospective funding portal members, on a voluntary basis, to submit information to FINRA using the proposed IFFP.[10] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Public Law 112–106, 126 Stat. 306 (2012).

[5] In general, crowdfunding refers to the use of the Internet by small businesses to raise capital through limited investments from a large number of investors. The JOBS Act creates an exemption (the ''crowdfunding exemption'') from registration under the Securities Act of 1933 (''Securities Act'') for securities offered by issuers pursuant to Title III of the JOBS Act. *See* Securities Act Section 4(a)(6) (15 U.S.C. 77d(a)(6)).

[6] The term ''funding portal'' is defined under Exchange Act Section 3(a)(80) (15 U.S.C. 78c(80)).

[7] *See* Securities Act Section 4A (15 U.S.C. 77d–1).

[8] *See, e.g.,* Securities Act Release No. 9354 (August 29, 2012), 77 FR 54464 (September 5, 2012) (Proposed Rule: Eliminating the Prohibition Against General Solicitation and General Advertising in Rule 506 and Rule 144A Offerings); *see also* Spotlight: Jumpstart Our Business Startups Act, available at: *http://www.sec.gov/spotlight/jobs-act.shtml.*

[9] *See Regulatory Notice* 12–34 (July 2012).

[10] The IFFP is attached to this filing as Exhibit 3 and is available on the FINRA Web site at: *www.finra.org/fundingportals.* Prospective funding portal members would submit their information via a dedicated FINRA email address using the online version of the IFFP on the FINRA Web site.

information that prospective funding portal members would submit using the proposed IFFP would help FINRA to become more familiar with their proposed business models, activities and operations. Further, the requested information will inform FINRA's ongoing development of rules for registered funding portals.

FINRA intends for the information request in the IFFP to be simple for prospective funding portals. For that reason, FINRA has limited the information request to the following items:

- Contact and general information about the funding portal;
- Ownership and funding information about the prospective funding portal;
- Information about the prospective funding portal's management; and
- Information about the funding portal's business relationships, business model and compensation.

FINRA will accord confidential treatment to the information that prospective funding portal members submit on the IFFP.

FINRA may not accept funding portals as FINRA members until the SEC has adopted its registration rules for funding portals and has approved the necessary FINRA rules, including adoption of a final application form for funding portal applicants. FINRA intends to adopt a streamlined membership application process for registered funding portals that reflects the nature of their business. This membership application process may require additional information from prospective funding portal members that voluntarily respond to the IFFP, depending upon the nature of the rules adopted by FINRA and the SEC. FINRA notes that prospective funding portal members are not bound by the responses they indicate on the IFFP and will be permitted to change their responses on the final application form that FINRA adopts.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so FINRA can implement the proposed rule change immediately.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[11] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the Act because collecting information, on a voluntary basis, from prospective funding portal members will assist FINRA in becoming more familiar with the proposed business models, activities and operations of funding portals. Further, the requested information will inform FINRA's efforts to timely develop final rules for registered funding portals with a view to facilitating the JOBS Act goals of job creation and economic growth.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because prospective funding portal members would submit the information requested on the proposed IFFP on a voluntary basis. As noted above, the proposed IFFP will allow FINRA to better understand the proposed business models, activities and operations of prospective funding portal members. FINRA anticipates that the information gathered through the IFFP will better position FINRA to streamline the application process for any prospective funding portal members. Further, the proposed IFFP will inform FINRA's efforts to timely develop final rules for registered funding portals with a view to developing a tailored regulatory approach for such members consistent with the goals of the JOBS Act. FINRA will impose no charge for submission of the proposed IFFP by prospective funding portal members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

FINRA has requested that the Commission waive the 30-day operative delay, so that the proposed rule change may become operative upon filing. The Commission hereby grants FINRA's request and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Waiving the 30-day operative delay will permit FINRA to implement the proposed rule change immediately and thereby facilitate its efforts to collect information, on a voluntary basis, from prospective funding portal members. This will assist FINRA to become more familiar with the proposed business models, activities and operations of funding portals and, further, will inform FINRA's efforts to timely develop final rules for registered funding portals with a view to facilitating the JOBS Act goals of job creation and economic growth. This information will also assist FINRA to propose rules for funding portals that are necessary and appropriate for the protection of investors. For the purposes only of waiving the 30-day operative delay, the Commission has reviewed the record for the proposed rule change and believes that the record does not contain any information to indicate that the proposed rule would have a significant effect on efficiency, competition, or capital formation. In light of the record, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation and has concluded that the proposed rule is unlikely to have any significant effect.[14]

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:

[11] 15 U.S.C. 78*o*–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] *See* 15 U.S.C. 78c(f).

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–2013–005 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–2013–005. 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–2013–005 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00966 Filed 1–17–13; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68652; File No. SR–CME–2012–47]

Self-Regulatory Organizations; Chicago Mercantile Exchange Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to the Acquisition of the Kansas City Board of Trade Clearing Corporation

January 14, 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 December 31, 2012, Chicago Mercantile Exchange Inc. (''CME'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by CME. CME filed the proposed rule change pursuant to Section 19(b)(3)(A)[3] of the Act and Rule 19b–4(f)(4)(ii)[4] thereunder so that the proposal was effective upon filing with the Commission. 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

CME proposes to adopt revisions to certain CME rules in connection with the November 30, 2012, acquisition of the Kansas City Board of Trade Clearing Corporation (''KCBTCC'') by CME Group Inc., the parent holding company of CME. The proposed rule changes would amend CME Rules 802 and 816 to integrate KCBTCC's derivatives clearing organization functions into CME's clearing functions. The proposed revisions became effective immediately upon filing and became operational on January 11, 2013.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CME 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. CME 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

CME is proposing certain revisions to its rulebook in connection with the November 30, 2012, acquisition of KCBTCC by CME Group Inc., the parent holding company of CME. The purpose of the proposed rule changes is to amend CME Rules 802 and 816 to integrate KCBTCC's derivatives clearing organization functions into CME's clearing functions. The changes became operational on January 11, 2013. The proposed material changes: (1) Have the effect of making CME clearing member default rules applicable to KCBTCC clearing participants; and (2) establish the minimum guaranty fund deposit amount for KCBTCC clearing participants.

CME also certified the proposed changes that are the subject of this filing to its primary regulator, the CFTC, in CME Submission 12–461.

The proposed CME changes relate to CME's activities as a derivatives clearing organization clearing futures transactions. As such, CME believes the proposed changes do not significantly affect the security-based swap clearing operations of CME or any related rights or obligations of CME security-based swap clearing participants. CME believes the proposed change is therefore properly filed under Section 19(b)(3)(A)[5] and Rule 19b–4(f)(4)(ii)[6] thereunder because it effects a change in an existing service of a registered clearing agency that primarily affects the futures clearing operations of the clearing agency with respect to futures that are not security futures and does not significantly affect any securities clearing operations of the clearing agency or any related rights or obligations of the clearing agency or persons using such service.

B. Self-Regulatory Organization's Statement on Burden on Competition

CME does not believe that the proposed change will have any impact, or impose any burden, on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CME has not solicited, and does not intend to solicit, comments regarding

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4)(ii).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(4)(ii).

this proposed change. CME has not received any unsolicited written comments from interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been filed pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(f)(4)(ii)[8] thereunder and was effective upon filing. The changes became operational on January 11, 2013. 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.[9]

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–CME–2012–47 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–CME–2012–47. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CME.

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–CME–2012–47 and should be submitted on or before February 8, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–00968 Filed 1–17–13; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(4)(ii).

[9] 15 U.S.C. 78s(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Application No. 99000720]

Harbert Mezzanine Partners III SBIC, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Harbert Mezzanine Partners III SBIC, L.P., 2100 Third Avenue North, Suite 600, Birmingham, AL 35203, a Federal Licensee applicant under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (''SBA'') Rules and Regulations (13 CFR 107.730). Harbert Mezzanine Partners III SBIC, L.P. proposes to invest in Employment Control Holding Company, LLC, a portfolio company of its Associate Harbert Mezzanine Partners II SBIC, L.P.

The financing is brought within the purview of § 107.730(a) of the Regulations because Harbert Mezzanine Partners III SBIC I, L.P. proposes to Finance a small business in which its Associate Harbert Mezzanine Partners II SBIC, L.P. has an equity interest of at least 10 percent, so the transaction that will effect the proposed Financing requires prior SBA exemption.

Notice is hereby given that any interested person may submit written comments on the transaction, within fifteen days of the date of this publication, to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Dated: December 21, 2012.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2013–00961 Filed 1–17–13; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 01/71–0401 issued to Masthead Venture Partners Capital, LP, and said license is hereby declared null and void.

United States Small Business Administration.

Dated: January 10, 2013.

Sean J. Greene,

Associate Administrator for Investment.

[FR Doc. 2013–00960 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice 8155]

Advisory Committee on the Secretary of State's Strategic Dialogue With Civil Society

ACTION: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (FACA), the Advisory Committee on the Secretary of State's Strategic Dialogue with Civil Society will convene in Washington, DC on March 12, 2013. The Committee provides advice on the formulation of U.S. policies, proposals, and strategies for engagement with, and protection of, civil society worldwide. The objective of this meeting is to review the progress of the Committee's five subcommittees.

DATES: The meeting will be held on March 12, 2013, from 11:00 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the U.S. Department of State, 2201 C Street NW., Washington, DC The meeting is open to public participation through live stream at *http://www.state.gov/s/sacsed/c47725.htm.* Closed captioning will be provided.

Written comments may be submitted to Madeleine Ioannou via email to *civilsociety@state.gov* or facsimile to (202) 647–2413. All comments, including names and addresses when provided, are placed in the record and are available for inspection and copying. The public may inspect comments received at the U.S. Department of State, 2201 C Street NW., Room 6820, Washington, DC 20520. Please call ahead to (202) 647–2413 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Madeleine Ioannou, Committee Executive Secretary, U.S. Department of State, 2201 C Street NW., Room 6820, Washington, DC 20520; (202) 647–2413; *civilsociety@state.gov.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Introductions, (2) Presentations by the Chairs of the Subcommittees, (3) Discussion of any Public Submissions, (4) General Discussion, (5) Adjournment. Anyone who would like to bring related matters to the attention of the Committee may file written statements with the Committee staff by sending an email to *civilsociety@state.gov.*

Dated: January 14, 2013.

Madeleine Ioannou,

Office of the Senior Advisor for Civil Society and Emerging Democracies, U.S. Department of State.

[FR Doc. 2013–01052 Filed 1–17–13; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2012–63]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 7, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–1242 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send 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.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Theresa J. White, ANM–113, Transport Standards Staff, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356; email: *theresa.j.white@faa.gov;* phone: (425) 227–2956; fax: 425–227–1232; or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* phone: (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 14, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–1242.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: 14 CFR 25.813(e).

Description of Relief Sought: In response to a customer request, Boeing Commercial Airplanes requests exemption from 14 CFR 25.813(e), Amendment 25–116, doors between passenger compartments, for the sole purpose of installing mini-suite seating systems in premium cabin zones of 747–8 airplanes.

[FR Doc. 2013–00949 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–01]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before February 7, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–1349 using any of the following methods:

- *Government-wide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send 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.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4024, or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 14, 2013.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–1349.

Petitioner: Delta Air Lines, Inc.

Section of 14 CFR Affected: 14 CFR 91.9(a).

Description of Relief Sought: During installation via Supplemental Type Certificate (STC) of the on-board Wif'i system on Delta Air Lines' 737–800 fleet, a placard was placed on the flight deck prohibiting use of WiFi devices from the flight deck. As part of a turbulence incident mitigation research program, Delta Air Lines seeks relief to allow 40 Delta B737 Senior Line Check Airmen (LCA) to access a web-based enroute turbulence tool using the existing aircraft WiFi connection during the operational demonstration period of the research effort anticipated to last approximately 1 year, and only during non-critical phases of flight. Delta provides analysis demonstrating an equivalent level of safety through use of very low-power equipment and operational controls.

[FR Doc. 2013–01044 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in the following locations: Eugene, OR and Galveston, TX. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before June 17, 2013.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9:00 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on the projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period for challenges of project decisions subject to previous notices published in the **Federal Register.** The projects and actions that are the subject of this notice are:

1. *Project name and location:* West Eugene EmX Extension Project, Lane County, OR. *Project sponsor:* Lane Transit District (LTD). *Project description:* The West Eugene EmX Extension (WEEE) Project will be an 8.8-mile (round trip) westerly extension of the Franklin/Gateway EmX Bus Rapid Transit (BRT) line. The West Eugene EmX Extension would be the third BRT corridor implemented in the Eugene-Springfield metropolitan area. This notice is for the West Eugene EmX Extension only. When the extension is complete, the EmX system will link residential and commercial activity centers in the West 11th Avenue Corridor with the region's two central business districts (Eugene and Springfield) and the region's two largest employers (the University of Oregon and Peace Health Hospital). The project includes approximately 5.9 miles of new BRT lanes, 13 new stations, seven new hybrid electric vehicles, intersection and traffic-signal improvements, and a variety of bicycle and pedestrian improvements. *Final agency actions:* Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect; project-level air quality conformity, and Finding of No Significant Impact (FONSI), dated December 20, 2012. *Supporting documentation:* Environmental Assessment, dated July 2012.

2. *Project name and location:* Galveston Downtown Transit Terminal/Parking Facility Project, Galveston, TX. *Project sponsor:* City of Galveston, TX (Island Transit). *Project description:* The project will be an intermodal transit terminal and parking facility in downtown Galveston, on the northeast corner of 25th Street and Strand Street. The project will consist of a single building with bus boarding areas, passenger waiting areas, rest rooms, retail space, and two and one-half levels

of parking. *Final agency actions:* No use determination of Section 4(f) resources; Section 106 finding of no adverse effect; project-level air quality conformity; and Finding of No Significant Impact (FONSI), dated September 4, 2012. *Supporting documentation:* Environmental Assessment, dated April 2012.

Issued on: January 14, 2013.

Lucy Garliauskas,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2013–01012 Filed 1–17–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Ford Motor Company

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Ford Motor Company's (Ford) petition for an exemption of the Edge vehicle line in accordance with § 543.9(c)(2) of 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). Ford also requested confidential treatment of specific information in its petition. The agency will address Ford's request for confidential treatment by separate letter.

DATES: The exemption granted by this notice is effective beginning with the 2014 model year.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated October 15, 2012, Ford requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the MY 2014 Ford Edge vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, Ford provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Edge vehicle line. Ford stated that the 2014 Edge will be equipped with the Ford SecuriLock device (also known as the Passive Antitheft System or PATS) as standard equipment or the Ford Intelligent Access with Push Button Start (IAwPB) antitheft device as optional equipment. Ford further stated that the Edge vehicles with base trim (SE) will only be offered with PATS. However, the entire vehicle line will be installed with a passive, electronic immobilizer device using encrypted transponder technology. Key components of the Securilock/PATS antitheft device will include an electronic transponder key, powertrain control module, transceiver module, ignition lock, and a passive immobilizer. Key components of the IAwPB device are electronic keyfob, remote function actuator (RFA), body control module (BCM) or Smart Power Distribution Junction Box (SPDJB), the PEPS/RFA module, the power train control module and a passive immobilizer. Ford stated that its MY 2014 Edge vehicle line will also be equipped with several other standard antitheft features common to Ford vehicles (i.e., hood release located inside the vehicle, counterfeit resistant VIN labels and secondary VINs, cabin accessibility only with the use of a valid key fob or keycode). Ford further stated that there will also be a separate perimeter alarm available on its Edge vehicle line. The perimeter alarm activates a visible and audible alarm if unauthorized access is attempted. Ford's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In the SecuriLock device, when the ignition key is turned to the ''Run/Start'' position, the transceiver module reads the ignition key code and transmits an encrypted message from the keycode to the control module, which then determines key validity and authorizes engine starting by sending a separate encrypted message to the powertrain control module (PCM). In the IAwPB device, when the ''StartStop'' button is pressed, the transceiver module reads the key code and transmits an encrypted message from the keycode to the control module to determine validity and authorizes engine starting by sending a separate encrypted message to the body control module (BCM), and the PCM. Ford stated that the powertrain will function only if the keycode matches the unique identification keycode previously programmed into the BCM/RFA. In both devices, if the codes do not match, the vehicle will be inoperable. Ford pointed out that in addition to the programmed key, there are three modules that must be matched together in order to start the vehicle adding even an additional level of security to the IAwPB device.

In addressing the specific content requirements of 543.6, Ford provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Ford conducted tests based on its own specified standards. Ford provided a detailed list of the tests conducted and believes that the device is reliable and durable since the device complied with its own specified requirements for each test.

Ford also stated that incorporation of several features in both devices further supports reliability and durability of the devices. Specifically, some of those features include: Encrypted communication between the transponder, control function and the power train control module; no moving parts; 18 quintillion possible codes making key duplication virtually impossible; inability to mechanically override the device to start the vehicle; and the body control module/remote function actuator and the power train control module share security data that during vehicle assembly form matched modules that if separated from each other will not function in other vehicles.

Ford compared the device proposed for its vehicle line with other devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Ford stated that it believes that the standard installation of either the SecuriLock device or the IAwPB device would be an effective deterrent against vehicle theft.

Ford stated that it installed the SecuriLock device on all MY 1996 Ford Mustang GT and Cobra models and other selected models. Ford stated that in the 1997 model, the SecuriLock device was extended to the complete Ford Mustang vehicle line as standard equipment. Ford also stated that according to the National Insurance

Crime Bureau (NICB) theft statistics, MY 1997 Mustangs installed with the SecuriLock device showed a 70% reduction in theft rate compared to the MY 1995 Mustangs.

Ford also reported that beginning with MY 2010, the SecuriLock device was installed as standard equipment on all of its North American Ford, Lincoln and Mercury vehicles but was offered as optional equipment on its 2010 F-series Super Duty pickups, Econoline and Transit Connect vehicles. Ford further stated that beginning with MY 2010, the IAwPB was standard equipment on the Lincoln MKT vehicles and starting with MY 2011, the device was offered as standard equipment on the Lincoln MKX and optionally on the Lincoln MKS, Taurus, Edge, Explorer and the Focus vehicles. Starting with 2013, the IAwPB was offered as standard equipment on the Lincoln MKZ and offered as optional equipment on the Ford Fusion, C-Max and Escape vehicles. Theft rate data is not available for model years' (MYs') 2011–2013.

Ford stated that both antitheft devices are of the same design and performance as that of the MY 2011 Ford Explorer vehicle line. Ford was granted an exemption for the Explorer vehicle line on May 28, 2010 by NHTSA (See 75 FR 30103) beginning with its MY 2011 vehicles. Since the agency granted Ford's exemption for its MY 2011 Explorer vehicle line, there has been no available theft rate information for this vehicle. The Explorer was granted an exemption from the parts marking requirements on May 28, 2010 (75 FR 30103). Ford also referenced theft rate data published by NHTSA showing that the theft rates for the Edge is lower than the median theft rate for all vehicles from MY's 2000–2009. Ford stated that since the SecuriLock or the IAwPB devices are the primary theft deterrents on Ford Edge vehicles, it believes that the very low theft rates are likely to continue or improve in the future. The theft rate data for the MY 2010 Ford Edge is 0.8783 and the average theft rate using three MYs' (2008–2010) data is 1.1655.

The agency agrees that the device is substantially similar to devices installed on other vehicle lines for which the agency has already granted exemptions.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Ford has provided adequate reasons for its belief that the antitheft device for the Ford Edge vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Ford provided about its device.

Based on the supporting evidence submitted by Ford on the device, the agency believes that the antitheft device for the Edge vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Ford's petition for exemption for the Edge vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Ford decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Ford wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: January 11, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–00996 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Motor Theft Prevention Standard; Volvo

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Volvo Cars of North America, LLC's (Volvo) petition for exemption of the S60 vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with the 2014 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Joy Williams, Office of International Policy, Fuel Economy and Consumer Programs, National Highway Traffic Safety Administration, 1200 New Jersey

Avenue SE., West Building, Room W43–455, Washington, DC 20590. Ms. Williams's telephone number is (202) 366–0846. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated October 16, 2012, Volvo requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541) for the S60 vehicle line beginning with MY 2014. The petition requested exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Volvo provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its S60 vehicle line. Volvo stated that beginning with MY 2014, all S60 vehicles will be equipped with a passive antitheft device as standard equipment. Volvo further stated that the antitheft device proposed for installation on the MY 2014 Volvo S60 vehicles will consist of three (3) systems: an alarm, a central locking system and an immobilizer. Key components of the antitheft device consist of a Driver Information Module, Immobilizer Antenna Unit (IAU), Brake Control Module, Transmission Control Module, Engine Control Module, Central Electronic Module (CEM), Phone Module (not available in the US), and the Keyless Vehicle Module. Volvo stated that currently, the Volvo S60 vehicle line is comprised of the S60 T5, T5 AWD, T6 SWD and T6 R models, which are all built on the same chassis/platform.

Volvo stated that the antitheft device for the S60 vehicle line will incorporate a central locking system that will allow either remote control key (physical key) or keyless remote vehicle entry. In both versions of the central locking system, when the vehicle is locked, the alarm is armed, the immobilizer unit is activated and electronic monitoring for unauthorized entry becomes active. Volvo stated that the physical key in the driver's door lock will not set the alarm, but will activate the immobilizer. Volvo further stated that when an unlock command is received, the alarm will be de-activated and the immobilizer will remain active until the programmed remote control key is inserted into the ignition switch, or a keyless remote key and the unlock sensor in the external door handle is recognized. Volvo's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

On the remote control key system, the remote control key must be inserted into the ignition in order to start the vehicle. When the start button is depressed, the CEM transmits a command to the IAU for a remote control key identity check. The IAU activates the built in antenna and reads off the identity code from the remote control key transponder. The code is then transmitted to the CEM and compared to the pre-programmed codes. If the transponder codes match, the vehicle can be started.

On the keyless system, the vehicle will attempt to identify a passive remote control key. If the remote control key cannot be found, the CEM will send a request to the IAU to scan for a transponder. If an approved transponder is not identified, the CEM will not send an approved key signal to the IAU and the vehicle will be unable to start

Volvo stated that an alarm system will be installed on the MY 2014 Volvo S60 vehicle line to prevent unwanted access to or manipulation of the vehicle in any way. The alarm will sound and the turn indicators will flash when an unauthorized attempt is made to open the side doors, trunk lid/tailgate or hood. Volvo also stated that the alarm is activated when any attempt is made to start the vehicle without a valid key that is fully integrated into the vehicle's electric system.

After a normal delay time (pre-arm phase), the vehicle is armed when the doors are closed and the vehicle is locked. On the passive key system (keyless vehicles), the device is armed by pushing a button in the outer door handle. In the remote control key-lock system, the device is armed by pressing the lock button on the remote control key. Disarming the remote control key systems occurs when the operator presses the unlock button on the remote control key or inserts a valid remote control key into the ignition lock. On the passive key system (keyless vehicles), Volvo states that the vehicle can be disarmed when a valid key is recognized and the outer door handle is pulled. The vehicle is also disarmed when any door, hood or trunk lid/tailgate is opened during the device's pre-arming time.

Volvo believes that the antitheft device that is standard on the MY 2014 S60 vehicle line is effective in reducing and deterring motor vehicle theft. Volvo stated that the premise for this belief originates from the theft data released by the NHTSA for model years (MYs) 2007–2010 vehicles and the Highway Loss Data Institute's (HLDI's) MYs 2007–2009 *Insurance Theft Losses for Passenger Vehicles* as produced in the Insurance Institute for Highway Safety's August 3, 2010 *Status Report* publication.

Volvo stated that it introduced the immobilizer as standard equipment beginning with its MY 1999 vehicle and that the MY 2007 Volvo S80 vehicle line has had the same antitheft device as proposed for the MY 2014 S60 vehicles since its introduction. Theft data for the MYs 2007–2010 Volvo S80 were 0.9255, 0.4373, 0.6749 and 0.3407 respectively. In addition, Volvo's submission provided an illustration of the industry average for thefts for MYs 2007 through 2012 vehicles. According to Volvo, the industry average for MYs 2007–2012 are 1.86, 1.69, 1.33 and 1.17 respectively, ranking the Volvo S80 well below the industry average for thefts.

In addressing the specific content requirements of 543.6, Volvo provided information on the reliability and durability of its device. To ensure reliability and durability of the device, Volvo conducted tests based on its own specified standards and believes that the device is reliable and durable since the device complied with its specified requirements for each test. Volvo stated that its testing requirements refer to both the Swedish Standard Institute ISO 16750 and Electromagnetic Compatibility (EMC) tests and that all components that are included in the functionality of the alarm are also tested for reliability and durability. As additional security measures, Volvo stated that its spare or replacement remote control keys can only be obtained through authorized Volvo retailers and each key has a unique identification defined by Volvo. Volvo also stated that to reduce or eliminate the marketability of stolen electronic components within its vehicles, certain electronic modules are made vehicle-specific and are programmed with certain codes that enable its use within the system of the corresponding vehicle. Consequently, the engine will not start if these numbers do not correspond.

Based on the supporting evidence submitted by Volvo, the agency believes that the antitheft device for the Volvo S60 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): attract attention to the efforts of an authorized person to enter or move a

vehicle by means other than a key; promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon supporting evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Volvo has provided adequate reasons for its belief that the antitheft device for the S60 vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information Volvo provided about its device.

For the foregoing reasons, the agency hereby grants in full Volvo's petition for exemption for the MY 2014 S60 vehicle line from the parts-marking requirements of 49 CFR part 541. The agency notes that 49 CFR part 541, appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given MY. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Volvo decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Volvo wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: January 11, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–00999 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Mercedes-Benz

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

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Mercedes-Benz USA, LLC (MBUSA) petition for an exemption of the New Generation Compact Car (NGCC) Line Chassis vehicle line in accordance with 49 CFR part 543, *Exemption from the Theft Prevention Standard.* This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of the Theft Prevention Standard (49 CFR part 541).

DATES: The exemption granted by this notice is effective beginning with the 2014 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Carlita Ballard, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA,1200 New Jersey Avenue SE., West Building, W43–439 Washington, DC 20590. Ms. Ballard's telephone number is (202) 366–5222. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated October 26, 2012, MBUSA requested an exemption from the parts marking requirements of the Theft Prevention Standard (49 CFR part 541) for the new MY 2014 NGCC Line Chassis vehicle line. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for an entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, MBUSA provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for its new vehicle line. MBUSA stated that its MY 2014 NGCC Line Chassis will include CLA-Class vehicles (CLA250, CLA250 4MATIC and CLA45 4MATIC AMG) that will be equipped with a passive ignition immobilizer (FBS III/FBS IV) and an access code-protected locking system as standard equipment. The immobilizer, transmitter key, electronic ignition starter switch control unit (EIS), the engine control module (ECM) and the transmission control module (TCM) collectively perform the immobilizer function. MBUSA stated that its immobilizer device is an interlinked system of control units which collectively perform the immobilizer function. The interlinked system includes the engine, EIS, transmitter key, TCM and ECM (including the fuel injection system) which independently calculates and matches a unique code. MBUSA stated that it is impossible to read the code from the vehicle in order to defeat the system. MBUSA stated that if a relevant query from the vehicle to the transmitter key is valid, operation of the vehicle will be authorized. MBUSA stated that the device will not be equipped with an audible or visible alarm feature. MBUSA's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

MBUSA stated that activation of the device occurs automatically when the key is removed from the ignition switch, whether the doors are open or not. Once activated, only a valid key with the correct code inserted into the ignition switch will disable immobilization and allow the vehicle to start and operate. MBUSA further stated that no other action by the operator other than turning the key is required to activate or deactivate the immobilizer.

In its submission, MBUSA stated that a locking/unlocking function is also incorporated into the device. The unlocking signal from the remote key sends a message to the vehicle's central electronic control unit and a permanent code is verified and compared to the stored code in the Signal Acquisition Module (SAM). MBUSA stated that when both codes match, the locking system will unlock the doors, tailgate and fuel filler cover.

In addressing the specific content requirements of 543.6, MBUSA provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the immobilizer device, MBUSA conducted performance tests based on the Economic Commission for Europe's specified standards. MBUSA provided a detailed list of the tests conducted and believes that the device is reliable and durable because the device complied with the specified requirements for each test. MBUSA also stated that it believes that the immobilizer device offered on the NGCC Line Chassis vehicle will be at least as effective as compliance with the parts-marking requirements of the theft prevention standard and as effective in deterring theft as it has been in other MBUSA vehicle lines for which theft data has been published. MBUSA submitted theft rate data published by the agency comparing its proposed device to antitheft devices already installed in the Audi A3, Audi A4, and the Volkswagen Passat vehicle lines.

MBUSA referenced theft data published by the agency showing that the average theft rate for the Audi A3 with an immobilizer was 1.4875 in MY/CY 2008 and 1.3294 in MY/CY 2009. MBUSA stated that it believes that this data also indicates that the immobilizer device was effective in contributing to a 10.6% reduction in the theft rate of the Audi A3 vehicle line. MBUSA also referenced theft rate data published by the agency for the Audi A4 and Volkswagen Passat vehicle lines (with an immobilizer) which showed a theft rate of 1.1317 and 0.6007 for MY/CYs 2008 and 2009 for the AudiA4 and 0.8197 and 0.5110 for MY/CY's 2008 and 2009 for the Volkswagen Passat respectively.

MBUSA stated that its proposed device is also functionally similar to the antitheft devices installed on the Mercedes-Benz S-Class, E-Class, C-Class, SL-Class and SLK Class chassis vehicles which the agency has already exempted from the parts marking requirements. In its submission, MBUSA concluded that lower theft rates could be expected from vehicles equipped with immobilizer devices as standard equipment. MBUSA stated that the data indicated its immobilizer device was effective in contributing to an average reduction of 31.8% in the theft rate of the SL-Line Chassis when theft rates for the vehicle line dropped from 1.0460 (CY 2007) to 0.7938 (CY 2009).

Based on the supporting evidence submitted by MBUSA on the device, the agency believes that the antitheft device for the NGCC Line Chassis vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7(b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of part 541. The agency finds that MBUSA has provided adequate reasons for its belief that the antitheft device for the MBUSA new vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541). This conclusion is based on the information MBUSA provided about its device.

For the foregoing reasons, the agency hereby grants in full MBUSA's petition for exemption for the NGCC Line Chassis vehicle line from the parts-marking requirements of 49 CFR part 541, beginning with the 2014 model year vehicles. The agency notes that 49 CFR part 541, appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If MBUSA decides not to use the exemption for this line, it must formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if MBUSA wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: January 11, 2013.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2013–00997 Filed 1–17–13; 8:45 am]

BILLING CODE 4910–59–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

AGENCY: United States Institute of Peace.

DATE/TIME: Thursday, January 24, 2013 (9:00 a.m.–3:30 p.m.).

LOCATION: 2301 Constitution Avenue NW., Washington, DC 20037.

STATUS: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: January 24, 2013 Board Meeting; Approval of Minutes of the One Hundred Forty-Fifth Meeting (October 24, 2012) of the Board of Directors; Chairman's Report; President's Report; Status Reports on Libya Trip, USIP work on the Rule of Law-Libya, Transition in Iraq, Update on Egypt; Congressional Overview; Strategic Plan; Board Executive Session; Other General Issues.

CONTACT: Tessie F. Higgs, Executive Office, Telephone: (202) 429–3836.

Dated: January 11, 2013.

Michael Graham,

Senior Vice President for Management, United States Institute of Peace.

[FR Doc. 2013–01017 Filed 1–17–13; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment, including public comment regarding retroactive application of any of the proposed amendments. Notice of public hearing.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, the United States Sentencing Commission is considering promulgating certain amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. This notice also sets forth a number of issues for comment, some of which are set forth together with the proposed amendments; some of which are set forth independent of any proposed amendment; and one of which (regarding retroactive application of proposed amendments) is set forth in the **SUPPLEMENTARY INFORMATION** portion of this notice.

The proposed amendments and issues for comment in this notice are as follows: (1) A proposed amendment to § 2B1.1 (Theft, Property Destruction, and Fraud) regarding offenses involving pre-retail medical products to implement the directive in the SAFE DOSES Act, Public Law 112–186 (October 5, 2012), and a related issue for comment; (2) an issue for comment on the directive in section 3 of the Foreign and Economic Espionage Penalty Enhancement Act of 2012, Public Law 112–____, relating to offenses involving stolen trade secrets or economic espionage; (3) proposed changes to the guidelines applicable to offenses involving counterfeit or adulterated drugs or counterfeit military parts, including (A) a proposed amendment on offenses involving counterfeit military goods and services, including options to amend § 2B5.3 (Criminal Infringement of Copyright or Trademark) or Appendix A (Statutory Index) with respect to such offenses to address the statutory changes to 18 U.S.C. 2320 made by section 818 of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81 (December 31, 2011); (B) a proposed amendment on offenses involving counterfeit drugs, including options to amend § 2B5.3 or Appendix A with respect to such offenses to address the statutory changes to 18 U.S.C. 2320, and to implement the directive to the Commission, in section 717 of the Food and Drug Administration Safety and Innovation Act, Public Law 112–144 (July 9, 2012); and (C) a proposed amendment on offenses involving adulterated drugs, including options to amend § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, Agricultural Product, or Consumer Product) or Appendix A with respect to such offenses to address the statutory changes to 21 U.S.C. 333 in section 716 of such Act; and related issues for comment; (4) a proposed amendment to § 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents) to respond to a circuit conflict over whether a sentencing court, in calculating the tax loss in a tax case, may subtract the unclaimed deductions that the defendant legitimately could have claimed if he or she had filed an accurate tax return, and related issues for comment; (5) a proposed amendment and issues for comment in response to two circuit conflicts relating to the circumstances under which the defendant is eligible for a third level of reduction under subsection (b) of § 3E1.1 (Acceptance of Responsibility), including (A) a proposed amendment to § 3E1.1 to respond to a circuit conflict over whether the court has discretion to deny the third level of reduction when the government has filed the motion described in subsection (b), which would recognize that the court does have such discretion; and (B) an issue for comment on a circuit conflict over whether the government has discretion to withhold making a motion under subsection (b) when there is no evidence that the government was required to prepare for trial; (6) a proposed amendment to § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) to respond to *Setser* v. *United States,* ____ U.S. ____ (March 28, 2012), which held that a federal court in imposing sentence generally has discretion to order that the sentence run consecutive to (or concurrently with) an anticipated, but not yet imposed, term of imprisonment; and (7) a proposed amendment and related issue for comment in response to miscellaneous issues arising from legislation recently enacted and to address technical and stylistic issues in the guidelines, including (A) proposed changes to Appendix A (Statutory Index) to address certain criminal provisions in the Federal Aviation Administration Modernization and Reform Act of 2012, Public Law 112–95 (February 14, 2012); the Child Protection Act of 2012, Public Law 112–206 (December 7, 2012); the Federal Restricted Buildings and Grounds Improvement Act of 2011, Public Law 112–98 (March 8, 2012); and the Ultralight Aircraft Smuggling Prevention Act of 2012, Public Law 112–93 (February 10, 2012); (B) a proposed change to Appendix A (Statutory Index) to address offenses under 18 U.S.C. 554; (C) proposed changes to guidelines in Chapter Two, Part J (Offenses Involving the Administration of Justice) to address an application issue involving the interaction of those guidelines with adjustments in Chapter Three, Part C (Obstruction and Related Adjustments); and (D) technical and stylistic changes.

DATES:

(1) *Written Public Comment.*—Written public comment regarding the proposed amendments and issues for comment set forth in this notice, including public comment regarding retroactive application of any of the proposed amendments, should be received by the Commission not later than March 19, 2013.

(2) *Public Hearing.*—The Commission plans to hold a public hearing regarding the proposed amendments and issues for comment set forth in this notice. Further information regarding the public hearing, including requirements for testifying and providing written testimony, as well as the location, time, and scope of the hearing, will be

provided by the Commission on its Web site at *www.ussc.gov.*

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle NE., Suite 2–500, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, Telephone: (202) 502–4502.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The proposed amendments in this notice are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates a heightened interest on the Commission's part in comment and suggestions regarding alternative policy choices; for example, a proposed enhancement of [2][4][6] levels indicates that the Commission is considering, and invites comment on, alternative policy choices regarding the appropriate level of enhancement. Similarly, bracketed text within a specific offense characteristic or application note means that the Commission specifically invites comment on whether the proposed provision is appropriate. Second, the Commission has highlighted certain issues for comment and invites suggestions on how the Commission should respond to those issues.

The Commission requests public comment regarding whether, pursuant to 18 U.S.C. 3582(c)(2) and 28 U.S.C. 994(u), any proposed amendment published in this notice should be included in subsection (c) of '1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. The Commission lists in '1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to '1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under '1B1.10(b) as among the factors the Commission considers in selecting the amendments included in '1B1.10(c). To the extent practicable, public comment should address each of these factors.

Additional information pertaining to the proposed amendments described in this notice may be accessed through the Commission's Web site at *www.ussc.gov.*

Authority: 28 U.S.C. 994(a), (o), (p), (x); USSC Rules of Practice and Procedure, Rule 4.4.

Patti B. Saris,

Chair.

1. Pre-Retail Medical Products

Synopsis of Proposed Amendment

This proposed amendment responds to the SAFE DOSES Act, Public Law 112B186 (October 5, 2012), which created a new criminal offense at 18 U.S.C. 670 for theft of pre-retail medical products, increased statutory penalties for certain related offenses when a pre-retail medical product is involved, and contained a directive to the Commission to ''review and, if appropriate, amend'' the federal sentencing guidelines and policy statements applicable to the new offense and the related offenses ''to reflect the intent of Congress that penalties for such offenses be sufficient to deter and punish such offenses, and appropriately account for the actual harm to the public from these offenses.''

New Offense at 18 U.S.C. 670

The new offense at section 670 makes it unlawful for any person in (or using any means or facility of) interstate or foreign commerce to—

(1) Embezzle, steal, or by fraud or deception obtain, or knowingly and unlawfully take, carry away, or conceal a pre-retail medical product;

(2) knowingly and falsely make, alter, forge, or counterfeit the labeling or documentation (including documentation relating to origination or shipping) of a pre-retail medical product;

(3) knowingly possess, transport, or traffic in a pre-retail medical product that was involved in a violation of paragraph (1) or (2);

(4) with intent to defraud, buy, or otherwise obtain, a pre-retail medical product that has expired or been stolen;

(5) with intent to defraud, sell, or distribute, a pre-retail medical product that is expired or stolen; or

(6) attempt or conspire to violate any of paragraphs (1) through (5).

The offense generally carries a statutory maximum term of imprisonment of three years. If the offense is an ''aggravated offense,'' however, higher statutory maximum terms of imprisonment are provided. The offense is an ''aggravated offense'' if—

(1) The defendant is employed by, or is an agent of, an organization in the supply chain for the pre-retail medical product; or

(2) the violation—

(A) involves the use of violence, force, or a threat of violence or force;

(B) involves the use of a deadly weapon;

(C) results in serious bodily injury or death, including serious bodily injury or death resulting from the use of the medical product involved; or

(D) is subsequent to a prior conviction for an offense under section 670.

Specifically, the higher statutory maximum terms of imprisonment are:

(1) Five years, if—

(A) the defendant is employed by, or is an agent of, an organization in the supply chain for the pre-retail medical product; or

(B) the violation (i) involves the use of violence, force, or a threat of violence or force, (ii) involves the use of a deadly weapon, or (iii) is subsequent to a prior conviction for an offense under section 670.

(2) 15 years, if the value of the medical products involved in the offense is $5,000 or greater.

(3) 20 years, if both (1) and (2) apply.

(4) 30 years, if the offense results in serious bodily injury or death, including serious bodily injury or death resulting from the use of the medical product involved.

The proposed amendment amends Appendix A (Statutory Index) to reference the new offense at 18 U.S.C. 670 to § 2B1.1 (Theft, Property Destruction, and Fraud). In addition, the possibility of providing an additional reference to § 2A1.4 (Involuntary Manslaughter) is bracketed.

The proposed amendment also adds a new specific offense characteristic to § 2B1.1. The new specific offense characteristic provides an enhancement of [2][4] levels if the offense involves a pre-retail medical product [and (A) the offense involved (i) the use of violence, force, or a threat of violence or force; or (ii) the use of a deadly weapon; (B) the offense resulted in serious bodily injury or death, including serious bodily injury or death resulting from the use of the medical product involved; or (C) the defendant was employed by, or was an agent of, an organization in the supply chain for the pre-retail medical

product]. It also provides a minimum offense level of level 14. It also amends the commentary to § 2B1.1 to specify that the term ''pre-retail medical product'' has the meaning given that term in section 670(e).

Issue for Comment

A multi-part issue for comment is also included on whether any changes to the guidelines instead of, or in addition to, the changes in the proposed amendment should be made to respond to the new offense, the statutory penalty increases made by the Act, and the directive to the Commission.

Proposed Amendment

Section 2B1.1(b) is amended by redesignating paragraphs (14) through (18) as (15) through (19), respectively; by inserting after paragraph (13) the following:

''(14) If the offense involved a pre-retail medical product [and (A) the offense involved the use of (i) violence, force, or a threat of violence or force; or (ii) a deadly weapon; (B) the offense resulted in serious bodily injury or death, including serious bodily injury or death resulting from the use of the medical product involved; or (C) the defendant was employed by, or was an agent of, an organization in the supply chain for the pre-retail medical product], increase by [2][4] levels. If the resulting offense level is less than level 14, increase to level 14.''; and

in paragraph (16)(B) (as so redesignated) by striking ''(b)(15)(B)'' and inserting ''(b)(16)(B)''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph beginning '' 'Personal information' means'' the following:

'' 'Pre-retail medical product' has the meaning given that term in 18 U.S.C. 670(e).''; and by inserting after the paragraph beginning '' 'Publicly trade company' means'' the following:

'' 'Supply chain' has the meaning given that term in 18 U.S.C. 670(e).''.

The Commentary to § 2B1.1 captioned ''Background'' is amended by inserting after the paragraph beginning ''Subsection (b)(12)'' the following:

''Subsection (b)(14) implements the directive to the Commission in section 7 of Public Law 112B186.'';

in the paragraph beginning ''Subsection (b)(14)(B)'' by striking ''(b)(14)(B)'' and inserting ''(b)(15)(B)''; in the paragraph beginning ''Subsection (b)(15)(A)'' by striking ''(b)(15)(A)'' and inserting ''(b)(16)(A)''; in the paragraph beginning ''Subsection (b)(15)(B)(i)'' by striking ''(b)(15)(B)(i)'' and inserting ''(b)(16)(B)(i)''; in the paragraph beginning ''Subsection (b)(16)'' by striking ''(b)(16)'' and inserting ''(b)(17)''; and in the paragraph beginning ''Subsection (b)(17)'' by striking ''(b)(17)'' and inserting ''(b)(18)'', and striking ''(b)(17)(B)'' and inserting ''(b)(18)(B)''.

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 669 the following:

''18 U.S.C. 670 [2A1.4,] 2B1.1''.

Issue for Comment

1. In addition to creating the new offense under section 670, the Act increased penalties for some related offenses when those offenses involve a pre-retail medical product. In particular, the Act added an increased penalty provision to each of the following statutes:

(A) 18 U.S.C. 659 (theft from interstate or foreign shipments by carrier), which is referenced to § 2B1.1.

(B) 18 U.S.C. 1952 (travel in aid of racketeering), which is referenced to § 2E1.2 (Interstate or Foreign Travel or Transportation in Aid of a Racketeering Enterprise).

(C) 18 U.S.C. 1957 (money laundering in aid of racketeering), which is referenced to § 2S1.1 (Laundering of Monetary Instruments; Engaging in Monetary Transactions in Property Derived from Unlawful Activity).

(D) 18 U.S.C. 2117 (breaking or entering facilities of carriers in interstate or foreign commerce), which is referenced to § 2B2.1 (Burglary of a Residence or a Structure Other than a Residence).

(E) 18 U.S.C. 2314 (transportation of stolen goods) and 2315 (sale or receipt of stolen goods), each of which are referenced to both §§ 2B1.1 and 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources).

For each of these existing statutes, the Act amended the penalty provision to provide that if the offense involved a pre-retail medical product, the punishment for the offense shall be the same as the punishment for an offense under section 670, unless the punishment under the existing statute is greater.

An additional statutory provision identified in the directive to the Commission (but not amended by the Act) is 18 U.S.C. 2118 (robberies and burglaries involving controlled substances), which contains several distinct offenses. The guidelines to which these various offenses are referenced include §§ 2A1.1, 2A2.1, 2A2.2, 2B2.1, 2B3.1 (Robbery), and 2X1.1.

The directive to the Commission provided that the Commission shall ''review and, if appropriate, amend'' the federal sentencing guidelines and policy statements applicable to offenses under section 670; under section 2118 of title 18, United States Code; or under any other section amended by the Act ''to reflect the intent of Congress that penalties for such offenses be sufficient to deter and punish such offenses, and appropriately account for the actual harm to the public from these offenses.'' The Act further states that, in carrying out the directive, the Commission shall—

(1) Consider the extent to which the Federal sentencing guidelines and policy statements appropriately reflect—

(A) The serious nature of such offenses;

(B) The incidence of such offenses; and

(C) The need for an effective deterrent and appropriate punishment to prevent such offenses;

(2) Consider establishing a minimum offense level under the Federal sentencing guidelines and policy statements for offenses covered by this Act;

(3) Account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(4) Ensure reasonable consistency with other relevant directives, Federal sentencing guidelines and policy statements;

(5) Make any necessary conforming changes to the Federal sentencing guidelines and policy statements; and

(6) Ensure that the Federal sentencing guidelines and policy statements adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

Issue for Comment

The Commission seeks comment on whether any changes to the guidelines instead of, or in addition to, the changes in the proposed amendment should be made to respond to the new offense, the statutory penalty increases made by the Act, and the directive to the Commission.

(1) First, the Commission seeks comment on the guideline or guidelines to which offenses under section 670, and other offenses covered by the directive, should be referenced. In particular:

(A) The proposed amendment would reference offenses under section 670 to § 2B1.1, and brackets the possibility of an additional reference to § 2A1.4. Should the Commission reference section 670 to one or more guidelines—such as § 2B5.3 (Criminal Infringement of Copyright or Trademark), § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury), or § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, Agricultural Product, or Consumer Product)—instead of, or in addition to, the proposed reference(s) to § 2A1.4 and § 2B1.1? If so, which ones?

(B) Similarly, should the Commission reference any of the other offenses covered by the directive to one or more guidelines instead of, or in addition to, the guideline or guidelines to which they are currently referenced? If so, which ones?

(2) Second, the Commission seeks comment on the proposed amendment to § 2B1.1, which would provide a new specific offense characteristic if the offense involves a pre-retail medical product [and (A) the offense involved the use of (i) violence, force, or a threat of violence or force; or (ii) a deadly weapon; (B) the offense resulted in serious bodily injury or death, including serious bodily injury or death resulting from the use of the medical product involved; or (C) the defendant was employed by, or was an agent of, an organization in the supply chain for the pre-retail medical product]. In particular:

(A) If the Commission were to promulgate the proposed amendment, how should the new specific offense characteristic interact with other specific offense characteristics in § 2B1.1? In particular, how should it interact with—

(i) The specific offense characteristic at § 2B1.1(b)(13)(B), which provides a 2-level enhancement and a minimum offense level of 14 if the offense involved an organized scheme to steal or to receive stolen goods or chattels that are part of a cargo shipment; and

(ii) The specific offense characteristic currently at § 2B1.1(b)(14), which provides a 2-level enhancement and a minimum offense level 14 if the offense involved a risk of death or serious bodily injury or possession of a dangerous weapon?

Should the new specific offense characteristic be fully cumulative with these current specific offense characteristics, or should the impact be less than fully cumulative in cases where more than one apply?

(B) Does the proposed amendment adequately respond to requirement (2) of the directive that the Commission consider establishing a minimum offense level for offenses covered by the Act? If not, what minimum offense level, if any, should the Commission provide for offenses covered by the Act, and under what circumstances should it apply?

(C) Does the proposed amendment adequately respond to requirement (3) of the directive that the Commission account for the aggravating and mitigating circumstances involved in the offenses covered by the Act? If not, what aggravating and mitigating circumstances should be accounted for, and what new provisions, or changes to existing provisions should be made to account for them?

(D) Does the proposed amendment adequately respond to the other requirements of the directive, in paragraphs (1), (4), (5), and (6)? If not, what other changes, if any, should the Commission make to the guidelines to respond to the directive?

(3) Section 670(e) defines the term ''pre-retail medical product'' to mean ''a medical product that has not yet been made available for retail purchase by a consumer.'' The proposed amendment would adopt this statutory definition. The Commission seeks comment on this definition. Is this definition adequately clear? If not, in what situations is this definition likely to be unclear and what guidance, if any, should the Commission provide to address such situations? Does the definition of the term ''supply chain'' (*see* 18 U.S.C. 670(e) (stating that the term ''supply chain'' includes ''manufacturer, wholesaler, repacker, own-labeled distributor, private-label distributor, jobber, broker, drug trader, transportation company, hospital, pharmacy, or security company'')) inform the determination of whether the medical product has been made available for retail purchase by a consumer?

(4) The Commission seeks comment on how, if at all, the guidelines should be amended to account for the aggravating factor in section 670 that increases the statutory maximum term of imprisonment if the defendant is employed by, or is an agent of, an organization in the supply chain for the pre-retail medical product. Is this factor already adequately addressed by existing provisions in the guidelines, such as the adjustment in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill)? If not, how, if at all, should the Commission amend the guidelines to account for this factor?

(5) Finally, the Commission seeks comment on what changes, if any, it should make to the guidelines to which the other offenses covered by the directive are referenced to account for the statutory changes or the directive, or both. For example, if the Commission were to promulgate the proposed amendment to § 2B1.1, adding a new specific offense characteristic to that guideline, should the Commission provide a similar specific offense characteristic in the other guidelines to which the other offenses covered by the directive are referenced?

2. Trade Secrets

Issue for Comment

1. Section 3 of the Foreign and Economic Espionage Penalty Enhancement Act of 2012, Public Law 112–____, contains a directive to the Commission on offenses involving stolen trade secrets or economic espionage. The Commission seeks comment on what, if any, changes to the guidelines are appropriate to respond to the directive.

The Directive

Section 3(a) of the Act directs the Commission to ''review and, if appropriate, amend'' the guidelines ''applicable to persons convicted of offenses relating to the transmission or attempted transmission of a stolen trade secret outside of the United States or economic espionage, in order to reflect the intent of Congress that penalties for such offenses under the Federal sentencing guidelines and policy statements appropriately, reflect the seriousness of these offenses, account for the potential and actual harm caused by these offenses, and provide adequate deterrence against such offenses.''

Section 3(b) of the Act states that, in carrying out the directive, the Commission shall—

''(1) consider the extent to which the Federal sentencing guidelines and policy statements appropriately account for the simple misappropriation of a trade secret, including the sufficiency of the existing enhancement for these offenses to address the seriousness of this conduct;

''(2) consider whether additional enhancements in the Federal sentencing guidelines and policy statements are appropriate to account for—

''(A) the transmission or attempted transmission of a stolen trade secret outside of the United States; and

''(B) the transmission or attempted transmission of a stolen trade secret outside of the United States that is committed or attempted to be

committed for the benefit of a foreign government, foreign instrumentality, or foreign agent;

''(3) ensure the Federal sentencing guidelines and policy statements reflect the seriousness of these offenses and the need to deter such conduct;

''(4) ensure reasonable consistency with other relevant directives, Federal sentencing guidelines and policy statements, and related Federal statutes;

''(5) make any necessary conforming changes to the Federal sentencing guidelines and policy statements; and

''(6) ensure that the Federal sentencing guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.''.

The Offenses Described in the Directive

Offenses described in the directive—the transmission or attempted transmission of a stolen trade secret outside the United States; and economic espionage—may be punished under 18 U.S.C. 1831 (Economic espionage), which requires as an element of the offense that the defendant specifically intend or know that the offense ''will benefit any foreign government, foreign instrumentality, or foreign agent''. Offenses described in the directive may also be punished under 18 U.S.C. 1832 (Trade secrets), which does not require such specific intent or knowledge, but does require that the trade secret relate to a product in interstate or foreign commerce.

Section 2 of the Act amended section 1831 to raise the maximum fine imposable for such an offense. The maximum fine for an individual was raised from $500,000 to $5,000,000, and the maximum fine for an organization was raised from $10,000,000 to either $10,000,000 or ''3 times the value of the stolen trade secret to the organization, including expenses for research and design and other costs of reproducing the trade secret that the organization has thereby avoided'', whichever is greater.

The statutory maximum terms of imprisonment are 15 years for a section 1831 offense and 10 years for a section 1832 offense. Offenses under sections 1831 and 1832 are referenced in Appendix A (Statutory Index) to § 2B1.1 (Theft, Property Destruction, and Fraud).

Offenses described in the directive may also be punished under other criminal statutes relating to trade secrets under specific circumstances. Examples of two such statutes are 18 U.S.C. 1905 (class A misdemeanor for disclosure of confidential information, including trade secrets, by public employees) and 7 U.S.C. 136h (class A misdemeanor for disclosure of trade secrets involving insecticides, by Environmental Protection Agency employees). Section 1905 is referenced in Appendix A (Statutory Index) to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information). Section 136h is not referenced in Appendix A (Statutory Index).

Applicable Provisions in the Guidelines

The following provisions in the guidelines, among others, address offenses involving trade secrets:

(1) Section 2B1.1(b)(5) contains a 2-level enhancement that applies ''[i]f the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent''.

(2) Application Note 3(C)(ii) of the Commentary to § 2B1.1 provides that, in a case involving trade secrets or other proprietary information, the court when estimating loss for purposes of the loss enhancement in § 2B1.1(b)(1) should consider, among other factors, ''the cost of developing that information or the reduction in the value of that information that resulted from the offense.''

Request for Comment

The Commission seeks comment on what, if any, changes to the guidelines should be made to respond to the directive. In particular, the Commission seeks comment on the following:

(1) What offenses, if any, other than sections 1831 and 1832 should the Commission consider in responding to the directive? What guidelines, if any, other than § 2B1.1 should the Commission consider amending in response to the directive?

(2) What should the Commission consider in reviewing the seriousness of the offenses described in the directive, the potential and actual harm caused by these offenses, and the need to provide adequate deterrence against such offenses?

(3) Do the guidelines appropriately account for the simple misappropriation of a trade secret? Is the existing enhancement at § 2B1.1(b)(5), which provides a 2-level enhancement ''[i]f the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent,'' sufficient to address the seriousness of the conduct involved in the offenses described in the directive?

(4) Should the Commission provide one or more additional enhancements to account for (A) the transmission or attempted transmission of a stolen trade secret outside of the United States; and (B) the transmission or attempted transmission of a stolen trade secret outside of the United States that is committed or attempted to be committed for the benefit of a foreign government, foreign instrumentality, or foreign agent? If so, under what circumstances should such an enhancement apply, and what level of enhancement should apply?

(5) Should the Commission restructure the existing 2-level enhancement in subsection (b)(5) into a tiered enhancement that directs the court to apply the greatest of the following:

(A) An enhancement of 2 levels if the offense involved the simple misappropriation of a trade secret;

(B) An enhancement of 4 levels if the defendant transmitted or attempted to transmit the stolen trade secret outside of the United States; and

(C) An enhancement of [5][6] levels if the defendant committed economic espionage, *i.e.,* the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent?

(6) Should the Commission provide a minimum offense level of [14][16] if the defendant transmitted or attempted to transmit stolen trade secrets outside of the United States or committed economic espionage?

3. Counterfeit and Adulterated Drugs; Counterfeit Military Parts

Synopsis of Proposed Amendment

This proposed amendment responds to two recent Acts that made changes to 18 U.S.C. 2320 (Trafficking in counterfeit goods and services). One Act provided higher penalties for offenses involving counterfeit military goods and services; the other Act provided higher penalties for offenses involving counterfeit drugs, and also included a directive to the Commission. The proposed amendment also responds to recent statutory changes to 21 U.S.C. 333 (Penalties for violations of the Federal Food, Drug, and Cosmetics Act) that provide higher penalties for offenses involving intentionally adulterated drugs.

A&B. 18 U.S.C. 2320 and Offenses Involving Counterfeit Military Goods and Services and Counterfeit Drugs

In general, section 2320 prohibits trafficking in goods or services using a counterfeit mark, and provides a statutory maximum term of imprisonment of 10 years (or, for a

repeat offender, 20 years). If the offender knowingly or recklessly causes or attempts to cause serious bodily injury or death, the statutory maximum is increased to 20 years (if serious bodily injury) or to any term of years or life (if death). Offenses under section 2320 are referenced in Appendix A (Statutory Index) to § 2B5.3 (Criminal Infringement of Copyright or Trademark).

Two recent Acts made changes to section 2320. First, section 818 of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81 (December 31, 2011), amended section 2320 to add a new subsection (a)(3) that prohibits trafficking in counterfeit military goods and services, the use, malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a combat operation, a member of the Armed Forces, or national security. A ''counterfeit military good or service'' is a good or service that uses a counterfeit mark and that (A) is falsely identified or labeled as meeting military specifications, or (B) is intended for use in a military or national security application. *See* 18 U.S.C. 2320(f)(4). An individual who commits an offense under subsection (a)(3) involving a counterfeit military good or service is subject to a statutory maximum term of imprisonment of 20 years, or 30 years for a second or subsequent offense. *See* 18 U.S.C. 2320(b)(3).

Second, section 717 of the Food and Drug Administration Safety and Innovation Act, Public Law 112–144 (July 9, 2012), amended section 2320 to add a new subsection (a)(4) that prohibits trafficking in a counterfeit drug. A ''counterfeit drug'' is a drug, as defined by section 201 of the Federal Food, Drug, and Cosmetic Act, that uses a counterfeit mark. *See* 18 U.S.C. 2320(f)(6). An individual who commits an offense under subsection (a)(4) involving a counterfeit drug is subject to the same statutory maximum term of imprisonment as for an offense involving a counterfeit military good or service—20 years, or 30 years for a second or subsequent offense. *See* 18 U.S.C. 2320(b)(3).

Section 717 of that Act also contained a directive to the Commission to ''review and amend, if appropriate'' the guidelines and policy statements applicable to persons convicted of an offense described in section 2320(a)(4)—*i.e.,* offenses involving counterfeit drugs—''in order to reflect the intent of Congress that such penalties be increased in comparison to those currently provided by the guidelines and policy statements''. *See* Public Law 112–144, § 717(b). In addition, section 717(b)(2) provides that, in responding to the directive, the Commission shallC

(A) Ensure that the sentencing guidelines and policy statements reflect the intent of Congress that the guidelines and policy statements reflect the serious nature of offenses under section 2320(a)(4) and the need for an effective deterrent and appropriate punishment to prevent such offenses;

(B) Consider the extent to which the guidelines may or may not appropriately account for the potential and actual harm to the public resulting from the offense;

(C) Assure reasonable consistency with other relevant directives and with other sentencing guidelines;

(D) Account for any additional aggravating or mitigating circumstances that might justify exceptions to the generally applicable sentencing ranges;

(E) Make any necessary conforming changes to the sentencing guidelines; and

(F) Assure that the guidelines adequately meet the purposes of sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

Parts A and B of the proposed amendment respond to the statutory changes to section 2320 made by these Acts and implement the directive.

A. Counterfeit Military Goods and Services

Part A addresses the issue of counterfeit military goods and services and contains four options. The first three options each add a new specific offense characteristic to § 2B5.3. Each of these three options provides an enhancement of [2][4] levels and a minimum offense level of level 14, but they apply to different circumstances.

Option 1 closely tracks the statutory language. It applies only if the offense involves a counterfeit military good or service ''the use, malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a combat operation, a member of the Armed Forces, or to national security.''

Option 2 applies to any offense that involves a counterfeit military good or service.

Option 3 is not limited to counterfeit military goods or services. It applies if the defendant knew the offense involved (A) a critical infrastructure; or (B) a product sold for use in national defense or national security or by law enforcement.

Option 4 takes a different approach than the first three options. It references offenses under section 2320(a)(3) to § 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities), with the possibility of an additional reference to § 2M2.1 (Destruction of, or Production of Defective, War Material, Premises, or Utilities) also bracketed.

B. Counterfeit Drugs

Part B addresses the issue of counterfeit drugs and contains three options.

Option 1 adds a new specific offense characteristic to § 2B5.3. It provides an enhancement of [2][4] levels and a minimum offense level of level 14 if the offense involves a counterfeit drug.

Option 2 revises the specific offense characteristic currently at § 2B5.3(b)(5), which provides an enhancement of 2 levels, and a minimum offense level of level 14, if the offense involved (A) the conscious or reckless risk of death or serious bodily injury, or (B) possession of a dangerous weapon (including a firearm) in connection with the offense. As revised, this specific offense characteristic would have three tiers and an instruction to apply the greatest. The first tier would provide an enhancement of 2 levels, and a minimum offense level of 12, if the offense involved a counterfeit drug. The second tier would provide an enhancement of 2 levels, and a minimum offense level of 14, if the offense involved possession of a dangerous weapon in connection with the offense. The third tier would provide an enhancement of 4 levels, and a minimum offense level of 14, if the offense involved the conscious or reckless risk of death or serious bodily injury.

Options 1 and 2 each would also amend the Commentary to § 2B5.3 to indicate that a departure may be warranted it the offense resulted in death or serious bodily injury.

Option 3 takes a different approach than the first two options. It references offenses under section 2320(a)(4) to § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury).

C. 21 U.S.C. 333 and Offenses Involving Intentionally Adulterated Drugs

In general, section 333(b) involves prescription drug marketing violations under the Federal Food, Drug, and Cosmetic Act and provides a statutory maximum term of imprisonment of 10 years. Offenses under section 333(b) are referenced in Appendix A (Statutory Index) to § 2N2.1 (Violations of Statutes

and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, Agricultural Product, or Consumer Product).

Section 716 of the Food and Drug Administration Safety and Innovation Act, Public Law 112–144 (July 9, 2012), amended 21 U.S.C. 333 to add a new penalty provision at subsection (b)(7). Subsection (b)(7) applies to any person who knowingly and intentionally adulterates a drug such that the drug is adulterated under certain provisions of 21 U.S.C. 351 and has a reasonable probability of causing serious adverse health consequences or death to humans or animals. It provides a statutory maximum term of imprisonment of 20 years.

Part C of the proposed amendment presents two options for addressing the offense under section 333(b)(7). Option 1 establishes a new alternative base offense level of level 14 in § 2N2.1 for cases in which the defendant is convicted under section 333(b)(7). Option 2 amends Appendix A (Statutory Index) to reference offenses under section 333(b)(7) to § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury).

Issues for Comment

Finally, the proposed amendment provides a series of issues for comment on offenses involving counterfeit military goods and services under section 2320, counterfeit drugs under section 2320, and intentionally adulterated drugs under section 333(b)(7).

Proposed Amendment

(A) Offenses Under Section 2320 Involving Counterfeit Military Goods and Services

Option 1:

Section 2B5.3(b) is amended by redesignating paragraph (5) as (6) and inserting after paragraph (4) the following:

''(5) If the offense involved a counterfeit military good or service the use, malfunction, or failure of which is likely to cause serious bodily injury or death, the disclosure of classified information, impairment of combat operations, or other significant harm to a combat operation, a member of the Armed Forces, or to national security, increase by [2][4] levels. If the resulting offense level is less than level 14, increase to level 14.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph beginning '' 'Commercial advantage'' the following:

'' 'Counterfeit military good or service' has the meaning given that term in 18 U.S.C. 2320(f)(4).''.

Option 2:

Section 2B5.3(b) is amended by redesignating paragraph (5) as (6) and inserting after paragraph (4) the following:

''(5) If the offense involved a counterfeit military good or service, increase by [2][4] levels. If the resulting offense level is less than level 14, increase to level 14.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph beginning ''Commercial advantage'' the following:

'' 'Counterfeit military good or service' has the meaning given that term in 18 U.S.C. 2320(f)(4).''.

Option 3:

Section 2B5.3(b) is amended by redesignating paragraph (5) as (6) and inserting after paragraph (4) the following:

''(5) If [the defendant knew] the offense involved a good or service used to maintain or operate a critical infrastructure; or used by or for a government entity in furtherance of the administration of justice, national defense, or national security, increase by [2][4] levels. If the resulting offense level is less than level 14, increase to level 14.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended by redesignating Notes 3 and 4 as 4 and 5, respectively; and by inserting after Note 2 the following:

''3. *Application of Subsection (b)(5).*—

(A) *Definitions.*—In subsection (b)(5):

'Critical infrastructure' means systems and assets vital to national defense, national security, economic security, public health or safety, or any combination of those matters. A critical infrastructure may be publicly or privately owned. Examples of critical infrastructures include gas and oil production, storage, and delivery systems, water supply systems, telecommunications networks, electrical power delivery systems, financing and banking systems, emergency services (including medical, police, fire, and rescue services), transportation systems and services (including highways, mass transit, airlines, and airports), and government operations that provide essential services to the public.

'Government entity' has the meaning given that term in 18 U.S.C. 1030(e)(9).

(B) *Application.*—Subsection (b)(5) applies to offenses in which the good or service was important in furthering the administration of justice, national defense, national security, economic security, or public health or safety. The enhancement ordinarily would apply, for example, in a case in which the defendant sold counterfeit semiconductors for use in a military system. But it ordinarily would not apply in a case in which the defendant sold counterfeit toner cartridges for use in printers at military headquarters.''.

Option 4:

Appendix A (Statutory Index) is amended by striking the line referenced to 18 U.S.C. 2320 and inserting the following:

''18 U.S.C. 2320(a)(1),(2) 2B5.3
18 U.S.C. 2320(a)(3) [2M2.1,] 2M2.3''.

(B) Offenses Under Section 2320 Involving Counterfeit Drugs

Option 1:

Section 2B5.3(b) is amended by redesignating paragraph (5) as (6) and inserting after paragraph (4) the following:

''(5) If the offense involved a counterfeit drug, increase by [2][4] levels. If the resulting offense level is less than level 14, increase to level 14.''.

The Commentary to § 2B5.3 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph beginning '' 'Commercial advantage'' the following:

'' 'Counterfeit drug' has the meaning given that term in 18 U.S.C. 2320(f)(6).''; and in Note 4 by adding at the end the following:

''(D) The offense resulted in death or serious bodily injury.''.

Option 2:

Section 2B5.3(b) is amended by amending paragraph (5) to read as follows:

''(5) (Apply the Greatest):

(A) If the offense involved a counterfeit drug, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(B) If the offense involved possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(C) If the offense involved the conscious or reckless risk of death or serious bodily injury, increase by 4 levels. If the resulting offense level is less than level 14, increase to level 14.''.

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 1 by inserting after the paragraph beginning '' 'Commercial advantage'' the following:

'' 'Counterfeit drug' has the meaning given that term in 18 U.S.C. 2320(f)(6).''; and in Note 4 by adding at the end the following:

''(D) The offense resulted in death or serious bodily injury.''.

Option 3:

Appendix A (Statutory Index) is amended by striking the line referenced to 18 U.S.C. 2320 and inserting the following:

''18 U.S.C. 2320(a)(1),(2) 2B5.3
18 U.S.C. 2320(a)(4) 2N1.1''.

(C) Offenses Under Section 333(b)(7) Involving Intentionally Adulterated Drugs

Section 2N2.1 is amended by amending subsection (a) to read as follows:

''(a) Base Offense Level: (Apply the Greater)

(1) 14, if the defendant was convicted under 21 U.S.C. 333(b)(7); or

(2) 6, otherwise.''; and

in subsection (c)(1) by inserting ''[, if the resulting offense level is greater than that determined above]'' before the period at the end.

Option 2:

Appendix A (Statutory Index) is amended by striking the line referenced to 21 U.S.C. 333(b) and inserting the following:

''21 U.S.C. 333(b)(1)B(6) 2N2.1
21 U.S.C. 333(b)(7) 2N1.1''.

Issues for Comment

1. Offenses Under 18 U.S.C. 2320 Involving Counterfeit Military Goods and Services

Options 1, 2, and 3 of the proposed amendment would provide a new specific offense characteristic in § 2B5.3 for offenses involving counterfeit military goods and services. If the Commission were to adopt Option 1, 2, or 3, how should this new specific offense characteristic interact with other specific offense characteristics in § 2B5.3? In particular, how should it interact with the specific offense characteristic currently at § 2B5.3(b)(5), which provides a 2-level enhancement and a minimum offense level 14 if the offense involved a risk of death or serious bodily injury or possession of a dangerous weapon? Should the new specific offense characteristic be fully cumulative with the current one, or should they be less than fully cumulative in cases where both apply?

Option 2 of the proposed amendment would apply to any case in which the offense involved a counterfeit military good or service. Is the scope of this option overly broad? Are there types of cases involving a counterfeit military good or service that should not be covered by Option 2? If so, what types of cases? For example, should the Commission provide an application note for Option 2 similar to the proposed application note 3(B) contained in Option 3, requiring that the counterfeit military good or service be important in furthering national security?

Option 3 of the proposed amendment would apply to any case in which the offense involved a good or service used to maintain or operate a critical infrastructure, or used by or for a government entity in furtherance of the administration of justice, national defense, or national security. The language used in this option parallels the language regarding critical infrastructure in § 2B1.1 (Theft, Property Destruction, and Fraud). In this new context, is the scope of this language overly broad? Are there types of cases that should not be covered by Option 3? If so, what types of cases?

Option 4 of the proposed amendment would reference offenses under section 2320 that involve counterfeit military goods or services (*e.g.,* offenses described in section 2320(a)(3)) to [§ 2M2.1 (Destruction of, or Production of Defective, War Material, Premises, or Utilities) and] § 2M2.3 (Destruction of, or Production of Defective, National Defense Material, Premises, or Utilities). If the Commission were to adopt Option 4, what changes, if any, should the Commission make to those guidelines to better account for such offenses?

2. Offenses Under 18 U.S.C. 2320 Involving Counterfeit Drugs (and Response to Directive)

Option 1 of the proposed amendment would provide a new specific offense characteristic in § 2B5.3 for offenses involving counterfeit drugs. If the Commission were to adopt Option 1, how should this new specific offense characteristic interact with other specific offense characteristics in § 2B5.3? In particular, how should it interact with the specific offense characteristic currently at § 2B5.3(b)(5), which provides a 2-level enhancement and a minimum offense level 14 if the offense involved a risk of death or serious bodily injury or possession of a dangerous weapon? Should the new specific offense characteristic be fully cumulative with the current one, or should they be less than fully cumulative in cases where both apply?

Option 3 of the proposed amendment would reference offenses under section 2320 that involve counterfeit drugs (*e.g.,* offenses described in section 2320(a)(4)) to § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Serious Bodily Injury). If the Commission were to adopt Option 3, what changes, if any, should the Commission make to that guideline to better account for such offenses?

In addition, to assist the Commission in determining how best to respond to the directive, the Commission seeks comment on offenses under section 2320 involving counterfeit drugs. What actual and potential harms to the public do such offenses pose? What aggravating and mitigating circumstances may be involved in such offenses that are not already adequately addressed in the guidelines? For example, if death or serious bodily injury resulted from the offense, should that circumstance be addressed by a departure provision, by a specific offense characteristic, by a cross-reference to another guideline (*e.g.,* a homicide guideline), or in some other manner?

Does the new specific offense characteristic in Option 1, or the revised specific offense characteristic in Option 2, adequately respond to the directive? If not, what changes, if any, should the Commission make to § 2B5.3 to better account for offenses under section 2320(a)(4) and the factors identified in the directive?

In the alternative, does Option 3 of the proposed amendment—referencing offenses involving counterfeit drugs to § 2N1.1—adequately respond to the directive? If not, what changes, if any, should the Commission make to § 2N1.1 to better account for offenses under section 2320(a)(4) and the factors identified in the directive?

3. Offenses Under 21 U.S.C. 333(b)(7) Involving Intentionally Adulterated Drugs

Option 2 of the proposed amendment amends Appendix A (Statutory Index) to reference offenses under section 333(b)(7) to § 2N1.1 (Tampering or Attempting to Tamper Involving Risk of Death or Bodily Injury). Section 2N1.1 provides a base offense level of 25 and an enhancement of 2 to 4 levels if the victim sustained serious bodily injury, depending on whether the injury was permanent or life-threatening. Section 2N1.1 also contains cross-references to other guidelines and a special instruction for certain cases involving more than one victim.

If the Commission were to reference offenses under section 333(b)(7) to § 2N1.1, as the proposed amendment provides, what changes, if any, should the Commission make to § 2N1.1 to better account for offenses under section 333(b)(7)?

Option 1 of the proposed amendment contemplates that offenses under section 333(b)(7) would be referenced to § 2N2.1. Section 2N2.1 provides a base offense level 6 and an enhancement for repeat offenders under 21 U.S.C. 331. It also provides a cross reference to

§ 2B1.1 (Theft, Property Destruction, and Fraud) if the offense involved fraud and a cross reference to any other offense guideline if the offense was committed in furtherance of, or to conceal, an offense covered by that other offense guideline. If offenses under section 333(b)(7) are to be sentenced under § 2N2.1, what changes, if any, should the Commission make to § 2N2.1? For example, should the Commission adopt Option 1, which would provide an alternative base offense level of 14 if the defendant was convicted under section 333(b)(7)? Should the Commission provide a different alternative base offense level instead? Or should the Commission provide additional specific offense characteristics, additional cross references, or a combination of such provisions to better account for offenses under section 333(b)(7)? If so, what provisions should the Commission provide?

Finally, the Commission seeks comment comparing and contrasting offenses involving intentionally adulterated drugs under section 333(b)(7) and offenses involving counterfeit drugs under section 2320(a)(4). How do these offenses compare to each other in terms of the conduct involved in the offense, the culpability of the offenders, the actual and potential harms posed by the offense, and other factors relevant to sentencing? Which offenses should be treated more seriously by the guidelines and which should be treated less seriously?

4. Tax Deductions

Synopsis of Proposed Amendment

This proposed amendment addresses a circuit conflict over whether a sentencing court, in calculating the tax loss in a tax case, may subtract the unclaimed deductions that the defendant legitimately could have claimed if he or she had filed an accurate tax return.

Circuits have disagreed over whether the tax loss in such a case may be reduced by the defendant's legitimate but unclaimed deductions. Specifically, the issue is whether a defendant is allowed to present evidence of unclaimed deductions that would have the effect of reducing the tax loss for purposes of the guidelines and thereby reducing the ultimate sentence, or whether the defendant is categorically barred from offering such evidence.

The Tenth Circuit recently joined the Second Circuit in holding that a sentencing court may give the defendant credit for a legitimate but unclaimed deduction. *See United States* v. *Hoskins,* 654 F.3d 1086, 1094 (10th Cir. 2011) (''But where defendant offers convincing proof—where the court's exercise is neither nebulous nor complex—nothing in the Guidelines prohibits a sentencing court from considering evidence of unclaimed deductions in analyzing a defendant's estimate of the tax loss suffered by the government.''); *United States* v. *Martinez-Rios,* 143 F.3d 662, 671 (2d Cir. 1998) (''the sentencing court need not base its tax loss calculation on gross unreported income if it can make a more accurate determination of the intended loss and that determination of the tax loss involves giving the defendant the benefit of legitimate but unclaimed deductions''); *United States* v. *Gordon,* 291 F.3d 181, 187 (2d Cir. 2002) (applying *Martinez-Rios,* the court held that the district erred when it refused to consider potential unclaimed deductions in its sentencing analysis). These cases generally reason that where a defendant offers convincing proof—where the court's exercise is neither nebulous nor complex—nothing in the Guidelines prohibits a sentencing court from considering evidence of unclaimed deductions in analyzing a defendant's estimate of the tax loss suffered by the government. *See Hoskins,* 654 F.3d at 1094–95.

Six other circuits—the Fourth, Fifth, Seventh, Eighth, Ninth, and Eleventh—have reached the opposite conclusion, finding that a defendant may not present evidence of unclaimed deductions to reduce the tax loss. *See United States* v. *Delfino,* 510 F.3d 468, 473 (4th Cir. 2007) (''The law simply does not require the district court to engage in [speculation as to what deductions would have been allowed], nor does it entitle the Delfinos to the benefit of deductions they might have claimed now that they stand convicted of tax evasion.''); *United States* v. *Phelps,* 478 F.3d 680, 682 (5th Cir. 2007) (holding that the defendant could not reduce tax loss by taking a social security tax deduction that he did not claim on the false return); *United States* v. *Chavin,* 316 F.3d 666, 679 (7th Cir. 2002) (holding that the definition of tax loss ''excludes consideration of unclaimed deductions''); *United States* v. *Psihos,* 683 F.3d 777, 781–82 (7th Cir. 2012) (following *Chavin* in disallowing consideration of unclaimed deductions); *United States* v. *Sherman,* 372 F.App'x 668, 676–77 (8th Cir. 2010); *United States* v. *Blevins,* 542 F.3d 1200, 1203 (8th Cir. 2008) (declining to decide ''whether an unclaimed tax benefit may ever offset tax loss,'' but finding the district court properly declined to reduce tax loss based on taxpayers' unclaimed deductions); *United States* v. *Yip,* 592 F.3d 1035, 1041 (9th Cir. 2010) (''We hold that § 2T1.1 does not entitle a defendant to reduce the tax loss charged to him by the amount of potentially legitimate, but unclaimed, deductions even if those deductions are related to the offense.''); *United States* v. *Clarke,* 562 F.3d 1158, 1164 (11th Cir. 2009) (holding that the defendant was not entitled to a tax loss calculation based on a filing status other than the one he actually used; ''[t]he district court did not err in computing the tax loss based on the fraudulent return Clarke actually filed, and not on the tax return Clarke could have filed but did not.'').

The proposed amendment presents three options for resolving the conflict. They would amend the Commentary to § 2T1.1 (Tax Evasion; Willful Failure to File Return, Supply Information, or Pay Tax; Fraudulent or False Returns, Statements, or Other Documents), as follows:

Option 1 provides that the determination of the tax loss shall account for any credit, deduction, or exemption to which the defendant was entitled, whether or not the defendant claimed the deduction at the time the tax offense was committed.

Option 2 provides that the determination of the tax loss shall not account for any credit, deduction, or exemption, unless the defendant was entitled to the credit, deduction, or exemption and claimed the credit, deduction, or exemption at the time the tax offense was committed.

Option 3 provides that the determination of the tax loss shall not account for any unclaimed credit, deduction, or exemption, unless the defendant demonstrates by contemporaneous documentation that the defendant was entitled to the credit, deduction, or exemption.

Issues for comment are also included.

Proposed Amendment

The Commentary to § 2T1.1 captioned ''Application Notes'' is amended by redesignating Notes 3 through 7 as 4 through 8, respectively, and by inserting after Note 2 the following:

Option 1:

''3. *Credits, Deductions, and Exemptions.*—The determination of the tax loss shall account for any credit, deduction, or exemption to which the defendant was entitled, whether or not the defendant claimed the deduction at the time the tax offense was committed.''.

Option 2:

''3. *Credits, Deductions, and Exemptions.*—The determination of the tax loss shall not account for any credit, deduction, or exemption, unless the defendant was entitled to the credit, deduction, or exemption and claimed the credit, deduction, or exemption at the time the tax offense was committed.''.

Option 3:

''3. *Credits, Deductions, and Exemptions.*—The determination of the tax loss shall not account for any unclaimed credit, deduction, or exemption, unless the defendant demonstrates by contemporaneous documentation that the defendant was entitled to the credit, deduction, or exemption.''.

Issues for Comment

1. If the Commission were to adopt Option 1 or 3, what requirements, if any, should be met before an unclaimed deduction is counted, other than the requirement that the unclaimed deduction be legitimate? In particular:

(A) Should a legitimate but unclaimed deduction be counted only if the defendant establishes that the deduction would have been claimed if an accurate return had been filed? If so, should this determination be a subjective one (*e.g.,* this particular defendant would have claimed the deduction) or an objective one (*e.g.,* a reasonable taxpayer in the defendant's position would have claimed the deduction)?

(B) Should a legitimate but unclaimed deduction be counted only if it is related to the offense? *See United States* v. *Hoskins,* 654 F.3d 1086, 1095 n.9 (10th Cir. 2011) (''We must emphasize, however, that § 2T1.1 does not permit a defendant to benefit from deductions unrelated to the offense at issue.''); *see also United States* v. *Yip,* 592 F.3d 1035, 1040 (9th Cir. 2010) (''[D]eductions are not permissible if they are unintentionally created or are unrelated to the tax violation, because such deductions are not part of the 'object of the offense' or intended loss.'').

(C) Are there differences among the various types of tax offenses that would make it appropriate to have different rules on the use of unclaimed deductions? If so, what types of tax offenses warrant different rules, and what should those different rules be? Additionally, are there certain cases in which the legitimacy of the deductions, credits, or exemptions and the likelihood that the defendant would have claimed them had an accurate return been filed is evident by the nature of the crime? For example, if a restaurant owner failed to report some gross receipts and made some payments to employees or vendors in cash, but actually keeps two sets of books (one accurate and one fraudulent), should the unclaimed deductions reflected in the accurate set of books be counted?

2. The proposed amendment presents options for resolving the circuit conflict, each of which is based on whether a defendant's tax loss may be reduced by unclaimed ''credits, deductions, or exemptions.'' The Commission seeks comment regarding whether this list of potential offsets provides sufficient clarity as to what the court may or may not consider depending on which option is chosen. In particular, should the Commission expand the language to clarify that the list includes any type of deduction? *See, e.g., United States* v. *Psihos,* 683 F.3d 777, 781–82 (7th Cir. 2012) (noting a dispute between the parties regarding whether the unclaimed cash payments at issue were to be used in computing adjusted gross income (an ''above-the-line'' deduction) or to be used in computing taxable income (a ''below-the-line'' deduction)).

5. Acceptance of Responsibility

Synopsis of Proposed Amendment

This proposed amendment and issue for comment address two circuit conflicts involving the guideline for acceptance of responsibility, § 3E1.1 (Acceptance of Responsibility). A defendant who clearly demonstrates acceptance of responsibility receives a 2-level reduction under subsection (a) of § 3E1.1. The two circuit conflicts both involve the circumstances under which the defendant is eligible for a third level of reduction under subsection (b) of § 3E1.1. Subsection (b) provides:

(b) If the defendant qualifies for a decrease under subsection (a), the offense level determined prior to the operation of subsection (a) is level 16 or greater, and upon motion of the government stating that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently, decrease the offense level by 1 additional level.

This is the language of the guideline after it was directly amended by Congress in section 401(g) of the PROTECT Act, Public Law 108–21, effective April 30, 2003. The PROTECT Act also directly amended Application Note 6 (including adding the last paragraph of that application note), and the Background Commentary. Section 401(j)(4) of the PROTECT Act states, ''At no time may the Commission promulgate any amendment that would alter or repeal the amendments made by subsection (g) of this section.''

Whether the Court Has Discretion To Deny the Third Level of Reduction

Circuits have disagreed over whether the court has discretion to deny the third level of reduction for acceptance of responsibility when the government has filed a motion under subsection (b) and the defendant is otherwise eligible.

The Seventh Circuit recently held that if the government makes the motion (and the other two requirements of subsection (b) are met, *i.e.,* the defendant qualifies for the 2-level decrease and the offense level is level 16 or greater), the third level of reduction must be awarded. *See United States* v. *Mount,* 675 F.3d 1052 (7th Cir. 2012).

The Fifth Circuit has held to the contrary, that the decision whether to grant the third level of reduction ''is the district court's—not the government's—even though the court may only do so on the government's motion.'' *See United States* v. *Williamson,* 598 F.3d 227, 230 (5th Cir. 2010).

The proposed amendment adopts the approach of the Fifth Circuit by recognizing that the court has discretion to deny the third level of reduction. Specifically, it amends Application Note 6 to § 3E1.1 by adding a statement that ''The court may grant the motion if the court determines that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. In such a case, the 1-level decrease under subsection (b) applies.''

An issue for comment is also provided on whether the Commission should instead resolve this issue in a different manner.

Whether the Government Has Discretion To Withhold Making a Motion

Circuits have also disagreed over whether the government has discretion to withhold making a motion under subsection (b) when there is no evidence that the government was required to prepare for trial. An issue for comment is also provided on whether the Commission should resolve this circuit conflict and, if so, how it should do so.

Proposed Amendment

The Commentary to § 3E1.1 captioned ''Application Notes'' is amended in Note 6, in the paragraph beginning ''Because the Government'', by adding at the end the following: ''The court may grant the motion if the court determines that the defendant has assisted authorities in the investigation or prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently. In such a case, the 1-level decrease under subsection (b) applies.''.

The Commentary to § 3E1.1 captioned ''Background'' is amended in the paragraph beginning ''Section 401(g)'' by inserting ''first sentence of the'' before ''last paragraph''.

Issues for Comment

1. Whether the Court Has Discretion To Deny the Third Level of Reduction

The Commission seeks comment on whether it should resolve this circuit conflict in a manner other than that provided in the proposed amendment. If so, how should the conflict be resolved and how should the Commission amend the guidelines to do so?

2. Whether the Government Has Discretion To Withhold Making a Motion

Circuits have also disagreed over whether the government has discretion to withhold making a motion under subsection (b) when there is no evidence that the government was required to prepare for trial.

The Second and Fourth Circuits have held that the government may withhold the motion only if it determines that it has been required to prepare for trial. *See United States* v. *Lee,* 653 F.3d 170, 173–174 (2d Cir. 2011) (government withheld the motion because it was required to prepare for a *Fatico* hearing; court held this was ''an unlawful reason''); *United States* v. *Divens,* 650 F.3d 343, 346 (4th Cir. 2011) (government withheld the motion because the defendant failed to sign an appellate waiver; court held the defendant was ''entitled'' to the motion and the reduction).

The majority of circuits, in contrast, have held that § 3E1.1 recognizes that the government has an interest both in being permitted to avoid preparing for trial and in being permitted to allocate its resources efficiently, *see* § 3E1.1(b), and that both are legitimate government interests that justify the withholding of the motion. *See, e.g., United States* v. *Collins,* 683 F.3d 697, 704–708 (6th Cir. 2012) (government withheld the motion because it was required to litigate pretrial motion to suppress evidence; court held the government did not abuse its discretion); *United States* v. *Newson,* 515 F.3d 374 (5th Cir. 2008) (government withheld the motion because the defendant refused to waive right to appeal; court held the government did not abuse its discretion); *United States* v. *Johnson,* 581 F.3d 994 (9th Cir. 2009) (same).

The Commission seeks comment on whether it should resolve this circuit conflict and, if so, how it should do so.

8. Setser

Synopsis of Proposed Amendment

A federal court imposing a sentence on a defendant generally has discretion to order that the sentence run consecutive to (or, in the alternative, concurrently with) a term of imprisonment previously imposed but not yet discharged. *See* 18 U.S.C. 3584(a); USSG § 5G1.3, comment. (backg'd.). Recently, the Supreme Court held that a federal court also generally has discretion to order that the sentence run consecutive to (or concurrently with) an anticipated, but not yet imposed, term of imprisonment. *See Setser* v. *United States,* __ U.S. __ (March 28, 2012).

For cases in which there is a term of imprisonment previously imposed but not yet discharged, § 5G1.3 (Imposition of a Sentence on a Defendant Subject to an Undischarged Term of Imprisonment) provides guidance to the court in determining whether the sentence for the instant offense should run consecutive to (or, in the alternative, concurrently with) the undischarged term of imprisonment. This proposed amendment responds to *Setser* by ensuring that § 5G1.3 also applies to cases covered by *Setser, i.e.,* cases in which there is an anticipated, but not yet imposed, term of imprisonment. The proposed amendment revises § 5G1.3 in two ways.

First, when the offense with the undischarged term of imprisonment is relevant conduct to the instant offense and resulted in an increase in the Chapter Two or Three offense level for the instant offense, the instant offense already includes an incremental punishment to account for the prior offense. Accordingly, subsection (b) of § 5G1.3 provides that the court generally should order the sentence for the instant offense to run concurrently with the undischarged term of imprisonment. The proposed amendment ensures that subsection (b) also applies to a case in which there is an anticipated, but not yet imposed, term of imprisonment for an offense that is relevant conduct to the instant offense and resulted in an increase in the Chapter Two or Three offense level for the instant offense.

Second, when the offense with the undischarged term of imprisonment is not covered by subsection (b), the sentence for the instant offense may be imposed to run concurrently, partially concurrently, or consecutively to the prior undischarged term of imprisonment to achieve a reasonable punishment for the instant offense. *See* § 5G1.3(c) (Policy Statement). The proposed amendment ensures that subsection (c) also applies to any other case in which there is an anticipated, but not yet imposed, term of imprisonment.

Conforming changes to the relevant application notes, to the background commentary, and to the heading of the guideline are also made.

Proposed Amendment

Section 5G1.3 is amended in the heading by inserting after ''Undischarged'' the following: ''or Anticipated''; in subsection (b) by inserting after ''resulted'' the following: ''or is anticipated to result''; in subsection (b)(2) by inserting after ''to the remainder of the undischarged term of imprisonment'' the following: ''or to the anticipated term of imprisonment, as applicable''; and in subsection (c) by inserting after ''an undischarged term of imprisonment'' the following: ''or an anticipated term of imprisonment''; and by striking ''prior undischarged term of imprisonment'' and inserting ''undischarged term of imprisonment or to the anticipated term of imprisonment, as applicable,''.

The Commentary to section 5G1.3 captioned ''Application Notes'' is amended in Note 3(A) by inserting after ''undischarged term of imprisonment'' the following: ''or to the anticipated but not yet imposed term of imprisonment, as applicable''; in Note 3(A)(ii) by striking ''prior undischarged'' and inserting ''undischarged or anticipated''; in Note 3(A)(iv) by striking ''prior'' and by inserting after ''imposed'' the following: '', or the fact that the anticipated sentence may be imposed,''; in Note 3(B) by striking ''prior'' and in the last sentence by inserting after ''undischarged'' both places it appears the following: ''or anticipated''; in Note 3(C) by inserting after ''Undischarged'' the following: ''or Anticipated''; by striking ''has had''; by inserting ''has been or is anticipated to be'' before ''revoked''; and by inserting ''that has

been, or that is anticipated to be,'' before ''imposed for the revocation''; and in Note 3(D) by inserting after ''undischarged'' the following: ''or anticipated.''

The Commentary to section 5G1.3 captioned ''Background'' is amended by striking ''In a case in which'' and all that follows through ''Exercise of that authority,'' and inserting the following: ''Federal courts generally 'have discretion to select whether the sentences they impose will run concurrently or consecutively with respect to other sentences that they impose, or that have been imposed in other proceedings, including state proceedings.' *See Setser v. United States,* 132 S.Ct. 1463, 1468 (2012); 18 U.S.C. 3584(a). Federal courts also generally have discretion to order that the sentences they impose will run concurrently or consecutively with other sentences that are anticipated but not yet imposed. *See Setser,* 132 S.Ct. at 1468. Exercise of that discretion,''.

7. Miscellaneous and Technical

Synopsis of Proposed Amendment

This proposed amendment responds to recently enacted legislation and miscellaneous and technical guideline issues.

A. Recently Enacted Legislation

Part A amends Appendix A (Statutory Index) to provide guideline references for four offenses not currently referenced in Appendix A that were established or revised by recently enacted legislation. They are as follows:

1. *18 U.S.C. 39A.* Section 311 of the Federal Aviation Administration Modernization and Reform Act of 2012, Public Law 112–95 (February 14, 2012), established a new criminal offense at 18 U.S.C. 39A (Aiming a laser pointer at an aircraft). The offense applies to whoever knowingly aims the beam of a laser pointer at an aircraft in the special aircraft jurisdiction of the United States or at the flight path of such an aircraft. The statutory maximum term of imprisonment is five years.

The proposed amendment amends Appendix A (Statutory Index) to reference section 39A offenses to § 2A5.2 (Interference with Flight Crew or Flight Attendant).

2. *18 U.S.C. 1514(c).* Section 3(a) of the Child Protection Act of 2012, Public Law 112–206 (December 7, 2012), established a new offense at 18 U.S.C. 1514(c) that makes it a criminal offense to knowingly and intentionally violate or attempt to violate an order issued under section 1514 (Civil action to restrain harassment of a victim or witness). The new offense has a statutory maximum term of imprisonment of five years.

The proposed amendment amends Appendix A (Statutory Index) to reference the new offense at section 1514(c) to § 2J1.2 (Obstruction of Justice).

3. *18 U.S.C. 1752.* The Federal Restricted Buildings and Grounds Improvement Act of 2011, Public Law 112–98 (March 8, 2012), amended the criminal offense at 18 U.S.C. 1752 (Restricted building or grounds). As so amended, the statute defines ''restricted buildings or grounds'' to mean any restricted area (A) of the White House or its grounds, or the Vice President's residence or its grounds; (B) of a building or grounds where the President or other person protected by the United States Secret Service is or will be temporarily visiting; or (C) of a building or grounds restricted in conjunction with an event designated as a special event of national significance. The statute makes it a crime to enter or remain; to impede or disrupt the orderly conduct of business or official functions; to obstruct or impede ingress or egress; or to engage in any physical violence against any person or property. The Act did not change the statutory maximum term of imprisonment, which is ten years if the person used or carried a deadly or dangerous weapon or firearm or if the offense results in significant bodily injury, and one year in any other case.

The proposed amendment amends Appendix A (Statutory Index) to reference section 1752 offenses to § 2A2.4 (Obstructing or Impeding Officers) and § 2B2.3 (Trespass).

4. *19 U.S.C. 1590.* The Ultralight Aircraft Smuggling Prevention Act of 2012, Public Law 112–93 (February 10, 2012), amended the criminal offense at 19 U.S.C. 1590 (Aviation smuggling) to provide a more specific definition of the term ''aircraft'' (*i.e.,* to include ultralight aircraft) and to cover attempts and conspiracies. Section 1590 makes it unlawful for the pilot of an aircraft to transport, or for any individual on board any aircraft to possess, merchandise knowing that the merchandise will be introduced into the United States contrary to law. It is also unlawful for a person to transfer merchandise between an aircraft and a vessel on the high seas or in the customs waters of the United States unlawfully. The Act did not change the statutory maximum terms of imprisonment, which are 20 years if any of the merchandise involved was a controlled substance, *see* § 1590(c)(2), and five years otherwise, *see* § 1590(c)(1).

The proposed amendment amends Appendix A (Statutory Index) to reference section 1590 offenses to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and § 2T3.1 (Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property).

The proposed amendment also includes an issue for comment on the offenses described above.

B. Interaction Between Offense Guidelines in Chapter Two, Part J and Certain Adjustments in Chapter Three, Part C

Part B responds to an application issue that arises in cases in which the defendant is sentenced under an offense guideline in Chapter Two, Part J (Offenses Involving the Administration of Justice) and the defendant may also be subject to an adjustment under Chapter Three, Part C (Obstruction and Related Adjustments).

In the Commentary to four of the Chapter Two, Part J offense guidelines, there is an application note stating that Chapter Three, Part C, does not apply, unless the defendant obstructed the investigation or trial of the instant offense. *See* §§ 2J1.2, comment. (n.2(A)); 2J1.3, comment. (n.2); § § 2J1.6, comment. (n.2); 2J1.9, comment. (n.1). These application notes in Chapter Two, Part J, originated when Chapter Three, Part C, contained only one guideline—§ 3C1.1 (Obstructing or Impeding the Administration of Justice).

Chapter Three, Part C, now contains three additional guidelines, and these application notes in Chapter Two, Part J, appear to encompass these three additional guidelines as well and generally prohibit the court from applying them. *See, e.g., United States v. Duong,* 665 F.3d 364 (1st Cir. January 6, 2012) (''Thus, according to the literal terms of Application Note 2, 'Chapter 3, Part C'—presumably including section 3C1.3 C—'does not apply.' ''). The First Circuit in *Duong,* however, determined that the application note in § 2J1.6 was in conflict with § 3C1.3 (Commission of Offense While on Release) and its underlying statute, 18 U.S.C. 3147, and indicated that the Commission's stated purpose in establishing § 3C1.3 ''was not to bring that guideline within the purview of Application Note 2 of section 2J1.6''. *Id.* at 368. Accordingly, the First Circuit held that the application note must be disregarded. *Id.*

Consistent with *Duong,* the proposed amendment clarifies the scope of

Application Note 2 by striking the general reference to Chapter Three, Part C, and replacing it with a specific reference to § 3C1.1. It makes the same change to the corresponding application notes in §§ 2J1.2, 2J1.3, and 2J1.9, and conforming changes to other parts of the Commentary in those guidelines.

C. Appendix A (Statutory Index) References for Offenses Under 18 U.S.C. 554

Section 554 of title 18, United States Code (Smuggling goods from the United States), makes it unlawful to export or send from the United States (or attempt to do so) any merchandise, article, or object contrary to any law or regulation of the United States. It also makes it unlawful to receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise, article, or object, prior to exportation, knowing the same to be intended for exportation contrary to any law or regulation of the United States. Offenses under section 554 have a statutory maximum term of imprisonment of ten years, and they are referenced in Appendix A (Statutory Index) to three guidelines: § § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources or Paleontological Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources or Paleontological Resources), 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License), and 2Q2.1 (Offenses Involving Fish, Wildlife, and Plants).

The Department of Justice in its annual letter to the Commission has proposed that section 554 offenses should also be referenced to a fourth guideline, § 2M5.1. The Department indicates that section 554 is used to prosecute a range of export offenses related to national security and that some cases would more appropriately be sentenced under § 2M5.1 than § 2M5.2. For example, when the section 554 offense involves a violation of export controls on arms, munitions, or military equipment (*e.g.,* export controls under the Arms Export Control Act, 22 U.S.C. 2778), the section 554 offense may appropriately be sentenced under § 2M5.2, because other offenses involving a violation of export controls on arms, munitions, or military equipment (such as offenses under 22 U.S.C. 2778) are referenced to § 2M5.2.

In contrast, when the section 554 offense involves a violation of export controls not involving munitions (*e.g.,* violations of economic sanctions or other export controls under the International Emergency Economic Powers Act, 50 U.S.C. 1705), the Department proposes that the section 554 offense be sentenced under § 2M5.1 rather than under § 2M5.2, because other offenses involving evasion of export controls (such as offenses under 50 U.S.C. 1705) are referenced to § 2M5.1 (among other guidelines).

Part C of the proposed amendment amends Appendix A (Statutory Index) to broaden the range of guidelines to which offenses under 18 U.S.C. 554 are referenced. Specifically, it adds a reference to § 2M5.1. The proposed amendment also brackets the possibility of adding a reference to § 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations or Specially Designated Global Terrorists, or For a Terrorist Purpose).

D. Technical and Stylistic Changes

Part D makes certain technical and stylistic changes to the *Guidelines Manual.*

First, it amends the Commentary to § 2B1.1 (Theft, Property Destruction, and Fraud) to provide updated references to the definitions contained in 7 U.S.C. 1a, which were renumbered by Public Law 111–203 (July 21, 2010).

Second, it amends the Notes to the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) to provide updated references to the definition of tetrahydrocannabinols contained in 21 C.F.R. § 1308.11(d), which were renumbered by 75 FR 79296 (December 20, 2010).

Third, it makes several stylistic revisions in the *Guidelines Manual* to change ''court martial'' to ''court-martial''.

Proposed Amendment

(A) Recently Enacted Legislation

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 38 the following:

''18 U.S.C. 39A 2A5.2'';

by inserting after the line referenced to 18 U.S.C. 1513 the following:

''18 U.S.C. 1514(c) 2J1.2'';

by inserting after the line referenced to 18 U.S.C. 1751(e) the following:

''18 U.S.C. 1752 2A2.4, 2B2.3''; and

by inserting after the line referenced to 19 U.S.C. 1586(e) the following:

''19 U.S.C. 1590 2D1.1, 2T3.1''.

(B) Interaction Between 2J and 3C

The Commentary to § 2J1.2 captioned ''Application Notes'' is amended in Note 2(A) by striking ''Inapplicability of Chapter Three, Part C'' and inserting ''Inapplicability of § 3C1.1''; and striking ''Chapter Three, Part C (Obstruction and Related Adjustments)'' and inserting '' § 3C1.1 (Obstructing or Impeding the Administration of Justice)''.

The Commentary to ''2J1.3 captioned ''Application Notes'' is amended in Note 2 by striking ''Chapter Three, Part C (Obstruction and Related Adjustments)'' and inserting '' § 3C1.1 (Obstructing or Impeding the Administration of Justice)''; and in Note 3 by striking ''Chapter Three, Part C (Obstruction and Related Adjustments)'' and inserting ''§ 3C1.1''.

The Commentary to § 2J1.6 captioned ''Application Notes'' is amended in Note 2 by striking ''Chapter Three, Part C (Obstruction and Related Adjustments)'' and inserting '' § 3C1.1 (Obstructing or Impeding the Administration of Justice)''.

The Commentary to § 2J1.9 captioned ''Application Notes'' is amended in Note 1 by striking ''Chapter Three, Part C (Obstruction and Related Adjustments) '' and inserting ''§ 3C1.1 (Obstructing or Impeding the Administration of Justice) ''; and in Note 2 by striking ''Chapter Three, Part C (Obstruction and Related Adjustments) '' and inserting ''§ 3C1.1''.

(C) 18 U.S.C. 554

Appendix A (Statutory Index) is amended by striking the line referenced to 18 U.S.C. 554 and inserting the following:

''18 U.S.C. 554 2B1.5, 2M5.1, 2M5.2, [2M5.3,] 2Q2.1''.

(D) Technical and Stylistic Changes

The Commentary to § 2B1.1 captioned ''Application Notes'' is amended in Note 14(A) by striking ''1a(5) '' both places it appears and inserting ''1a(11) ''; by striking ''1a(6) '' both places it appears and inserting ''1a(12) ''; by striking ''1a(26) '' both places it appears and inserting ''1a(28)''; by striking ''1a(23) '' both places it appears and inserting ''1a(31) ''.

Section 2D1.1(c) is amended in the Notes to Drug Quantity Table, in each of Notes (H) and (I), by striking ''1308.11(d)(30) '' and inserting ''1308.11(d)(31) ''.

The Commentary to § 4A1.1 captioned ''Application Notes'' is amended in each of Notes 2 and 3 by striking ''court martial'' and inserting ''court-martial''.

Section 4A1.2(g) is amended by striking ''court martial'' and inserting ''court-martial''.

Issue for Comment

1. Part A of the proposed amendment would reference offenses under 18 U.S.C. 39A, 18 U.S.C. 1514(c), 18 U.S.C. 1752, and 19 U.S.C. 1590 to various guidelines. The Commission invites comment on offenses under these statutes, including in particular the conduct involved in such offenses and the nature and seriousness of the harms posed by such offenses. Do the guidelines covered by the proposed amendment adequately account for these offenses? If not, what revisions to the guidelines would be appropriate to account for these offenses? In particular, should the Commission provide one or more new alternative base offense levels, specific offense characteristics, or departure provisions in one or more of these guidelines to better account for these offenses? If so, what should the Commission provide?

Similarly, are there any guideline application issues that the Commission should address for cases involving these statutes? For example, the proposed amendment would reference offenses under 19 U.S.C. 1590 to § 2D1.1 and § 2T3.1. In a section 1590 case sentenced under § 2T3.1, should the use of an aircraft be considered a form of ''sophisticated means,'' such that the defendant should receive the specific offense characteristic at § 2T3.1(b)(1), which provides an increase of 2 levels and a minimum offense level of 12 if the offense involved sophisticated means? If not, then under what circumstances (if any) should the defendant in a section 1590 case receive that specific offense characteristic?

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Part II

Department of Commerce

Patent and Trademark Office

37 CFR Parts 1, 41, and 42
Setting and Adjusting Patent Fees; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 41, and 42

[Docket No. PTO–C–2011–0008]

RIN 0651–AC54

Setting and Adjusting Patent Fees

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office or USPTO) sets or adjusts patent fees in this rulemaking as authorized by the Leahy-Smith America Invents Act (Act or AIA). The fees will provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of patent operations, while helping the Office implement a sustainable funding model, reduce the current patent application backlog, decrease patent application pendency, improve patent quality, and upgrade the Office's patent business information technology (IT) capability and infrastructure. The fees also will further key policy considerations. The Office also reduces fees for micro entities under section 10(b) of the Act by 75 percent in this rulemaking and extends the existing fee discount of 50 percent for small entities to additional fees in this rulemaking.

DATES: This rule is effective on March 19, 2013, except for amendments to § 1.18(a)(1), (b)(1), (c)(1), and (d)(1) (patent issue and publication fees); § 1.21(h)(1) (fee for recording a patent assignment electronically); § 1.482(a)(1)(i)(A), (a)(1)(ii)(A), and (a)(2)(i) (international application filing, processing and search fees); and § 1.445(a)(1)(i)(A), (a)(2)(i), (a)(3)(i), and (a)(4)(i) (international application transmittal and search fees), which will be effective on January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Michelle Picard, Office of the Chief Financial Officer, by telephone at (571) 272–6354 or by email at *michelle.picard@uspto.gov*; or Dianne Buie, Office of Planning and Budget, by telephone at (571) 272–6301 or by email at *dianne.buie@uspto.gov*.

SUPPLEMENTARY INFORMATION: This rule was proposed in a notice of proposed rulemaking published at 77 FR 55028 (Sept. 6, 2012) (hereinafter NPRM).

Table of Contents

I. Executive Summary

A. Purpose of This Action

Section 10 of the Leahy-Smith America Invents Act authorizes the Director of the USPTO to set or adjust by rule any patent fee established, authorized, or charged under Title 35, United States Code (U.S.C.) for any services performed by, or materials furnished by, the Office. Section 10 prescribes that fees may be set or adjusted only to recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents, including administrative costs to the Office with respect to such patent operations. Section 10 authority includes flexibility to set individual fees in a way that furthers key policy considerations, while taking into account the cost of the respective services. *See* Section 10 of the Act, Public Law 112–29, 125 Stat. at 316–17. Section 10 also establishes certain procedural requirements for setting or adjusting fee regulations, such as public hearings and input from the Patent Public Advisory Committee and oversight by Congress.

The fee schedule in this final rule will recover the aggregate estimated costs of the Office while achieving strategic and operational goals, such as implementing a sustainable funding model, reducing the current patent application backlog, decreasing patent application pendency, improving patent quality, and upgrading the patent IT business capability and infrastructure.

The United States economy depends on high quality and timely patents to protect new ideas and investments for business and job growth. To reduce the backlog and decrease patent application pendency, the USPTO must examine significantly more patent applications than it receives each year for the next several years. Bringing the number of applications in the backlog down to a manageable level, while at the same time keeping pace with the new patent applications expected to be filed each year, requires the Office to collect more aggregate revenue than it estimates that it will collect at existing fee rates. The Office estimates that the additional aggregate revenue derived from this fee schedule will enable a decrease in total patent application pendency by 11.3 months during the five-year planning horizon (fiscal year (FY) 2013–FY 2017), thus permitting a patentee to obtain a patent sooner than he or she would have under the status quo fee schedule. The additional revenue from this fee schedule also will recover the cost to begin building a three-month patent operating reserve. The Office estimates that the patent operating reserve will accumulate almost two months of patent operating expenses by the end of the five-year planning horizon (FY 2013–FY 2017) and will reach the three-month target in FY 2018, thereby continuing to build a sustainable funding model that will aid the Office in maintaining shorter pendency and an optimal patent application inventory.

Additionally, the fee schedule in this final rule will advance key policy considerations while taking into account the cost of individual services. For example, the rule includes multipart and staged fees for requests for continued examination (RCEs), appeals, and contested cases, all of which aim to increase patent prosecution options for applicants. Also, this rule includes a new 75 percent fee reduction for micro entities and expands the availability of the 50 percent fee reduction for small entities as required under section 10, providing small entities a discount on more than 25 patent fees that do not currently qualify for a small entity discount.

B. Summary of Provisions Impacted by This Action

This final rule sets or adjusts 351 patent fees—93 apply to large entities (any reference herein to ''large entity'' includes all entities other than small or micro entities), 94 to small entities, 93 to micro entities, and 71 are not entity-specific. Of the 93 large entity fees, 71 are adjusted, 18 are set at existing fee amounts, and 4 were first proposed in the preceding NPRM. Of the 94 small entity fees, 85 are adjusted, 5 are set at existing fee amounts, and 4 were first proposed in the NPRM. There are 93 new micro entity fees first proposed in the NPRM that are set at a reduction of 75 percent from the large entity fee amounts. Of the 71 fees that are not entity-specific, 9 are adjusted in this rule, and 62 are set at existing fee amounts.

In all, once effective, the routine fees to obtain a patent (i.e., filing, search, examination, publication, and issue fees) will decrease by at least 23 percent under this final rule relative to the current fee schedule. Also, despite increases in some fees, applicants who meet the new micro entity definition will pay less than the amount paid for small entity fees under the current fee schedule for 87 percent of the fees eligible for a discount under section 10(b). Additional information describing

the adjustments is included in *Part V. Individual Fee Rationale* section of Supplementary Information for this final rulemaking.

C. Summary of Costs and Benefits of This Action

The Office prepared a Regulatory Impact Analysis (RIA) to consider the costs and benefits of this final rule over a five-year period (FY 2013–FY 2017). In the RIA developed for the NPRM, the Office offered a discussion of monetized and qualitative costs that could be derived from the proposed patent fee schedule. The Office made several inferences using internal data and relevant academic literature. Upon further review of the proposed rulemaking and source materials, and consistent with OMB Circular A–4, Regulatory Analysis, as discussed further in the RIA, the USPTO no longer monetizes costs and benefits in the final rule or the RIA. Rather, this final rule for the purposes of regulatory review is considered to be a transfer payment from one group to another, and discussion of all costs and benefits is qualitative in nature. Thus, the RIA for this final rule outlines the transfer and assesses the qualitative benefits and costs that accrue to patent applicants, patent holders, and other patent stakeholders in the United States. The RIA includes a qualitative comparison of the final fee schedule to the current fee schedule (Baseline) and to three other alternatives considered. The RIA assesses the change in qualitative costs or benefits related to the changes in the final fee schedule using certain key indicators when comparing the Baseline. The RIA concludes that the patent fee schedule set forth in this final rule has the most significant net benefit among the alternatives considered. *See* Table 1. The complete RIA is available for review at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*.

TABLE 1—FINAL PATENT FEE SCHEDULE COSTS AND BENEFITS, CUMULATIVE FY 2013—FY 2017

Transfers	
Transfers	$13,993 million
Qualitative Costs and Benefits	
Costs:	
Cost of patent operations	*Minimal*
Lost patent value from a decrease in patent applications.	*Minimal*
Benefit:	
Increase in private patent value from a decrease in pendency.	*Significant*
Fee Schedule Design Benefits. (Significant, Moderate, Not Significant).	*Moderate*
Decreased Uncertainty Effect. (Significant, Moderate, Not Significant).	*Significant*
Net Benefit	*Significant*

To assess the qualitative benefits of the final fee schedule, the Office considered how the value of a patent would increase under the final fee schedule, as well as benefits from improving the fee schedule design and benefits from decreased uncertainty. When patent application pendency decreases, a patentee holds the exclusive right to the invention sooner, which increases the private value of that patent. Because the outcomes of this final rule will decrease patent application pendency, the Office expects that the private patent value will increase considerably, relative to the Baseline. Likewise, the design of the final fee schedule offers benefits relating to the three policy factors considered for setting individual fees as described in *Part III* of this final rule, namely, *fostering innovation, facilitating effective administration of the patent system,* and *offering patent prosecution options to applicants.* By maintaining the current fee setting philosophy of keeping front-end fees below the cost of application processing and recovering revenue from back-end fees, the final fee schedule continues to *foster innovation* and ease access to the patent system. The final fee schedule also continues to offer incentives and disincentives to engage in certain activities that *facilitate effective administration of the patent system* and help reduce the amount of time it takes to have a patent application examined. For example, application size fees, extension of time fees, and excess claims fees remain in place to facilitate the prompt conclusion of prosecution of an application. The final fee schedule likewise includes multipart and staged fees for RCEs, appeals, and contested cases, all of which aim to *increase patent prosecution options for applicants.* The qualitative benefits of the fee schedule design include new options for applicants to reduce their front-end costs for some services (e.g., appeals) until they have more information to determine the best prosecution option for their innovation. Lastly, shortening pendency reduces uncertainty regarding the claimed invention and scope of patent rights for patentees, competitors, and new entrants. Reducing uncertainty has a significant benefit in terms of clarity of patent rights, freedom to innovate, and the efficient operation of markets for technology.

To assess the qualitative costs of the final fee schedule, the Office assessed the costs of its patent operations. The Office's cost of patent operations varies depending on the number of incoming patent applications and the amount of resources available. As discussed in *Part IV. Fee Setting Methodology* (*see* Step 1), the cost of operations included in this final rule also reduced slightly from that estimated in the NPRM. *See* Table 1.

For FY 2013—FY 2015, the Office continues to project an annual increase in the number of serialized patent application filings, though the increases to some fees in the new fee structure may result in a slightly slower growth rate than that estimated under the Baseline. Nevertheless, the Office estimated that new patent application filings would return to the same annual growth rate anticipated in the absence of fee increases beginning in FY 2016. Overall, the demand for patent application services is generally inelastic (*see USPTO Section 10 Fee Setting—Description of Elasticity Estimates,*'' at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*), and even with these slight decreases, the total number of patent applications filed is projected to grow year-after-year. The Office considered the cost associated with this slight reduction in patent applications filed as a reduction to the benefit of the increased patent value when assessing the overall net benefit of the final fee schedule. *See* Table 1.

Additional details describing the benefits and costs of the final fee schedule are available in the RIA at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*.

II. Legal Framework

A. Leahy-Smith America Invents Act—Section 10

The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 284. Section 10(a) of the Act authorizes the Director of the Office to set or adjust by rule any patent fee established, authorized, or charged under Title 35, U.S.C. for any services performed by, or

materials furnished by, the Office. Fees under 35 U.S.C. may be set or adjusted only to recover the aggregate estimated cost to the Office for processing, activities, services, and materials related to patents, including administrative costs to the Office with respect to such patent operations. *See* 125 Stat. at 316. Provided that the fees in the aggregate achieve overall aggregate cost recovery, the Director may set individual fees under section 10 at, below, or above their respective cost. The Office's current fee structure includes statutory fees (set by Congress) that provide lower, below cost fees on the front end of the patent process (e.g., filing, searching, and examination fees), which are in turn balanced out by higher, above cost fees on the back end (i.e., issue and maintenance fees). This balance enables the Office to provide lower costs to enter the patent system, making it easier for inventors to pursue patents for their innovations, and these lower front-end fees are off-set by higher back-end fees. Congress set this balance when it established the existing statutory fee structure, and the Office continues to follow this model with the fee structure in this final rule, because a key policy consideration is to *foster innovation* by facilitating access to the patent system. Section 10(e) of the Act requires the Director to publish the final fee rule in the **Federal Register** and the Official Gazette of the Patent and Trademark Office at least 45 days before the final fees become effective. Section 10(i) terminates the Director's authority to prospectively set or adjust any fee under section 10(a) upon the expiration of the seven-year period that began on September 16, 2011.

B. Small Entity Fee Reduction

Section 10(b) of the AIA requires the Office to reduce by 50 percent the fees for small entities that are set or adjusted under section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

C. Micro Entity Fee Reduction

Section 10(g) of the AIA amends Chapter 11 of Title 35, U.S.C. to add section 123 concerning micro entities. Section 10(b) of the Act requires the Office to reduce by 75 percent the fees for micro entities that are set or adjusted under Section 10(a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents. In a separate rulemaking, pursuant to 35 U.S.C. 123, the Office implemented the micro entity provisions of the AIA. *See* 77 FR 75019 (Dec. 19, 2012).

D. Patent Public Advisory Committee Role

The Secretary of Commerce established the Patent Public Advisory Committee (PPAC) under the American Inventors Protection Act of 1999. 35 U.S.C. 5. The PPAC advises the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on the management, policies, goals, performance, budget, and user fees of patent operations.

When adopting patent fees under section 10 of the Act, the Director must provide the PPAC with the proposed fees at least 45 days prior to publishing the proposed fees in the **Federal Register**. The PPAC then has at least 30 days within which to deliberate, consider, and comment on the proposal, as well as to hold public hearing(s) on the proposed fees. The PPAC must make a written report available to the public of the comments, advice, and recommendations of the committee regarding the proposed fees before the Office issues any final fees. The Office will consider and analyze any comments, advice, or recommendations received from the PPAC before finally setting or adjusting fees.

Consistent with this framework, on February 7, 2012, the Director notified the PPAC of the Office's intent to set or adjust patent fees and submitted a preliminary patent fee proposal with supporting materials. The preliminary patent fee proposal and associated materials are available at *http://www.uspto.gov/about/advisory/ppac/*. The PPAC held two public hearings: one in Alexandria, Virginia, on February 15, 2012, and another in Sunnyvale, California, on February 23, 2012. Transcripts of these hearings and comments submitted to the PPAC in writing are available for review at *http://www.uspto.gov/about/advisory/ppac/*.

The PPAC submitted a written report on September 24, 2012, setting forth in detail the comments, advice, and recommendations of the committee regarding the proposed fees. The report is available for review at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*. The Office considered and analyzed the comments, advice, and recommendations received from the PPAC before publishing this final rule. The Office's response to the PPAC's report is available in the Discussion of Comments at *Part VI* of this rulemaking.

III. Rulemaking Goals and Strategies

Consistent with the Office's goals and obligations under the AIA, the overall strategy of this rulemaking is to ensure that the fee schedule generates sufficient revenue to recover aggregate costs. Another strategy is to set individual fees to further key policy considerations while taking into account the cost of the particular service. As to the strategy of balancing aggregate revenue and aggregate cost, this rule will provide sufficient revenue for two significant USPTO goals: (1) Implement a sustainable funding model for operations; and (2) optimize patent timeliness and quality. As to the strategy of setting individual fees to further key policy considerations, the policy factors contemplated are: (1) *Fostering innovation;* (2) *facilitating effective administration of the patent system;* and (3) *offering patent prosecution options to applicants*.

These fee schedule goals and strategies are consistent with strategic goals and objectives detailed in the *USPTO 2010–2015 Strategic Plan* (Strategic Plan) that is available at *http://www.uspto.gov/about/stratplan/USPTO_2010–2015_Strategic_Plan.pdf*, as amended by Appendix #1 of the FY 2013 President's Budget, available at *http://www.uspto.gov/about/stratplan/budget/fy13pbr.pdf* (collectively referred to herein as ''Strategic Goals''). The Strategic Plan defines the USPTO's mission and long-term goals and presents the actions the Office will take to realize those goals. The significant actions the Office describes in the Strategic Plan that are specific to the goals of this rulemaking are implementing a sustainable funding model, reducing the patent application backlog, decreasing patent application pendency, improving patent quality, and upgrading the Office's patent IT business capability and infrastructure.

Likewise, the fee schedule goals and strategies also support the *Strategy for American Innovation*—an Administration initiative first released in September 2009, and updated in February 2011, that is available at *http://www.whitehouse.gov/innovation/strategy*. The *Strategy for American Innovation* recognizes innovation as the foundation of American economic growth and national competitiveness. Economic growth in advanced economies like the United States is driven by creating new and better ways of producing goods and services, a process that triggers new and productive investments, which is the cornerstone of economic growth. Achieving the *Strategy for American Innovation* depends, in part, on the USPTO's success in reducing the patent application backlog and in decreasing patent application pendency—both of which stall the delivery of innovative

goods and services to market and impede economic growth and the creation of high-paying jobs. This rule positions the USPTO to reduce the patent application backlog and decrease patent application pendency.

A. Ensure the Overall Fee Schedule Generates Sufficient Revenue To Recover Aggregate Cost

The first fee setting strategy is to ensure that the fee schedule generates sufficient aggregate revenue to recover the aggregate cost to maintain USPTO operations and accomplish USPTO strategic goals. Two overriding principles motivate the Office in this regard: (1) Operating with a more sustainable funding model than in the past to avoid disruptions caused by fluctuations in the economy; and (2) accomplishing strategic goals, including the imperatives of reducing the patent application backlog and decreasing patent application pendency. Each principle is discussed in greater detail below.

1. Implement a Sustainable Funding Model for Operations

As explained in the Strategic Plan, the Office's objective of implementing a sustainable funding model for operations will facilitate USPTO's long-term operational and financial planning and enable the Office to adapt to changes in the economy and in operational workload.

Since 1982, patent fees that generate most of the patent revenue (e.g., filing, search, examination, issue, and maintenance fees) have been set by statute, and the Office could adjust these fees only to reflect changes in the Consumer Price Index (CPI) for All Urban Consumers, as determined by the Secretary of Labor. Because these fees were set by statute, the USPTO could not realign or adjust them to quickly and effectively respond to market demand or changes in processing costs other than for the CPI. Over the years, these constraints led to funding variations and shortfalls. Section 10 of the AIA changed this fee adjustment model and authorized the USPTO to set or adjust patent fees within the regulatory process so that the Office will be better able to respond to its rapidly growing workload.

The Budgets (*see* FY 2013 and FY 2014 President's Budget Requests at *http://www.uspto.gov/about/stratplan/budget/index.jsp*) delineate the annual plans and prospective aggregate costs to execute the initiatives in the Strategic Plan. One of these costs is the growth of a three-month patent operating reserve to allow effective management of the U.S. patent system and responsiveness to changes in the economy, unanticipated production workload, and revenue changes, while maintaining operations and effectuating long-term strategies. The Office evaluated the optimal size of the operating reserve by examining specific risk factors. There are two main factors that create a risk of volatility in patent operations—spending levels and revenue streams. After reviewing other organizations' operating reserves, the Office found that a fully fee-funded organization such as the USPTO should maintain a minimum of a three-month operating reserve. The fee schedule in this final rule will gradually build the three-month operating reserve. The USPTO will assess the patent operating reserve balance against its target balance annually and, at least every two years, will evaluate whether the target balance continues to be sufficient to provide the stability in funding needed by the Office. By implementing this fee schedule, the USPTO anticipates that the three-month patent operating reserve will be achieved in FY 2018.

The fees in this final rule will provide the USPTO with sufficient aggregate revenue to recover the aggregate cost to operate the Office while improving the patent system. During FY 2013, patent operations will cost $2.479 billion after accounting for an offset to spending from other income of $23 million and a withdrawal from the operating reserve of $28 million. The final fee schedule should generate $2.479 billion in aggregate revenue to offset these costs. Once the Office transitions to the fee levels set forth in this final rule, it estimates an additional $11.5 billion in aggregate revenue will be generated from FY 2014 through FY 2017 to recover the total aggregate cost over the same time period—$11.1 billion in operating costs and $0.4 billion in a three-month operating reserve. (*See* Table 3 in *Part IV,* Step 2 of this rule.)

Under the new fee structure, as in the past, the Office will continue to regularly review its operating budgets and long-range plans to ensure that the USPTO uses patent fees prudently.

2. Optimize Patent Quality and Timeliness

The Office developed the strategic goal of optimizing patent quality and timeliness in response to intellectual property (IP) community feedback, the *Strategy for American Innovation,* and in recognition that a sound, efficient, and effective IP system is essential for technological innovation and for patent holders to reap the benefits of patent protection.

In past years, a steady increase in incoming patent applications and insufficient patent examiner hiring due to multi-year funding shortfalls has led to a large patent application backlog and long patent application pendency. Decreasing pendency increases the private value of a patent because the faster a patent is granted, the more quickly the patent owner can commercialize the innovation. Shorter pendency also allows for earlier disclosure of the scope of the patent, which reduces uncertainty for the patentee, potential competitors, and additional innovators regarding patent rights and the validity of the patentee's claims.

To reduce the backlog and decrease patent application pendency, the USPTO must examine significantly more patent applications than it receives each year for the next several years. Bringing the applications in the backlog down to a manageable level, while at the same time keeping pace with the new patent applications expected to be filed each year, requires the Office to collect more aggregate revenue than it estimates that it will collect at existing fee rates. The Office needs this additional revenue to hire additional patent examiners, improve the patent business IT capability and infrastructure, and implement other programs to optimize the timeliness of patent examination. This final rule will result in an average first action patent application pendency of 10 months in FY 2016, an average total pendency of 20 months in FY 2017, and a reduced patent application backlog and inventory of approximately 335,000 patent applications by FY 2016. This would be a significant improvement over the 21.9 months and 32.4 months for average first action patent application pendency and average total pendency, respectively, at the end of FY 2012. Under this final rule, the patent application backlog is also expected to decrease significantly from the 608,300 applications in inventory as of the end of FY 2012.

In addition to timeliness of patent protection, the quality of application review is critical to ensure that the value of an issued patent is high. Quality issuance of patents provides certainty in the market and allows businesses and innovators to make informed and timely decisions on product and service development. Through this final rule, the Office will continue to improve patent quality through comprehensive training for new and experienced examiners, an expanded and enhanced ombudsmen program to help resolve questions about

applications, improved hiring processes, and guidelines for examiners to address clarity issues in patent applications. The Office also will continue to encourage interviews between applicants and examiners to help clarify allowable subject matter early in the examination process and to encourage interviews later in prosecution to resolve outstanding issues. Lastly, the Office will continue to reengineer the examination process, and to monitor and measure examination using a comprehensive set of metrics that analyze the quality of the entire process.

In addition to direct improvements to patent quality and timeliness, the USPTO's development and implementation of the patent end-to-end processing system using the revenue generated from this fee structure will improve the efficiency of the patent system. The IT architecture and systems in place currently are obsolete and difficult to maintain, leaving the USPTO highly vulnerable to disruptions in patent operations. Additionally, the current IT systems require patent employees and external stakeholders to perform labor-intensive business processes manually, decreasing the efficiency of the patent system. This final rule provides the Office with sufficient revenue to modernize its IT systems so that the majority of applications are submitted, handled, and prosecuted electronically. Improved automation will benefit both the Office and innovation community.

B. Set Individual Fees To Further Key Policy Considerations, While Taking Into Account the Costs of the Particular Service

The second fee setting strategy is to set individual fees to further key policy considerations, while taking into account the cost of the associated service or activity. This fee schedule recovers the aggregate cost to the Office of operations, while also considering the individual cost of each service provided. This includes consideration that some applicants may use particular services in a more costly manner than other applicants (e.g., patent applications cost more to process when more claims are filed). The final fee schedule considers three key policy factors: (1) *Fostering innovation;* (2) *facilitating effective administration of the patent system;* and (3) *offering patent prosecution options to applicants*. The Office focused on these policy factors because each promotes particular aspects of the U.S. patent system. *Fostering innovation* is an important policy factor to ensure that access to the U.S. patent system is without significant barriers to entry, and innovation is incentivized by granting inventors certain short-term exclusive rights to stimulate additional inventive activity. *Facilitating effective administration of the patent system* is important to influence efficient patent prosecution, resulting in compact prosecution and a decrease in the time it takes to obtain a patent. In addition, the Office recognizes that patent prosecution is not a one-size-fits-all process and therefore, where feasible, the Office endeavors to fulfill its third policy factor of *offering patent prosecution options to applicants*. Each of these policy factors is discussed in greater detail below.

1. Fostering Innovation

To encourage innovators to take advantage of patent protection, the Office sets basic ''front-end'' fees (e.g., filing, search, and examination) below the actual cost of carrying out these activities. Likewise, consistent with the requirements in the Act, the Office provides fee reductions for small and micro entity innovators to facilitate access to the patent system. Setting front-end and small and micro entity fees below cost requires, however, that other fees be set above cost. To that end, the Office sets basic ''back-end'' fees (e.g., issue and maintenance) in excess of costs to recoup revenue not collected by front-end and small and micro entity fees. Charging higher back-end fees also fosters innovation and benefits the overall patent system. After a patent is granted, a patent owner is better positioned, as opposed to at the time of filing a patent application, to more closely assess the expected value of an invention, which is a consideration in determining whether to pay maintenance fees to keep the patent protecting the invention in force. Expiration of a patent makes the subject matter of the patent available in the public domain for subsequent commercialization. Determining the appropriate balance between front-end and back-end fees is a critical component of aligning the Office's costs and revenues.

2. Facilitating Effective Administration of the Patent System

The fee structure in this final rule helps facilitate effective administration of the patent system by encouraging applicants or patent holders to engage in certain activities that facilitate an effective patent system. In particular, setting fees at the particular levels will: (1) Encourage the submission of applications or other actions that enable examiners to provide prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecution of an application, which results in pendency reduction, faster dissemination of information, and certainty in patented inventions; and (3) help recover the additional costs imposed by some applicants' more intensive use of certain services that strain the patent system than other applicants.

3. Offering Patent Prosecution Options to Applicants

The final fee schedule provides applicants with flexible and cost-effective options for seeking patent protection. For example, the Office is setting multipart and staged fees for RCEs, appeals, and contested cases. The Office breaks the RCE fee into two parts. The fee for a first RCE is set more than 30 percent below cost to facilitate access to the service and in recognition that most applicants using RCEs only require one per application. The fee for a second and subsequent RCE is set only slightly below cost as an option for those who require multiple RCEs. Likewise, the staging of appeal fees allows applicants to pay less in situations when an application under appeal is either allowed or reopened rather than being forwarded to the Patent Trial and Appeal Board (PTAB). Finally, the establishment of multipart and staged fees for contested cases improves access to these proceedings while removing low quality patents from the patent system.

Summary of Rationale and Purpose of the Final Rule

The final patent fee schedule will produce aggregate revenues to recover the aggregate costs of the USPTO, including for its management of strategic goals, objectives, and initiatives in FY 2013 and beyond. Using the two Strategic Plan goals (implementing a sustainable funding model for operations and optimizing patent quality and timeliness) as a foundation, the final rule provides sufficient aggregate revenue to recover the aggregate cost of patent operations, including implementing a sustainable funding model, reducing the current patent application backlog, decreasing patent application pendency, improving patent quality, and upgrading the patent business IT capability and infrastructure. Additionally, in this final rule, the Office considered individual fees by evaluating its historical cost (where available) and considering the policy factors of *fostering innovation, facilitating effective administration of*

the patent system, and *offering patent prosecution options to applicants*.

IV. Fee Setting Methodology

As explained in the NPRM, there are three iterative and interrelated steps involved in developing the fees:

Step 1: Determine the prospective aggregate costs of patent operations over the five-year period, including the cost of implementing new initiatives to achieve strategic goals and objectives.

Step 2: Calculate the prospective revenue streams derived from the individual fee amounts (from Step 3) that will collectively recover the prospective aggregate cost over the five-year period.

Step 3: Set or adjust individual fee amounts to collectively (through executing Step 2) recover projected aggregate cost over the five-year period, while furthering key policy considerations.

A description of how the USPTO carries out these three steps is set forth in turn. Where key projections or inputs have changed since the NPRM, the Office explains the reasons underlying the revised estimates.

Step 1: Determine Prospective Aggregate Costs

Calculating aggregate costs is accomplished primarily through the routine USPTO budget planning and formulation process. The Budget is a five-year plan (that the Office prepares and updates annually) for carrying out base programs and implementing the strategic goals and objectives.

The first activity performed to determine prospective aggregate cost is to project the level of demand for patent products and services. Demand for products and services depends on many factors, including domestic and global economic activity. The USPTO also takes into account overseas patenting activities, policies and legislation, and known process efficiencies. Because examination costs are approximately 70 percent of the total patent operating cost, a primary production workload driver is the number of patent application filings (i.e., incoming work to the Office). The Office looks at indicators such as the expected growth in Real Gross Domestic Product (RGDP), the leading indicator to incoming patent applications, to estimate prospective workload. RGDP is reported by the Bureau of Economic Analysis (*www.bea.gov*), and is forecasted each February by the Office of Management and Budget (OMB) (*www.omb.gov*) in the Economic and Budget Analyses section of the Analytical Perspectives, and each January by the Congressional Budget Office (CBO) (*www.cbo.gov*) in the Budget and Economic Outlook. A description of the Office's methodology for using RGDP can be found in the section of the annual budget entitled, ''USPTO Fee Collection Estimates/Ranges.'' *See* annual budget *available at http://www.uspto.gov/about/stratplan/budget/index.jsp*. The expected change in the required production workload must then be compared to the current examination production capacity to determine any required staffing and operating cost (e.g., salaries, workload processing contracts, and printing) adjustments. The Office uses a patent application pendency model that estimates patent production output based on actual historical data and input assumptions, such as incoming patent applications, examiner attrition rates, and overtime hours. An overview of the model and a simulation tool is available at *http://www.uspto.gov/patents/stats/patent_pend_model.jsp*. Further information, including a more detailed description of inputs, outputs, and key data relationships, is available from the Office upon request.

The second activity is to calculate the aggregate costs to execute the requirements. In developing its annual budgets, the Office first looks at the cost of status quo operations (the base requirements). The base requirements (e.g., salaries for employees on-board) are adjusted for anticipated pay raises and inflationary increases for the periods FY 2013–FY 2017 (examples of the detailed calculations and assumptions for this adjustment to base are available in the annual Budgets). The Office then estimates the prospective cost for expected changes in production workload and new initiatives over the same period of time (refer to ''Program Changes by Sub-Activity'' sections of the Budget). The Office reduces cost estimates for completed initiatives and known cost savings expected over the same five-year horizon (*see* page 9 of the FY 2013 President's Budget). Finally, the Office estimates its three-month target operating reserve level based on this aggregate cost calculation for the year to determine if operating reserve adjustments are necessary.

The estimate for the FY 2013 aggregate costs contained in this final rule ($2.479 billion) is $125 million less than the estimate contained in the NPRM ($2.604 billion). The Office lowered its aggregate cost estimate in response to public comments expressing a desire for the Office to achieve its goals over a longer timeframe and to incorporate additional efficiencies into operations. In some instances, the Office was also able to use more recent data. The most significant factors affecting the reduction in aggregate costs include: (1) Decreasing the amount deposited into the operating reserve as well as extending the timeframe for reaching the target amount of the operating reserve, and (2) lengthening the timeframe for achieving pendency goals and optimal inventory levels, and accounting for other changes related to operational costs and efficiencies. Each is discussed in turn.

First, the Office decided to slow the growth of the operating reserve, as well as reduce the amount of fees deposited into the operating reserve during FY 2013, in response to public and PPAC comments. *See* response to PPAC Comment 6 and Public Comments 18 and 19. The Office is slowing the growth of the operating reserve due to a reduction in aggregate revenue, as explained in more detail in Step 2, below. In the NPRM, the Office estimated reaching a target operating reserve level of three months in FY 2017. In this final rule, the adjustments to aggregate revenue and fee amounts have slowed the pace for reaching the three month operating reserve target to beyond the five-year planning period (approximately FY 2018). (*See* PPAC Comments 6, 7, 11, 14, 16, and 23; and Public Comments 2, 18, 41, 42, 43, and 45 for additional information). When estimating aggregate costs for the NPRM, the Office planned to deposit $73 million in the operating reserve in FY 2013. In the updated estimate of aggregate costs calculated for this final rule, the Office plans to use $28 million of operating reserve funds in FY 2013. The net change of activity results in a decrease of aggregate costs associated with the operating reserve of $101 million.

The Office is using funds from the operating reserve in FY 2013 due to two main components of aggregate cost—an increase in the cost of existing base requirements and the timing of implementing the fees included in the final rule. As discussed in more detail below, the Office experienced historically low examiner attrition rates (the rate at which examiners left the Office). This lower than planned attrition rate resulted in additional higher paid examiners on board during FY 2013, increasing the aggregate cost of base requirements of patent examination (existing examiners on board). Additionally, the Office will publish this final rule one month later than originally anticipated in the NPRM (April instead of March 2013). This later publication date reduces the amount of revenue originally estimated to be

collected during FY 2013. Further, the Office anticipates a ''bubble'' of fee payments paid at the current fee rates, prior to the effective date of the fees in this final rule. This ''bubble'' is typical in years with fee changes. Therefore, these situations require the Office to use the operating reserve in FY 2013, whereas in FY 2014 through FY 2017, the Office estimates it will deposit funds in the operating reserve.

Second, many public comments and the PPAC report strongly urged the Office to achieve the 10 month first action patent application pendency and the 20 month total patent application pendency goals more gradually than proposed, and to achieve a ''soft landing'' to reach the optimal patent application inventory and workforce levels at a slower rate than proposed. *See* PPAC Comment 7 and Public Comment 2. During FY 2012, the Office examined more patent applications than it initially anticipated, in part because of historically low attrition rates. In the NPRM, the Office anticipated an attrition of 5.8 percent in FY 2013, but in the final rule, the Office now anticipates an attrition rate of 4.0 percent in FY 2013 (the same attrition rate the Office experienced in FY 2012).

In response to comments and to capitalize on the historically low attrition rates, the Office is recalibrating its examination capacity during the five-year planning period of this final rule by reducing the number of examiners that are hired, increasing the amount of overtime allotted for production, and hiring more experienced examiners. Instead of planning to hire 1,500 patent examiners in FY 2013 (as the NPRM estimated), the Office now plans to hire 1,000 patent examiners in FY 2013. The Office also reevaluated its hiring plans in FY 2013 to include hiring more patent examiners with greater IP experience and knowledge, thus making this smaller number of hires more productive sooner than originally expected. This recalibration results in a more costly examiner production capacity (because the more experienced hires are paid a higher salary) in the beginning (FY 2013 and FY 2014) of the five-year planning period when comparing the net operating requirements (*see* Table 3) per production unit (*see* Table 2) in the final rule to that in the NPRM. However, as the Office begins reaping the benefits of the overtime and hiring recalibration, the examiner production capacity begins to cost less in FY 2015, so that the total net operating cost per production unit over the five-year planning period is less in the final rule than in the NPRM. For example, in FY 2013, the net operating requirements per production unit are approximately $4,200 in this final rule ($2.507 billion divided by 596,200 production units) compared to approximately $4,100 in the NPRM. In FY 2015, the net operating requirements per production unit are approximately $4,020 in this final rule ($2.779 billion divided by 691,300 production units) compared to approximately $4,046 in the NPRM. This initial increase in aggregate cost is necessary to establish the examination capacity needed to achieve the ''soft landing'' referred to in the comments from the PPAC and the public.

The ''soft landing'' is evident when looking at the more gradual increase in production units over four years (596,200 in FY 2013 increasing to 698,500 in FY 2016) in this final rule (*see* Table 2) compared to the rapid increase in the NPRM over three years (620,600 in FY 2013 increasing to 694,200 in FY 2015). Also, maintaining fewer examiners on board throughout and at the end of the five-year planning horizon (7,800 in FY 2017 in the final rule compared to 8,200 in FY 2017 in the NPRM) permits the Office to use production overtime as a lever to arrive at the future ''soft landing'' when evaluating actual inputs impacting the production modeling (application filing levels, examiner attrition rates, and production levels).

While the examination costs marginally increase in the early years due to the higher cost of base examination capacity (because the Office has greater expenses associated with having more examiners than initially projected from lower attrition rates and more experienced examiners), the Office has more than offset this increase by reducing patent operational costs in other areas such as deferring slightly some IT investment plans and leveraging operational efficiencies, consistent with public comments and a routine annual review and update of the patent operating and budget plans. *See* PPAC Comment 7 and Public Comment 2. In addition, in the time between the publication of the NPRM and the formulation of this final rule, additional information concerning key inputs to the patent application pendency model became available, so the Office revised certain projections as discussed below.

For example, after reviewing FY 2012 filing data and RGDP information available after the NPRM published (*see* Step 2: Calculate Prospective Aggregate Revenue), the Office lowered its estimates for the level of demand of patent products and services (application filing levels). In the NPRM, the Office projected a growth rate of 6.0 percent in FY 2013–FY 2014; 5.5 percent in FY 2015–FY 2016; and 5.0 percent in FY 2017. Based on actual filing data from FY 2012, the Office now believes that a projected growth rate of 5.0 percent for each of FY 2013–FY 2017 is appropriate in this final rule. This means that examiner production capacity and aggregate costs are reduced because somewhat fewer patent applications are projected to be filed, and the work associated with those applications is less, as compared to the NRPM projections.

Many of the key inputs affecting lower aggregate costs and revenue are summarized in Table 2.

TABLE 2—PATENT PRODUCTION WORKLOAD PROJECTIONS—FY 2013–FY 2017

Utility, Plant, and Reissue (UPR)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Applications*	558,900	586,800	616,200	647,000	679,300
Growth Rate**	5.0%	5.0%	5.0%	5.0%	5.0%
Production Units	596,200	655,200	691,300	698,500	641,300
End of Year Backlog	566,800	486,500	398,900	334,300	358,500
Examination Capacity**	8,500	8,400	8,200	8,000	7,800
Performance Measures (UPR):					
Avg. First Action Pendency (Months)	18.0	15.8	12.9	10.5	10.0
Avg. Total Pendency (Months)	30.1	26.1	23.7	21.0	18.8

* In this table, the patent application filing data includes requests for continued examination (RCEs).
** In this table, demand for patent examination services, which is used to calculate aggregate cost, is not adjusted for price elasticity.

Overall, the Office estimates that during FY 2013, patent operations will cost $2.530 billion, including $1.761 billion for patent examination activities; $340 million for IT systems, support, and infrastructure contributing to patent operations; $58 million for activities related to patent appeals and the new AIA *inter partes* dispute actions; $48 million for activities related to IP protection, policy, and enforcement; and $323 million for general support costs necessary for patent operations (e.g., rent, utilities, legal, financial, human resources, and other administrative services). In addition, the Office estimates collecting $23 million in other income associated with reimbursable agreements (offsets to spending) and using $28 million from the operating reserve during FY 2013 to sustain operations. Detailed descriptions of operating requirements are located in the USPTO annual budgets (*see http://www.uspto.gov/about/stratplan/budget/index.jsp*). Table 2 above provides key underlying production workload projections and assumptions used to calculate aggregate cost. Table 3 presents the total budgetary requirements (prospective aggregate cost) for FY 2013 through FY 2017.

TABLE 3—ESTIMATED ANNUAL AGGREGATE COSTS AND FINAL FEE SCHEDULE AGGREGATE REVENUES

	(In millions)				
	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Aggregate Cost Estimate:					
Planned Operating Requirements	$2,530	$2,739	$2,802	$2,852	$2,815
Less Other Income *	(23)	(23)	(23)	(23)	(23)
Net Operating Requirements	2,507	2,716	2,779	2,829	2,792
Planned Deposit in Operating Reserve	(28)	90	92	98	117
Total Aggregate Cost Estimate	*2,479*	*2,806*	*2,871*	*2,927*	*2,909*
Aggregate Revenue Estimate **	*2,479*	*2,806*	*2,871*	*2,927*	*2,909*
Cumulative Operating Reserve Balance.					
Target Operating Reserve	633	685	701	713	704
Operating Reserve Ending FY 2012 Balance $112	84	174	266	364	481
Over/(Under) Target Balance***	(549)	(511)	(435)	(349)	(223)

* The Office collects other income associated with reimbursable agreements (offsets to spending) and recoveries of funds obligated in prior years in the amount of approximately $23 million each year.

** The proposed fee schedule will generate less revenue compared to the FY 2013 President's Budget in an effort to slow the growth of the operating reserve over the next five years.

*** The Office estimates that it will meet the three-month operating reserve target in FY 2018.

Step 2: Calculate Prospective Aggregate Revenue

As described in Step 1, the USPTO's annual requirements-based budgets include the aggregate prospective cost of planned production, new initiatives, and an operating reserve planned for the Office to realize its strategic goals and objectives for the next five years. The aggregate prospective cost becomes the target aggregate revenue level that the new fee schedule must generate in a given year and over the five-year planning horizon. The estimate for the FY 2013 aggregate revenue contained in this final rule ($2.479 billion) is $125 million less than the estimate contained in the NPRM ($2.604 billion). As discussed in more detail in Step 1, the Office has lowered its aggregate cost estimate in response to public comments expressing a desire for the Office to achieve its goals over a longer timeframe and to incorporate additional efficiencies into operations. This reduction in aggregate costs requires a corresponding reduction in aggregate revenue. The most significant factors affecting the reduction in aggregate revenues include: (1) Decreasing fee amounts (*see* PPAC Comments 6, 7, 11, 14, 16, and 23; and Public Comments 2, 18, 41, 42, 43, and 45 for additional information); (2) publishing this final rule one month later than originally anticipated in the NPRM (April instead of March 2013) and thereby reducing the amount of revenue originally estimated to be collected during FY 2013; and (3) lengthening the timeframe for achieving pendency goals and optimal inventory levels (*see* Step 1, above for additional information). Following is a discussion of the methodology used to calculate aggregate revenue.

As explained in the NPRM, to calculate the aggregate revenue estimates, the Office first analyzes relevant factors and indicators to determine prospective fee workload volumes (e.g., number of applications and requests for services and products) for the five-year planning horizon. Economic activity is an important consideration when developing workload and revenue forecasts for the USPTO's products and services because economic conditions affect patenting activity, as most recently exhibited in the recession of 2009 when incoming workloads and renewal rates declined.

Major economic indicators include the overall condition of the U.S. and global economies, spending on research and development activities, and investments that lead to the commercialization of new products and services. The most relevant economic indicator that the Office uses is the RGDP, which is the broadest measure of economic activity. RGDP growth is factored into estimates of patent application levels. RGDP is anticipated to grow approximately three percent for FY 2013 based on OMB and CBO estimates provided in February and January of 2012, respectively. CBO prepared updated economic guidance in August 2012, temporarily altering its projection methodology to reflect heightened uncertainty over fiscal policy conditions and concerns. The August 2012 CBO estimates envision various economic scenarios instead of a single point estimate as CBO typically prepared. Nonetheless, the Office made calculations based on CBO's August 2012 estimates and they had a negligible impact on forecasts of the Office's workloads given the +/− 5 percent outer bounds discussed below.

Economic indicators also provide insight into market conditions and the management of IP portfolios, which influence application processing requests and post-issuance decisions to maintain patent protection. When developing fee workload forecasts, the Office considers other influential factors including overseas activity, policies and legislation, process efficiencies, and anticipated applicant behavior.

The Office's methodology to estimate aggregate revenue was updated to consider two new elements related setting and adjusting fees using the new section 10 fee setting authority. The first includes adjustments to fee workload estimates as a result of changes in demand for services. In the past, fees that comprise a majority of the Office's aggregate revenue (e.g., filing, search, examination, issue, and maintenance) were adjusted based on minimal CPI increases. In this rule, the Office is both increasing and decreasing fees by amounts larger than it experienced with CPI increases in the past. Therefore, the Office considered impacts of applicant and patentee behavior in response to the fee changes. The second incorporates the new discount for micro entity applicants and patentees. The introduction of the new micro entity fees required the Office to estimate how many small entity applicants and patentees would pay fees at micro entity rates. Each of these elements is discussed in turn below.

Elasticity and Application Filing Levels

The economic indicators discussed previously correlate with patent application filings, which, with adjustments for elasticity, are a key driver of patent fees. As discussed previously, in the NPRM, the Office projected an application filing growth rate of 6.0 percent in FY 2013—FY 2014, 5.5 percent in FY 2015—FY 2016, and 5.0 percent in FY 2017. After reviewing actual FY 2012 filing data and other economic indicators discussed herein, the Office lowered its estimates for the level of demand of patent products and services (application filing levels). The Office now believes that a projected growth rate of 5.0 percent for each of FY 2013—FY 2017 is appropriate in this final rule.

The Office also considered how applicant behavior in response to fee (price) changes included in this final rule would impact the application filing demand referenced above. Anticipated applicant behavior in response to fee changes is measured using an economic principle known as elasticity which for the purpose of this action means how sensitive applicants and patentees are to fee amounts or price changes. If elasticity is low enough (i.e., demand is *inelastic*), when fees increase, patent activities will decrease only slightly in response thereto, and overall revenues will still increase. Conversely, if elasticity is high enough (i.e., demand is *elastic*), when fees increase, patenting activities will decrease significantly enough in response thereto such that overall revenues will decrease. When developing fee forecasts, the Office accounts for how applicant behavior will change at different fee amounts projected for the various patent services. Additional detail about the Office's elasticity estimates is available in ''*USPTO Section 10 Fee Setting—Description of Elasticity Estimates,''* at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*. Some of the information on which the Office based its elasticity estimates are copyrighted materials and are available for inspection at the USPTO.

Using the information contained in the ''Description of Elasticity Estimates'' document, the Office estimated that 1.3 percent fewer new (serialized) applications than the number estimated to be filed in the absence of a fee increase would be filed during FY 2013 as patent filers adjusted to the new fees, specifically the increase in the total filing, search, and examination fees for most applicants. The Office further estimated that 2.7 percent fewer new patent applications would be filed during FY 2014, and 4.0 percent fewer new patent applications would be filed during FY 2015. However, the Office estimated that new (serialized) patent application filings would return to the same annual growth rate anticipated in the absence of a fee increase beginning in FY 2016. Overall, the demand for patent application services is generally inelastic, and even with these slight decreases, the total aggregate revenue received from patent applications filed is projected to grow year-after-year.

Micro Entity Applicants

The introduction of a new class of applicants, called micro entities, requires a change to aggregate revenue estimations, and the Office refined its workload and fee collection estimates to include this new applicant class. *See* 35 U.S.C. 123; *see also* Changes to Implement Micro Entity Status for Paying Patent Fees, 77 FR 75019 (Dec. 19, 2012). 35 U.S.C. 123, which sets forth the requirements that must be met in order for an applicant to claim the micro entity discount, provides two bases under which an applicant may establish micro entity status.

First, section 123(a) provides that the term ''micro entity'' means an applicant who makes a certification that the applicant: (1) Qualifies as a small entity as defined in 37 CFR 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid (except for applications resulting from prior employment as defined in section 123(b)); (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income exceeding three times the median household income for that preceding calendar year; and (4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that had a gross income exceeding the income limit described in (3).

Second, 35 U.S.C. 123(d) provides that a micro entity also shall include an applicant who certifies that: (1) The applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

The Office revised the rules of practice in patent cases to implement these micro entity provisions of the Leahy-Smith America Invents Act in a separate rulemaking. *See* 77 FR 75019 (Dec. 19, 2012).

The Office estimates that when micro entity discounts on patent fees are available, 31 percent of small entity applications will be micro entity applications, under the criteria set forth in section 123(a) and (d). In making this estimate, the Office considered several factors, including historical data on patents granted. The Office began with patent grant data, because the best available biographic data on applicant type (e.g., independent inventor and domestic universities) comes from patent grant data in the Office's database. A series of computations led to the estimate that 31 percent of small entity applicants will be micro entities. The first set of computations estimated the number of persons who would qualify for micro entity status under Section 123(a). The Office began by estimating the number of individuals who were granted patents in FY 2011. There were 221,350 utility patents granted in FY 2011 as reported in the *FY 2011 USPTO Performance and Accountability Report* (*PAR*). The PAR is available for review at *http://www.uspto.gov/about/stratplan/ar/2011/index.jsp*. The Office's Patent Technology Monitoring Team (PTMT) provides data showing the split between

domestic and foreign patent grants. (It should be noted that PTMT's data is based on the calendar year not the fiscal year.) PTMT's data is available at *http://www.uspto.gov/web/offices/ac/ido/oeip/taf/all_tech.htm#PartA1_1b*. From this data, the Office found that 5.0 percent of utility patents granted in FY 2011 were granted to individuals in the United States and 1.9 percent were granted to individuals from other countries. These figures refer to patents where the individuals were not listed in the USPTO database as associated with a company. These individuals would likely meet the criteria under section 123(a)(1) (small entity status). Using this information, the Office estimates that individuals in the United States received 11,068 utility patents (221,350 times 5.0 percent) in FY 2011, and that individuals from other countries received 4,206 utility patents (221,350 times 1.9 percent). In total, the Office estimates that 15,274 (11,068 plus 4,206) patents were granted to individuals in FY 2011.

Concerning the micro entity threshold in 35 U.S.C. 123(a)(2), the Office's Patent Application Locating and Monitoring (PALM) database reports that 62 percent of both foreign and domestic small entity applicants filed fewer than 5 applications in FY 2009. As stated above, an estimated 15,274 patent grants were to individuals both domestic (11,068) and foreign (4,206). Using this information, the Office estimates that 6,862 (11,068 times 62 percent) patents will be granted to domestic applicants who meet the thresholds for micro entity status set forth in sections 123(a)(1) and 123(a)(2), while 2,608 (4,206 times 62 percent) patents will be granted to foreign applicants who meet the same thresholds.

Concerning the income threshold in 35 U.S.C. 123(a)(3), the median household income for calendar year (CY) 2011 (the year most recently reported by the Bureau of the Census) was $50,054. *See* Income, Poverty, and Health Insurance Coverage in the United States: 2011, at 5 and 33 (Table A–1) (Sept. 2012) *available at http://www.census.gov/prod/2012pubs/p60-243.pdf*. (The Office will indicate conspicuously on its Web site the median household income reported by the Bureau of the Census and the income level that is three times the median household income for the calendar year most recently reported.) Thus, the income level specified in 35 U.S.C. 1.29(a)(3) and (a)(4) (three times the median household income) is $150,162.

The Internal Revenue Service (IRS) records show that in 2009 about 97 percent of individuals (as proxied by the total number of IRS form filings) reported adjusted gross income of less than $200,000, and about 87 percent of individuals reported adjusted gross income of less than $100,000. *See* Table 1.1 at: *http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96981,00.html*. Using this information, the Office estimates that 6,656 (6,862 times 97 percent) of patents granted to individuals from the U.S. will be for individuals under the gross income threshold of the micro entity definition ($150,162 for CY 2011). The Office uses 97 percent as the best available estimate of the maximum number of individuals who satisfy the income limit. Median household income and gross income levels are not readily available for the country of origin for all foreign individuals. Therefore, the Office conservatively estimates that all foreign individuals will satisfy the income requirements for micro entity fee reductions, and that income alone should not limit their eligibility. Using the best available data, as presented above, the Office estimates that the total number of individuals who meet the thresholds set forth in 35 U.S.C. 123(a)(1), (a)(2), and (a)(3) is 9,264 (6,656 from the United States and 2,608 foreign).

The 9,264 figure represents a reasonable approximation of the number of patents granted annually to persons who would qualify as micro entities under section 123(a). There is no data available to indicate how many persons would be excluded under section 123(a)(4) based upon an assignment, grant, or conveyance or an obligation to grant, assign, or convey to an entity with income exceeding the limit in section 123(a)(3). However, the Office's approach with the other components of section 123(a) is sufficiently conservative to mitigate the risks of not capturing this population. Likewise, while a small company could qualify as a micro entity under section 123(a), the above calculation of individuals represents a reasonable overall approximation because the estimate of affected individuals is sufficiently conservative.

Turning to 35 U.S.C. 123(d), the most recent data available on university patent grants is from CY 2008. Reviewing the data from CY 2001–CY 2008, the Office estimates that domestic universities account for approximately 1.9 percent of all patent grants. The Office is using this figure as a reasonable approximation for the number of micro entity applicants expected under section 123(d), which covers applicants who are employed by universities or who have assigned their invention to a university. Applying this information to FY 2011, the Office estimates that universities received 4,206 (221,350 times 1.9 percent) of the patents granted in FY 2011. The data on university patent grants is available at: *http://www.uspto.gov/web/offices/ac/ido/oeip/taf/univ/asgn/table_1_2008.htm*.

To combine 123(a) and 123(d), the Office adds the estimated number of patents granted that could meet the micro entity definition for individuals (9,264) and for university grants (4,206) to obtain a total of 13,470 patent grants. The Office divides 13,470 micro entity patents by the 43,827 small entity patents in FY 2011 (per the Office's PALM database) to calculate that approximately 31 percent of small entity patents will be micro entity patents. The Office expects a uniform distribution of micro entities across all application types. No data exists to suggest otherwise. Likewise, the Office applies the 31 percent estimate to both filings and grants because the Office expects a uniform distribution of micro entities among both applicants and patentees, and no data exists to suggest otherwise. Thus, the Office estimates that 31 percent of all small entity applicants will qualify as micro entity applicants.

In recent years, small entity applicants made up approximately 25 percent of utility filings and 20 percent of utility patent grants (per the PALM database). Given that utility filings are the largest category of application types, for forecasting purposes, the Office uses utility filing data as representative of the universe of patent application filings. Applying the 31 percent estimate for the number of micro entities, the Office estimates that micro entities will account for 7.8 percent (25 percent times 31 percent) of all filings, and 6.2 percent (20 percent times 31 percent) of all grants. The Office used these estimates (7.8 percent and 6.2 percent) to calculate the portion of fee workloads (e.g., number of application filings, patent issues, and maintenance fees paid) that should be multiplied by the new micro entity fee amounts to include in the estimate for aggregate revenue.

Aggregate Revenue Estimate Ranges

When calculating aggregate revenue, the USPTO prepares a high-to-low range of fee collection estimates that includes a +/− 5 percent outer bounds to account for: the inherent uncertainty, sensitivity, and volatility of predicting fluctuations in the economy and market environment; interpreting policy and

process efficiencies; and developing fee workload and fee collection estimates from assumptions. The Office used 5 percent because historically the Office's actual revenue collections have typically been within 5 percent of the projected revenue. Additional detail about the Office's aggregate revenue, including projected workloads by fee, is available in ''*USPTO Section 10 Fee Setting—Aggregate Revenue Estimates Alternative 1: Proposed Alternative—Set and Adjust Section 10 Fees''* available at *http://www.uspto.gov/aia_implementation/fees.jsp*.

Summary

Patent fees are collected for patent-related services and products at different points in time within the patent application examination process and over the life of the pending patent application and granted patent. Approximately half of all patent fee collections are from issue and maintenance fees, which subsidize filing, search, and examination activities. Changes in application filing levels immediately impact current year fee collections, because fewer patent application filings means the Office collects fewer fees to devote to production-related costs, such as additional examining staff and overtime. The resulting reduction in production activities creates an out-year revenue impact because less production output in one year results in fewer issue and maintenance fee payments in future years.

The USPTO's five-year estimated aggregate patent fee revenue (*see* ''Aggregate Revenue Estimate'' in Table 3) is based on the number of patent applications it expects to receive for a given fiscal year, work it expects to process in a given fiscal year (an indicator for workload of patent issue fees), expected examination and process requests for the fiscal year, and the expected number of post-issuance decisions to maintain patent protection over that same fiscal year. Within the iterative process for estimating aggregate revenue, the Office adjusts individual fees up or down based on cost and policy decisions (*see* Step 3: Set Specific Fee Amounts), estimates the effective dates of new fee rates, and then multiplies the resulting fees by appropriate workload volumes to calculate a revenue estimate for each fee.

To calculate the aggregate revenue, the Office assumes that all new fee rates will be effective on April 1, 2013, except for the following fee changes which will be effective on January 1, 2014: § 1.18(a)(1), (b)(1), (c)(1), and (d)(1) (patent issue and publication fees); § 1.21(h)(1) (fee for recording a patent assignment electronically); § 1.482(a)(1)(i)(A), (a)(1)(ii)(A), and (a)(2)(i) (international application filing, processing and search fees); and fees included in § 1.445(a)(1)(i)(A), (a)(2)(i), (a)(3)(i), and (a)(4)(i) (international application transmittal and search fees). Using these figures, the USPTO sums the individual fee revenue estimates, and the result is a total aggregate revenue estimate for a given year (*see* Table 3).

Step 3: Set Specific Fee Amounts

Once the Office finalizes the annual requirements and aggregate prospective costs for a given year during the budget formulation process, the Office sets specific fee amounts that, together, will derive the aggregate revenue required to recover the estimated aggregate prospective costs during that timeframe. Calculating individual fees is an iterative process that encompasses many variables. The historical cost estimates associated with individual fees is one variable that the USPTO considers to inform fee setting. The Office's Activity-Based Information (ABI) provides historical cost for an organization's activities and outputs by individual fee using the activity-based costing (ABC) methodology. ABC is commonly used for fee setting throughout the Federal Government. Additional information about the methodology, including the cost components related to respective fees, is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1* in the document titled ''*USPTO Section 10 Fee Setting—Activity-Based Information and Costing Methodology.''* The USPTO provides data for FY 2009—FY 2011 because the Office finds that reviewing the trend of ABI historical cost information is the most useful way to inform fee setting. The underlying ABI data are available for public inspection at the USPTO.

When the Office implements a new process or service, historical ABI data is typically not available. However, the Office will use the historical cost of a similar process or procedure as a starting point to calculate the cost of a new activity or service. For example, as described in the final rulemaking for supplemental examination, the Office used the ABI historical cost for *ex parte* reexamination procedures as a starting point for calculating the prospective cost to implement the new supplemental examination procedures. *See* Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and To Revise Reexamination Fees, 77 FR 48828 (Aug. 14, 2012).

In other cases, ABI historical cost information related to similar processes is not available, and the Office estimates cost by calculating the resources necessary to execute the new process. To do so, the Office estimates the amount of time (in hours) and necessary skill level to complete an activity. The USPTO then multiplies the estimated amount of time by the hourly wage(s) of the persons required at each skill level and adds the administrative and indirect cost rates (derived from ABI historical cost data) to this base cost estimate to calculate the full cost of the activity. One-time costs, such as IT, training, or facilities costs, are added to the full cost estimate to obtain the total cost of providing the new process or service. Lastly, the USPTO applies a rate of inflation to estimate the prospective unit cost. For example, the Office used this methodology to calculate the costs associated with the new *inter partes* and post-grant review processes. *See* Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012).

Besides using cost data as a point of reference for setting individual fee amounts, the USPTO also uses various policy factors discussed in *Part III. Rulemaking Goals and Strategies* to inform fee setting. Fees are set to allow the Office to recover its aggregate costs, while furthering key policy considerations. The following section describes the rationale for setting fee rates at specific amounts.

V. Individual Fee Rationale

The Office projects the aggregate revenue generated from the patent fees will recover the prospective aggregate cost of its patent operations. However, each individual fee is not necessarily set equal to the estimated cost of performing the activities related to the fee. Instead, as described in *Part III. Rulemaking Goals and Strategies,* some of the fees are set to balance several key policy factors: *fostering innovation, facilitating effective administration of the patent system,* and *offering patent prosecution options to applicants.* As also described in *Part III,* executing these policy factors in the patent fee schedule is consistent with the *Strategy for American Innovation* and the goals and objectives outlined in the Strategic Plan. Once the key policy factors are considered, fees are set at, above, or below individual cost recovery levels for the activity or service provided.

For the purpose of discussing the changes in this rule, the rationale for setting or adjusting individual fees are grouped into two major categories: (1) Fees where large entity amounts changed from the current amount by greater than plus or minus 5 percent and 10 dollars (described below in section (B)); and (2) fees where large entity amounts stayed the same or did *not* change by greater than plus or minus 5 percent and 10 dollars (described below in section (C)). The purpose of the categorization is to identify large fee changes for the reader and provide an individual fee rationale for such changes. The categorization is based on changes in large entity fee amounts because percentage changes for small entity fees that are in place today would be the same as the percentage change for the large entity, and the dollar change would be half of that of the large entity change. Therefore, there will never be an instance where the small entity fee change meets the greater than plus or minus 5 percent and 10 dollars criteria and a large entity fee change does not.

The ''*USPTO Section 10 Fee Setting—Table of Patent Fee Changes''* is available at *http://www.uspto.gov/aia_implementation/fees.jsp* and the tables in *Part VI.* The table of patent fee changes presents the current fees for large and small entities and the final fees for large, small, and micro entities. The table also includes the dollar and percent changes between current fees and final fees for large entity fees only as well as the FY 2011, FY 2010, and FY 2009 unit costs. The Discussion of Specific Rules in this rulemaking contains a complete listing of fees that are set or adjusted in this patent fee schedule.

A. Discounts for Small and Micro Entity Applicants

The fees described below include discounts for small and micro entity applicants as required by section 10. The current small entity discount scheme changes when fees are set in accordance with section 10. That is, section 10(a) provides that the USPTO can set or adjust ''any fee established, authorized or charged under'' Title 35, U.S.C., and section 10(b) of the Act provides that fees set or adjusted under section 10(a) authority for ''filing, searching, examining, issuing, appealing, and maintaining patent applications and patents'' will be reduced by 50 percent for small entities and 75 percent for micro entities. A small entity is defined in 35 U.S.C. 41(h)(1), and a micro entity is defined in 35 U.S.C. 123.

Currently, the small entity discount is only available for statutory fees provided under 35 U.S.C. 41(a), (b), and (d)(1). Section 10(b) extends the discount to some patent fees not contained in 35 U.S.C. 41(a), (b), and (d)(1). Thus, in this final rule, the Office applies the discount to a number of fees that currently do not receive the small entity discount. There is only one fee for which a small entity discount is currently offered that is ineligible for a small entity discount under the final fee schedule: the fee for a statutory disclaimer under 37 CFR 1.20(d). This fee is currently $160 for a large entity and $80 for a small entity. In this final rule, this fee is $160 for all entities (i.e., large, small, and micro) because this particular fee does not fall under one of the six categories of patent fees set forth in section 10(b).

Additionally, the new contested case proceedings created under the Act (*inter partes* review, post-grant review, covered business method patent review, and derivation proceedings) are trial services, not appeals. As such, the fees for these services do not fall under any of the six categories under section 10(b), and therefore are not eligible for discounts. Appeals before the PTAB involve contests to an examiner's findings. The new trial services, however, determine whether a patent should have been granted. They involve discovery, including cross-examination of witnesses. Further, the AIA amends sections of Title 35 that specifically reference ''appeals,'' while separately discussing *inter partes* review, post-grant review, and derivation proceedings, highlighting that these new services are not appeals. *See* section 7 of the AIA (amending 35 U.S.C. 6).

B. Fees With Proposed Changes of Greater Than Plus or Minus 5 Percent and 10 Dollars

For those fees that change by greater than plus or minus 5 percent and 10 dollars, the individual fee rationale discussion is divided into four general subcategories: (1) Fees to be set at cost recovery; (2) fees to be set below cost recovery; (3) fees to be set above cost recovery; and (4) fees that are not set using cost data as an indicator. Table 4 contains a summary of the individual fees that are discussed in each of the subcategories referenced above.

For purposes of discussion within this section, where new micro entity fees are set, it is expected that an applicant or a patent holder would have paid the current small entity fee (or large entity in the event there is not a small entity fee), and dollar and percent changes are calculated from the current small entity fee amount (or large entity fee, where applicable).

It should be noted that the ''Utility Search Fee'' listed below does not meet the ''change by greater than plus or minus 5 percent and 10 dollars'' threshold, but is nonetheless included in the discussion for comparison of total filing, search, and examination fees—all three of which are due upon filing an application.

TABLE 4—PATENT FEE CHANGES

[By greater than plus or minus 5 percent and 10 dollars]

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
(1) Fees set at cost recovery:				
Request for Prioritized Examination	$4,800 ($2,400) [N/A]	$4,000 ($2,000) [$1,000]	−$800 (−$400) [−$1,400]	−17% (−17%) [−58%]
(2) Fees set below cost recovery:				
Basic Filing Fee—Utility	$390 ($195)	$280 ($140)	−$110 (−$55)	−28% (−28%)

TABLE 4—PATENT FEE CHANGES—Continued

[By greater than plus or minus 5 percent and 10 dollars]

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
	[N/A]	[$70]	[−$125]	[−64%]
Utility Search Fee	$620	$600	−$20	−3%
	($310)	($300)	(−$10)	(−3%)
	[N/A]	[$150]	[−$160]	[−52%]
Utility Examination Fee	$250	$720	+$470	+188%
	($125)	($360)	(+$235)	(+188%)
	[N/A]	[$180]	[+$55]	[+44%]
Total Basic Filing, Search, and Exam—Utility	*$1,260*	*$1,600*	*+$340*	*+27%*
	($630)	*($800)*	*(+170)*	*(+27%)*
	[N/A]	*[$400]*	*[−$230]*	*[−37%]*
First Request for Continued Examination (RCE)	$930	$1,200	+$270	+29%
	($465)	($600)	(+$135)	(+29%)
	[N/A]	[$300]	[−$165]	[−35%]
Second and Subsequent RCEs (NEW)	$930	$1,700	+$770	+83%
	($465)	($850)	(+$385)	(+83%)
	[N/A]	[$425]	[−$40]	[−9%]
Notice of Appeal	$630	$800	+$170	+27%
	($315)	($400)	(+$85)	(+27%)
	[N/A]	[$200]	[−$115]	[−37%]
Filing a Brief in Support of an Appeal in Application or *Ex Parte* Reexamination Proceeding	$630	$0	−$630	−100%
	($315)	($0)	(−$315)	(−100%)
	[N/A]	[$0]	[−$315]	[−100%]
Appeal Forwarding Fee for Appeal in Examination or *Ex Parte* Reexamination Proceeding or Filing a Brief in Support of an Appeal in *Inter Partes* Reexamination (NEW)		$2,000	+$2,000	N/A
	NEW	($1,000)	(+$1,000)	(N/A)
		[$500]	[+$500]	[N/A]
Total Appeal Fees (Paid before Examiner Answer)	*$1,260*	*$800*	*−$460*	*−37%*
	($630)	*($400)*	*(−$230)*	*(−37%)*
	[N/A]	*[$200]*	*[−$430]*	*[−68%]*
Total Appeal Fees (Paid after Examiner Answer)	*$1,260*	*$2,800*	*+$1,540*	*+122%*
	($630)	*($1,400)*	*(+$770)*	*(+122%)*
	[N/A]	*[$700]*	*[+$70]*	*[+11%]*
Ex Parte Reexamination	$17,750	$12,000	−$5,750	−32%
	(N/A)	($6,000)	(−$11,750)	(−66%)
	[N/A]	[$3,000]	[−$14,750]	[−83%]
Processing and Treating a Request for Supplemental Examination—Up to 20 Sheets	$5,140	$4,400	−$740	−14%
	(N/A)	($2,200)	(−$2,940)	(−57%)
	[N/A]	[$1,100]	[−$4,040]	[−79%]
Ex Parte Reexamination Ordered as a Result of a Supplemental Examination Proceeding	$16,120	$12,100	−$4,020	−25%
	(N/A)	($6,050)	(−$10,070)	(−62%)
	[N/A]	[$3,025]	[−$13,095]	[−81%]
Total Supplemental Examination Fees	*$21,260*	*$16,500*	*−$4,760*	*−22%*
	(N/A)	*($8,250)*	*(−$13,010)*	*(−61%)*
	[N/A]	*[$4,125]*	*[−$17,135]*	*[−81%]*
Inter Partes Review Request—Up to 20 Claims (Per Claim Fee for Each Claim in Excess of 20 is $200) (NEW)		$9,000	+$9,000	N/A
	NEW	(N/A)	(N/A)	(N/A)
		[N/A]	[N/A]	[N/A]
Inter Partes Review Post Institution Fee—Up to 15 Claims (Per Claim Fee for Each Claim in Excess of 15 is $400) (NEW)		$14,000	+$14,000	N/A
	NEW	(N/A)	(N/A)	(N/A)
		[N/A]	[N/A]	[N/A]
Total Inter Partes Review Fees (For Current Fees, Per Claim Fee for Each Claim in Excess of 20 is $600)	*$27,200*	*$23,000*	*−$4,200*	*−15%*
	(N/A)	*(N/A)*	*(N/A)*	*(N/A)*
	[N/A]	*[N/A]*	*[N/A]*	*[N/A]*
Post-Grant Review or Covered Business Method Patent Review Request—Up to 20 Claims (Per Claim Fee for Each Claim in Excess of 20 is $250) (NEW)		$12,000	+$12,000	N/A
	NEW	(N/A)	(N/A)	(N/A)
		[N/A]	[N/A]	[N/A]

TABLE 4—PATENT FEE CHANGES—Continued

[By greater than plus or minus 5 percent and 10 dollars]

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Post-Grant Review or Covered Business Method Patent Review Post Institution Fee—Up to 15 Claims (Per Claim Fee for Each Claim in Excess of 15 is $550) (NEW)	NEW	$18,000 (N/A) [N/A]	+$18,000 (N/A) [N/A]	N/A (N/A) [N/A]
Total Post-Grant Review or Covered Business Method Patent Fees (For Current Fees, Per Claim Fee for Each Claim in Excess of 20 is $800)	*$35,800* *(N/A)* *[N/A]*	*$30,000* *(N/A)* *[N/A]*	*−$5,800* *(N/A)* *[N/A]*	*−16%* *(N/A)* *[N/A]*
(3) Fees set above cost recovery:				
Publication Fee for Early, Voluntary, or Normal Publication (Pre Grant Publication or PG Pub)	$300 (N/A) [N/A]	$0 ($0) [$0]	−$300 (−$300) [−$300]	−100% (−100%) [−100%]
Utility Issue Fee	$1,770 ($885) [N/A]	$960 ($480) [$240]	−$810 (−$405) [−$645]	−46% (−46% [−73%]
Combined Total—Pre-grant Publication and Issue Fee—Utility	*$2,070* *($1,185)* *[N/A]*	*$960* *($480)* *[$240]*	*−$1,110* *(−$705)* *[−$895]*	*−54%* *(−59%)* *[−77%]*
Maintenance Fee Due at 3.5 Years (1st Stage)	$1,150 ($575) [N/A]	$1,600 ($800) [$400]	+$450 (+$225) [−$175]	+39% (+39%) [−30%]
Maintenance Fee Due at 7.5 Years (2nd Stage)	$2,900 ($1,450) [N/A]	$3,600 ($1,800) [$900]	+$700 (+$350) [−$550]	+24% (+24%) [−38%]
Maintenance Fee Due at 11.5 Years (3rd Stage)	$4,810 ($2,405) [N/A]	$7,400 ($3,700) [$1,850]	+$2,590 (+$1,295) [−$555]	+54% (+54%) [−23%]
(4) Fees not set using cost data as an indicator:				
Extensions for Response within 1st Month	$150 ($75) [N/A]	$200 ($100) [$50]	+$50 (+$25) [−$25]	+33% (+33%) [−33%]
Extensions for Response within 2nd Month	$570 ($285) [N/A]	$600 ($300) [$150]	+$30 (+$15) [−$135]	+5% (+5%) [−47%]
Extensions for Response within 3rd Month	$1,290 ($645) [N/A]	$1,400 ($700) [$350]	+$110 (+$55) [−$295]	+9% (+9%) [−46%]
Extensions for Response within 4th Month	$2,010 ($1,005) [N/A]	$2,200 ($1,100) [$550]	+$190 (+$95) [−$455]	+9% (+9%) [−45%]
Extensions for Response within 5th Month	$2,730 ($1,365) [N/A]	$3,000 ($1,500) [$750]	+$270 (+$135) [−$615]	+10% (+10%) [−45%]
Utility Application Size Fee—For each Additional 50 Sheets that Exceed 100 Sheets	$320 ($160) [N/A]	$400 ($200) [$100]	+$80 (+$40) [−$60]	+25% (+25%) [−38%]
Independent Claims in Excess of 3	$250 ($125) [N/A]	$420 ($210) [$105]	+$170 (+$85) [−$20]	+68% (+68%) [−16%]
Claims in Excess of 20	$62 ($31) [N/A]	$80 ($40) [$20]	+$18 (+$9) [−$11]	+29% (+29%) [−35%]
Multiple Dependent Claim	$460 ($230) [N/A]	$780 ($390) [$195]	+$320 (+$160) [−$35]	+70% (+70%) [−15%]
Correct Inventorship After First Action on the Merits (NEW)	NEW	$600 ($300) [$150]	+$600 (+$300) [+$150]	N/A (N/A) [N/A]

TABLE 4—PATENT FEE CHANGES—Continued

[By greater than plus or minus 5 percent and 10 dollars]

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Derivation Petition Fee	$400 (N/A) [N/A]	$400 N/A N/A	$0 (N/A) [N/A]	0% (N/A) [N/A]
Assignments Submitted Electronically (NEW)	$40 (N/A) [N/A]	$0 (N/A) [N/A]	−$40 (N/A) [N/A]	−100% (N/A) [N/A]
Assignments Not Submitted Electronically	$40 (N/A) [N/A]	$40 (N/A) [N/A]	$0 (N/A) [N/A]	0% (N/A) [N/A]

(1) Fees to be set at Cost Recovery

The following fee is set at cost recovery. This fee supports the policy factor of ''*offering patent prosecution options to applicants''* by providing applicants with flexibilities in seeking patent protection. A discussion of the rationale for the proposed change follows.

Request for Prioritized Examination:

TABLE 5—REQUEST FOR PRIORITIZED EXAMINATION FEE CHANGES

Fee information	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Request for Prioritized Examination	$4,800 ($2,400) [N/A]	$4,000 ($2,000) [$1,000]	−$800 (−$400) [−$1,400]	−17% (−17%) [−58%]

TABLE 6—REQUEST FOR PRIORITIZED EXAMINATION COST INFORMATION

Cost information	FY 2011
Cost calculation is available in the proposed rule published in the Federal Register Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures, 76 FR 6369 (Feb. 4, 2011).	$4,000

A patent applicant may seek prioritized examination at the time of filing an original utility or plant application or a continuation application thereof or upon filing an RCE in compliance with 37 CFR 1.114. A single request for prioritized examination may be granted for an RCE in a plant or utility application. When in the prioritized examination track, an application will be accorded special status during prosecution until a final disposition is reached. The target for prioritized examination is to provide a final disposition within twelve months, on average, of prioritized status being granted. This prioritized examination procedure is part of an effort by the USPTO to *offer patent prosecution options to applicants* to provide applicants greater control over the timing of examination of their applications. The procedure thereby enables applicants to have greater certainty in their patent rights sooner.

The AIA established the current large and small entity fees for prioritized examination, which the Office put in place in 2011. *See* Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures Under the Leahy-Smith America Invents Act, 76 FR 59050 (Sept. 23, 2011). The large entity fee is greater than the Office's cost to process a single prioritized examination request to subsidize the fee revenue lost from providing small entity applicants a 50 percent discount from the large entity fee. The cost calculation for the prioritized examination fees is available in the proposed rule. *See* Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures, 76 FR 6369 (Feb. 4, 2011). The higher large entity fee, coupled with the lower small entity fee, recovers the Office's total cost for conducting all prioritized examinations.

Under section 10, micro entities are eligible to receive a 75 percent discount from the large entity fee for prioritized examination. Here, the Office sets the large entity fee at cost ($4,000), instead of further increasing the fee to subsidize the new micro entity discount. The Office will recover this subsidy through other fees that are set above cost recovery, rather than through a separate, higher, large entity fee for prioritized examinations. The Office believes this system will *foster innovation* and allow for ease of entry into the patent system. Setting the large entity prioritized examination fee further above cost would contradict this policy factor and hinder fast patent protection for large entity applicants.

(2) Fees To Be Set Below Cost Recovery

There are eight fees that the Office sets below cost recovery that meet the greater than plus or minus 5 percent and 10 dollars criteria. The policy factors relevant to setting fees below cost recovery are *fostering innovation* and *offering patent prosecution options to applicants.* Applying these policy factors to set fees below cost recovery benefits the patent system by keeping the fees low and making patent filing and prosecution more available to applicants, thus *fostering innovation.* Although many fees are increased from current fee rates under this rule, the Office is not increasing ''pre-grant'' fees (e.g., filing, search, and examination) to avoid creating a barrier to entry as otherwise might have been created if fees were set to recover the full cost of the activity. The fee schedule *offers patent prosecution options* to provide applicants flexible and cost-effective options for seeking and completing patent protection. This strategy provides multipart and staged fees for certain patent prosecution and contested case activities. A discussion of the rationale for each fee adjustment follows.

Basic Filing, Search, and Examination—Utility:

TABLE 7—BASIC FILING, SEARCH, AND EXAMINATION—UTILITY FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Basic Filing Fee—Utility	$390	$280	−$110	−28%
	($195)	($140)	(−$55)	(−28%)
	[N/A]	[$70]	[−$125]	[−64%]
Utiliity Search Fee	$620	$600	−$20	−3%
	($310)	($300)	(−$10)	(−3%)
	[N/A]	[$150]	[−160]	[−52%]
Utility Examination Fee	$250	$720	+$470	+188%
	($125)	($360)	(+$235)	(+188%)
	[N/A]	[$180]	[+$55]	[+$44%]
Total Basic Filing, Search, and Exam—Utility	*$1,260*	*$1,600*	*+$340*	*+27%*
	($630)	*($800)*	*(+170)*	*(+27%)*
	[N/A]	*[$400]*	*[− $230]*	*[− 37%]*

TABLE 8—BASIC FILING, SEARCH, AND EXAMINATION—UTILITY FEE HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011 $/% of Total	FY 2010 $/% of Total	FY 2009 $/% of Total
Basic Filing Fee—Utility	$234/6%	$243/6%	$241/7%
Utility Search Fee	$1,521/43%	$1,694/43%	$1,520/41%
Utility Examination Fee	$1,814/51%	$1,969/51%	$1,904/52%
Total Unit Cost	*$3,569/100%*	*$3,906/100%*	*$3,665/100%*

A non-provisional application for a patent requires filing, search, and examination fees to be paid upon filing. Currently, the large entity basic filing, search, and examination fees for a utility patent recover slightly more than one-third of the average unit cost for processing, searching, and examining a patent application, while the fee for a small entity application recovers around 17 percent of the average unit cost. The Office subsidizes the below-price filing, search, and examination fees through higher ''back-end'' fees, for example, above cost issue and maintenance fees. The Office maintains this ''back-end'' subsidy of ''front-end'' fees structure to achieve the policy goal of *fostering innovation.*

The current fee rates and respective costs associated with each stage of patent prosecution are out of alignment. For example, on average, 94 percent of the costs associated with filing, searching, and examining an application occur in the search and examination stages (*see* Table 8). Approximately half of those costs are estimated to occur in the examination stage (*see* Table 8), but only 20 percent of the total filing, search, and examination fees are derived from the examination fee (*see* Table 9). To adjust this fee structure and help stabilize the USPTO funding model, the Office is increasing the total filing, search, and examination fees and realigning the fee rates to more closely track the cost pattern by stage of prosecution (i.e., filing, search, and examination), while keeping each stage below actual cost.

TABLE 9—UTILITY BASIC FILING, SEARCH, AND EXAMINATION—CURRENT, PROPOSED, AND FINAL FEE INFORMATION

Proposed fee information	Current $/% of Total	Final $/% of Total
Basic Filing Fee—Utility	$390/31%	$280/17%
Utility Search Fee	$620/49%	$600/38%
Utility Examination Fee	$250/20%	$720/45%
Total Fees	*$1,260/100%*	*$1,600/100%*

In this rule, the Office sets the combined total fee for filing, search, and examination at $1,600. This adjustment keeps the cost of entering the patent system at or below cost for large, small, and new micro entity applicants—45 percent, 22 percent, and 11 percent of FY 2011 total cost, respectively. Likewise, the adjustment for filing, search, and examination fees continues to ensure that these initial fees remain a small part (10 percent) of the cost to apply for patent protection when compared to the average legal fees to file for a patent. The filing, search, and examination fees are also only 10 percent of the total fees paid for a patent through maintenance to full term (i.e., filing, search, examination, issue, and maintenance).

The overall increase in filing, search, and examination fees *facilitates effective administration of the patent system,* because it encourages applicants to submit only the most thoughtful and unambiguous applications, therefore facilitating examiners' ability to provide prompt, quality non-final and final actions. At the same time, the overall increase in filing, search, and examination fees helps to stabilize the Office's revenue stream by collecting more revenue when an application is filed from all patent applicants, instead of collecting revenue when a patent is later published or issued from only successful applicants. Also, while the Office increases application fees, reducing the pre-grant publication and issue fees offsets these increases.

As discussed above, based on economic indicators, the Office projects a 5.0 percent growth rate in application filings for each year from FY 2013 to FY 2017. Additionally, the Office recognizes that some applicants may choose to reduce the number of applications filed in response to this increase in fees. Based on elasticity estimates, the Office anticipates that this impact will be relatively short-term, lasting for the first two and a half years after the fee increase. The Office estimated that applicants would file 1.3 percent fewer new (serialized) patent applications during FY 2013 than the number estimated to be filed in the absence of a fee increase (with new fee schedule implementation for half the fiscal year). The Office estimated that 2.7 percent fewer new patent applications would be filed during FY 2014 and 4.0 percent fewer new patent applications would be filed during FY 2015 in response to the fee adjustment. Despite this decrease in new patent applications filed when compared to the number filed absent the fee increase, the Office estimated that the overall number of patent applications filed would continue to grow each year, albeit at a lower growth rate in FY 2013 through FY 2015. The Office estimated that beginning in FY 2016, the growth in patent applications filed would return to the same levels anticipated in the absence of a fee increase. To the extent that there is some impact on filings, the Office determined that the benefits of the fee changes outweigh the temporary cost of fewer patent filings. The additional revenue generated from the increase in fees provides sufficient resources to decrease pendency. The reduction in pendency is estimated to increase private patent value by shortening the time for an invention to be commercialized or otherwise obtain value from the exclusive right for the technology. Additional information about this estimate is available at *http://www.uspto.gov/aia_implementation/fees.jsp*, in a document entitled ''*USPTO Section 10 Fee Setting—Description of Elasticity Estimates.''* The economic impact of this proposed adjustment is further considered in the cost and benefit analysis included in the *Regulatory Impact Analysis,* available at *http://www.uspto.gov/aia_implementation/fees.jsp.*

It should be noted that utility patent fees are referenced in this section to simplify the discussion of the fee rationale. However, the rationale also applies to the filing, search, and examination fee changes for design, plant, reissue, and PCT national stage fees as outlined in the ''*USPTO Section 10 Fee Setting—Table of Patent Fee Changes.''*

Request for Continued Examination (RCE)—First Request:

TABLE 10—FIRST REQUEST FOR CONTINUED EXAMINATION (RCE) FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
First Request for Continued Examination (RCE)	$930 ($465) [N/A]	$1,200 ($600) [$300]	+$270 (+$135) [−$165]	+29% (+29%) [−35%]

TABLE 11—REQUEST FOR CONTINUED EXAMINATION (RCE) HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Request for Continued Examination (RCE)	$2,070	$1,696	$1,881
Percentage of RCE cost compared to the cost to process a new application	60%	43%	51%

The historical unit cost information is calculated by subtracting the cost to complete a single application with no RCEs from the cost to complete a single application with one RCE. A description of the cost components is available for review in the ''*Section 10 Fee Setting—Activity-Based Information and Costing Methodology''* document. It is reasonable to expect that the cost to the Office to complete a single RCE should be less than the cost to complete a new application because an RCE is continuing from work already performed on the original application. The Office's historical cost data demonstrates this, with the cost to process an RCE being, on average, half of the cost to prosecute a new application.

An applicant may file an RCE in an application that is under final rejection (i.e., prosecution is closed) by filing a submission and paying a specified fee within the requisite time period. Applicants typically file an RCE when they choose to continue to prosecute an application before the examiner, rather than appeal a rejection or abandon the

application. In FY 2011 and FY 2012, about 30 percent of applications filed were for RCEs. Generally, around 70 percent of RCE applications filed in a year are for first RCEs and the remaining 30 percent are for a second or subsequent RCE. Given this data, it is reasonable to expect that most outstanding issues are resolved with the first RCE.

In this final rule, the Office divides the fee for RCEs into two parts: (1) A lower fee for a first RCE; and (2) a second, higher fee for a second or subsequent RCE. The Office divided this RCE fee because, as stated before, 70 percent of RCEs are for the first RCE, which indicates that applicants need modest additional time to resolve the outstanding issues with the examiner. Multipart RCE fees demonstrate how the Office seeks to *facilitate effective administration of the patent system* and *offer patent prosecution options to applicants.*

The large entity fee for the first RCE is set approximately 36 percent below cost recovery at $1,200 to advance innovation by easing the burden on an applicant needing to resolve outstanding items with an examiner. The USPTO calculated the large entity cost for an RCE at $1,882 by averaging historical costs after estimating the incremental cost to complete a single application with one RCE compared to the cost to complete an application with no RCE. The RCE fee in the current fee structure is set at 74 percent of the total fees for filing, search, and examination ($930 divided by $1,260). The fee relationship of a first RCE to total fees for filing, search, and examination set herein remains the same at 75 percent ($1,200 divided by $1,600).

When an applicant does not agree with a final rejection notice, the applicant has the option to file a notice of appeal as an alternative to filing an RCE. The fee to file a notice of appeal is also set below cost recovery and less than the fee set for the first, and second and subsequent RCEs (*see* appeal fee information in a following section). The USPTO chose this fee relationship to ensure all applicants have viable options to dispute a final rejection when they believe the examiner has erred. These *patent prosecution options* allow applicants to make critical decisions at multiple points in the patent prosecution process.

In addition to dividing the current RCE fee into two parts, the Office is piloting other ways to address RCEs. Specifically, the Office is operating two pilot programs that aim to avoid the need to file an RCE by permitting: (i) An Information Disclosure Statement to be submitted after payment of the issue fee; and (ii) further consideration of after final responses.

The first initiative, called Quick Path Information Disclosure Statement (QPIDS) Pilot, permits an applicant to file an IDS after a final rejection and gives the examiner time to consider whether prosecution should be reopened. If the items of information in the IDS do not require prosecution to be reopened, the application will return to issue, thereby eliminating the need for applicants to file an RCE.

The second initiative, called the After Final Consideration Pilot (AFCP), authorizes a limited amount of non-production time for examiners to consider responses filed after a final rejection with the goal of achieving compact prosecution and increased collaboration between examiners and stakeholders. The Office believes these two pilot programs should reduce the need for RCEs and thereby enable applicants to secure a patent through a single application filing.

Apart from these pilot programs, the USPTO is collaborating with the PPAC on an RCE outreach effort. The objective of this initiative is to identify the reasons why applicants file RCEs, identify any practices for avoiding unnecessary RCEs, and explore new programs or changes in current programs that could reduce the need for some RCEs. The Office recently issued a request for comments on RCE practice in the **Federal Register** (*see* 77 FR 72830 (Dec. 6, 2012)) as a part of this multi-step approach to address concerns with respect to RCE practice and engage in related efforts directed at reducing patent application pendency.

Request for Continued Examination (RCE)—Second and Subsequent Request (New):

TABLE 12—SECOND AND SUBSEQUENT REQUEST FOR CONTINUED EXAMINATION (RCE) FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Second and Subsequent Requests for Continued Examination (RCE) (NEW)	$930 ($465) [N/A]	$1,700 ($850) [$425]	+$770 (+$385) [−$40]	+83% (+83%) [−9%]

TABLE 13—REQUEST FOR CONTINUED EXAMINATION (RCE) HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Request for Continued Examination (RCE)	$2,070	$1,696	$1,881
Percentage of RCE cost compared to the cost to process a new application	60%	43%	51%

The historical unit cost information is calculated by subtracting the cost to complete a single application with no RCEs from the cost to complete a single application with one RCE. A description of the cost components is available for review in the *"Section 10 Fee Setting—Activity-Based Information and Costing Methodology"* document. It is reasonable to expect that the cost to the Office to complete a single RCE should be less than the cost to complete a new application because an RCE is continuing from work already performed on the original application. The Office's historical cost data demonstrates this, as the cost to process an RCE is on average, half of the cost to prosecute a new application.

As discussed previously, in this rule, the Office divides the fee for RCEs into two parts: (1) A lower fee for a first RCE; and (2) a second, higher fee for a second or subsequent RCE. Multipart RCE fees demonstrate how the Office seeks to

facilitate effective administration of the patent system and *offer patent prosecution options to applicants.* The Office divided this RCE fee because, as noted above, approximately 30 percent of RCEs are for a second or subsequent RCE, which indicates that most applicants generally need only one RCE to resolve outstanding issues with the examiner.

The Office sets the large entity fee for second and subsequent RCEs at $1,700, which is about 10 percent below cost recovery. The USPTO calculated the large entity cost for an RCE at $1,882 by averaging historical costs after estimating the incremental cost to complete a single application with one RCE compared to the cost to complete an application with no RCE.

The Office recognizes that an RCE may be less costly to examine than a new continuing application in certain situations. However, the patent fee structure is designed such that the costs associated with the processing and examination of a new or continuing application are recovered by issue and maintenance fees, allowing for a fee significantly below cost recovery. To avoid setting higher issue and maintenance fees to offset the cost of processing second and subsequent RCEs, the fees for those RCEs are set closer to cost recovery. The Office determined that increasing the issue and/or maintenance fees to offset lower than cost recovery second and subsequent RCEs fees would cause the majority of filers (who do not seek more than one RCE) to subsidize services provided to the small minority of filers who seek two or more RCEs. The Office does not believe such subsidization would be an optimal result.

As discussed earlier, when an applicant does not agree with a final rejection notice, the applicant has the option to file a notice of appeal, for which the fee is also set below cost recovery and less than the fee proposed for the first, and second and subsequent, RCEs (*see* appeal fee information in the following section). The USPTO chose this fee relationship to ensure that all applicants have viable options to dispute a final rejection when they believe the examiner has erred. These *patent prosecution options* allow applicants to make critical decisions at multiple points in the patent prosecution process.

Appeal Fees (Partially New):

TABLE 14—APPEAL FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Notice of Appeal	$630 ($315) [N/A]	$800 ($400) [$200]	+$170 (+$85) [−$115]	+27% (+27%) [−37%]
Filing a Brief in Support of an Appeal in Application or *Ex Parte* Reexamination Proceeding	$630 ($315) [N/A]	$0 ($0) [$0]	−$630 (−$315) [−$315]	−100% (−100%) [−100%]
Appeal Forwarding Fee for Appeal in Examination or *Ex Parte* Reexamination Proceeding *or* Filing a Brief in Support of an Appeal in *Inter Partes* Reexamination (NEW)	NEW	$2,000 ($1,000) [$500]	N/A (N/A) [N/A]	N/A (N/A) [N/A]
Total Appeal Fees (paid before Examiner Answer)	*$1,260 ($630) [N/A]*	*$800 ($400) [$200]*	*−$460 (−$230) [−$430]*	*−37% (−37%) [−68%]*
Total Appeal Fees (paid after Examiner Answer)	*$1,260 ($630) [N/A]*	*$2,800 ($1,400) [$700]*	*+$1,540 (+$770) [+$70]*	*+122% (+122%) [+11%]*

TABLE 15—APPEAL FEE HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Notice of Appeal to Patent Trial and Appeal Board (PTAB) Filing a Brief in Support of an Appeal. Appeal Forwarding Fee.	$4,799	$4,960	$5,008

An applicant who disagrees with an examiner's final rejection may appeal to the PTAB by filing a notice of appeal and the required fee within the time period provided. An applicant likewise may file a notice of appeal after the applicant's claim(s) has/have been twice rejected, regardless of whether the claim(s) has/have been finally rejected. Further, an applicant may file a notice of appeal after a first rejection in a continuing application if any of the claims in the parent application were previously rejected.

Within two months from the date of filing a notice of appeal, an appellant must file a Brief. Then, the examiner must file an Examiner's Answer. After the Examiner's Answer is mailed, the appeal file is forwarded to the PTAB for review.

Currently, a large entity applicant pays $630 to file a notice of appeal and another $630 when filing a Brief—a total

of $1,260. These current fees only recover approximately 25 percent of the Office's cost of an appeal. In this final rule, the Office increases appeal fees to reduce the gap between fees and cost. At the same time, the Office *offers patent prosecution options to applicants* and stages the appeal fees to recover additional cost at later points in time and thereby minimize the cost impacts on applicants associated with withdrawn final rejections.

In the NPRM, the Office proposed to set a $1,000 notice of appeal fee and a $0 fee when filing the brief. After evaluating comments received from the PPAC and the public, the Office is adjusting the notice of appeal fee down to $800 and setting the $0 fee when filing the brief. The Office recognizes that after some notices of appeal are filed, the matter is resolved, and there is no need to take the ultimate step of forwarding the appeal to the PTAB for a decision. The Office further sets a $2,000 fee to forward the appeal file—containing the appellant's Brief and the Examiner's Answer—to the PTAB for review. This fee is the same as the Office proposed in the NPRM. Under this fee structure, 28 percent of the fee would be paid at the time of notice of appeal, and the remaining 72 percent would be paid after the Examiner's Answer, but only if the appeal is forwarded to the PTAB. The Office estimates that less than 5 percent of applicants who receive final rejections will pay the full fee ($2,800) required to forward an appeal to PTAB. This fee structure allows the appellant to reduce the amount invested in the appeal process until receiving the Examiner's Answer. In fact, when prosecution issues are resolved after the notice of appeal and before forwarding an appeal to the PTAB, a large entity appellant would pay only $800 to obtain an Examiner's Answer, 37 percent less than under the current fee structure.

Staging the appeal fees in this manner allows applicants to pay less in situations when an application is either allowed or reopened instead of being forwarded to the PTAB. This *patent prosecution option* allows applicants to make critical decisions at multiple points in the patent prosecution process. Also, just as the Office is exploring ways to minimize unnecessary RCE filings, the Office is likewise exploring other options, including pilot programs, in an effort to reduce the need to appeal to the PTAB.

Ex Parte Reexamination:

TABLE 16—EX PARTE REEXAMINATION FEE CHANGES

Fee Description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Ex Parte Reexamination	$17,750 (N/A) [N/A]	$12,000 ($6,000) [$3,000]	−$5,750 (−$11,750) [−$14,750]	−32% (−66%) [−83%]

TABLE 17—EX PARTE REEXAMINATION HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Ex Parte Reexamination	$19,626	$16,648	$17,162

TABLE 18—EX PARTE REEXAMINATION PROSPECTIVE COST INFORMATION

Prospective cost information	FY 2013
Supplemental Examination Fee Methodology for Final Rule (77 FR 48828 (Aug. 14, 2012)) available at *http://www.uspto.gov/aia_implementation/supp_exam_fee_meth_fr.pdf.*	$17,750

Any person (including anonymously) may file a petition for the *ex parte* reexamination of a patent that has been issued. The Office initially determines if the petition presents ''a substantial new question of patentability'' as to the challenged claims. If such a new question has been presented, the Office will order an *ex parte* reexamination of the patent for the relevant claims.

After noting a disparity between the previous *ex parte* reexamination fee ($2,520) and the cost of completing the proceeding ($17,750), the Office increased the fee using its authority under 35 U.S.C. section 41(d). (*See* Changes To Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and To Revise Reexamination Fees, 77 FR 48828 (Aug. 14, 2012)).

In the NPRM, the Office proposed setting the *ex parte* reexamination fee at $15,000, which is 15 percent below the Office's cost of conducting the proceeding, and introduced new small and micro entity discounts for an *ex parte* reexamination (in accordance with section 10, third party requestors are not eligible for the micro entity discounts).

In this final rule, the Office further reduces the large entity fee for *ex parte* reexamination from $15,000 (as proposed in the NPRM) to $12,000, which is 32 percent below the Office's cost of conducting the proceeding. Setting the fee below cost permits easier access to the *ex parte* reexamination process, which benefits the patent system and patent quality by removing low quality patents.

The *ex parte* reexamination fee is due at the time of filing, however, it is in essence a two-part fee. First, part of the *ex parte* reexamination fee helps to recover the costs for analyzing the request and drafting the decision whether to grant or deny *ex parte* reexamination. This is based on the fee set forth in 37 CFR 1.20(c)(7) for a denied request for *ex parte* reexamination ($3,600, $1,800 for a small entity, and $900 for a micro entity patentee). Second, the remaining part of the fee helps to recover the costs for conducting *ex parte* reexamination if the request for *ex parte* reexamination is

granted. This is based on the *ex parte* reexamination fee set forth in 37 CFR 1.20(c)(1) less the fee set forth in 37 CFR 1.20(c)(7) for a denied request for *ex parte* reexamination ($12,000 less $3,600 equals $8,400 for a large entity; $6,000 less $1,800 equals $4,200 for a small entity; and $3,000 less $900 equals $2,100 for a micro entity patentee).

Supplemental Examination:

TABLE 19—SUPPLEMENTAL EXAMINATION FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Processing and Treating a Request for Supplemental Examination—Up to 20 Sheets	$5,140 (N/A) [N/A]	$4,400 ($2,200) [$1,100]	−$740 (−$2,940) [−$4,040]	−14% (−57%) [−79%]
Ex Parte Reexamination Ordered as a Result of a Supplemental Examination Proceeding	$16,120 (N/A) [N/A]	$12,100 ($6,050) [$3,025]	−$4,020 (−$10,070) [−$13,095]	−25% (−62%) [−81%]
Total Supplemental Examination Fees	*$21,260* *(N/A)* *[N/A]*	*$16,500* *($8,250)* *[$4,125]*	*−$4,760* *(−$13,010)* *[−$17,135]*	*−22%* *(−61%)* *[−81%]*

TABLE 20—SUPPLEMENTAL EXAMINATION PROSPECTIVE COST INFORMATION

Prospective cost information	FY 2013
Supplemental Examination Fee Methodology for Final Rule (77 FR 48828 (Aug. 14, 2012)) *available at http://www.uspto.gov/aia_implementation/supp_exam_fee_meth_fr.pdf*	
Supplemental Examination Request*	$5,180
Supplemental Examination Reexamination	16,120
Total Supplemental Examination Costs	21,300

*In the final rule, the Office estimated its fiscal year 2013 cost for processing and treating a request for supplemental examination to be $5,180. The Office also estimated that the document size fees will recover an average of $40 per request for supplemental examination. Therefore, the Office added new § 1.20(k)(1) to set a fee of $5,140 for processing and treating a request for supplemental examination (the estimated 2013 cost amount rounded to the nearest ten dollars minus $40).

Supplemental examination is a new proceeding created by the AIA with an effective date of September 16, 2012 (*see* Changes To Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and To Revise Reexamination Fees, 77 FR 48828 (Aug. 14, 2012)). A patent owner may request a supplemental examination of a patent by the Office to consider, reconsider, or correct information believed to be relevant to the patent. This proceeding will help the patent owner preempt inequitable conduct challenges to the patent. The need for this proceeding arises only after a patent owner recognizes that there is information that should have been brought to the attention of the Office to consider or reconsider during the application process, or information submitted during the application process that needs to be corrected.

The current fees for the request for supplemental examination and the *ex parte* reexamination ordered as a result of a supplemental examination proceeding are $5,140 and $16,120, respectively, as set using the Office's authority under 35 U.S.C. 41(d).

In the NPRM, the Office proposed to adjust supplemental examination fees to 15 percent below cost at $18,000 ($4,400 for the request and $13,600 for the reexamination). After updating the patent operating plans and corresponding aggregate costs in response to public comments, the Office determined that it could reduce the supplemental examination fee further while continuing to ensure that the aggregate revenue equals aggregate cost. In this rule, the Office is reducing the fee for conducting an *ex parte* reexamination ordered as a result of a supplemental examination to $12,100 and setting the total supplemental examination fees at $16,500 ($4,400 for the request and $12,100 for the reexamination), which is 22 percent below the Office's cost for these services.

The Office believes these reduced fee amounts continue to be sufficient to encourage applicants to submit applications with all relevant information during initial examination, yet low enough to *facilitate effective administration of the patent system* by providing patentees with a procedure to immunize a patent from an inequitable conduct challenge.

Inter Partes Review:

TABLE 21— INTER PARTES REVIEW FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Inter Partes Review Request—Up to 20 Claims (Per Claim Fee for Each Claim in Excess of 20 is $200) (NEW)	NEW	$9,000 (N/A) [N/A]	N/A (N/A) [N/A]	N/A (N/A) [N/A]
Inter Partes Review Post Institution Fee—Up to 15 Claims (Per Claim Fee for Each Claim in Excess of 15 is $400) (NEW)	NEW	$14,000 (N/A) [N/A]	N/A (N/A) [N/A]	N/A (N/A) [N/A]
Total Inter Partes Review Fees (For Current Fees, Per Claim Fee for Each Claim in Excess of 20 is $600)	*$27,200 (N/A) [N/A]*	*$23,000 (N/A) [N/A]*	*− $4,200 (N/A) [N/A]*	*− 15% (N/A) [N/A]*

TABLE 22—INTER PARTES REVIEW PROSPECTIVE COST INFORMATION

Prospective cost information	FY 2013

The Total *Inter Partes* Review cost calculation of $27,200 included in Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012) is available for review at *http://www.gpo.gov/fdsys/pkg/FR–2012–08–14/pdf/2012–17906.pdf.* The Office estimated that 35 hours of Judge time would be required during review and used this as the basis for estimating the cost for the *Inter Partes* Review. The IT-related costs are included in the Review Request portion of the fee.

Description	Base cost	Per claim cost
Inter Partes Review Request—up to 20 claims	$10,500	> 20 = $200
Inter Partes Review Post Institution Fee—up to 15 claims	16,700	> 15 = $400
Total Inter Partes Review Costs	27,200	N/A

Inter partes review is a new trial proceeding created by the AIA with an effective date of September 16, 2012 (*see* Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents 77 FR 48680 (Aug. 14, 2012). *Inter partes* review allows the Office to review the patentability of one or more claims in a patent only on a ground that could be raised under 35 U.S.C. 102 or 103, and only on the basis of prior art consisting of patents or printed publications. The *inter partes* review process begins when a third party files a petition nine months after the grant of a patent. An *inter partes* review may be instituted upon a showing that there is a reasonable likelihood that the petitioner would prevail with respect to at least one claim challenged. If the review is instituted and not dismissed, the PTAB will issue a final determination within one year of institution. The period can be extended for good cause for up to six months from the date of one year after instituting the review.

In this final rule, the Office sets the *inter partes* review fees at a level below the Office's cost recovery and improves the fee payment structure. The Office sets four separate fees for *inter partes* review, which a petitioner would pay upon filing a petition. The Office also chooses to return fees for post-institution services should a review not be instituted. Similarly, the Office establishes that fees paid for post-institution review of a large number of claims will be returned if the Office only institutes the review of a subset of the requested claims.

The USPTO sets the fee for an *inter partes* review petition at $9,000 for up to 20 claims. This fee would not be returned or refunded to the petitioner even if the review is not instituted.

In addition, the USPTO sets a per claim fee of $200 for each claim requested for review in excess of 20. This fee would not be returned or refunded to the petitioner if the review is not instituted or if the institution is limited to a subset of the requested claims.

The USPTO also sets the *inter partes* review post-institution fee at $14,000 for a review of up to 15 claims. This fee would be returned to the petitioner if the Office does not institute a review. Likewise, the Office sets a per claim fee of $400 for review of each claim in excess of 15 during the post-institution trial. The entire post-institution fee would be returned to the petitioner if the Office does not institute a review. The entire excess claims fee would be returned if review of 15 or fewer claims is instituted. If the Office reviews more than 15 claims, but fewer than all of the requested claims, it would return part of the fee for each claim the Office did not review.

For example, under this final rule, if a party requests *inter partes* review of 52 claims, the petitioner would pay a single fee up front comprising two parts and totaling $44,200. The first part is for determining whether to institute the review and would include the base fee ($9,000) plus a fee of $200 for each of the additional 32 claims (52 minus 20), which equates to an additional $6,400 for a total review request fee of $15,400 ($9,000 plus $6,400). The second part of the fee is for when the review is instituted and includes the base fee of $14,000 plus a fee of $400 for each of the additional 37 claims (52 minus 15),

which equates to an additional $14,800 for a total post institution fee of $28,800 ($14,000 plus $14,800). In addition, under this rule, if the petitioner seeks review of 52 claims, but the Office only institutes review of 40 claims, the Office would return $4,800 (it did not institute review of the 41st through 52nd claim for which review was requested). Alternatively, if the review is not instituted at all, the portion of the fee covering the trial would be returned (i.e., the base post-institution fee of $14,000 as well as the $14,800 for claims over 15, for a total of $28,800).

The Office sets these two claim thresholds—one for petitions (up to 20 claims) and the other for the post-institution trials (up to 15 claims)—because it anticipates that it will not institute review of 25 percent of claims for which review is requested. The Office bases this approach on its analysis of the initial *inter partes* reexaminations filed after September 15, 2011, as well as the new opportunity for patent owners to file a response to the petition before the Office determines whether and for which claims to institute review.

This approach also considers certain policy factors, such as *fostering innovation* by facilitating greater access to the *inter partes* review proceedings and thereby removing low quality patents from the patent system.

Post-Grant Review or Covered Business Method Patent Review:

TABLE 23—POST-GRANT REVIEW OR COVERED BUSINESS METHOD PATENT REVIEW FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Post-Grant Review or Covered Business Method Patent Review Request—Up to 20 Claims (Per Claim Fee for Each Claim in Excess of 20 is $250) (NEW)	NEW	$12,000 (N/A) [N/A]	N/A (N/A) [N/A]	N/A (N/A) [N/A]
Post-Grant Review or Covered Business Method Patent Review Post Institution Fee—Up to 15 Claims (Per Claim Fee for Each Claim in Excess of 15 is $550) (NEW)	NEW	$18,000 (N/A) [N/A]	N/A (N/A) [N/A]	N/A (N/A) [N/A]
Total Post-Grant Review or Covered Business Method Patent Review Fees (For Current Fees, Per Claim Fee for Each Claim in Excess of 20 is $800)	$35,800 (N/A) [N/A]	*$30,000 (N/A) [N/A]*	*– $5,800 (N/A) [N/A]*	*– 16% (N/A) [N/A]*

TABLE 24—POST-GRANT REVIEW OR COVERED BUSINESS METHOD PATENT REVIEW PROSPECTIVE COST INFORMATION

Prospective cost information	FY 2013
The Total Post-Grant Review cost calculation of $35,800 included in Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012) is available for review at *http://www.gpo.gov/fdsys/pkg/FR–2012–08–14/pdf/2012–17906.pdf.* The Office estimated that 50 hours of Judge time would be required during review and used this as the basis for estimating the cost for the Post-Grant Review. The IT-related costs are included in the Review Request portion of the fee.	

Description	Base cost	Per claim cost
Post-Grant Review or Covered Business Method Patent Review Request—up to 20 claims	$14,700	> 20 = $250
Post-Grant Review or Covered Business Method Patent Review Post Institution Fee—up to 15 claims	21,100	> 15 = $550
Total Post-Grant Review Costs	35,800	N/A

Post-grant review is a new trial proceeding created by the AIA with an effective date of September 16, 2012 (*see* Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012)). Post-grant review allows the Office to review the patentability of one or more claims in a patent on any ground that could be raised under 35 U.S.C. 282(b)(2) and (b)(3) in effect on September 16, 2012. The post-grant review process begins when a third party files a petition within nine months of the grant of a patent. A post-grant review may be instituted upon a showing that it is more likely than not that at least one challenged claim is unpatentable or that the petition raises an unsettled legal question that is important to other patents or patent applications. If the review is instituted and not dismissed, the PTAB will issue a final determination within one year of institution. This period can be extended for good cause for up to six months from the date of one year after instituting the review.

In this final rule, the Office sets the post-grant review fee at a level below the Office's cost recovery and improves the fee payment structure. The Office sets four separate fees for post-grant review, which the petitioner would pay upon filing a petition for post-grant review. The Office also chooses to return fees for post-institution services if a review is not instituted. Similarly, the Office establishes that fees paid for a post-institution review of a large

number of claims will be returned if the Office only institutes the review of a subset of the requested claims. The same structure and fees apply for covered business method review.

The Office sets the fee for a post-grant review petition at $12,000 for up to 20 claims. This fee would not be returned or refunded to the petitioner even if the review is not instituted by the Office.

In addition, the Office sets a per claim fee of $250 for each claim in excess of 20. This fee would not be returned or refunded to the petitioner if the review is not instituted, or if the institution is limited to a subset of the requested claims.

The USPTO also sets a post-grant review post-institution fee at $18,000 for post-institution review of up to 15 claims. This fee would be returned to the petitioner if the Office does not institute a review. Likewise, the Office sets a per claim fee of $550 for review of each claim in excess of 15 during the post-institution review. The entire fee would be returned to the petitioner if the Office does not institute a review. The excess claims fees would be returned if review of 15 or fewer claims is instituted. If the Office reviews more than 15 claims, but fewer than all of the requested claims, it would return part of the fee for each claim that was not instituted.

For example, under this final rule, a party seeking post-grant review of 52 claims would pay a single fee up front comprising two parts and totaling $58,350. The first part is for determining whether to institute the review and would include the base fee ($12,000) plus a fee of $250 for each of the additional 32 claims (52 minus 20), which equates to an additional $8,000 for a total review request fee of $20,000 ($12,000 plus $8,000). The second part of the fee is for when the review is instituted and includes the base fee of $18,000 plus a fee of $550 for each of the additional 37 claims (52 minus 15), which equates to an additional $20,350 for a total post institution fee of $38,350 ($18,000 plus $20,350). In addition, under this rule, if the petitioner requests review of 52 claims, but the Office only institutes review of 40 claims, then the Office would return $6,600 (it did not institute review of the 41st through 52nd claims for which review was requested). Alternatively, if a review is not instituted at all, the Office would return $38,350 ($20,350 for claims over 15, as well as the base $18,000 post-institution fee).

The Office sets two different claim thresholds—one for petition (up to 20 claims) and the other for the post-institution trials (up to 15 claims)—because it anticipates that it will not institute a review of 25 percent of claims for which review is requested. The Office bases this approach on its analysis of the initial *inter partes* reexaminations filed after September 15, 2011, as well as the new opportunity for patent owners to file a response to the petition before the Office determines whether and for which claims to institute review.

The approach also considers certain policy factors, such as *fostering innovation* through facilitating greater access to the post-grant review proceedings and thereby removes low quality patents from the patent system.

Pre Grant Publication (PGPub) Fee:

TABLE 25—PRE GRANT PUBLICATION (PGPUB) FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Publication Fee for Early, Voluntary, or Normal Publication	$300	$0	−$300	−100%
Publication Fee for Republication	300	300	0	0%

TABLE 26—PRE GRANT PUBLICATION (PGPUB) HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Publication Fee for Early, Voluntary, or Normal Publication	$181	$158	$243

With certain exceptions, each nonprovisional utility and plant patent application is published 18 months from the earliest effective filing date. The fee for this pre-grant publication (PGPub) is paid only after a patent is granted. If a patent is never granted, the applicant does not pay the fee for PGPub. Once the Office determines that the invention claimed in a patent application is patentable, the Office sends a notice of allowance to the applicant, outlining the patent application publication fees due, along with the patent issue fee. The applicant must pay these publication and issue fees three months from the date of the notice of allowance to avoid abandoning the application.

Currently, the PGPub fee is set at $300 and collects over one and a half times the cost to publish a patent application. The IP system benefits from publishing patent applications; disclosing information publicly stimulates research and development, as well as subsequent commercialization through further development or refinement of an invention. Therefore, a lower PGPub fee would benefit both applicants and innovators in the patent system.

Given that publishing a patent application 18 months after its earliest effective filing date benefits the IP system more than individual applicants, the Office reduces the PGPub fee to $0. Reducing this fee also helps rebalance the fee structure and offsets the proposed increases to filing, search, and examination fees ($340 increase, less this $300 decrease is a net $40 increase—or 3 percent—to apply for a patent and publish the application). However, to allow the Office to recover sufficient revenue to pay for the projected cost of patent operations in FY 2013, the effective date of the proposed reduction to the PGPub fee is January 1, 2014.

The PGPub fee for republication of a patent application (1.18(d)(2)) is not adjusted, but is set at the existing rate of $300. The Office keeps this fee at its existing rate for each patent application that must be published again after a first publication for $0.

(3) Fees To Be Set Above Cost Recovery

There are two fees that the Office sets above cost recovery that meet the greater than plus or minus 5 percent and 10 dollars criteria. The policy factor relevant to setting fees above cost recovery is *fostering innovation.* Back-end fees work in concert with front-end fees. The above-cost, back-end fees allow the Office to recover the revenue required to subsidize the cost of entry into the patent system and reduce the backlog of patent applications. A discussion of the rationale for each change follows.

Issue Fees:

TABLE 27—ISSUE FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Utility Issue Fee	+$1,770 (+$885) [N/A]	+$960 (+$480) [+$240]	−$810 (−$405) [−$645]	−46% (−46%) [−73%]

TABLE 28—ISSUE FEE HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011	FY 2010	FY 2009
Utility Issue Fee	$257	$231	$224

Once the Office determines that the invention claimed in a patent application is patentable, the USPTO sends a notice of allowance to the applicant outlining the patent application publication and patent issue fees due. The applicant must pay the publication and issue fees three months from the date of the notice of allowance to avoid abandoning the application.

In setting fees due after completing prosecution at a level higher than cost, front-end fees can be maintained below cost, thereby *fostering innovation.* Currently, the large entity issue fee is set at $1,770, which is seven times more than the cost of issuing a patent. This fee recovers revenue, but it also poses a challenge to applicants at the time of allowance. When the issue fee is due, patent owners possess less information about the value of their invention than they do a few years later. Lowering issue fees will help inventors financially at a time when the marketability of their invention is less certain. Additionally, setting the PGPub fee at $0 as discussed above, and recovering the combined cost of publishing and issuing an application through only the issue fee benefits small and micro entity innovators. The 50 percent discount for small entities and 75 percent discount for micro entities are not available for the publication fee, but are available for the issue fee. Thus, there are benefits to both the IP system and the applicant when the issue fees are set at an amount lower than the current fee amount, but still above cost recovery.

To both maintain the beneficial aspects of this back-end subsidy model and realign the balance of the fee structure, the Office decreases the large entity issue fee to $960. This amount is about twice the cost of both publishing an application (which is set below cost at $0) and issuing a patent. This fee adjustment is over a 50 percent decrease from the amount currently paid for both the PGPub and issue fees together. The Office is adjusting the issue fee in two steps. First, the Office sets the issue fee at $1,780 and makes available a 50 percent discount for small entities and a 75 percent discount for micro entities. Second, the Office decreases the large entity issue fee to $960 effective January 1, 2014, and continues to make available discounts for small and micro entities.

It should be noted that only utility issue fees are referenced in this section to simplify the discussion of the fee rationale. However, the rationale is applicable to the issue fee changes for design, plant, and reissue fees as outlined in the ''*USPTO Section 10 Fee Setting—Table of Patent Fee Changes.*''

Maintenance Fees:

TABLE 29—MAINTENANCE FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Maintenance Fee Due at 3.5 Years (1st Stage)	$1,150 ($575) [N/A]	$1,600 ($800) [$400]	+$450 (+$225) [$−175]	+39% (+39%) [−30%]
Maintenance Fee Due at 7.5 Years (2nd Stage)	$2,900 ($1,450) [N/A]	$3,600 ($1,800) [$900]	+$700 (+$350) [−$550]	+24% (+24%) [−38%]
Maintenance Fee Due at 11.5 Years (3rd Stage)	$4,810 ($2,405) [N/A]	$7,400 ($3,700) [$1,850]	+$2,590 (+$1,295) [−$555]	+54% (+54%) [−23%]

TABLE 30—MAINTENANCE FEE HISTORICAL COST INFORMATION

Historical unit cost information	FY 2011 *	FY 2010	FY 2009
Maintenance Fee Due at 3.5 Years (1st Stage)	.....	$1	$2
Maintenance Fee Due at 7.5 Years (2nd Stage)	.....	1	2
Maintenance Fee Due at 11.5 Years (3rd Stage)	.....	1	2

* Beginning in FY 2011, the Office determined that the maintenance fee activity was in support of the process application fees activity and its associated fees. Therefore, the Office reassigned these costs accordingly, and no longer estimates a unit cost for maintenance fee activities. Additional information about the methodology for determining the cost of performing the Office's activities, including the cost components related to respective fees, available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1* in the document titled *''USPTO Section 10 Fee Setting—Activity-Based Information and Costing Methodology.''*

Maintenance fees must be paid at defined intervals—3.5 years, 7.5 years, and 11.5 years—after the Office grants a utility patent in order to keep the patent in force. Maintaining a patent costs the Office very little. However, maintenance fees benefit the Office and the patent system by generating revenue that permits the Office to keep front-end fees below cost and to subsidize the cost of prosecution for small and micro entity innovators.

Additionally, maintenance fees will be paid only by patent owners who believe the value of their patent is higher than the fees for renewing their patent rights. On this score, setting early maintenance fees lower than later maintenance fees mitigates uncertainty associated with the value of the patent. As the value becomes more certain over time, the maintenance fee increases because patent owners have more information about the commercial value of the patented invention and can more readily decide whether the benefit of a patent outweighs the cost of the fee.

Therefore, under a progressively higher maintenance fee schedule, a patent holder is positioned to perform an individual cost-benefit analysis to determine if the patent is at least as valuable as the maintenance fee payment. When the patent holder determines that the patent benefit (value) outweighs the cost (maintenance fee), the holder will likely continue to maintain the patent. Conversely, when the patent holder determines that the benefit is less than the cost, the holder likely will not maintain the patent to full term. When the patent expires, the subject matter of the patent is no longer held with exclusive patent rights, and the public may utilize the invention and work to extend its innovation or commercialization. More information on the economic costs and benefits of patent renewal can be found in the rulemaking RIA, which is available for review at *http://www.uspto.gov/aia_implementation/fees.jsp*.

The Office increases the first, second, and third stage maintenance fees to $1,600, $3,600, and $7,400, respectively. These increases are commensurate with the subsidies offered for prosecution of a patent application and align with the fee setting strategy of *fostering innovation* by setting front-end fees below cost. The increase also ensures that the USPTO has sufficient aggregate revenue to recover the aggregate cost of operations and implement goals and objectives.

(4) Fees That Are Not Set Using Cost Data as an Indicator

Fees in this category include those fees for which the USPTO does not typically maintain historical cost information separate from that included in the average overall cost of activities during patent prosecution or did not refer to cost information for setting the particular fee. Instead, the Office evaluates the policy factors described in *Part III. Rulemaking Goals and Strategies,* above, to inform fee setting. Some of these fees are based on the size and complexity of an application and help the Office to *effectively administer the patent system* by encouraging applicants to engage in certain activities. Setting fees at particular levels can: (1) Encourage the submission of applications or other actions which lead to more efficient processing where examiners can provide, and applicants can receive, prompt, quality interim and final decisions; (2) encourage the prompt conclusion of prosecuting an application, resulting in pendency reduction and the faster dissemination of patented information; and (3) help recover costs for activities that strain the patent system.

There are six types of fees in this category. A discussion of the rationale for each proposed change follows.

Extension of Time Fees:

TABLE 31—EXTENSION OF TIME FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Extension for Response within 1st Month	$150	$200	+$50	+33%
	($75)	($100)	(+$25)	(+33%)
	[N/A]	[$50]	[−$25]	[−33%]
Extension for Response within 2nd Month	$570	$600	+$30	+5%
	($285)	($300)	(+$15)	(+5%)
	[N/A]	[$150]	[−$135]	[−47%]
Extension for Response within 3rd Month	$1,290	$1,400	+$110	+9%
	($645)	($700)	(+$55)	(+9%)
	[N/A]	[$350]	[−$295]	[−46%]
Extension for Response within 4th Month	$2,010	$2,200	+$190	+9%
	($1,005)	($1,100)	(+$95)	(+9%)
	[N/A]	[$550]	[−$455]	[−45%]

TABLE 31—EXTENSION OF TIME FEE CHANGES—Continued

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Extension for Response within 5th Month	$2,730 ($1,365) [N/A]	$3,000 ($1,500) [$750]	+$270 (+$135) [−$615]	+10% (+10%) [−45%]

If an applicant must reply within a non-statutory or shortened statutory time period, the applicant can extend the reply time period by filing a petition for an extension of time and paying the requisite fee. Extensions of time may be automatically authorized at the time an application is filed or requested as needed during prosecution. The USPTO increases these fees to facilitate an efficient and prompt conclusion of application processing, which benefits the Office's compact prosecution initiatives and reduces patent application pendency.

Application Size Fees:

TABLE 32—APPLICATION SIZE FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Application Size Fee—For each Additional 50 Sheets that Exceed 100 Sheets	$320 ($160) [N/A]	$400 ($200) [$100]	+$80 (+$40) [−$60]	+25% (+25%) [−38%]

Currently, the Office charges an additional fee for any application where the specification and drawings together exceed 100 sheets of paper. The application size fee applies for each additional 50 sheets of paper or fraction thereof. The USPTO increases the application size fee to facilitate an efficient and compact application examination process, which benefits the applicant and the *effective administration of patent prosecution.* Succinct applications facilitate faster examination with an expectation of fewer errors.

Excess Claims:

TABLE 33—EXCESS CLAIMS FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Independent Claims in Excess of 3	$250 ($125) [N/A]	$420 ($210) [$105]	+$170 (+$85) [−$20]	+68% (+68%) [−16%]
Claims in Excess of 20	$62 ($31) [N/A]	$80 ($40) [$20]	+$18 (+$9) [−$11]	+29% (+29%) [−35%]
Multiple Dependent Claim	$460 ($230) [N/A]	$780 ($390) [$195]	+$320 (+$160) [−$35]	+70% (+70%) [−15%]

Currently, the Office charges a fee for filing, or later presenting at any other time, each independent claim in excess of 3, as well as each claim (whether dependent or independent) in excess of 20. In addition, any original application that is filed with, or amended to include, multiple dependent claims must pay the multiple dependent claim fee. Generally, a multiple dependent claim is a dependent claim which refers back in the alternative to more than one preceding independent or dependent claim.

The patent fee structure has maintained excess claim fees since at least 1982, and the result has been that most applications now contain three or fewer independent claims and twenty or fewer total claims. Applicants who feel they need more than this number of independent or total claims may continue to present them by paying the applicable excess claims fee. While the former excess claims fee amount encouraged most applicants to present three or fewer independent claims and twenty or fewer total claims, it was not sufficient to discourage some applicants from presenting a copious number of

claims for apparent tactical reasons, nor did the former excess claims fee reflect the excess burden associated with examining those claims. *See, e.g.,* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612, 48659–60 (Aug. 14, 2012) (noting that the number of claims often impacts the complexity of the request and increases the demands placed on the deciding officials in administrative proceedings). Thus, the Office is adopting excess claims fee amounts that are aimed to permit applicants to include excess claims when necessary to obtain an appropriate scope of coverage for an invention, while deterring applicants from routinely presenting a copious number of claims merely for apparent tactical reasons.

In this final rule, the Office sets the fees for independent claims in excess of three to $420, for claims in excess of 20 to $80, and for multiple dependent claims to $780. The Office also increased claim fees to facilitate an efficient and compact application examination process, which benefits the applicant and the USPTO through more *effective administration of patent prosecution.* Filing applications with the most prudent number of unambiguous claims will enable prompt conclusion of application processing, because more succinct applications facilitate faster examination with an expectation of fewer errors.

Correct Inventorship After First Action on the Merits (New):

TABLE 34—CORRECT INVENTORSHIP AFTER FIRST ACTION ON THE MERITS FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Correct Inventorship After First Action on the Merits (NEW)	NEW	$600 ($300) [$150]	N/A (N/A) [N/A]	N/A (N/A) [N/A]

It is necessary for the Office to know who the inventors are to prepare patent application publications, conduct examination under 35 U.S.C. 102 and 103, and prevent double patenting. Changes to inventorship (e.g., adding previously unnamed persons as inventors or removing persons previously named as inventors) cause additional work for the Office. For instance, the Office may need to repeat prior art searches and/or reconsider patentability under 35 U.S.C. 102 and 103, as well as reconsider the possibility of double patenting.

In the NPRM, the Office proposed a $1,000 fee to correct inventorship after the first action on the merits. In this final rule, after carefully considering comments from the PPAC and the public, the Office sets the fee to correct inventorship after the first action on the merits at $600, 40 percent less than the $1,000 proposed in the NPRM. The inventorship correction fee is set to encourage reasonable diligence and a bona fide effort to ascertain the actual inventorship as early as possible and to provide that information to the Office prior to examination. The fee also will help offset the costs incurred by the Office when there is a change in inventorship.

Additionally, in the NPRM, the Office proposed that the correction of inventorship fee be paid in all circumstances when inventors were added or deleted, because requiring the fee only to add inventors would encourage applicants to err in favor of naming too many persons as inventors, which would complicate the examination process (e.g., it could complicate double patenting searches). In this final rule, the Office is adding an exception when inventors are deleted due to the cancellation of claims. This final rule requires a fee to accompany a request to correct or change the inventorship filed after an Office action on the merits, unless the request is accompanied by a statement that the request to correct or change the inventorship is due solely to the cancelation of claims in the application.

The Office appreciates that inventorship may change as the result of a restriction requirement by the Office. Where inventorship changes as a result of a restriction requirement, the applicant should file a request to correct inventorship promptly (prior to first action on the merits) to avoid this fee. Otherwise, the Office will incur the costs during examination related to the change in inventorship.

Derivation Proceeding:

TABLE 35—DERIVATION PROCEEDING FEE CHANGES

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Derivation petition fee	$400 (N/A) [N/A]	$400 (N/A) [N/A]	$0 (N/A) [N/A]	0% (N/A) [N/A]

A derivation proceeding is a new trial proceeding conducted at the PTAB to determine whether an inventor named in an earlier application derived the claimed invention from an inventor named in the petitioner's application, and whether the earlier application claiming such invention was authorized. An applicant subject to the first-inventor-to-file provisions may file a petition to institute a derivation proceeding only within one year of the

first publication of a claim to an invention that is the same or substantially the same as the earlier application's claim to the invention. The petition must be supported by substantial evidence that the claimed invention was derived from an inventor named in the petitioner's application.

In this final rule, the Office sets the derivation petition fee at $400. The Office estimates the $400 petition fee will recover the Office's cost to process a petition for derivation.

Assignments Submitted Electronically Fee (New):

TABLE 36—FEE CHANGES FOR ASSIGNMENTS SUBMITTED ELECTRONICALLY

Fee description	Current fees	Final fees	Dollar change	Percent change
	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity	Large (small) [micro] entity
Assignments Submitted Electronically (NEW)	$40 (N/A) [N/A]	$0 (N/A) [N/A]	−$40 (N/A) [N/A]	−100% (N/A) [N/A]
Assignments Not Submitted Electronically (NEW)	$40 (N/A) [N/A]	$40 (N/A) [N/A]	$0 (N/A) [N/A]	0% (N/A) [N/A]

Note: The current fee amount is $40 for submitting an assignment to the Office, regardless of method of submission.

Ownership of a patent gives the patent owner the right to exclude others from making, using, offering for sale, selling, or importing into the U.S. the invention claimed in a patent. Patent law provides for the transfer or sale of a patent, or of an application for patent, by an instrument in writing (i.e., an assignment). When executing an assignment, the patent owner may assign (e.g., transfer) the total or a percentage of interest, rights, and title of a patent to an assignee. When there is a completed assignment, the assignee becomes the owner of the patent and has the same rights of the original patentee. The Office records assignments that it receives, and the recording serves as public notice of patent ownership.

Assignment records are an important part of the business cycle—markets operate most efficiently when buyers and sellers can locate one another. If assignment records are incomplete, the business and research and development cycles could be disrupted because buyers face difficulty finding sellers, and potential innovators may not have a thorough understanding of the marketplace they are considering entering. The Office recognizes that complete patent assignment data disseminated to the public provides certainty in the technology space and helps to *foster innovation*.

Therefore, more complete patent assignment records will produce a number of benefits for the public and IP stakeholders. The public will have a more comprehensive understanding of which entities hold and maintain U.S. patent rights. Patenting inventors and companies will better understand the competitive environment in which they are operating, allowing them to better allocate their own research and development resources, more efficiently obtain licenses, and accurately value patent portfolios.

Currently, a patent owner must pay $40 to record the assignment of patent rights. During FY 2012, over 90 percent of assignments were submitted electronically. This fee could be viewed as a barrier to those involved in patent and application assignments. Given that patent applications, patents, and the completeness of the patent record play an important role in the markets for innovation and the long-term health of the U.S. economy, the Office is setting two fees for recording an assignment. When an assignment is submitted using the Office's electronic system, the Office sets the fee at $0. When an assignment is sent to the Office in a manner other than using the Office's electronic system, the Office sets the fee at the current amount of $40. Providing *patent prosecution options for applicants* benefits a majority of owners who typically record assignments. In addition, the *patent prosecution options for applicants* benefit the overall IP system by reducing the financial barrier for recording patent ownership information and facilitating a more complete record of assigned applications and grants.

C. Fees With No Changes (or Changes of Less Than Plus or Minus 5 Percent and 10 Dollars)

The Office sets all other categories of fees not discussed above at existing fee rates or at slightly adjusted rates (i.e., less than plus or minus 5 percent and 10 dollars) rounded to the nearest ten dollars by applying standard arithmetic rules. The resulting fee amounts will be convenient to patent users and permit the Office to set micro entity fees at whole dollar amounts when applying the fee reduction. These other fees, such as those related to disclosing patent information to the public (excluding the PGPub fee) and patent attorney/agent discipline fees, are already set at appropriate levels to achieve the Office's goals expressed in this rulemaking. A listing of all fees that are adjusted in this rule is included in the *Table of Patent Fee Changes* available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*.

D. Overall Comparison of the Final Patent Fee Schedule to the Current Fees

Overall, once effective, the total amount of fees under this final rule added together to obtain a basic patent decreases when compared to the total fees paid for the same services under the current fee schedule. This decrease is substantial (23 percent) from application to issue (*see* Table 37). When additional processing options such as RCEs are included, the decrease becomes smaller after the first RCE (12 percent) and eventually begins increasing after a second RCE (5 percent) (*see* Tables 38 and 39). The staging of appeal fees in this rule offers similar decreases in the total fees paid when filing a notice of appeal. Under the final fee schedule, the total fees for both filing an appeal and to obtain a basic patent decrease from the current fee schedule (27 percent) (*see* Table 40). If the appeal is forwarded to the PTAB for a decision after the Examiner's Answer, then the total fees increase (17 percent) (*see* Table 40). Once an applicant has obtained a basic patent,

the cost to maintain it remains substantially the same through the second stage maintenance fee. However, at the third stage maintenance fee, once the patent holder has more information on the value of the patent, the total fees increase (24 percent) (*see* Table 41). This structure reflects the key policy considerations of *fostering innovation, facilitating effective administration of the patent system,* and *offering patent prosecution options to applicants.* Additional details about each of these payment structures are outlined below. In this section, the Office assumes, for the purpose of comparison between the current and final fee schedule, that all fees are as of their stated effective dates in this final rule. For example, comparisons between the current and final issue and PGPub fees are based on the final fees as they will become effective beginning on January 1, 2014. Further, to simplify the comparison among fee schedules, the time value of money has not been estimated in the examples below.

1. Routine Application Processing Fees and First RCE Fees Decrease

The total amount paid for routine fees to obtain a basic patent from application filing (i.e., filing, search, examination, publication, and issue) under the final fee structure will decrease compared to the current fee structure, as shown in Table 37. This overall decrease is possible because the decrease in pre-grant patent application publication and issue fees from $2,070 to $960 (a decrease of $1,110) more than offsets the increase in large entity filing, search, and examination fees from $1,260 to $1,600 (an increase of $340). The net effect is a $770 (or 23 percent) decrease in total fees paid under the final fee structure when compared to the current fee structure. This *fosters innovation* by reducing the cost to obtain a basic patent.

TABLE 37—COMPARISON OF FINAL PATENT FEE SCHEDULE TO THE CURRENT PATENT FEES FROM FILING THROUGH ISSUE

Fee	Current	Final
Filing, Search, and Examination	$1,260	$1,600
Pre-Grant Publication and Issue	2,070	960
Total	3,330	2,560

When an application for a first RCE is submitted to complete prosecution, the total fees from application filing to obtain a basic patent continue to remain less than would be paid under the current fee schedule. This overall decrease continues to be possible because of the decrease in pre-grant patent application publication and issue fees. The net effect of the final fee schedule, including a first RCE, is a $500 (or 12 percent) decrease in total fees paid under the final fee structure when compared to the current fee structure, as shown in Table 38.

TABLE 38—COMPARISON OF THE FINAL PATENT FEES TO THE CURRENT PATENT FEES WITH ONE RCE

Fee	Current	Final
Filing, Search, and Examination	$1,260	$1,600
First RCE	930	1,200
Pre-Grant Publication and Issue	2,070	960
Total	4,260	3,760

When adding a second RCE to prosecution, the total fees increase slightly, by $270 (or 5 percent), as shown in Table 39.

TABLE 39—COMPARISON OF THE FINAL PATENT FEES TO THE CURRENT PATENT FEES WITH TWO RCES

Fee	Current	Final
Filing, Search, and Examination	$1,260	$1,600
First RCE	930	1,200
Second and subsequent RCE	930	1,700
Pre-Grant Publication and Issue	2,070	960
Total	5,190	5,460

2. Initial Appeals Fees Decrease

Instead of filing an RCE, an applicant may choose to file a notice of appeal. When adding the notice of appeal and the brief filing fees (allowing the applicant to receive the Examiner's Answer) to the fees to obtain a basic patent, the total fees from application filing decrease by $1,230 (or 27 percent) from the current total fees. If the prosecution issues are not resolved prior to forwarding an appeal to the Board, the fees increase because the Office proposes to recover more of the appeals cost. In that instance, fees will increase by $770 (or 17 percent) more than would be paid today for an appeal decision. However, under this final rule, the staging of fees allows the applicant to pay less than under the current fee schedule in situations where an application is either allowed or prosecution is reopened before being forwarded to the Board.

TABLE 40—COMPARISON OF THE FINAL PATENT FEES AND CURRENT PATENT FEES, WITH AN APPEAL

Fee	Current	Final
Filing, Search, and Examination	$1,260	$1,600
Notice of Appeal and Filing a Brief	1,260	800
Pre-Grant Publication and Issue	2,070	960
Subtotal for Fees Paid Before Examiner's Answer	4,590	3,360
Appeal Forwarding Fee	NEW	2,000
Subtotal for Fees if Appeal is Forwarded to Board for Decision	4,590	5,360

3. Maintenance Fees Increase

When a patent holder begins maintaining an issued patent, he or she will pay $320 (7 percent) less than is paid under the current fee schedule from initial application filing through the first stage. To maintain the patent through second stage, a patent holder will pay $380 (5 percent) more than is paid today under the current fee schedule. When a patent is maintained to full term, a patent holder will pay $2,970 (24 percent) more than would be paid under the current fee schedule. The most significant maintenance fee increase occurs after holding a patent for 11.5 years, which is when a patent holder will be in a better position to determine whether the benefit (value) from the patent exceeds the cost (maintenance fee) to maintain the patent.

TABLE 41—COMPARISON OF THE FINAL PATENT FEE SCHEDULES TO THE CURRENT FEES, LIFE OF PATENT

Fee	Current	Final
Filing, Search, and Examination	$1,260	$1,600
Pre-Grant Publication and Issue	2,070	960
Total Through Issue	3,330	2,560
First Stage Maintenance—3.5 years	1,150	1,600
Cumulative Subtotal	4,480	4,160
Second Stage Maintenance—7.5 years	2,900	3,600
Cumulative Subtotal	7,380	7,760

TABLE 41—COMPARISON OF THE FINAL PATENT FEE SCHEDULES TO THE CURRENT FEES, LIFE OF PATENT—Continued

Fee	Current	Final
Third Stage Maintenance—11.5 years	4,810	7,400
Total Fees for Life of Patent	12,190	15,160

VI. Discussion of Comments

A. Patent Public Advisory Committee Fee Setting Report

Consistent with section 10(d) of the Leahy-Smith America Invents Act, the PPAC submitted a written report setting forth in detail the comments, advice, and recommendation of the committee regarding the proposed fees published in the NPRM on September 24, 2012. The report is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1.* The Office considered the PPAC's comments, advice, and recommendations on fees proposed in the NPRM before setting or adjusting fees in this final rule, as further discussed below.

General Fee Setting Considerations

General Fee Setting Approach

PPAC Comment 1: The PPAC commented overall that the fees included in the NPRM represent an improvement over the February 2012 Proposal. The PPAC also endorsed an increase in fees above the level set by the 15 percent surcharge effective in 2011, recognizing that the current level of receipts are insufficient to allow the Office to improve patent operations, provide the service patent applicants deserve, and make critical infrastructure improvements. The PPAC stated that it endorses the fees in general, though it also believes some fees are higher than expected for an initial fee setting effort.

Response: The USPTO appreciates the PPAC's endorsement of the Office's plan to set fees to meet its aggregate costs, including costs for implementing key strategic initiatives, such as to decrease patent application pendency and reduce the patent application backlog, to improve the quality of patent examination, and to update patent information technology systems that benefit both the Office and applicants. It is important for the Office to reduce the patent application backlog so that the Office can maintain an optimal patent application inventory that provides applicants with 10 months first action pendency and 20 months total pendency. These pendency goals were developed in consultation with patent stakeholders when the Office established the Strategic Plan. To meet its aggregate costs, the Office requires additional funds (2 percent increase in total aggregate revenue) beyond the amount provided by the 15 percent surcharge. With the increased fees, the Office will not only reduce the amount of time it takes to examine a patent application, but also create a sustainable funding model for the Office. Prior to AIA section 10 fee setting authority, the Office was authorized to adjust certain statutory fees only to reflect changes in the CPI for All Urban Consumers, and that limited authority did not allow the USPTO to recover increased processing costs or adjust to changes in demand for services related to those fees. The Office responds to the PPAC's comments on the amounts of particular fees in the sections below.

Behavioral Incentives

PPAC Comment 2: The PPAC advised that while some use of fees to encourage or discourage behavior may be appropriate, significant use of this ability to set fees at high levels to discourage actions is not recommended because it is not clear that the USPTO will always take into consideration the factors driving applicant behavior, and because those factors may be at cross-purposes with particular desires of the USPTO. The PPAC also commented that fee structures that depart from strict cost recovery can engender either beneficial or perverse incentives to all actors within our patent system.

Response: The Office fully and carefully considered factors incentivizing both applicant and Office behavior in setting the final patent fees. In doing so, the Office conducted considerable outreach to stakeholders, and made numerous changes from its February 2012 proposal as a result of input from stakeholders. The Office carefully explained its rationale and motivation in the NPRM for each fee that the Office proposed to change by more than 5 percent and more than ten dollars.

Additionally, as further explained in the RIA, the Office considered and rejected a cost recovery fee structure because the Office determined that a strict, fee-by-fee based cost recovery fee structure would fail to foster innovation in accordance with the Office's fee setting strategy. The Office found that using a strict cost recovery model would greatly increase barriers to entry into the patent system because filing, search, and examination fees would increase significantly, resulting in a loss of private patent value due to a decrease in the number of patent applications filed. Simultaneously, maintenance fees would be set significantly lower and patent holders would maintain their patents longer, reducing incentives to release patents of minimal value into the public domain for others to use for follow-on invention. The Office determined that it will better effectuate its mission of fostering innovation by setting fees to recover costs in the aggregate while incentivizing compact patent prosecution. Where the Office deviated from cost recovery for a particular fee, it has fully considered the behavioral effects of such departures.

PPAC Comment 3: The PPAC commented that the Office should ensure that applicants are not saddled with the cost of internal operational inefficiencies, as that may reduce the Office's incentives to improve its efficiency.

Response: The Office created the final fee structure in order to set fees at optimal levels to improve the Office's services and to enhance operational efficiency. The Office also continuously reviews its own internal processes and behaviors to improve operational inefficiencies. These regular reviews of internal operations and behaviors were institutionalized as a priority. For example, the Office established a Patent Process Reengineering Team (Team) in June 2010 to review and evaluate pre-examination, examination, and post-examination processes. The Team delivered redesigned and streamlined processes—with recommendations for improvements—to USPTO senior leadership and the Patents End-To-End (PE2E) software engineering team. Specifically, the Team produced more than 250 individual process improvement recommendations in the areas of: Increased electronic application filing and management, processing standardization and consistency (with both domestic and international standards), accurate and easy measurement of core metrics, examination quality, customer satisfaction, and reduced risk exposure. Where the best tool for improvement included information technology, the Office incorporated the recommendations for improved processes into the PE2E program development plan.

The Office already implemented many of the Team's recommendations. For example, the Office gained efficiency in the terminal disclaimer process, resulting in pendency reduction for over 40,000 applications by an average of 30 days. Also, the USPTO improved internal operations and Office behavior through the First

Action Interview Pilot Program, which benefits applicants by advancing the prosecution of applications and enhancing the interactions between the applicant and examiner early in the process to facilitate a more compact prosecution.

The Office will continue to evaluate all AIA and patent operational procedures and make efficiency improvements accordingly. In addition, the AIA requires the Office to consult with the PPAC annually to determine if any fees set using section 10(a) should be reduced. After such consultation, the Office may reduce fees. *See* AIA section 10(c). In the future, the Office will work with the PPAC to determine if any improvements in operational efficiency warrant a reduction in fees set or adjusted in this rulemaking.

Fee Setting Elasticity

PPAC Comment 4: The PPAC commented that the proposed system of slightly raising filing, search, and examination fees while lowering the issue and publication fees, is sensible. The PPAC also comment that the balance of fees distributed between the front-end and back-end continues to be preserved so that the reduced front-end fees encourage applicants to enter the patent system. The PPAC nevertheless advised that raising pre-issue fees like filing, search, and examination may still (at the margins) discourage some otherwise meritorious patent filings. Based on its discussions with applicants, including large corporations and small and start-up entities, the PPAC anticipated some decrease in the demand for patent filings. The PPAC advised that increases in fees will strain some patenting budgets and commented that it continues to be concerned that fee changes will have a greater impact on filing and payment of maintenance fees than projected. The PPAC recognized that generating adequate funds is essential, yet advised that it must be balanced with the public policy of ensuring access to intellectual property coverage.

Response: The Office appreciates the PPAC's support for this overall structure for fees. Although the Office shares the PPAC's concern about any impact of increased filing, search, and examination fees on the number of prospective patent applications filed, the Office's elasticity analysis indicates that the potential impact is small and that filings will likely continue to grow over the next five years, even if at a somewhat lesser rate than if there were no fee increases. Further, to the extent there is some impact on filings, the Office believes that the benefits of the fee changes outweigh the temporary cost of fewer patent filings. The additional revenue generated from the increase in fees will provide sufficient resources for the Office to reduce the backlog and decrease pendency. The decrease in pendency is estimated to increase private patent value by shortening the time for an invention to be commercialized or otherwise obtain value from the exclusive right for the technology.

The Office also notes that filing, search, and examination fees are increased, and issue and publication fees are decreased in this final rule. As explained in detail in this rulemaking and the RIA, the filing, search, examination, publication and issue fees, once effective and taken together, are reduced by at least 23 percent for all successful applicants (with a much greater reduction for small and micro entity applicants), and this reduction may allow applicants on limited budgets to file and prosecute more patent applications under the new fee structure. Therefore, an applicant who expects a high likelihood of an application being issued may be more likely to file a patent application under the new fee schedule.

As discussed above, based on economic indicators, the Office expects a 5.0 percent annual growth rate in filings for FY 2013 through FY 2017. Based on elasticity computations, the Office conservatively believes that the growth rate in application filings may be somewhat lower (compared to the rate of growth in the absence of a fee increase) in the first few years under this final rule. Along with this rulemaking and the RIA, the Office provided an estimate of elasticity to address whether and how applicants might be sensitive to price (fee) changes, and included an estimate of the impact on application filing levels. *See* ''USPTO Section 10 Fee Setting—Description of Elasticity Estimates'' *available at http://www.uspto.gov/aia_implementation/fees.jsp#heading-1.* The Office conservatively estimated that, initially, the fees under the final rule would cause a small decrease in the demand for patenting activity due to the fee adjustments (a 1.3 percent decrease in FY 2013, a 2.7 percent decrease in FY 2014, and a 4.0 percent decrease in FY 2015–FY 2017). Even with these short term decreases at the margin, the Office still expects to receive an increasing number of new (serialized) application filings during later years. The Office has projected that it will take in sufficient revenue, despite the elasticity of some fees, to recover aggregate costs under the final fee schedule.

PPAC Comment 5: In reviewing the Office's experience with ''Track 1,'' the PPAC noted that fewer applicants participated in that program than originally anticipated. The PPAC cautioned that the Track 1 experience seems relevant to the new programs under the AIA, and that the Office's elasticity assumptions may be overly optimistic.

Response: Track 1 created a new and optional expedited examination service for certain applicants who were willing to pay an extra fee. The Office considered the effects of the Track 1 fee levels on applicants' use of that service in its analysis of the fees in this rulemaking. The Track 1 program experience is only of limited usefulness when considering elasticity of fees in this final rule. Unlike core application services, the Track 1 service is optional for applicants. The Track 1 fee level was set by Section 11(h) of the AIA and implemented by a rule that reflected that statutory provision. Ordinarily for elasticity estimates about a service, there would need to be some change in price and some observation about demand in the face of that price change. With only one data point so far (the initial fee set by the AIA), it is difficult to extrapolate meaningful elasticity estimates from the Track 1 program to date.

Operating Reserve

PPAC Comment 6: The PPAC agreed that the creation of an operating reserve is a sound business practice to allow for continuity of service and the ability to complete long-term plans more effectively and efficiently. The PPAC also commented that three months seems to be a good size for the reserve. The PPAC, nevertheless, expressed concern that access to spend all generated funds, as a part of the annual appropriations process, is not assured under the AIA. The PPAC recommended that the Office continue to grow the operating reserve gradually, while also allowing for a longer period to monitor Congressional support.

Response: The Office agrees with the PPAC that having an operating reserve is a sound and needed business practice. The Government Accountability Office's (GAO's) review of the USPTO's fee setting process (reported to the Chairman of the Committee on Appropriations) also substantiated the need for maintaining an operating reserve. The GAO found that it ''is consistent with our previous reporting that an operating reserve is important for fee-funded programs to match fee collections to average program costs over time and because

program costs do not necessarily decline with a drop in fee collections.'' (*See* New User Fee Design Presents Opportunities to Build on Transparency and Communication Success, GAO–12–514R (Apr. 25, 2012) *available at http://www.gao.gov/products/GAO-12-514R.*) An operating reserve promotes confidence in the United States IP system by providing a mechanism to absorb and respond to temporary changes in the economy and USPTO's operating and financial environments. Without an operating reserve, agencies can be unnecessarily thrown into short-term cash flow stress like that which the USPTO experienced in FY 2009 due to the economic recession and in FY 2010 due to the delay in the authorization of spending authority for the fees collected from patent applicants during the rebound from FY 2009.

An operating reserve consists of funds already available for the USPTO to spend. Congress has already appropriated the money in USPTO's operating reserve, and therefore no additional appropriation is required for USPTO to use the operating reserve. Thus, the operating reserve is available to ameliorate the short-term problem of under-collection in a given year.

The Office also agrees with the PPAC that it is prudent to grow this three-month operating reserve in a gradual manner. The fee structure in this final rule seeks to achieve that prudent growth by extending the period of growth by another year (to FY 2018), as compared to the timeframe proposed in the September NPRM (FY 2017). This extension of the time period for growing the operating reserve is the result of reducing fee amounts in the final rule in response to comments from the PPAC and the public and is consistent with the number of patent examiners the Office plans to hire in FY 2013 to achieve a ''soft landing'' with respect to the patent application inventory and workforce level as discussed further in the response to PPAC Comment 7.

Finally, as to whether the USPTO will be able to spend all funds collected in excess of the USPTO's specified annual overall appropriation amount, Section 22 of the AIA provides that such collections are deposited in a new Patent and Trademark Fee Reserve Fund (created by the AIA) that is available to the USPTO subject to procedures provided in appropriations acts. In any given year, if the USPTO collects fees beyond the specified annual overall appropriated amount, those fees will be deposited into the Patent and Trademark Fee Reserve Fund. In fiscal year 2012 (the first full year after AIA), the USPTO appropriations bill included procedures permitting it to spend fees deposited in the Patent and Trademark Fee Reserve Fund. The Office has no reason to believe the same will not hold true for fiscal year 2013 and beyond. The Office will continue to work closely with Congress to ensure full access to fees paid by patent applicants and patentees, consistent with the AIA.

Pendency Goals

PPAC Comment 7: The PPAC commented that it supports decreasing pendency, and stated that while the proposed decreased pendency times are laudable, there is nothing magical about the pendency timeframes (i.e., 10 months first action pendency and 20 months total pendency). For future years, the PPAC advised that it will be important to reach a properly balanced inventory level of patent applications pending at the Office that is appropriate for the workforce level. The inventory should be low enough to achieve desired decreased pendency and high enough to accommodate potential fluctuations in application filings, retention of examiners, and changes in RCE filings stemming from the programs being instituted by the USPTO. The PPAC refers to this desired end state as a ''soft landing.''

Response: Optimizing patent quality and timely issuance of patents provides greater legal certainty. The longer it takes to review a patent application, the longer it takes for the benefit of the IP protection to accrue. Failure to complete the examination in a timely manner creates uncertainty regarding the scope and timing of any IP rights. This not only impacts patent applicants, but it also has a negative impact on other innovators and businesses in that field that are awaiting the outcome of the pending application.

As the IP environment becomes increasingly global, applicants are increasing their foreign patent application filings in multiple countries. Obtaining a first action about 10 months from filing provides patent applicants with important information about the status of their application so that they can determine whether to file in other countries before the expiration of the 12-month date to maintain priority. This leads to more strategic patent application filings and reduces user resources spent on unnecessary filings in patent offices worldwide.

The USPTO worked closely with stakeholders and responded to their concerns in establishing the targets of 10 months first action pendency and 20 months total pendency in the Strategic Plan. The PPAC gave its support to these pendency timeframes in their 2009 Annual Report, which commended then Secretary of Commerce Gary Locke and Under Secretary and Director David Kappos for their efforts to reduce first action pendency to ten months. PPAC likewise indicated in its report that the PPAC would like to work with the Office and the innovation community to reduce overall pendency to twenty months as the ultimate goal with reasonable intermediate targets and timelines.

The Office has a long-term plan to reduce the patent application backlog to a steady-state of about 350,000 unexamined applications, and to decrease first action patent application pendency to 10 months and total patent application pendency to 20 months. The Office agrees with the PPAC regarding the need for a ''soft landing'' when planning for these goals in the out years. The Office is very aware that as the patent application backlog and pendency drop, it is important to ensure that the Office reaches the right balance of application inventory and staff size. The Office has considered the PPAC's comment and reevaluated its long-term plan, recognizing the substantial progress and efficiencies made to date and taking into account historically low attrition rates, higher production levels, and the need to ensure that continued backlog progress does not result in inventory levels decreasing to a point where there is inadequate work on hand for some employees. Thus, as an initial measure, the Office is reducing the number of patent examiners it plans to hire in FY 2013 from 1,500 to 1,000. This change substantially reduces the risk of excessively low inventory, yet also increases the possibility that it will take longer to reach the ideal inventory and pendency levels. Under this approach, patent production modeling indicates conservatively that the reduction in hiring may cause ideal inventory levels to occur in FY 2016 and patent application pendency targets for first action and total by FY 2016 and FY 2017, respectively. In response to comments and in an abundance of caution, the Office is thus changing the timeframe in which it estimates it will reach its ideal patent application inventory target to FY 2016, first action patent application pendency target to FY 2016, and the total patent application pendency target to FY 2017. The Office recognizes that this adjustment keeps the Office on track for meeting its goals while further avoiding any risk of excessively low inventory.

PPAC Comment 8: The PPAC noted that a pendency timeframe of 10 months to first action and 20 months total pendency may result in applicants and

examiners not being aware of some prior art at the time of the first office action on the merits. As a result, the PPAC stated that the Office might incorrectly issue a patent.

Response: Prior to 2000, the Office did not routinely publish pending patent applications, and instead only publicly disclosed pending applications under special circumstances. Since 2000, the Office has generally published applications 18 months from their earliest effective filing date. *See* 35 U.S.C. 122(b).

As noted in the response to the PPAC Comment 7, the first action pendency and total pendency goals at 10 months and 20 months, respectively, were developed in consultation with patent stakeholders when the Office established the Strategic Plan. The Office appreciates that a pendency goal of 10 months to first action may result in some prior art (in the form of other applications) being published after issuing the first Office action in a particular application. However, prior to the adoption of 18-month publication in 2000, the Office examined applications knowing that the full range of potential prior art might not yet be available. And with the adoption of 18-month publication, the only way the Office could avoid examining an application before all applicable prior art had been published would be to delay examination until after eighteen months from the priority date of any potentially relevant application and/or revise 35 U.S.C. 122(b) to eliminate the exceptions to 18-month publication. These are not feasible options. Moreover, the risk of missing relevant prior art is lessened because many applications are published in fewer than 18 months because the 18-month publication deadline is computed from the earliest filed application, and many applications are outgrowths of an earlier filed application. Because there is general support from the Office's stakeholders on both decreasing pendency generally and the 10 month goal specifically, notwithstanding a limited risk of some prior art not being known publicly, the Office has thus decided to maintain 10 months as the targeted date of a first Office action.

Individual Fee Categories

Prioritized Examination

PPAC Comment 9: The PPAC commented that the Office's efforts to make the Track 1 option more accessible to applicants by lowering the fee is an encouraging step, but advises that the Office should closely monitor demand for Track 1 applications and offer additional downward fee adjustments to determine the optimal fee rate and improve access to this service.

Response: The Office will continue to monitor the demand for the Track 1 prioritized examination program to see if the demand increases with the decrease in the fee. At the same time, the Office will continue to monitor the pendency associated with the traditional examination path to ensure that any potential changes in the demand for the Track 1 prioritized examination program do not impact the pendency for the traditional examination path. The fee for the prioritized examination program is intended to closely recover the cost of the program so as not to impact the level of examination resources of the traditional ''track.''

Request for Continued Examination (RCE)

PPAC Comment 10: The PPAC expressed a variety of operational concerns about the way the Office perceives and handles RCEs as part of the patent prosecution process. The PPAC advised that: (i) There are incentives on both sides to file RCEs (applicants continue to need to achieve allowance, examiners get further (albeit reduced) counts for RCE prosecution, and the pendency of RCEs is not included in the traditional pendency numbers); and (ii) the increasing backlog of RCEs generates further patent term adjustments for a large number of applicants. The PPAC recommended that the Office consider these factors as it considers any proposed increase in RCE fees. These concerns also underlie the PPAC's comment that RCE fees set too high may disincentivize the Office to improve its efficiency. The PPAC recommended that a small increase in the fee for an RCE might be appropriate, but the fee should align more closely with the Office's associated costs and the fee should be less than the fees for new or continuing applications. The PPAC further recommended that the higher fee for second and subsequent RCEs should be reduced because these RCEs are easier and cheaper to examine and any number of continuations may be filed at the same cost per continuation. The PPAC finally recommended that the USPTO should continue to find ways to reduce applicants' need for RCEs, rather than increase fees for filing an RCE.

Response: The Office appreciates the PPAC's comments about the operational aspects of RCEs, and looks forward to continuing to work with the PPAC on potential operational improvements. In setting the proposed fee levels, the Office determined that approximately 70 percent of applicants that file an RCE file only one RCE. The first RCE fee ($1,200 for large entities) was set at a level lower than both the average historic cost of performing the services associated with an RCE ($1,882) and the fee for filing a continuing application ($1,600 for large entities), as well as much lower than the average historic cost of services associated with examining a new patent application ($3,713). Because the Office set the fee for the first RCE below the cost to process it, the Office must recoup that cost elsewhere. Since most applicants resolve their issues with the first RCE, the Office determined that applicants that file more than one RCE are using the patent system more extensively than those who file zero or only one RCE. Therefore, the Office determined that the cost to review applications with two or more RCEs should not be subsidized with other back-end fees to the same extent as applications with a first RCE, newly filed applications, or other continuing applications. Nevertheless, the fee set for the second and subsequent RCE ($1,700 for large entities) is still lower than the average historic cost of the Office processing an RCE ($1,882), thus retaining the Office's incentives to work toward additional examination efficiencies, consistent with the PPAC's comments.

Regarding the relationship between RCEs and continuing applications, the Office did not include a second, higher fee for second and subsequent continuing applications because RCEs and continuing applications are not completely interchangeable. The Office increased the fee for second and subsequent RCEs ($1,700 for large entities) to recover the cost associated with processing more than one RCE and to keep the fee sufficiently close to the filing, search, and examination fee for a continuing application ($1,600 for large entities). The Office determined that the fee differential between a continuing application and a second and subsequent RCE ($100) would likely not be a significant factor in an applicant's choice between a second or subsequent RCE and a continuing application, and instead the differing characteristics in the two types of continuing applications would be the overriding factor in whether the applicant files an RCE or a continuing application. Moreover, RCEs are not subject to excess claims or excess page fees. Thus, RCEs may cost less than continuations in many instances.

While an RCE may be less costly to examine than a new continuing application in certain situations, the

patent fee structure is designed such that the costs associated with the processing and examination of a new or continuing application are also recovered by issue and maintenance fees, allowing for lower than cost recovery continuing application fee amounts. The Office continued this subsidization design with the fee for a first RCE. In fact, the fee for a first RCE ($1,200 for large entities) is set at 75 percent ($1,200 divided by $1,600) of the total fees for filing, search, and examination set herein. This fee relationship is the same as exists in the current fee structure because an RCE fee is 74 percent of the total fees for filing, search, and examination ($930 divided by $1,260). To avoid charging higher issue and maintenance fees to offset the cost of processing second and subsequent RCEs, the fees for those RCEs are instead set closer to cost recovery. Increasing the issue and/or maintenance fees to offset lower than cost recovery second and subsequent RCEs would cause the majority of filers (who do not seek more than one RCE) to subsidize services provided to the small minority of filers who seek two or more RCEs. The Office does not believe such subsidization would be an optimal result.

The Office understands the PPAC's operational point that a higher inventory and longer pendency of RCEs could generate additional PTA. The Office notes that the RCE fees set in this rule will generate the revenue necessary to reduce inventory and pendency levels overall so as to potentially reduce the amount of PTA earned.

Regarding the variety of operational concerns that centered on examination practices associated with second office actions and final rejections, second office actions in current practice are not automatically made final. In an instance where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p), another non final action is appropriate. If the applicant receives a final action that they believe to be premature, the question should be raised to the examiner and/or supervisory patent examiner (SPE) while the application is still pending before the primary examiner. The issue of whether a final rejection is premature is not sufficient grounds for appeal, or basis of complaint before the Patent Trial and Appeal Board. It is rather reviewable by petition under 37 CFR 1.181. Additionally, the applicant has the option to request an interview with the examiner, consistent with MPEP 713, and to request a review of identified matters on appeal in an appeal conference prior to the filing of an appeal brief.

Regarding pendency calculations, the Office presents multiple application pendency numbers on the Patent Dashboard in the USPTO Data Visualization Center at *http://www.uspto.gov/dashboards/patents/main.dashxml*. There, the Office publishes traditional total pendency both with and without RCEs, as well as the pendency for RCEs alone. The Office also publishes the backlog for RCEs. The Office presents data on the growth in RCE filings, the inventory of RCEs, and the pendency associated with RCEs. The USPTO is continuing efforts to reduce the number of situations in which applicants might be required to file RCEs to address the existing backlog of pending unexamined RCEs. The USPTO initiated two new pilot programs—the AFCP and the QPIDS Pilots—as a means to reduce RCE filings (*see http://www.uspto.gov/patents/init_events/index.jsp*). While it is still too early to predict the effectiveness of these programs, short-term analysis has shown that each pilot is already having a positive impact on reducing the need to file a RCE.

In addition to these on-going efforts, the USPTO is continuing training efforts to emphasize compact prosecution practices such as interview training. The USPTO is also collaborating with the PPAC on an RCE outreach effort. The objective of this initiative is to identify reasons for filing RCEs, identify practices for avoiding unnecessary RCEs, and explore new programs or changes in current programs that could reduce the need for RCEs. As a part of this effort, the Office recently issued a request for comments on RCE practice in the **Federal Register** (*see* 77 FR 72830 (Dec. 6, 2012)). This multi-step approach to address stakeholder concerns with respect to RCE practice is directed at reducing patent application pendency, including the impact of RCEs on such pendency.

Appeals

PPAC Comment 11: The PPAC commented that the Office's elimination of the fee for the submission of a brief is a positive step forward. The PPAC otherwise commented that appeal fees in general are too high given that some applicants must file an appeal due to examination problems. The PPAC also commented that a Notice of Appeal is frequently utilized as an extension of time and that the Office should set the fee to recognize this usage. The PPAC also commented that in some instances applicants are forced to pay extensions of time or file a notice of appeal due to slow Office treatment of an after final submission. The PPAC recommended lowering the Notice of Appeal fee to around its current post-surcharge amount (for example $750), and charging the increased amount for forwarding the brief to the Board.

Response: The Office appreciates the PPAC's support for eliminating the fee for submitting an appeal brief. Also, the Office is implementing the PPAC's recommendation for lowering the Notice of Appeal fee in this final rule. The Office is lowering the fee for a Notice of Appeal to $800 (large entity) from the $1,000 (large entity) proposed in the NPRM and the Office will leave the fee for forwarding an appeal to the PTAB at the originally proposed $2,000 (large entity). Given the high cost to the Office of the appeals process, the fee adjustments are necessary to decrease the gap between cost of the appeal service and fee in order to improve the financial sustainability of the Office. As appeals are sometimes necessary due to differences of opinion between an applicant and the examiner, the Office has coupled the higher fees with a new staged fee structure to ease the cost impact on applicants when prosecution is reopened following submission of the appeal brief. The Office estimates that about two-thirds of applicants who appeal final rejections will pay only the $800 (large entity) notice of appeal fee, which is less than would be paid in the same situation under the current fee structure ($1,260 for large entities). The Office likewise estimates that only one-third of applicants who appeal final rejections will pay the additional $2,000 appeal forwarding fee, which, in total with the notice of appeal fees ($800 plus $2,000 equals $2,800), is 43 percent less than the average historical cost of providing appeal services ($4,922). The Office recognizes that total fees to receive an appeal decision from the PTAB will more than double. However, the Office estimates that less than 5 percent of applicants who receive final rejections will be paying both the notice of appeal and the appeal forwarding fee.

Regarding appeals being filed due to examination problems, in the appeals decided on their merits by the PTAB, over 65 percent result in affirmance of at least some of the rejected claims (*see http://www.uspto.gov/ip/boards/bpai/stats/receipts/fy2012_sep_e.jsp*). This data demonstrates that the PTAB is affirming a larger percentage of rejected claims than it reverses. The Office

believes that the affirmance rate would be much lower if there were significant problems with the examination process.

Likewise, Office data shows there is not a large problem with the timely treatment of an after final submission. During FY 2012, after final amendments were acted upon by the Office in an average of 8.8 days, and only 4.6 percent took over four weeks to be addressed. In fact, 60 percent of after final amendments were addressed within one week. Also, if an applicant files a response to a final rejection within two months of the date of the final rejection, the shortened statutory period will expire at three months from the date of the final rejection or on the date the advisory action is mailed, whichever is later, thus minimizing the need for any extensions.

PPAC Comment 12: The PPAC recommended that the Office enhance its provisions for resolution of problems in the examination of applications. For example, the PPAC recommended that the Office permit real-time applicant participation in pre-appeal brief conferences or a more robust ombudsman or SPE review of cases.

Response: The internal processes for conducting both pre-appeal and appeal conferences are undergoing an in-depth internal review. The Office is currently evaluating process improvement recommendations. In the meantime, the current process addresses some of the comments raised by the PPAC. For example, a Technology Center-designated conferee, a SPE, and the examiner participate in pre-appeal or appeal conferences to review the applicant's remarks and the examiner's rejections. In addition, when the Patents Ombudsman Program receives an inquiry from an applicant/attorney/agent regarding a legitimate problem in the prosecution of an application, an Ombudsman Representative in the Technology Center (TC) handling that application will request that the SPE review the application with particular attention on the issue raised. As appropriate, a Quality Assurance Specialist (QAS) in that TC also might get involved at the request of the SPE. Once the SPE has reviewed the application, he/she will close the loop directly with the applicant/attorney/agent who initiated the inquiry.

Ex Parte Reexamination

PPAC Comment 13: The PPAC noted that the fee for an *ex parte* reexamination increased significantly, from $2,520 to $17,750, and was proposed to be reduced to $15,000 in the NRPM. The PPAC questioned why the Office did not see the disparity between costs and fees for *ex parte* reexamination earlier, and work with Congress to correct the disparity.

Response: The *ex parte* reexamination fees were adjusted on a cost recovery basis in the supplemental examination final rule using authority in 35 U.S.C. 41(d) because fees for this new AIA service were required to be in place one year from the AIA's enactment (September 16, 2012), and because the Office would not finish with the section 10 rulemaking by that date. (*See* Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and to Revise Reexamination Fees, 77 FR at 48831 and 48851). Given that supplemental examination and *ex parte* reexamination are such closely related services, the Office elected to adjust the fee for filing a request for *ex parte* reexamination and to set a fee for petitions filed in *ex parte* and *inter partes* reexamination proceedings to more accurately reflect the cost of these processes when it set the fees for supplemental examination. The Office has been aware of the disparity between its costs for conducting *ex parte* reexamination and the former *ex parte* reexamination fee for a number of years. The Office, however, wanted to ensure that this disparity was not unique to one or a few fiscal years before moving to adjust reexamination fees. Accordingly, the Office did not seek to adjust the *ex parte* reexamination fees earlier.

PPAC Comment 14: The PPAC questioned why *ex parte* reexamination has a high cost when it is a procedure with minimal processes (for example, it involves no testimony and no interaction with third parties). The PPAC noted that the cost [fee] for reviewing the petition ($1,800) is higher than the proposed fee for the entire initial examination ($1,600) and commented that the costs related to all aspects of the *ex parte* reexamination process seem high. The PPAC recommended that there should be ways to provide for more straight forward decision-making and streamline the review process to lower costs.

Response: Petitions in reexamination proceedings generally involve issues of greater complexity and greater number of issues than other patent-related petitions. *See* Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and to Revise Reexamination Fees, 77 FR at 48837. As a result, these proceedings are more expensive on average for the Office to administer. Nonetheless, after updating the patent operating plans and corresponding aggregate costs in response to public comments, the Office determined it could reduce the *ex parte* reexamination fee while continuing to ensure that the aggregate revenue equals aggregate cost. In this final rule, the Office is reducing the fee for *ex parte* reexamination (proposed at a total of $15,000 for large entities) to $12,000 (large entity), which is 32 percent below the Office's cost for these services. The Office also notes that this rulemaking applies small and micro entity reductions to the *ex parte* reexamination fee, resulting in discounts of 50 percent for small entities and 75 percent for micro entity patentees.

PPAC Comment 15: The PPAC advised that the Office should construct a more streamlined, pay-as-you-go approach to reexamination. The PPAC recommended that the Office break the *ex parte* reexamination fee into two parts: (1) Petition; and (2) reexamination. If nonpayment for reexamination following the grant of a petition is a concern, the PPAC recommended several methods to ensure that the Office receives payment.

Response: The *ex parte* reexamination fee is in essence a two-part fee: (1) Part of the *ex parte* reexamination fee helps to recover the costs for analyzing the request and drafting the decision whether to grant or deny *ex parte* reexamination; this is based on the fee set forth in 37 CFR 1.20(c)(7) for a denied request for *ex parte* reexamination ($3,600, $1,800 for a small entity, and $900 for a micro entity patentee); and (2) the remaining part of the fee helps to recover the costs for conducting *ex parte* reexamination if the request for *ex parte* reexamination is granted; this is based on the *ex parte* reexamination fee set forth in 37 CFR 1.20(c)(1) less the fee set forth in 37 CFR 1.20(c)(7) for a denied request for *ex parte* reexamination ($12,000 less $3,600 or $8,400 for a large entity; $6,000 less $1,800 or $4,200 for a small entity; and $3,000 less $900 or $2,100 for a micro entity patentee). Rather than adopt a pay-as-you-go approach in *ex parte* reexamination, the Office adopted a process of charging the total fee up front and then refunding the balance of the fee if the request for *ex parte* reexamination is denied. This approach avoids the delays and complications of collecting a separate fee for conducting *ex parte* reexamination if the request for *ex parte* reexamination is granted. While PPAC's other payment collection suggestions may be valid, the Office's historical approach of collecting the full fee in advance, and issuing refunds as needed, completely avoids the delays and risks related to nonpayment of fees following the grant of a request for *ex*

parte reexamination and helps ensure efficient processing of an *ex parte* reexamination.

Supplemental Examination

PPAC Comment 16: The PPAC commented that the fees for supplemental examinations are too high. The PPAC questioned the Office's underlying cost assumptions, suggesting that the basis of the estimate should have been limited to patentee-initiated reexaminations, not all *ex parte* reexaminations. The PPAC recommended that the Office publish estimates of historic costs for patentee-initiated reexaminations for comparison purposes.

Response: The supplemental examination fees were set on a cost recovery basis in the final rule to implement supplemental examination. *See* Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and to Revise Reexamination Fees, 77 FR 48828 (Aug. 14, 2012). The supplemental examination final rule adopted fees for supplemental examination as follows: (1) $5,140 for processing and treating a request for supplemental examination; (2) $16,120 for conducting *ex parte* reexamination ordered as a result of a supplemental examination; (3) $170 for each non-patent document between 21 and 50 pages in length; and (4) $280 for each additional 50-page increment or a fraction thereof, per document. *See id.* at 48831 and 48851. The cost calculations relating to the supplemental examination final rule were published by the Office (''Cost Calculations for Supplemental Examination and Reexamination'') at *http://www.uspto.gov/aia_implementation/patents.jsp#heading-9*. The Office does not separately track the time taken by the examiners to process and analyze patentee-initiated *ex parte* reexaminations versus third party-requested *ex parte* reexaminations. The Office determined via consultation with the Central Reexamination Unit (CRU) managers that the examiner time required for patentee-initiated requests and third party-requested *ex parte* reexaminations is about the same, and thus the costs to the Office for either type of request for *ex parte* reexamination are about the same. *See* page 13 of ''Cost Calculations for Supplemental Examination and Reexamination''.

The NPRM proposed to adjust supplemental examination fees to reduce, below full cost recovery, both the fee for processing and treating a request for supplemental examination and the fee for conducting *ex parte* reexamination ordered as a result of a supplemental examination, in total by 16 percent. After updating the patent operating plans and corresponding aggregate costs in response to public comments, the Office determined it could reduce the supplemental examination fee further while continuing to ensure that the aggregate revenue equals aggregate cost. In this final rule, the Office is reducing the large entity fee for conducting *ex parte* reexamination ordered as a result of a supplemental examination (proposed at $13,600) to $12,100. Therefore, this final rule sets the total fees for supplemental examination at $16,500 ($4,400 for processing and treating a request for supplemental examination plus the $12,100, excluding any applicable document size fees), which is 23 percent below the Office's cost for these services. Any reductions beyond this level would require increases to other fee(s) to ensure the overall fee structure provides cost recovery in the aggregate. This rulemaking also sets forth small (50 percent) and micro entity (75 percent) reductions to all of the supplemental examination fees.

PPAC Comment 17: The PPAC recommended that a pay-per-reference system for each reference over twelve submitted in a supplemental examination request would be more effective than the currently proposed maximum reference rule. The PPAC also recommended that the Office should permit a patentee one supplemental examination request per issued patent, regardless of the number of references submitted.

Response: The procedures governing the supplemental examination process provided for in the AIA were adopted in the supplemental examination final rule. *See* Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and to Revise Reexamination Fees, 77 FR 48828 (Aug. 14, 2012). As explained in that rule, the Office placed a limit on the number of items of information that may be submitted with a request for supplemental examination because the Office must conclude a supplemental examination within three months of the date on which the request for supplemental examination is filed. The Office set the limit at twelve items of information because ninety-three percent of the requests for *ex parte* reexamination filed in FY 2011 included twelve or fewer documents. *See* Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and to Revise Reexamination Fees, 77 FR at 48830. This rulemaking addresses only the fee for supplemental examination (reducing it by 23 percent and adding a small entity discount of 50 percent and a micro entity discount of 75 percent), and does not propose to change the requirements for a request for supplemental examination, such as the number of items of information that may be included in a request for supplemental examination.

PPAC Comment 18: The PPAC commented that many in the applicant community view supplemental examination as akin to reviews of information disclosure statements (IDSs) after a final rejection. With that usage in mind, the PPAC recommended that the fees for supplemental examination be reduced to levels similar to original examination fees.

Response: The Office determined that the supplemental examination process is more analogous to an *ex parte* reexamination process than a review of an IDS after a final rejection. In both supplemental examination and *ex parte* reexamination, the Office must determine whether a substantial new question of patentability is raised in the request within three months of the filing date of the request. Supplemental examination, however, is further enhanced to involve the review of information in addition to the patents and printed publications provided for in *ex parte* reexamination practice. Therefore, in the supplemental examination final rule, the Office based its estimate of the cost of supplemental examination proceedings on its costs for *ex parte* reexamination proceedings.

Inter Partes Review, Post-Grant Review, and Covered Business Methods Review

PPAC Comment 19: The PPAC commented that the new *inter partes* review, post-grant review, and covered business method review request and institution fees are the right balance between cost recovery and incentive for use. The PPAC supported the Office's decision to set these fees at the proposed rates, even though the PPAC received several public comments suggesting that high fees would lessen the use of these proceedings to remove improperly granted patents from the patent system. The PPAC commented that it supports the USPTO's decision to break the fee into two parts, but advises the Office to consider a more granular pay-as-you-go approach.

Response: The Office appreciates the PPAC's support for the *inter partes* review, post-grant review, and covered business method review fee rates. The AIA requires that the Office establish

fees for *inter partes* review, post-grant review, and covered business method review to be paid by the person requesting the review. The fees paid by the person requesting the review are to be set considering the aggregate costs of the review. The statutory framework requires the full fee to be paid in advance and refunds issued as needed. Therefore, the Office is not instituting a pay-as-you-go fee structure for these services.

PPAC Comment 20: The PPAC commented that the Office has resisted calls for more structured and automatic discovery in the *inter partes* review, post-grant review, and covered business method review proceedings and that this will be the most significant driver of costs for these contested cases. The PPAC recommended that the Office work to streamline the structure of proceedings.

Response: The Office's final rules for *inter partes* review, post-grant review, and covered business method review affirmatively embrace the calls for more structured and automatic discovery by providing for mandatory initial disclosures, default cross-examination times, a model order regarding e-discovery, and guidelines for cross-examination. *See* Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012). Additionally, the final rules provide that the parties to a contested case may agree to discovery amongst themselves as a way of streamlining the structure and conduct of the proceeding. The Office will be monitoring these new services and will consider feedback from the user community on how the services are being implemented and whether any improvements can be made to these procedures.

Maintenance Fees

PPAC Comment 21: The PPAC commented that it generally supports the maintenance fee scheme proposed in the NPRM and that individual fees are reasonable because patentees should have a better sense of the value of the intellectual property as time progresses after patent grant. However, the PPAC questioned the fee increase proposed for the third stage maintenance fee. The PPAC advised that the increase to the third stage maintenance fee may have a greater adverse effect on demand (and therefore revenue) than the Office projected. Given the AIA's requirement to review fees at least annually, the PPAC recommended that the Office closely monitor the effects of the third stage maintenance fee increase and make adjustments to the fee level as needed.

Response: The Office appreciates PPAC's general support for the maintenance fee changes, and agrees with the need for continuous future monitoring. The Office will work with the PPAC to review available data on maintenance fee payments on a regular basis, and will be prepared to make adjustments to the fee levels as needed. The Office recognizes the PPAC's concern with the third stage maintenance fee in particular and will continue to monitor whether there is any adverse effect on demand due to the increase in that fee. The Office has closely considered this potential effect in its aggregate revenue calculation and analysis of elasticity associated with paying maintenance fees. The Office notes that the third stage maintenance fee is assessed when the patent holder should have maximum information about the value of the patent and can best make an informed decision about whether the value of that patent justifies the amount of the fee when considering the expected future income from the protection. Further, the increase in the third stage maintenance fee allows the Office to provide a fee structure where earlier fees, paid when the patentee has much less information about the value of the patent, can be reduced, so as to reduce the barriers to filing a patent application. By contrast, lowering the third stage maintenance fee would necessitate raising an earlier stage fee in order to remain at overall cost recovery.

Excess Claims

PPAC Comment 22: The PPAC commented that the increase in excess claim fees is unwarranted due to the relative ease with which excess claims can be searched by examiners, the necessity of more claims of varying scope in today's legal environment, and the fact that other patent offices allow applicants to take advantage of multiple dependent claims. The PPAC recommends that the fees be reduced from the rates proposed in the NPRM.

Response: The Office realizes that excess claims can be useful to inventors in today's legal environment, but points out that excess claiming is a burden to the patent system and the Office. Excess claiming slows the examination process and increases patent application pendency, without contributing materially to the Office's goal of *fostering innovation.* The Office therefore concluded that an increase in fees for excess claims will benefit the patent system and the Office.

Moreover, the patent fee structure has had a fee for ''excess claims'' (i.e., independent claims in excess of three and total claims in excess of twenty) since at least 1982, and the result is that most applications now contain three or fewer independent claims and twenty or fewer total claims. Applicants who feel they need more than this number of independent or total claims may continue to present them by paying the applicable excess claims fee. While the former excess claims fee amount encouraged most applicants to present three or fewer independent claims and twenty or fewer total claims, it was not sufficient to discourage some applicants from presenting a copious number of claims for apparent tactical reasons, and nor did the fees reflect the excess burden associated with examining those claims. *See, e.g.,* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612, 48659–60 (Aug. 14, 2012) (noting that the number of claims often impacts the complexity of the request and increases the demands placed on the deciding officials in administrative proceedings). Thus, the Office is adopting excess claims fee amounts designed to permit applicants to include excess claims when necessary to obtain an appropriate scope of coverage for an invention, but to deter applicants from routinely presenting a copious number of claims merely for tactical reasons.

Finally, while U.S. practice does not permit a multiple dependent claim to depend from another multiple dependent claim (35 U.S.C. 112(e)), this does not impact the applicable excess claims fee as a multiple dependent claim or any claim depending therefrom is considered a separate dependent claim for purposes of computing the required excess claims fee. *See* 35 U.S.C. 41(a)(2)(B).

Oath and Declaration Fees and Correct Inventorship

PPAC Comment 23: The PPAC applauded the Office's elimination of the fee for filing an oath or declaration, first proposed in February 2012. The PPAC also stated that the $1,000 fee to correct inventorship is unwarranted, commenting that a fee for changing inventorship stemming from a restriction requirement or amendments to the claims does not seem appropriate and that enlargement of inventorship (which might require a further search) is what matters. The PPAC recommended that the Office charge a fee only to correct inventorship that adds an inventor after the first Office action.

Response: Changes to inventorship (e.g., adding previously unnamed persons as inventors or removing persons previously named as inventors) after examination has started can cause additional work for the Office. This additional work is necessary regardless of whether the change to the inventorship is the correction of an error in naming inventors, or is due to changes to the claims resulting from an amendment during examination. The inventorship correction fee also is necessary to encourage a bona fide effort to ascertain the actual inventorship as early as possible and to provide that information to the Office prior to examination. However, after carefully considering comments from the PPAC and the public, the Office is reducing the change of inventorship fee in this final rule to $600 (large entity) from the $1,000 (large entity) fee proposed in the NPRM. After this reduction, the revenue generated by this fee will continue to offset the costs incurred by the Office when there is a change in inventorship. Additionally, the Office proposed for this fee to be paid when inventors are added or deleted, because requiring the fee only to add inventors will encourage applicants to err in favor of naming too many persons as inventors, which would complicate the examination process (e.g., it could complicate double patenting searches). After further consideration of the PPAC report and other public comments, in this final rule, the Office is requiring a fee to accompany a request to correct or change the inventorship filed after the Office action on the merits, unless the request is accompanied by a statement that the request to correct or change the inventorship is due solely to the cancelation of claims in the application.

B. Public Comments in Response to the Notice of Proposed Rulemaking

The Office received 28 written submissions in response to the proposed rulemaking from intellectual property organizations, not-for-profit or academic or research institutions, law firms, and individuals. The summaries of comments and the Office's responses to the written comments follow.

General Fee Setting Considerations

General Fee Setting Approach

Comment 1: Several commenters expressed support for the Office's overall fee setting approach, including the goals for implementing a sustainable funding model and optimizing patent timeliness (i.e., first action pendency of 10 months and total pendency of 20 months) and quality. Specifically, one commenter stated that the fee changes are a step in the right direction. Another commenter supported the Office's efforts to reduce the patent application and appeal backlog and commended the Office's success to date. Noting that extended patent application pendency hinders progress and weakens the motivation to invent, one of the commenters stated that the proposed fees will benefit the USPTO and help expedite the application process for those seeking a patent, thereby advancing technology.

Response: The USPTO appreciates the endorsement from the commenters and is committed to achieving the goals developed in consultation with the stakeholder community as set forth in the Strategic Plan. The fee schedule in this final rule provides the Office with a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations while implementing key strategic initiatives, such as decreasing patent application pendency, reducing the patent application backlog, improving the quality of patent examination, and updating patent information technology systems. The decrease in pendency, reduction in the backlog, and improvement in patent information technology systems will speed the delivery of innovative goods and services to market and facilitate economic growth and the creation of jobs. Likewise, improving the quality of patent examination strengthens the U.S. patent system.

Comment 2: A commenter stated that the patent application pendency targets of first action pendency of 10 months by FY 2015 and total pendency of 20 months by FY 2016 reflect appropriate long-term goals for the Office. The commenter further stated that applicants will benefit from the early indication of the likely scope of patent coverage and the speedier issuance of a patent, which can allow them to more confidently invest in the commercialization of (or obtain financing for) their innovations. The commenter suggested that competitors of the patentee also will benefit by knowing where they may safely target their commercial activities and investments. The commenter continued to support the pendency goals by explaining that patent applicants need an indication of their prospects for receiving a patent in time for them to consider whether and where to file outside the United States. The commenter explained that under the Paris Convention for the Protection of Industrial Property, applicants have only one year in which to file and claim the priority of their first filing—for applicants who did not first file a provisional application or other priority application—and that receiving a first action at 10 months will allow them to decide whether to file abroad and to take steps to achieve such filings. The commenter stated strong support for the 10 months first action pendency and 20 months total pendency goals and welcomed the proposed lengthening of the timeframes for achieving the goals. The commenter further stated that the Office should not need to change the 10 and 20 month patent application pendency goals in order to provide a ''soft landing'' (in reference to the PPAC Fee Setting Report). Instead, the commenter suggested that the Office has many other tools (e.g., increasing/decreasing overtime, monitoring filing activity, or adjusting hiring) at its disposal to calibrate the throughput in specific art areas and is confident that the Office can reasonably achieve both the pendency goals and a ''soft landing.''

Response: The Office appreciates the feedback and endorsement for the 10 and 20 pendency month goals, which were developed in consultation with the stakeholder community when the Office established the Strategic Plan. As part of the Office's planning for achieving these goals and a ''soft landing'' for the optimal patent application inventory level, the Office has recalibrated its short-term plans to take into consideration comments from the public as well as new information, such as higher examiner production levels, historically low attrition rates, and the substantial progress the Office has already achieved to date. Consistent with plans to manage a ''soft landing'' and avoid an excessively low inventory, the Office has changed the timeframe in which it estimates it will reach its ideal pendency goals to FY 2016 and FY 2017 for first action pendency and total pendency, respectively, but with the recognition that the USPTO may well be within 1 to 2 months of its goal (or that it may fully reach it) in FY 2015 and FY 2016, respectively.

Comment 3: One commenter questioned why the Office incorporated the cost of a photocopy at $.25 per page and the cost of a black and white copy of a patent at $3.00 into its fee setting process under the AIA, given that the Office's costs for providing these services has not changed in years.

Response: The Office included the fees associated with a photocopy ($.25 per page) and a black and white copy of a patent ($3.00) into the patent fee schedule. The Office is setting the fees at the existing fee rates because the Office's data in support of the unit cost

for these services is not current. Therefore, the Office determined it was best to set the fees at existing rates until such time that it assesses more current information.

Comment 4: A commenter questioned the need for a $200 electronic filing incentive.

Response: Section 10(h) of the Leahy-Smith America Invents Act (AIA) provides for the establishment of a $400 ($200 for small entity) fee for any patent application filed by mail, rather than via the Office's electronic filing system (EFS-Web). The overriding purpose for this fee is to encourage applicants to file electronically, which facilitates more effective administration of the patent system. The Office began collecting the electronic filing incentive fee on November 15, 2011, and does not have the authority to change the fee established by the AIA. Once the fee is collected by the USPTO, it must be deposited in the United States Department of the Treasury and is not available to the USPTO for spending.

Comment 5: A commenter suggested that the Office's continued reliance on a fee schedule that is heavily dependent on post-allowance fees is flawed and continues to put the Agency in an unstable financial position. A commenter argued that the optimal fee schedule should consider the incentives and social welfare of patent applicants and society as well as the USPTO's need for financial sustainability. The commenter proposed that the Office consider further increasing filing, search, and examination fees to better align these fees with the costs of these services and to decrease the Office's reliance on post-allowance fees. Further, the commenter stated that being overly dependent on post-allowance fees that only materialize if the Office decides to grant patent applications creates an incentive for the Office to grant an unnecessarily large number of patents and potentially invalid patents. The commenter cited a forthcoming academic study that supports this theory.

Response: As noted in this rulemaking, Congress and the USPTO have long promoted a fee structure that fosters innovation by removing barriers to entry into the patent system through lower front-end fees (set well below cost) and higher back-end fees. The lower front-end fees facilitate entry into the patent system, and in so doing, encourage the disclosure of information on new inventions and ideas to the public. Higher back-end fees not only help to recoup costs incurred at the front-end of the process, but also foster innovation by encouraging patent holders to assess the costs and benefits of maintaining their patent at various points over the 20 year term of the patent (i.e., 3.5 years, 7.5 years, and 11.5 years) when maintenance fees are due. This helps to ensure that low value patents are released back into the public domain for subsequent commercialization. The Office carefully considered many factors discussed in this final rule to determine that the increases to filing, search, and examination fees are adequate to secure the needed aggregate revenue to recover examination costs while continuing to foster innovation.

The Office has conducted extensive short- and long-term analyses of historical costs using the Office's activity-based cost data, budget execution data, allowance rates, strategic and operational goals, and elasticity estimates to mitigate risks to its financial stability. These analyses revealed that the vast majority of the USPTO's past financial stressors were the result of unforeseeable circumstances that were typically short-term in nature (e.g., receiving an authorized spending level lower than that requested of Congress, proposed surcharges or fee rate increases that were not enacted, unanticipated dips in revenue due to broader economic conditions, etc.). These kinds of pressures were generally felt within a given fiscal year, and were best addressed through fiscal year spending adjustments. Attempting to mitigate these pressures by increasing allowance rates would have done nothing to alleviate such short-term concerns, because the maintenance fees would not have been collected until years later. The operating reserve presented in this final rule better establishes a sustainable funding model to respond to these types of short-term circumstances.

Moreover, the Office's fee schedule and financial positions are not the drivers of patent examination practice. While there is a direct correlation between the number of patents granted and future maintenance fee collections, patent examiners make independent patentability determinations in accordance with statutory requirements by comparing the prior art to the claimed invention as a whole, without regard to budgetary pressures of the USPTO. Furthermore, the training patent examiners receive is not varied depending on the Office's fee structure or financial status.

Lastly, with regard to the ''forthcoming academic study,'' the commenters acknowledged that they ''cannot absolutely conclude * * * that the Office's fee structure has truly caused an increase in granting behavior.'' The Office also points out that there is no data or policy basis to support the argument that examination practices are the result of the Office's fee structure or financial position.

Comment 6: A commenter suggested that while a financially constrained USPTO could increase fees in an effort to cover its expenses, the duration of the fee setting process limits the ability of the Office to immediately augment its revenue through fee increases. Thus, the commenter suggested that the Office may turn to granting patents in an effort to increase fee collections, even with fee setting authority.

Response: The Office does not and will not grant more patents as a financial tool to increase fee collections. As discussed in Comment 5, above, the statutory requirements governing patent examination do not permit such a strategy. In addition, the Office considered the timeline for setting and adjusting fees under the AIA in its financial plans. In the event the Office finds itself unexpectedly financially constrained, the Office will adjust spending accordingly and use the operating reserve if needed to manage through the timeframe required to adjust fees.

Comment 7: A commenter suggested that the Office divert maintenance fees to a special fund which would be limited to subsidizing the filing, search, and examination costs for small and micro inventors.

Response: The Office does not have the legal authority to create a special fund in which to deposit maintenance fees. However, under the fee structure included in this final rule, maintenance fees paid by large, small, and micro entity inventors (patentees) will be used in part to subsidize the filing, search, and examination costs for all applicants including small and micro entity inventors.

Comment 8: A commenter suggested that the Office should reduce the proposed fee levels. The commenter noted that as proposed in the NPRM, routine patent fees through issue decrease by 22 percent. The commenter added however, that when factoring in the total fees paid through third stage maintenance, total fees paid increase by 26.3 percent in FY 2013 and 20.9 percent in FY 2014 when the issue fee decrease becomes effective. The commenter further encouraged the Office to accelerate the effective dates of several fees, including the issue fee estimated in the NPRM to take effect on January 1, 2014.

Response: The commenter is correct in stating that, once effective, the

routine patent fees through issue for a large entity proposed in the NPRM decreased by 22 percent (decreases by 23 percent in this final rule), whereas in FY 2014, when coupled with the three maintenance fees, the total fees increased by 26 percent (increases by 24 percent in this final rule). This is consistent with the policy factor of fostering innovation, which guided decisions for setting the proposed fee levels. That is, the Office proposed to set front-end fees below cost and set back-end fees above cost to recoup the front-end subsidy. A front-end subsidy encourages patent application filings and the disclosure of new technology to foster innovation.

When setting the effective date for fee changes, the USPTO takes various factors into consideration, including the number of patent applications it expects to receive and the amount of work it expects to process (e.g., an indicator for workload of patent issue fees). This enables the USPTO to calculate the aggregate revenue for each fiscal year. To allow the Office to recover sufficient revenue to pay for the projected costs for FY 2013, the effective date of the proposed reduction to the issue fee and a few other fees has been set at January 1, 2014. Accelerating this effective date would put the Office at risk of collecting insufficient revenue in FY 2013 to meet its operating expenses.

Finally, based on the current timeline for examining and issuing a patent, the delayed implementation date for the reduction in the issue and publication fees (January 1, 2014) generally aligns with the timing of the increase in filing, search, and examination fees so that patent applicants paying the current (lower) filing, search, and examination fees prior to FY 2013 will continue to pay the current (higher) issue and publication fees. On the other hand, successful patent applicants benefiting from the reduced issue and publication fees in FY 2014 will be more likely to have paid the increased filing, search, and examination fees effective shortly after the publication of this final rule.

Comment 9: A commenter noted that the Office's goal of ''fostering innovation'' fails to take into account the externalities that marginal (i.e., low value) patents impose on producing companies, other innovators, and the public, which over time contribute to the failure of the disclosure function by lowering the quality of patents.

Response: The USPTO is committed to optimizing the quality of the patents it issues, as well as the timeliness. As noted in the Strategic Plan, the Office has taken numerous actions to measure and improve quality. Through collaboration with the PPAC, and with participation from the entire patent community, the USPTO developed a comprehensive set of metrics that are used to monitor patent quality from start to finish. These quality metrics are reported to stakeholders on a monthly basis via the performance dashboard on the USPTO's Web site (*see* the Patent Dashboard in the USPTO Data Visualization Center *available at http://www.uspto.gov/dashboards/patents/main.dashxml*).

In addition, one of the policy factors contemplated in USPTO fee setting is to foster innovation by providing fee levels that encourage, not discourage, innovation. Economic evidence has shown that patents are one important means by which innovators can profit from their research and development efforts, and the patent filing decision normally comes at the beginning of the innovation process, when uncertainty over commercial viability is highest. The fee setting approach adopted by the Office allows for more experimentation earlier in the process by innovators, while also recognizing that other fees charged later in the process (i.e., issue and maintenance fees) will require the innovator to make decisions about the economic value of continuing with the patenting process. In this way, and through the added investment that the USPTO fee structure will allow the Office to make in improving quality and timeliness of examination, the system will minimize the sort of marginal patents mentioned as a concern in the comment.

Relatedly, disclosure, both in quality and in the timeliness of arrival, is also improved by the new fee structure, since the innovation community will receive better information, earlier in time. Finally, increased maintenance fees, as set in this final rule, should help to mitigate the externalities created by marginal patents. If the patents are truly of a low-value, patent holders will elect not to maintain them for as long, thus making them available in the public domain sooner than they might have been under a lower maintenance fee schedule.

Comment 10: A commenter is concerned that shifting fees to be higher at the front-end and lower at the back-end will ultimately discourage some applicants from filing otherwise worthy patent applications, and will impede the dissemination and publication of potentially useful inventions, removing them from public discourse. The commenter suggested reducing filing, search, and examination fees and/or shifting a higher proportion of the fees to the back end.

Response: While the filing, search, and examination fees in the final fee schedule increase, once effective, the total basic fees for obtaining a patent (i.e., filing, search, examination, publication, and issue) decrease by 23 percent. As discussed in the Office's response to PPAC Comment 4, the Office shares the commenters concern about the impact of increased filing, search, and examination fees on the number of prospective patent applications filed. However, the Office's elasticity analysis indicates that the potential impact is small and that filings will continue to grow over the next five years, even if at a somewhat lesser rate for the first few years. Additionally, while some applicants may choose not to file low value patent applications due to the increased combined filing, search, and examination fees, there are other means by which an applicant may disclose his or her invention (e.g., manufacturing the product). Therefore, when combined with the above mentioned elasticity analysis, the Office expects that the impact to public disclosure will not be significant. Further, to the extent there is some impact on filings, the Office has determined that the benefits of the fee changes outweigh the temporary cost of fewer patent filings. The additional revenue generated from the increase in fees provides sufficient resources to decrease patent application pendency. The reduction in patent application pendency is estimated to increase private patent value by shortening the time for an invention to be commercialized or otherwise obtain value from the exclusive right for the technology. Given this overall benefit to the patent system taken as a whole, the Office is setting and adjusting the total filing, search, and examination fees ($1,600 for a large entity) as proposed in the NPRM.

Comment 11: A commenter commended the Office for its willingness to be flexible in the application of its new fee setting authority. The commenter also urged the Office to keep the overarching goal of patent quality in the forefront of the discussion with the pendency and fiscal goals. The commenter further stated that the user community remains open to supporting reasonably justified fee increases and procedural changes that are aimed at producing high quality, valid, and enforceable patents.

Response: The USPTO appreciates the commenter's support for its exercise of fee setting authority. The USPTO's first strategic goal is to optimize patent quality and timeliness. To fulfill this goal, the Office established a set of

strategic objectives to decrease patent application pendency and reduce the patent application backlog, as well as to measure and improve patent quality. Over the past several years, the Office has made significant progress on a set of initiatives that aim to improve patent quality. In collaboration with the patent examiners' union, the Office has developed a new work credit system that gives examiners more time to review the merits of patent applications before making their decisions. The Office also implemented new performance standards that place a greater emphasis on examiners interacting with applicants earlier in the process in order to clarify claims and enhance the quality of patent reviews. At the same time, the Office is committed to building a highly-skilled and capable examining corps, implementing improved hiring practices with a focus on recruiting experienced IP professionals, and providing comprehensive training to both new and experienced examiners.

As the Office implements these and other quality initiatives it is ensuring accountability and tracking progress by initiating 21st century analysis, measurement, and tracking of patent quality. Indeed, the Office developed a comprehensive set of metrics that are used to monitor quality from start to finish. These quality metrics are reported to stakeholders on a monthly basis via the performance dashboard on the USPTO's Web site. *See http://www.uspto.gov/dashboards/patents/main.dashxml.*

Comment 12: The Office received several comments about the patent application pendency goals and the relationship to the availability of prior art. One commenter suggested that the USPTO's goal to reduce first action pendency to 10 months may have the unintended consequences of increasing the uncertainty of the patenting process and potentially reducing the quality of patents, given that there may be ''hidden'' prior art since patent applications are not published until 18 months after the filing date. The commenter recommended that either the first action pendency goal be relaxed to 20 months, or that the USPTO allow applicants to postpone paying search and examination fees for up to 18 months. Another commenter disagreed with this idea asserting that the statement in the PPAC Fee Setting Report regarding the possibility that there may be prior art that is unknown to both an applicant and the Office under the patent application pendency goals of 10 and 20 months is not persuasive. The commenter further explained that while it is true that claims may be allowed that could later be found unpatentable based on subsequently published prior art, the situation has existed for years and patent applicants and the public have enhanced mechanisms to bring such prior art to bear on such claims.

Response: The Office agrees with the second commenter's approach to pendency goals and prior art. As noted in the Office's response to PPAC Comment 8, the Office recognizes that some prior art may not be available to the Office before the first Office action on the merits; however, the Office has general support from stakeholders for pursuing a 10 month first action pendency and believes that the risk is mitigated because many patent applications are published in fewer than 18 months. The 18-month publication deadline is computed from the earliest filed application, and many applications are outgrowths of an earlier filed application, which increases the probability that the prior art was already published. Regarding the suggestion to postpone paying search and examination fees for up to 18 months, ''staging'' of fee payments is an idea that the Office may explore in the future. Given the significant change in the revenue stream for a fee structure modification of this magnitude, the Office believes it is better to first achieve greater financial stability through a sufficient operating reserve and then solicit feedback and ideas from the public via a formal request for comments regarding staged fees. Moreover, the realignment of the individual fees for filing, search, and examination to their respective costs in this final rule prepares the Office to entertain a future staged fee schedule if it was a structure the Office and its stakeholders determined was viable.

Comment 13: A commenter questioned the Office's conclusion that application filings will increase as a result of the proposed changes, especially for small entities. Another commenter suggested that the increased patent fees will discourage independent inventors from filing applications and maintaining patents.

Response: Under the final patent fee structure, large and small entities will pay increased filing fees (i.e., fees for filing, search, and examination). This is counter-balanced in that most successful applicants, regardless of entity status and once effective, will pay less in fees (23 percent for large entities) through the issuance of their patent under the new fee structure. Additionally, the micro entity discount will become available with the new fee structure, mitigating costs significantly for a subset of small entities. However, the Office recognizes that the increased filing fees for large and small entities may discourage some applicants from filing applications. The Office accounted for this impact through the analysis of elasticity. Using publicly available data, the Office incorporated elasticity estimates into its projections and forecasts. The data used does not permit the Office to disaggregate elasticity effects by entity size (e.g., large, small, or micro). The increase in filing fees to large and small entities is expected to reduce moderately the anticipated growth rate of future patent application filings in the short term, but it is not expected to cause a decline in the total number of new (serialized) application filings. The Office expects that filing levels, including for micro entities, will return to the same levels anticipated (across all entity sizes) in the absence of a fee increase by FY 2016. This analysis is described in detail in the supplemental document on elasticity available at *http://www.uspto.gov/aia_implementation/fees.jsp*.

Comment 14: One commenter believed that higher fees should be accompanied with good or better published patent content. The commenter suggested that the Office use fees to maintain its current high quality of patent data, specifically text accuracy.

Response: Providing high quality patent data and information is a priority for the USPTO. The new patent fee structure is designed to ensure that the USPTO generates sufficient revenue to recover its aggregate costs, including those costs associated with the Office's multi-year effort to improve its patent IT systems. Through the PE2E modernization effort, the USPTO will improve both the efficiency and effectiveness of its patent IT systems and business processes, while at the same time continue providing high quality patent information to the public.

The PE2E system seeks to improve the USPTO's image-to-text conversion capabilities. To do so, the USPTO plans to engage a number of solutions moving forward that will further enhance the Office's character recognition capabilities and the accuracy of the converted text. In addition to better enabling the Office to convert documents to text, PE2E is exploring ways to receive text directly from the applicant, with a focus on solutions that will both minimize the burden on USPTO's stakeholders and improve the quality of text received by the Office.

Comment 15: A commenter believes that the increased fees would have a negative impact on many businesses. The commenter stated that some companies may have to use research and development money to cover the cost of patent fee increases. The commenter claimed that this diversion of resources would inhibit innovation and job creation in America's technology sector. Additionally, the commenter noted that the proposed fees increase the total cost of filing, prosecuting, and maintaining patents, and that the Office already increased most of its fees by 15 percent in 2011 and then again in October 2012. The commenter recommended that the fees for filing, prosecuting, and maintaining a patent be held constant at the current level and extra claims fees also remain constant until the CPI justifies another increase.

Response: The Office analyzed the costs and benefits of this final fee schedule and three alternative fee schedules in comparison to the Baseline (status quo or current fee schedule) in the RIA. *See http://www.uspto.gov/aia_implementation/fees.jsp.* The Office determined that it must increase fees to meet its aggregate costs while implementing key strategic initiatives, including costs to reduce patent application pendency and the backlog, to improve the quality of patent examination, and to update patent information technology systems that benefit both the Office and the applicant. The Office understands that innovation is critical for economic growth and national competitiveness because it brings new goods and services to market. The Office weighed the cost of increasing fees against the benefit of reducing the patent application backlog so that the Office can provide applicants with 10 months first action pendency and 20 months total pendency. The Office also recognizes that there may be a reduction to the growth of new application filings; however, the Office has also determined that the benefits of the fee changes outweigh the temporary cost of slower growth in patent filings. The fee structure set forth in this final rule thus encourages innovation and facilitates job creation.

To meet its aggregate costs, the Office requires additional funds (2 percent increase in total aggregate revenue) beyond the amount provided by the 15 percent surcharge. The additional revenue generated from the increase in fees provides sufficient resources to decrease patent application pendency, and the reduction in pendency is estimated to increase private patent value by shortening the time for an invention to be commercialized or otherwise obtain value from the exclusive right for the technology.

Comment 16: One commenter suggested that the Office retrain administrative staff to become operational staff (i.e., patent examiners) in order to clear the backlog and to reduce overhead.

Response: For patent examiner positions, the USPTO recruits engineers, chemists, microbiologists, physicists, and biologists that have successfully completed all requirements for an undergraduate or higher degree at an accredited college or university. In addition, for some disciplines, the USPTO specifies a minimum number of hours of required course content. For candidates seeking employment above entry level, the Office requires professional experience in an appropriate field, graduate education in the field, and/or law school.

The USPTO's administrative personnel generally have educational backgrounds that do not qualify them to fulfill patent examiner positions, e.g., accounting, economics, statistics, etc. Moreover, it is impossible to run an agency without personnel who perform human resources, information technology and other administrative functions necessary to the operation of the Office. Finally, administrative personnel meeting the patent examiner requirements have applied and become examiners in the past and may continue to apply for vacant patent examiner positions.

The Office anticipates that the new fee schedule will provide sufficient revenue to hire the optimal number of patent examiners needed to reduce the patent application backlog and decrease patent application pendency. Further, the Office will continue to seek cost savings and greater efficiency from its entire staff, including administrative personnel.

Comment 17: A commenter suggested that the Office's cost estimate of $1,860 for a patent search is too high, at least in part, because of inefficient operations.

Response: The Office provides the historical costs of the major patent fees, including the methodology used to determine the cost of the fees in a supplemental document entitled, ''USPTO Section 10 Fee Setting—Activity-Based Information and Costing Methodology'' available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*. This document shows the search fee costs associated with the examination of a patent application for FY 2009 ($1,520), FY 2010 ($1,694) and FY 2011 ($1,521) in addition to further detail on the activity costs and the fee calculations.

In 2009, the USPTO's cost management program was recognized as a federal best practice in an independent review, and the Office continues to use these best practices to calculate the cost data that has informed the fee setting process. In addition to using sound cost accounting practices, the Office continues to regularly review its annual requirements-based operating budgets and long-range plans to ensure that the Office operates efficiently. Further, the AIA includes a mandate for the Director of the USPTO to annually consult with the PPAC on the ''advisability of reducing any fees'' (*see* section 10(c)). This annual consultation will be informed by both cost accounting data and any efficiency gains the Office realizes while providing patent services.

Operating Reserve

Comment 18: The Office received several comments about building the three-month operating reserve too quickly. One of the commenters stated that contributing 3 percent to 7 percent of collected fees each year builds the operating reserve too quickly at a high cost to current applicants who face budget constraints. Similarly, another commenter stated that since applicants are already paying higher fees in order to help meet the USPTO's other goals, the operating reserve should be built more gradually to avoid current applicants carrying too much of the burden. A commenter further stated that carefully building and managing a three-month operating reserve is a reasonable fiscal goal and that the commenter appreciated the balanced approached of the modification in the NPRM from the February 2012 proposal, specifically lengthening the target date for achieving full-funding by two years. However, the commenter also stated that a $200 million increase planned for the operating reserve in FY 2014 in the NPRM is too aggressive and suggested a more appropriate goal would be to permit the operating reserve to achieve the three-month goal over six years. Finally, another commenter further suggested that the plan for building the operating reserve is too quick and establishing a longer timeframe would permit the USPTO to lower the fees for post-grant proceedings, making these prosecution options more accessible to small businesses and non-profit entities.

Response: The Office welcomes support for its financial sustainability and operating reserve goals. As noted in the response to PPAC Comment 6, the

Office extended the growth period of the three-month operating reserve by one year (to FY 2018) compared to the timeframe proposed in the NPRM. The Office believes that this timeframe achieves a reasonable balance between growth that is gradual enough to limit the burden on applicants and rapid enough to reach the target reserve and provide necessary financial stability in a reasonable timeframe. Additionally, in this final rule, the Office sets fees for two proceedings at lower amounts than were proposed in the NPRM. These fee reductions are for *ex parte* reexamination (from $15,000 to $12,000) and reexamination ordered as a part of supplemental examination (from $13,600 to $12,100).

Comment 19: A commenter expressed concerns that building the operating reserve so quickly could make it a convenient target for congressional confiscation of fees, and another commenter suggested that the USPTO consider delaying build-up of its operating reserve until such time that any potential fee diversion by the Congress is prohibited. A different commenter suggested that the Office should take every precaution to ensure the fees paid by users are not vulnerable to sequestration or diversion and, if either becomes a reality, the Office should immediately stop building the operating reserve until a mechanism can be found to protect the funds.

Response: As noted in the response to PPAC Comment 6, the AIA mitigates the issue of fee diversion by stipulating that USPTO's excess collections are to be deposited into the new Patent and Trademark Fee Reserve Fund rather than into the general Treasury, and are available for USPTO purposes as provided for in the Office's annual appropriations bill. The Office will continue to work closely with Congress to ensure full access to fees paid by patent applicants and patentees, consistent with the AIA. In addition, as previously mentioned, the Office has slowed the growth of the operating reserve.

Comment 20: A commenter noted that there may be several potential surges in fee activity during the course of implementing the AIA, which would likely lead to ''bubbles'' of fee payments that could be used as a source of funds for building the operating reserve.

Response: The Office anticipates ''bubbles'' of fee payments in advance of this new fee schedule taking effect, similar to the surge in collections experienced in late FY 2011 after the passage of the AIA and the implementation of the 15 percent surcharge in FY 2012. Unlike the ''bubble'' at the end of FY 2011, however, the ''bubbles'' that the Office anticipates for FY 2013 as a result of this final rule and for FY 2014 relating to implementation of those fees set to take effect on January 1, 2014, will be experienced within the respective fiscal years. These anomalies (''bubbles'') are considered in the Office's projected FY 2013 and FY 2014 aggregate revenue collections, including the estimated operating reserve levels.

Small, Micro, and Independent Inventor Matters

Comment 21: The Office received several comments about the impact of fees on small entities and the provision of small and micro entity discounts. One commenter questioned whether the USPTO is providing micro entities with a 75 percent discount. Several commenters expressed support for small and micro entity fees, and some welcomed any further fee reductions, with one commenter proposing that the discount for small entities should be increased to one-third of large entity fee rates instead of one-half. A commenter stated that it is inconsistent to allow small entities (and micro entities) to file applications with reduced filing fees but not allow reduced reexamination fees. One commenter expressed general support for the fee proposal, particularly for the manner in which the rule allocates fees based on an applicant's ability to pay (e.g., large entities pay more) and the front-end/back-end subsidy structure. Lastly, one commenter recommended that the USPTO set aside a small fraction of large entity fee collections for outreach to small businesses.

Response: Congress authorized micro entity fee reductions and an enhanced list of small entity fee reductions to permit greater access to the patent system by these entities. Section 10(b) of the AIA states that the ''fees set or adjusted under subsection (a)'' for the specified patent services ''shall be reduced by 50 percent with respect to the application of such fees to any small entity that qualifies for reduced fees under section 41(h)(1) of title 35, United States Code.'' (Pub. L. 112–29, section 10). Therefore, the Office has no legal authority to change the size of the discount for small entities from 50 percent. Section 10(g) of the AIA further reduced the fee burden for some small entities by adding section 123 to chapter 11 of title 35 to define a new micro entity class of applicants. Section 10(b) of the AIA further states that ''fees set or adjusted under subsection (a)'' for the specified patent services ''shall be reduced by 75 percent with respect to the application of such fees to any micro entity as defined in section 123.''

Under the authority of section 10(b) of the AIA, the Office sets small and micro entity fee rates for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents; these rates amount to a 50 percent reduction for small entities and a 75 percent reduction for micro entities. Fee reductions for reexamination services are included under the authority of section 10(b). In this final rule, the Office sets or adjusts 351 patent fees, including 94 small entity fees set at a reduction of 50 percent and 93 micro entity fees set at a reduction of 75 percent from the large entity fee amounts.

The USPTO continues to work with companies, legal associations, inventor organizations and others to provide inventors and small businesses with contacts, information and assistance. The Office supports several programs to help both small businesses and independent inventors, including the Small Business Education Campaign and pro bono programs. More information on these programs and others designed to support small businesses is available at *http://www.uspto.gov/smallbusiness/about/* and also *http://www.uspto.gov/inventors/proseprobono/index.jsp*.

The AIA directs the USPTO to work with intellectual property law associations across the country to establish pro bono programs for financially under-resourced inventors and small businesses. A pilot program in Minnesota was launched in June 2010 to provide legal services to help such individuals and businesses obtain solid patent protection. Another pro bono pilot program was launched in Denver during FY 2012. More regional pro bono programs are planned for 2013. Outreach to small businesses and independent inventors is included in the Office's annual patent operating budget, so a portion of all fees collected contributes to this outreach effort.

Comment 22: Several commenters suggested that discounts to small and micro entities should be extended to *inter partes* reviews, post-grant reviews, and covered business method patent reviews, with one of the commenters asserting that if the fees are too high, small and micro entities will be driven out of the market in favor of large corporations. One of the commenters disagreed with the USPTO's interpretation of section 10(b) of the AIA, and argued that neither the text of section 10(b) nor any other provision of the AIA limits the USPTO from offering reduced fees or lowering fees for

services not enumerated in that section. The commenter stated that, even if the USPTO's interpretation is correct, the Director has broad authority to lower fees for the administrative trials to allow greater access for entities such as small businesses and non-profits that may otherwise not be able to participate. Other commenters suggested providing non-profit organizations similar or greater discounts on post-grant review and *inter partes* review fees, with one commenter suggesting these proceedings would be prohibitively expensive for non-profit organizations. Another commenter applauded the Office's work to reduce certain fees (from those set under the Office's section 41(d)(2) authority), especially the *ex parte* reexamination fees for small and micro entities. However, the commenter expressed concern that the proposed fees would create a disincentive for some third parties (e.g., public interest groups) to challenge patents, and urged the Office to provide reduced fees for small and micro entities, specifically for not-for-profit organizations.

Response: The express authority of section 10(b) refers to fees for supplemental examination, reexamination, and petition, but not to administrative trials like *inter partes* review, post-grant review, and covered business methods review. Further, because the administrative trials are new services for which the Office has no historical cost basis, setting these fees too far below their prospective cost is risky. The Office designed the new procedures around Congressional intent for the AIA. In many cases, these services are an alternative to even more expensive litigation. Further, many of these services, including post-grant review and *inter partes* review, provide for refunds if the Office does not elect to institute a proceeding, which could significantly lower the cost.

The Office's authority to set fees is coupled with the requirement that aggregate patent revenue must recover the aggregate cost of patent operations. As the Office collects and analyzes more data about the cost of patent operations for these new services, the Office will continually reassess the fairness and adequacy of the fee schedule to both achieve the needed aggregate revenue and remain aligned with the Office's strategic and operational goals and policy priorities—including fostering innovation.

In addition, the Office also established staged fees for appeals and RCEs, which aim to reduce the upfront cost of patent services for all entities, but especially those eligible for a fee reduction. Finally, the pendency gains that the Office aims to realize as a result of the additional revenue will be beneficial to all entities—including not-for-profit entities and public interest groups, as demonstrated by the positive net benefit presented in the RIA. (*See* the RIA at *http://www.uspto.gov/aia_implementation/fees.jsp*). Although non-patent holders will not accrue monetary benefits from the reduction in pendency, the rest of society stands to gain other benefits (e.g., decreased uncertainty) as described in the RIA.

Comment 23: A commenter stated that the criteria to qualify for micro entity status are too restrictive, specifically the limitation on the number of prior patent applications due to prior employment situations and the income requirements. The commenter suggested eliminating the limit related to not being named on more than four previously filed patent applications and raising the income requirement to four or five times the median household income.

Response: The AIA established the criteria under which an applicant may qualify for micro entity status (*see* 35 U.S.C. 123). This final rule sets fee levels, which in applicable instances include micro entity discounts as set forth in section 10(b) of the AIA. This final rule does not alter the eligibility requirements set forth in the law. In a separate final rule, the Office set forth rules of practice pertaining to how an applicant can qualify for micro entity discounts. *See* Changes to Implement Micro Entity Status for Paying Patent Fees, 77 FR 75019 (Dec. 19, 2012). 35 U.S.C. 123(a)(2) has a criterion for micro entity status that requires the applicant ''has not been named as an inventor on more than 4 previously filed patent applications, other than applications filed in another country, provisional applications under section 111(b), or international applications filed under the treaty defined in section 351(a) for which the basic national fee under section 41(a) was not paid.'' 35 U.S.C. 123(b) states that ''[a]n applicant is not considered to be named on a previously filed application for purposes of subsection (a)(2) if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.'' 35 U.S.C. 123(a)(3) states that a micro entity is one who ''did not * * * have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding 3 times the median household income for that preceding calendar year.'' The Office does not have the authority to eliminate the previously filed application limit or expand the income level because both are set by statute. However, the law does not apply to applications filed due to prior employment situations if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.

Comment 24: A commenter asked the Office to estimate how much it would cost a small or micro entity to claim eligibility for these discounts.

Response: The AIA established the bases under which an applicant may establish micro entity status (*see* 35 U.S.C. 123). While this final rule sets fee levels, it does not establish the procedural requirements for asserting small or micro entity status. To pay reduced patent fees as a small entity, the entity must merely assert small entity status using the same procedures in place today. Specifically, a small entity may make this assertion by either checking a box on the transmittal form, ''Applicant claims small entity status,'' or by paying the small entity fee exactly. In a separate rulemaking (*see* Changes to Implement Micro Entity Status for Paying Patent Fees, 77 FR 75019 (Dec. 19, 2012)), the Office set out the procedures pertaining to claiming micro entity status. These procedures are designed to align with, to the extent feasible, the corresponding small entity procedures. A micro entity must certify in writing that he or she meets the criteria delineated in the AIA. In both cases, the burden to establish small or micro entity status is nominal (making an assertion or submitting a certification).

Comment 25: A commenter questioned the Office's assumption that all foreign individuals will qualify for micro entity fee reductions.

Response: The Office does not assume that all foreign patent applicants will qualify for micro entity discounts. The introduction of micro entities required the Office to refine its fee payment workload and fee collection estimates. The Office estimated the size of the micro entity population by making certain calculations about how many applicants would likely qualify under each of the criteria set forth in the law (*see* sections 123(a) and (d)) using the best available data. In making these estimates, the Office considered several factors, including historical data on patents granted. The Office began with patent grant data, because the best available biographic data on applicant type (e.g., independent inventor and domestic universities) comes from patent grant data in the Office's database.

As noted previously, individuals (not companies or organizations) accounted for a very small portion of utility patent grantees in FY 2011. Only 5.0 percent (11,068) of granted patents went to individuals in the U.S., and 1.9 percent (4,206) of granted patents went to individuals from other countries. Designation as an individual is based on being listed in the USPTO database without being associated with a company. By the Office's own records, in FY 2011, individuals from other countries received 4,206 utility patents. The Office's Patent Application Locating and Monitoring (PALM) database reports that 62 percent of both foreign and domestic small entity applicants filed fewer than 5 applications in FY 2009. The Office combined these statistics to estimate that only 2,608 (62 percent of 4,206) of foreign individuals would meet the joint standard of being an individual and having filed fewer than five applications. Then, the Office concluded that about 97 percent of American households fall under the maximum income threshold for micro entity eligibility. Given that household income in the United States is greater than that of most foreign countries, it is reasonable to project that all foreign applicants applying as individuals who meet the other standards for micro entity eligibility are not likely to be disqualified on income alone. All foreign patent applicants will have to specifically qualify by the requirements set forth in 35 U.S.C. 123 in order to be eligible for the micro entity discount.

Comment 26: A commenter stated that proposals for the reduction of certain Patent Cooperation Treaty (PCT) fees aimed at making the international patent system more accessible to small and micro entities are generally welcomed, provided that such reductions are affordable for the Office and that the administration of such fee reductions is manageable and proportionate.

Response: The Office remains committed to making the patent system more accessible to small and micro entities both domestically and abroad. Given the Office's mandate to ensure that aggregate revenue recovers aggregate cost, the Office conducted the necessary analysis to conclude that providing fee reductions for certain PCT services is both affordable and consistent with the Office's goals. The Office does not anticipate a large administrative burden for its own operations or those of other Receiving Offices. The Office will continue to work with its international partners to balance support for small and micro entities with the effective administration of global patent systems. For example, in response to concerns raised by one of the Office's international counterparts, the Office is setting the effective date for the international phase fees established in § 1.445 and § 1.482 in this final rule as (including small and micro entity discounts) January 1, 2014, to provide sufficient time between publication of the final rule and the fee effective date to allow consequential changes to be made to international forms, procedures, and associated systems.

Comment 27: A commenter stated that the means for claiming fee reductions on PCT services as a small entity must be easy to understand and operate by people of any nationality or residence, both for the applicant/agent and for the receiving Offices handling the international application. The commenter added that if a form is to be used, it would be preferable to allow an agent making a filing to check a box on behalf of the applicants without requiring further signatures from each one.

Response: In response to the comments suggesting that the fee reductions should be simple to understand and operate, the final rule amends section 1.27(c)(3) to allow small entity status to be established in international applications by payment of the exact amount of the small entity transmittal fee set forth in § 1.445(a)(1) or by payment of the small entity search fee set forth in § 1.445(a)(2) to a Receiving Office other than the United States Receiving Office in the exact amount established for that Receiving Office under PCT Rule 16. Small entity status can additionally be established by written assertion as previously provided for in section 1.27(c)(1). With regard to establishment of micro entity status, the Office will make available a form for use in certifying an applicant's entitlement to micro entity status.

Comment 28: A commenter suggested that it is not practical for a Receiving Office to verify whether the claim for micro or small entity status is valid in an international application filed under the PCT. The commenter suggested that the Office should make clear what will happen if the United States International Searching Authority has reason to question an assertion of small or micro entity status made in an international application filed with a foreign Receiving Office.

Response: The Office will generally not question applicant's assertion to small entity status. (*See, e.g.,* 37 CFR 1.27(f) and MPEP 509.03 (VIII) ''Normally, the Office will not question a claim to status as a small entity.'') Similarly, the Office plans to generally rely on applicant's certification of micro entity status and will ordinarily not require any additional documents from the applicant concerning the applicant's entitlement to claim micro entity status. However, any attempt to fraudulently establish status as a micro or small entity shall be considered fraud practiced or attempted on the Office. *See, e.g.,* section 1.27(h).

Comment 29: One commenter suggested that at least six months would be needed from notice of the final requirements of the system to properly implement instructions, forms, and systems for the execution of payment of small and micro entity fees and establishing small or micro entity status in international applications for which the Office acts as a Receiving Office, International Searching Authority, or International Preliminary Examining Authority.

Response: In response to this comment, the Office is setting the effective date for the international phase fees established in § 1.445 and § 1.482 in this final rule (including small and micro entity discounts) as January 1, 2014, in order to provide for sufficient implementation time.

Comment 30: A commenter suggested that the proposed fee schedule saddled large entities with more than a fair share of the fee burden, at least for maintenance fees. The commenter urged the Director of the USPTO to use his discretion (granted in 35 U.S.C. 123(e)) to eliminate the 75 percent micro entity discount for maintenance fees.

Response: The Office aims to *foster innovation* for all entities, and fee reductions are one of the tools that the Office uses to achieve this policy. Fee reductions are established by the AIA at Section 10(b), and the Office does not have the authority to eliminate the reductions set by the AIA. Also, maintenance fees are a critical component of the USPTO's funding stream given the Office's policy of setting front-end fees below cost and back-end fees above cost. (*See* the Office's response to PPAC Comment 21 for more information.)

Additionally, the fee burden to large entities for micro entity maintenance fees is not very large, especially because: (1) Micro entities must first qualify as small entities; and (2) the projected population of micro entities is small. As noted in this final rule, the Office estimates that 31 percent of small entity applications will be micro entity applications (*see Part IV. Fee Setting Methodology*). Small entities are already a relatively small portion of patent

applicants—approximately 25 percent over the past five years (*see* Table 53)—so the population of micro entity applicants is expected to be less than 10 percent (25 percent of 31 percent equals 7.75 percent), and the population of micro entity maintenance fee payers would be even smaller. Further, the dollar differential between small and micro entities over all three stages of maintenance fee payments is just over $3,000. (The total of maintenance fee payments through the third stage is $6,300 for small entities compared to $3,150 for micro entities.)

Legal Considerations

Comment 31: One commenter stated that there was not adequate time for the public to submit comments in response to the fee proposal. Another commenter requested additional time to prepare comments on the fee proposal.

Response: The Office reasonably believes 60 days was sufficient time for public comment. The Office notes that it first set forth a fee proposal on February 7, 2012, and then it held two public hearings in collaboration with the PPAC. Additionally, the PPAC collected written comments in response to the February 2012 fee proposal, which the Office reviewed and made available for public review. Finally, the Office provided a 60-day period for written comments following publication of the NPRM, in addition to the PPAC public hearings and earlier comment period and numerous roadshows across the country to provide the public an opportunity to receive further information and to ask questions of the Office concerning the fee proposal.

Comment 32: A commenter stated that the Office must consider the Independent Offices Appropriations Act (IOAA), 31 U.S.C. 9701, both explicitly and *in pari materia,* in setting fees. The commenter asserts that the IOAA applies and that the USPTO's fees amount to taxes insofar as the fees are based on anything other than the IOAA and cost to the USPTO associated with the individual service.

Response: The IOAA is a general government-wide user fee statute adopted in 1951. It is a permissive statute and intended for agencies to use in fee setting where Congress has not provided more specific fee setting authority. Where statutes independent of the IOAA provide specific statutory authority for user fees, those statutes control based on the terms of their own coverage and limitations. *See Bunge Corp.* v. *U.S.,* 5 Cl. Ct. 511, 515–16 (1984), *aff'd mem.,* 765 F.2d 162 (Fed. Cir. 1985) (''The IOAA was intended to serve an interstitial function, providing fee setting authority where Congress has not otherwise authorized the agency to collect fees * * *. It would be inconsistent with this purpose to hold that the IOAA applies where an agency acts pursuant to a different, more specific grant of fee setting authority.'') Here, the USPTO has separate and specific fee setting authority provided by Section 10 of the AIA. Given the specific fee setting authority Congress provided to the USPTO in Section 10 of the AIA, the USPTO does not need to use the IOAA for this fee setting.

Finally, the IOAA and section 10 cannot be read in *pari materia,* contrary to the commenter's suggestion. The IOAA has several significant limitations that apply to fee setting under the terms of that statute, including some limitations to require that each fee be set to recover the cost of the corresponding service. Section 10 does not impose these limitations and is fundamentally different than the IOAA. Specifically, whereas the IOAA requires that each individual fee be set for cost recovery, section 10 does not compel cost recovery on an individual fee basis, but rather explicitly permits fees to be set to recover ''aggregate estimated costs'' of the patent operations. In addition, while the IOAA assigns fees to the general treasury, section 10 fees are kept by the USPTO.

Comment 33: A commenter stated that the proposed fees exceed the authority of the AIA. Specifically, the commenter states that the AIA provides no authority for allowing the USPTO to set or adjust fees on any basis other than cost of the service provided. For example, the commenter posits that the USPTO may not set individual fees above cost based on policy reasons. The commenter also states that the Office's authority is limited to making adjustments that are supported by cost data while retaining a reasonable semblance of the relative levels of existing fees.

Response: The commenter's suggestions are contrary to the plain language of the AIA. The AIA permits individual patent fees to be set or adjusted to encourage or discourage particular services, so long as the aggregate revenues for all patent fees match the aggregate costs of the patent operation. The comment would read into the AIA limitations that do not exist and that are inconsistent with the AIA.

Comment 34: A commenter noted that the agency must comply with the Administrative Procedure Act, 5 U.S.C. 500, *et seq.* in setting Section 10 fees.

Response: The Office agrees that the Office must comply with the rulemaking requirements of the Administrative Procedures Act in setting Section 10 fees. As demonstrated in this section and in this rulemaking as a whole, the USPTO has complied with these requirements.

Individual Fees

Prioritized Examination Fee

Comment 35: A commenter suggested that the proposed reduced fee for Prioritized Examination is still too high, and recommended that the USPTO lower this fee to $2,000 to encourage participation in the program.

Response: In this final rule, the Office is lowering the fee for prioritized examination from $4,800 to $4,000. The Office aims to increase access to prioritized examination while ensuring that the large entity fee remains at cost recovery. Currently, USPTO cost data does not support the suggested $2,000 fee. The Office's cost calculation for prioritized examinations is available in the proposed rule published in the **Federal Register**. (*See* Changes To Implement the Prioritized Examination Track (Track I) of the Enhanced Examination Timing Control Procedures, 76 FR 59050 (Sept. 23, 2011)). As noted in the Office's response to PPAC Comment 9, the Office will continue to monitor participation in the prioritized examination program to assess whether demand increases with a decrease in the fee, and whether there is any adverse impact on pendency of applications in the traditional examination ''track.''

Basic Filing, Search, and Examination Fees

Comment 36: One commenter asserted that the Office understates the cost of filing a patent application. In particular, the commenter believes that the NPRM misled the public to believe that a fee which actually goes up by 27 percent appears to go down by 62 percent. The commenter suggested that filing fees are confusing because fees ''due on filing'' include filing, search, and examination fees, instead of solely the ''filing'' fee.

Response: The NPRM states that the basic filing fee for utility applications decreases by 28 percent for large entities. The utility search fee decreases by 3 percent for large entities, and the utility examination fee increases by 188 percent for large entities when compared to the current patent fee schedule. The net result of the changes to these three components is a 27 percent increase ($340) in the total filing, search, and examination fees for large entity utility applications. *See*

Setting and Adjusting Patent Fees, 77 FR 55028 (Sept. 6, 2012), specifically Table 4 at 55039 and Table 9 at 55043–55044.

The USPTO separated the single fee paid at filing into filing, search, and examination components as part of the 21st Century Strategic Plan that was submitted to the Congress in 2003. The result was to create a more optimal alignment of fees with services, and provide the applicant with more information about the services being received. However, throughout the proposed rule and this final rule, the Office refers to the three fees collectively as the basic ''front-end'' fees and clearly states that the total of all three fees is due at filing.

Request for Continued Examination (RCE) Fees

Comment 37: Several commenters expressed concerns about the increase in RCE fees and operational issues surrounding patent examination and RCEs. Several comments expressed support for the Office's continued efforts to reduce the number of RCEs, but suggested that even more work is needed. One commenter appreciated the reduction of the first RCE fee in the NPRM from the February 2012 proposal to the PPAC, but noted that the second and subsequent RCE fee continues to be nearly double the fee currently in place. The commenter further noted that the moderated fee continues to be high when compared to the costs to examine a case from scratch or to examine a continuation. Several commenters cited issues with examining practices as a reason for increased RCE filings, including improper final rejections, inexperienced examiners, and an examiner's failure to effectively engage with an applicant. The commenter believed that a punitive subsequent RCE fee will not resolve the issue of applicants filing multiple RCEs. One commenter suggested that, given the number of new examiners hired, the RCE fee should be incrementally increased once the overall experience level of the examining corps increases and quality examination is ensured.

Response: The Office carefully considered the decisions to differentiate between fees for filing a first RCE and filing second or subsequent RCEs and whether to increase the RCE fee above its current level. As noted in the final rule, those considerations included historical cost information, historical RCE filing trends, aggregate revenue needs, and patent examination practices (by the Office and applicants). *See* response to PPAC Comment 10.

On the issue of the overall experience level of the examining corps, the Office took into account the average grade level of the patent examining corps when calculating costs. The Office will continue to monitor the quality of examination through its quality metrics that are published on the USPTO Data Visualization Center at *http://www.uspto.gov/dashboards/patents/main.dashxml*.

Comment 38: Some commenters expressed concerns about the way the Office dockets RCEs. Two commenters suggested that the Office consider docketing RCEs like other amended cases (i.e., the same scheduling as responses to office actions) to advance rather than delay prosecution. Alternatively, one commenter suggested the Office could use the amended case docket for those applicants who pay the higher fee for an RCE and continue placement on the continuing new case docket for those applicants who pay the current RCE fee amount.

Response: As a result of the recent Count System Initiative changes, RCEs are being reprioritized within their current docket category based upon their effective filing date, which will move older RCEs ahead for action sooner than other cases in the same category.

Comment 39: A commenter stated that the decision to accept an amendment after final rejection is often at the examiner's discretion and, therefore, so is the need for an RCE. The commenter suggested that: (1) Examination practices be standardized so that all examiners will accept an amendment without an RCE if an amended claim is found to be patentable; and (2) the AFCP be formally adopted. Another commenter suggested that the Office create a new procedure for a ''single review RCE'' or a ''one more action'' procedure with a lower fee than is currently charged for an RCE. The commenter envisioned this procedure as an opportunity for an examiner, in exchange for some portion of a count, to consider art the examiner has newly identified or for an applicant to put claims in condition for appeal. The commenter further explained that an examiner could update the search following an agreement after final on potentially allowable subject matter, all without requiring a full RCE with a delayed track and multiple actions. The commenter further suggested that the application should be maintained on the amended case docket (response to office action scheduling), or an even faster docket, and treated as an amendment after final with some count benefit to the examiner. The commenter recognized the similarity of this procedure to some of the ongoing efforts of the Office (specifically the AFCP), but suggested this procedure would be available as a matter of right and with a lower fee than a current RCE (but higher than the pilot program, which does not currently require payment of additional fees to the Office).

Response: In response to this public comment, the Office reviewed data on applications having an after final reply followed by an RCE filing. The data shows that more than 50 percent of all RCEs are filed with no prior submission after final (i.e., no amendment that attempts to place the application in condition for allowance). It is noted that the AFCP should have the effect of motivating more applicants to file after final replies for additional consideration. After a final rejection is made by the examiner, the applicant must do one of three things to avoid abandonment: (1) File a reply that places the application in condition for allowance; (2) file a notice of appeal; or (3) file an RCE in compliance with 37 CFR 1.114. The data suggests that many applicants elect option (3) over option (1). Absent a timely filed after final amendment that permits issuance of a patent (i.e., an amendment that leaves no pending claim subject to a rejection) the application must be regarded as abandoned, unless a notice of appeal or RCE is timely filed. In situations when an after final amendment may make some but not all claims allowable, the current procedures provide a check box (number 6) on the Advisory Action form that allows an examiner to indicate that a claim(s) amended after final would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). A copy of the current Advisory Action form is found on page 700–88 of the MPEP, Eighth Edition, Revision 9. With regard to the ''single review RCE'' or ''one more action'' concepts, such suggestions are outside the scope of this rulemaking, but to the extent that these suggestions can be implemented consistent with 35 U.S.C. 132 and 133, they will be given consideration.

Comment 40: One commenter stated that it is important for the Office to deal with the ''hidden'' RCE backlog because ''one gets what one measures.'' The commenter suggested that the pendency goals should be established taking into account RCEs (e.g., X months from filing to final disposition of RCEs, and Y months for traditional total pendency including RCEs), which would establish a clear focus on the backlog of RCEs and would keep the user community fully apprised of the Office's progress in

bringing that backlog under control. The commenter suggested that these goals should be tracked and reported side-by-side with the 10- and 20-month traditional pendency goals.

Response: The Office presents multiple application pendency numbers on the Patent Dashboard in the USPTO Data Visualization Center available at *http://www.uspto.gov/dashboards/patents/main.dashxml*. There, the Office publishes traditional total pendency both with and without RCEs, as well as the pendency for RCEs alone. The Office also publishes the backlog for RCEs. The Office further presents data on the growth in RCE filings, the inventory of RCEs, and the pendency associated with RCEs. *See* response to PPAC Comment 10 for additional information about the Office's efforts to respond to issues concerning RCEs, including the backlog.

Appeal Fees

Comment 41: Two commenters stated that the total for appeal fees ($3,000) is too high given the percentage of reversals on appeals (50 percent per one commenter and 80 percent or more per the other commenter). The commenters stated that the proposed two-part fee structure should be further realigned so that the initial fee is lower and the final fee due after receipt of the examiner's answer is the largest component of the appeal fees. Further, one of the commenters explained that many appeals are terminated prior to the applicant filing an appeal brief so the single fee for the notice of appeal ($1,000) is excessive, and it should be eliminated or greatly reduced. The commenter also questioned the proposed $1,000 fee due upon filing a Notice of Appeal, stating that a number of appeals are pursued due to inexperienced examiners and/or poor rejection quality and that the fee increase might discourage meritorious appeals.

Response: In this final rule, the Office is implementing the recommendation to reduce the proposed appeal fees so that meritorious appeals are not discouraged. This final rule lowers the fee for a Notice of Appeal to $800 (large entity) from the $1,000 (large entity) proposed in the NPRM. This is much lower than the current $1,260 (large entity) fee for the combined services of filing a Notice of Appeal and filing an appeal brief because the fee for filing an appeal brief is eliminated under the new structure. The fee for forwarding an appeal to the PTAB remains the same as proposed in the NPRM ($2,000 for large entities). Many applicants will pay less under the new structure because the forwarding fee will only apply to those that forward an appeal to the PTAB, which is estimated to be about 5 percent of applicants who receive a final rejection. However, the Office notes that these fees are set 43 percent below the cost of providing these services ($4,922 average historical cost). Therefore, decreasing the gap between the total cost incurred and the total fees charged is critical to recovering costs in the aggregate for the appeals process. For more information, please refer to the response to PPAC Comments 11 and 12.

The Office recognizes that applicants may in some cases need to appeal an examiner's decision and welcomes suggestions on improving the process. As noted in the response to PPAC Comment 11, the Office's data shows that in appeals decided on their merits by the PTAB, over 65 percent result in affirmance of at least some of the rejected claims (*see http://www.uspto.gov/ip/boards/bpai/stats/receipts/fy2012_sep_e.jsp*).

Ex Parte Reexamination Fees

Comment 42: Several commenters stated that the $15,000 fee for *ex parte* reexamination is too high. One of the commenters proposed that *ex parte* reexaminations applied for by the owner of the patent and *ex parte* reexaminations ordered as a result of a supplemental examination should both not exceed $2,900. (A $2,900 fee is approximately 15 percent above the fee for *ex parte* reexaminations that was effective prior to September 16, 2012, the effective date of the final rule. *See* Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and to Revise Reexamination Fees, 77 FR 48828 (Aug. 14, 2012)). The commenter further suggested that a patent owner is paying maintenance fees, which should subsidize the cost of owner-initiated *ex parte* reexaminations.

Response: To achieve sufficient cost recovery while meeting the rulemaking goal to facilitate effective administration of the patent system, and given the long-term disparity between the fee and the cost, the Office must increase the reexamination fee. An analysis of the Office's *ex parte* reexamination costs revealed that the previous $2,520 *ex parte* reexamination fee did not recover the Office's costs for that service. In fact, the Office's costs are approximately seven times the amount of the previous fee ($2,520) for an *ex parte* reexamination, which demonstrates that minor increases (10–15 percent) to the previous fee would also be insufficient. However, in response to comments from the PPAC and the public, the Office is reducing the fee for *ex parte* reexamination (proposed at a total of $15,000 for large entities) to $12,000 (large entity) in this final rule, which is 32 percent below the Office's cost for these services.

The Office appreciates the suggestion that maintenance fees (which are paid for by the patent owner) subsidize reduced fees for *ex parte* reexaminations applied for by the patent owner. The fees in this final rule must overall be set, nevertheless, so that total aggregate revenue equals the total aggregate cost of patent operations. The fee structure sets many fees below the cost of processing and recovers the lost revenue from back-end fees such as maintenance fees, which are set above cost. If the Office were to reduce the fee for *ex parte* reexaminations, the Office would need to increase other fees to offset the lost revenue. In this final rule, the Office decided to set the *ex parte* reexamination fee so that the additional costs for this service are borne not by all patent holders (through the payment of maintenance fees as a commenter suggested), but instead only by those patent owners who require *ex parte* reexaminations. An applicant is not required to use the *ex parte* reexamination process. Finally, in this final rule, the Office sets reduced fee rates for small entity ($6,000) and micro entity patentees ($3,000) that require an *ex parte* reexamination to permit greater access to the *ex parte* reexamination process.

Comment 43: Several commenters questioned the Office's cost basis for the reexamination fee. Some questioned why the *ex parte* reexamination fee was not more closely aligned with other patent services like a full initial examination, prioritized examination, or prosecuting an *ex parte* patent application. One of the commenters argued that a reexamination is generally more focused and limited than a full initial examination and questioned why the cost for *ex parte* reexamination is more than four times the cost for an initial search and examination. The commenter suggested that either the Office is using costing assumptions that are much too cautious, or the Office should apply its focus to reigning in the cost of *ex parte* reexamination. One of the commenters stated that the Office's cost for prosecuting an *ex parte* patent application is only $3,569, and said that this makes the $15,000 proposed fee for an *ex parte* reexamination excessive. Another commenter suggested that *ex parte* reexamination is more closely related to prioritized examination given the expedited nature of the service and

the need for one or more examiner interviews.

Response: As stated in the response to PPAC Comment 14, requests for *ex parte* reexamination generally contain issues that are more complex than may be present in a typical patent application. As to the comparison of *ex parte* reexamination with prioritized examinations, applications under prioritized examination are required, in addition to including payment of the $4,000 fee (large entity) set in this rule, to contain no more than 4 independent claims, and no more than 30 total claims, in order to maintain prioritized status. In contrast, in *ex parte* reexamination practice, there is no limit on the number of patent claims that may be requested to be reexamined. Furthermore, applications under prioritized examination receive, on average, a final disposition within twelve months of prioritized status being granted. However, in *ex parte* reexamination practice, the Office must make a determination whether the request raises a substantial new question of patentability within three months after the filing date of each request.

Nonetheless, after updating the patent operating plans and corresponding aggregate cost estimates in response to public comments, the Office determined it can reduce the *ex parte* reexamination fee further. In this final rule, the Office is reducing the fee for *ex parte* reexamination from $15,000 to $12,000 (large entity). The Office also notes that this rulemaking applies small and micro entity reductions to the *ex parte* reexamination fee, resulting in discounts of 50 percent for small entities and 75 percent for micro entity patentees.

Comment 44: A commenter suggested that the *ex parte* reexamination fee should be deferred until reexamination is ordered, so as to reduce the initial costs on patent owners. Another commenter suggested that it would be appropriate to apply a two-stage fee for the *ex parte* reexamination fee.

Response: As explained in greater detail in the response to PPAC Comment 15, the Office elected not to adopt a pay-as-you-go approach to the *ex parte* reexamination fee, even though it is essentially a two-part fee, to ensure fee payment and completion of the reexamination in a timely manner.

Supplemental Examination Fees

Comment 45: Two commenters questioned the rationale that setting a high fee for supplemental examination would encourage applicants to submit all relevant information during initial examination. One commenter believed that the magnitude of the supplemental examination fee is inconsistent with the congressional intent in creating this process, which the commenter believes was to allow a patentee, without limitation, to bring to the USPTO's attention information relevant to the patent. The commenter felt that the USPTO's stated reason for setting the supplemental examination fee above cost is inconsistent with the policy objective of securing a complete, high-quality, and expeditious initial examination of a patent application. Instead, the commenter stated that making supplemental examination more accessible—not less—encourages expeditious initial examination by serving as a back-up plan, allowing applicants to submit pertinent information later, thereby reducing the tendency to ''over disclose'' at the front-end of the process. The other commenter suggested that patentees will use supplemental examination properly and efficiently and that the fee should be lowered to promote greater access to the procedure.

Response: In the final rule to implement supplemental examination, the supplemental examination fees initially were set on a cost recovery basis, as required by 35 U.S.C. 41(d). *See* Changes to Implement the Supplemental Examination Provisions of the Leahy-Smith America Invents Act and to Revise Reexamination Fees*,* 77 FR 48828 (Aug. 14, 2012). The supplemental examination final rule set a fee of $5,140 for processing and treating a request for supplemental examination, and a fee of $16,120 for conducting *ex parte* reexamination ordered as a result of a supplemental examination, resulting in a total fee of $21,260 (excluding any applicable document size fees). The cost calculations relating to the supplemental examination final rule were published by the Office (''Cost Calculations for Supplemental Examination and Reexamination'') on its Web site at *http://www.uspto.gov/aia_implementation/patents.jsp#heading-9*.

In response to stakeholder feedback, and after updating and carefully reviewing the aggregate cost and aggregate revenue of patent operations, the Office determined that it could reduce these fees in this final rule to $4,400 and $12,100, respectively, resulting in a total fee of $16,500 (excluding any applicable document size fees), which is 23 percent below the Office's costs for providing these services. In addition, the Office set reduced fee rates in this final rule for small ($8,250) and micro ($4,125) entities to permit greater access to the supplemental examination process.

Per the requirements of section 10 of the AIA, the fees in this final rule are structured so that total aggregate revenue equals the total aggregate cost of patent operations. The fee structure sets many fees below cost and recovers the lost revenue from other fees, which are set above cost. As such, if the Office were to further reduce the fee for supplemental examination, the Office would have to increase other fees to offset the lost revenue. The Office determined not to further subsidize the cost of this service, as it would require the entire patent applicant community to bear the cost of services utilized by a limited number of patentees.

Comment 46: A commenter questioned whether the supplemental examination fee proposed by USPTO is justified, and suggested that supplemental examination fees should be no more than those charged for filing ($280) and searching ($600) reissue applications, since the USPTO's expenses for these processes should be similar. As such, the commenter suggested that the large entity supplemental examination fee be no more than $880. Another commenter questioned the Office's rationale for setting supplemental examination fees at $18,000, given that a patentee requesting supplemental examination is required to provide a separate explanation of the relevance and manner of applying each item of information to each claim of the patent. The commenter stated that this fee stands in contrast to the average historical cost of less than $4,000 incurred by the Office where it independently conducts a complete search and examination. Another commenter suggested a total fee of $3,120 (the total fees for examining and issuing a reissue application) for conducting an *ex parte* reexamination following supplemental examination.

Response: The supplemental examination process is more analogous to the *ex parte* reexamination process than to a reissue proceeding. In both supplemental examination and *ex parte* reexamination, the requester provides a separate explanation of the relevance and manner of applying each item of information to each claim of the patent, and the Office must determine whether a substantial new question of patentability is raised in the request within three months of the filing date of the request. Further, supplemental examination is enhanced beyond *ex parte* reexamination to involve information beyond the patents and

printed publications and beyond issues of anticipation and obviousness provided for in *ex parte* reexamination practice. Therefore, the Office based its estimate of the cost of supplemental examination proceedings on its costs for *ex parte* reexamination proceedings ($17,750), making adjustments as needed. *See* responses to Comments 42 and 45 for more information about how the Office set the fee for supplemental examination under 35 U.S.C. 41(d).

Comment 47: A commenter suggested that ''staging'' the fees for supplemental examination would be preferable to charging the fees for the supplemental examination request and *ex parte* reexamination if ordered initially and then refunding the fee for reexamination when it is not ordered.

Response: The Office has not adopted a pay-as-you-go approach, because that approach introduces risks related to nonpayment of fees and procedural delays related to collecting a separate fee after the Office grants a request for *ex parte* reexamination. *See* the Office's response to PPAC Comment 17 for more information.

Comment 48: A commenter noted that a fee structure that permitted a patent owner to secure Office consideration, reconsideration, or correction of all desired items of information in one supplemental examination would be more reasonable than the current fee structure where a patent owner can secure Office review of only up to 12 items of information in a single supplemental examination request and must pursue additional supplemental examinations for additional items of information. The commenter recommended that the Office set an additional fee for each item of information over 12.

Response: The supplemental examination procedure was designed to enable patent owners to present items of information for consideration, reconsideration, or correction. The Office is required to conduct and conclude supplemental examination within three months after a request is filed. In order to meet this timeframe, the Office is setting a limit of twelve items of information that a patent owner may submit to the Office in each request. The purpose of this limit is to strike a balance between the needs of the patent owner and the ability of the Office to timely conclude the proceeding. There is, however, no limit to the number of issues that these twelve items of information can raise, or to the number of separate requests for supplemental examination of the same patent that a patent owner can file at any time.

Even though the basis for most inequitable conduct allegations is typically far fewer than ten items of information, the Office raised the limit to 12 items of information in response to the public's comments. A review of *ex parte* reexamination requests filed in FY 2011 revealed that the requester relied on twelve or fewer documents in at least 93 percent of the requests. In addition, the Office is mindful of the time necessary for examiners to analyze the items of information submitted, particularly since the items are not limited to patents and printed publications, and since each item may raise multiple issues. Accordingly, the supplemental examination final rule limited the number of items of information to 12 to establish a procedure that not only is practical, but also enables an examiner to fully, comprehensively, and timely analyze all submitted items of information and issues to accurately determine whether there is a substantial new question of patentability.

Comment 49: Some commenters questioned the Office's cost basis for the reexamination fee. One commenter questioned whether the Office based its prospective cost determination on the historical costs of all *ex parte* and *inter partes* reexaminations instead of only patentee-initiated reexaminations, which are the closest corollaries to supplemental examination.

Response: As noted in the Office's response to PPAC Comment 16, the Office does not separately track the time taken by examiners to process and analyze patentee-initiated *ex parte* reexaminations versus third party-requested *ex parte* reexaminations. The Office will continually monitor the actual costs associated with reexamination proceedings as this information becomes available and use it to inform future fee setting efforts.

Inter Partes Review, Post-Grant Review, Covered Business Method Patent Review Fees

Comment 50: Several commenters noted that post-grant review and *inter partes* review are new proceedings that are based on prospective costs (rather than historical costs). Specifically, one commenter suggested that the Office may have been too cautious in its estimates of prospective costs for post-grant review and *inter partes* review. The commenters recommended that the Office reevaluate the cost calculations for these proceedings as information from actual proceedings becomes available and adjust the fees once the true cost is known by experience.

Response: The Office recognizes that the stated costs for the post-grant review and *inter partes* review proceedings are based on prospective costs informed by the Office's managerial cost accounting data rather than historical costs. (*See* the Office's methodology to determine the cost of patent services in a supplemental document entitled, ''USPTO Section 10 Fee Setting—Activity-Based Information and Costing Methodology'' available on the USPTO Web site at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*.) As information on the actual cost of these proceedings becomes available, the Office will revisit the costs and fees for these proceedings, as suggested by the commenters, to ensure the respective fees are set at the appropriate levels.

Comment 51: A commenter suggested that the post-grant review and *inter partes* review proceedings are overly complex and should require only three major submissions to the Board—the initial petition, the patent owner's response, and the petitioner's responsive comments. The commenter stated this type of a proceeding would establish a more streamlined and efficient set of rules that would produce significantly lower costs and fees for petitioners.

Response: The AIA requires the Office to establish a procedure that involves more submissions than suggested by the commenter. For instance, 35 U.S.C. 313 provides that ''the patent owner shall have the right to file a preliminary response to the petition.'' Also 35 U.S.C. 316(a) and 326(a) require the Office to establish procedures to permit the parties to submit supplemental information and allow the patent owner to amend the claims. Therefore, the USPTO cannot adopt the commenter's suggestion.

Comment 52: A commenter supported the Office's decision in post-grant and *inter partes* review proceedings to split the fees into a fee for the initial petition and a fee for proceeding after grant of a petition. Several commenters suggested that the Office should establish fees for other milestones, or ''stage'' the payment of separate fees, during these proceedings, such as at the request for an oral hearing and for a rehearing, thereby further reducing front-end costs and matching fees commensurate with the Office's work. One commenter suggested that the lack of this staging was a ''missed opportunity.'' Several commenters also supported additional fees during the proceedings for late-filed and additional motions, especially motions for supplemental discovery, because these actions could pose costs

on both the Office and the opposing party.

Response: The AIA requires that the Office establish fees for *inter partes* review, post-grant review, and covered business method review to be paid by the person requesting the review. The fees paid by the person requesting the review are to be set considering the aggregate costs of the review. A ''pay-as-you-go'' approach would require patent owners to pay for some of the costs associated with the review, which is inconsistent with the statutory framework. In addition, if petitioners were required to pay for costs associated with additional submissions by patent owners, this could encourage patent owners to file additional submissions merely to increase costs for the petitioner.

Comment 53: A commenter suggested that the Office consider increased fees for late filed motions to amend (e.g., after patent owner response), unless there is a new rejection, because such motions inject uncertainty and greater cost into the proceedings.

Response: In prescribing the administrative trial final rules, the Office considered the effect of the regulations on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings. Those rules provide that late motions to amend may only be authorized when there is a good cause showing or a joint request of the petitioner and the patent owner to materially advance a settlement. Therefore, late motions to amend that impact the Office's ability to timely complete proceedings would be rare. Moreover, charging for late motions would require patent owners to pay for some of the costs associated with the reviews, which is inconsistent with the statutory framework.

Comment 54: A commenter expressed support for the reduction in *inter partes* review fees from the fees set under 35 U.S.C. 41(d)(2). Another commenter expressed concern that many small businesses and non-profits will not have the financial capital to pay large upfront fees for administrative trial proceedings under the proposed fee structure. As a result, they will turn to the classic district court litigation option (at a projected cost between $500,000 and $3.9 million per party) because of the ability to spread-out fees, even though that option is overall more expensive and less efficient. Because Congress intended the administrative trial proceedings to be a less expensive alternative to litigation, the commenter recommended that the USPTO change the structure of these fees to provide an option that distributes the fees over time throughout the course of the proceedings. Additionally, the commenter suggested that the proper benchmark for these fees is not merely a lower cost than litigation, but rather is a fee structure accessible to all.

Response: The Office appreciates the commenter's support for the fee reductions made in this final rule as compared to fees previously set for the administrative trials under 35 U.S.C. 41(d). In this final rule, as proposed in the September NPRM, the Office sets the fees for *inter partes* review and post-grant review below cost recovery at what amounts to a 15 percent discount from the fees originally set under section 41(d)(2) authority.

Regarding the distribution of fees throughout an administrative trial proceeding, the AIA requires that the fees for *inter partes* review and post-grant review be paid at the time of filing the petition. *See* 35 U.S.C. 312(a)(1) and 322(a)(1). Adopting a ''spread-out'' fee system as suggested by the commenter would be contrary to the statute and congressional intent. Further, administrative trials before the Office will be conducted faster than district court litigation that on the average take a few years because, in the absence of good cause, the Office is required to issue the final determination in the review no later than one year after institution. *See* 35 U.S.C. 316(a)(11) and 326(a)(11). Therefore, the benefit of distributing the fees over such a short time period would not be significant. Finally, in a ''spread-out'' fee system, the petitioner could cause unnecessary delays through late payment or failure to pay required fees.

Comment 55: A commenter stated that the proposed fees for administrative trial proceedings (e.g., *inter partes* review, post-grant review, and the transitional program for covered business patents) are too high for small businesses and non-profits. The commenter argued that the high fees for these proceedings would make them inaccessible to many stakeholders. The commenter therefore recommended that the USPTO revise the fee schedule to ensure accessibility to all stakeholders. Lower fees, the commenter argued, would better satisfy Congress's intent that proceedings be broadly accessible and the goal of creating a healthier, more efficient patent system.

Response: As noted in the Office's response to Public Comment 22, the administrative trials are new services for which the Office has no historical cost basis. Setting the fees for these often complex and potentially costly services too far below their prospective costs is risky. In addition, the scope of section 10(b) of the AIA does not include the administrative trial services, which means that the Office cannot set small and micro entity fees for these services. The reduced fees in this final rule attempt to make these proceedings more accessible while recognizing the need to facilitate effective administration of the patent system. The Office will continually revisit the fees for these services to determine the right balance between the fee and the cost.

Comment 56: A commenter argued that the fees for challenging each claim in excess of 20 in administrative trial proceedings are too high for small businesses and non-profits, and noted that the proposed fee structure would also create harmful incentives for patent applicants by rewarding applications containing numerous claims. The commenter gave the example that, for a post-grant review on a patent with 200 claims, the petition fees alone would amount to $174,000 and the petitioner must also incur additional costs relating to discovery. The commenter expressed concern that these high fees and the claim-based fee structure would make the new post-grant proceedings inaccessible for small businesses and non-profit organizations.

Response: As previously discussed, the Office does not have statutory authority to provide a small or micro entity discount on fees for administrative trials. Additionally, in the Office's experience with administrative trials in the first few months after they became available, petitioners are not challenging an excessively large number of claims. The Office received a total of 80 petitions from September 16, 2012, through November 30, 2012, and only 23 petitions challenged more than 20 claims (29 percent, 23 out of 80). The highest number of excess claims challenged thus far was 58 claims, which is far from the 200 claims discussed in the commenter's example. In the petitions that challenge 20 claims or less, the average number of challenged claims was 11 claims, which is well below the 20 claims permitted without excess claims fees.

The current experience in the number of challenged claims in *inter partes* review and covered business review is entirely consistent with historical data for reexaminations, i.e., that large number of claims are not often challenged even where one fee covers all claims challenged. (*See* Response to Comment 238 in Trial Final Rule, 77 FR 48612, 48668 (Aug. 14, 2012)). Moreover, a party need not challenge all

claims in a patent, such as when only certain claims are alleged to be infringed by the party challenging the patent. Finally, the fee charged is to recover the total extra cost to the Office to review the larger number of claims, and given the balanced nature of the fee structure, if this fee did not recover costs, other fees would have to be increased.

Comment 57: A commenter expressed concern that while there are $600 and $800 fees per excess claims in *inter partes* review and post-grant review respectively, the fee is only $80 for claims in excess of 20 in a patent application. Therefore, the commenter argued that this would create an incentive for applicants to file applications with large numbers of patents claims in order to make it inaccessible for small businesses and non-profit organizations to challenge their patent through the new administrative trial procedures. By shutting out small businesses and non-profit organizations as third party challengers, the commenter asserted that the fee structure would have a negative effect on patent quality and innovation.

Response: To date, the percentage of patents being challenged is very small. Through November 2012, the Office received a total of 80 petitions for review. In contrast, the Office issues more than 10,000 patents per month. Adding one claim in each of the patents would cost orders of magnitude more than paying for review of an additional claim given the large difference in the number of reviews relative to the number of patents. Furthermore, the review fees are set considering the total cost of conducting the proceedings. Setting the fees further below cost would require other patent applicants, namely innovators, to subsidize patent challengers since the aggregate cost of the Office must be recovered. The AIA requires that the fees for *inter partes* review and post-grant review be paid by the person requesting the review at the time of filing the petition. *See, e.g.,* 35 U.S.C. 311 and 312(a)(1). Finally, as previously discussed, the Office does not have statutory authority to provide a small or micro entity discount on fees for *inter partes* review and post-grant review.

Comment 58: One commenter criticized the fee structure as subsidizing the prosecution of invalid patents. Because the costs of review are borne by the challenger, even when the patent is shown to be invalid, the commenter argued that the challenger pays the full price for performing a public service to remedy a problem created by the patent applicant and the Office. The commenter suggested that the Office establish a fee-shifting regime for *inter partes* reviews, post-grant reviews, and covered business method patent reviews to address this free rider problem. Specifically, the commenter argues, if a patent is invalidated, the patent owner should be required to abandon the patent, commit to reimburse the challenger, or pay the costs and fees associated with the challenger's petition. In this way, the fee schedule would create the right incentives for applicants to undertake due diligence for the technology they claim to have invented.

Response: The AIA requires that the fees for *inter partes* review and post-grant review be paid by the person requesting the review at the time of filing the petition. *See, e.g.,* 35 U.S.C. 311 and 312(a)(1). This final rule to reset those fees under the new authority in section 10 of the AIA does not provide for changing the entity paying the fee but rather the amount paid by the entity requesting review. Adopting a system as suggested by the commenter would be inconsistent with the statute and congressional intent.

Maintenance Fees

Comment 59: A commenter expressed support for reasonable subsidization of selected patent-related services with income from maintenance fees, but suggested that the Office revisit its decision to impose such large maintenance fee increases. The commenter suggested that companies will have to counterbalance the maintenance fee increases with a decrease in application filings, which may have an unintended impact on USPTO operations.

Response: The Office's proposed fee structure is designed to generate enough aggregate revenue to recover the aggregate cost of patent operations and support American innovation with low entry fees and a mechanism to release information into the public domain once a patent holder deems the value of their innovation is lower than the fees needed to maintain protection. The USPTO has carefully considered the effect of each of the fee changes in this final rule on the demand for the Office's services through an elasticity analysis and other reviews as described above. As discussed in response to PPAC Comment 21, the Office will continually monitoring fees after this initial fee setting effort.

Comment 60: A commenter questioned the Office's rationale for increasing the three maintenance fees at different rates. The commenter suggested that the USPTO reconsider these increases and provide a practical fee schedule with a clearer, more specific rationalization.

Response: Keeping front-end fees below cost necessitates an increase in post-issuance fees. The Office selected a staged increase in maintenance fees, so that patent holders will pay higher maintenance fees later in the life of their patents, at a time when they can make more informed decisions regarding their patents' value in the marketplace.

Excess Claims Fees

Comment 61: A commenter suggested that the Office's excess claims fees are illogical and too high. The commenter also questioned the rationale for thresholds of 20 total claims and three independent claims.

Response: The fee difference between total claims in excess of twenty and independent claims in excess of three is based on the fact that an independent claim requires a completely separate prior art patentability determination. This requires more examination effort than required for a dependent claim, because the dependent claim is allowable over the prior art given that the claim from which it depends is allowable over the prior art. For example, if an applicant cancels 3 independent claims and presents 17 new independent claims, to cover 17 dependent claims that were previously allowed and are now rewritten in independent form, the applicant will receive 20 completely separate prior art patentability determinations (17 for the current independent claims and three for the independent claims previously presented and now canceled). Thus, requiring an applicant in this situation to pay for 14 independent claims in excess of three is reasonable. An applicant can avoid this situation by drafting claims in a chain from the broadest to which the applicant feels he/she is entitled to the narrowest the applicant is willing to accept, rather than drafting a set of dependent claims which all depend from an independent claim. To avoid excess claims fees, the applicant could also have canceled the original 3 independent claims, redrafted only 3 of the 17 dependent claims in independent form, and changed the dependency of the remaining 14 claims. Also, after calculating the aggregate cost of patent operations as compared to the aggregate revenue generated from the patent fee schedule contained in this final rule, the Office determined that the excess claims fees will remain at the rate proposed so that other fees do not need to be increased to generate additional aggregate revenue to cover the aggregate cost of patent operations.

Comment 62: A commenter stated that the 70 percent increase in the excess independent claim fees does not reflect the realities of prosecution practices and should be reduced. The commenter further suggested that most unrelated independent claims would be removed from the application through restrictions, leaving a closely related set of claims that would pose little additional burden to examiners. A second commenter stated that the increase in the excess independent claim fees does not reflect the realities of using a variety of claim types and scope during patent prosecution and should be reduced. The commenter explained that in technologies where multiple restriction requirements are often imposed, using high fees to prevent the filing of all claims necessary for a complete restriction requirement can effectively deprive applicants of the safe harbor for restricted claim groups under 35 U.S.C. 121.

Response: As set forth in MPEP 804, claims that are unrelated (e.g., unconnected in design, operation, and effect) are generally subject to restriction. Because independent claims in most applications are at least related, restriction requirements are usually based on a determination by the examiner that the claims are distinct. Therefore, the commenter's observation offers little relief from the burden imposed by excessive independent claims. The deterrent effect that 35 U.S.C. 41 has provided against excess claims has been insufficient in the past. In view of the increasing rate of application filings and an increasing long term trend of more applications containing an excessive number of claims, the Office stated in 1998 that ''the problem with applications containing an excessive number of claims is now reaching a critical stage.'' *See* Changes to Implement the Patent Business Goals, Advance Notice of Proposed Rulemaking, 63 FR 53497, 53507 (Oct. 5, 1998). In addition to helping the Office meet its policy goals of reducing application processing time, application pendency, and examination burden, the increase in excess claims fees is also justified because fees paid by applicants filing a large number of claims will be more commensurate with the resources the Office must expend examining the large number of claims. For a detailed explanation on this topic, see the Office's response to PPAC Comment 12.

Comment 63: A commenter stated that the proposed fee increase for excess claims from $250 to $420 is excessive. The commenter also suggested that the number of independent claims that may be presented without incurring a fee is too low, given that more than three independent claims are often necessary to effectively cover the varying aspects of a single invention. Another commenter noted that the Office does not provide historic costs for consideration of claims and it is not clear why a fourth independent claim would cost $420 to examine.

Response: The Office realizes that excess claiming can be strategically useful to inventors in today's legal environment, but notes that excess claiming can be a significant burden to the patent system and the Office. The Office set the excess claims fees after carefully considering its policy goals of reducing application processing time, application pendency, and examination burden, and after considering how the increase in excess claims fees will allow the Office to recover the resources it must expend examining large numbers of claims. For a detailed explanation on this topic, see the Office's response to PPAC Comment 22.

Correct Inventorship Fee

Comment 64: Several commenters suggested that the $1,000 fee for correcting inventorship after issuance of a first action on the merits is not appropriate in all cases. Two commenters noted that where claims are limited by amendments or restrictions during examination, inventors are commonly removed. Three commenters suggested that the fee would be more appropriate when an inventor is added to an application after the first action, but all expressed continued support for the fee's elimination or reduction. Another commenter stated that an applicant may need to remove inventors after the Office requires a restriction of claims. The commenter stated that applicants are often able to make these changes using Application Data Sheets, thereby removing the Office's expense in updating records. In these and related cases, the commenter suggested that the Office consider eliminating the fee or having a reduced fee where the applicant in good faith could not have anticipated such a requirement or could not have taken alternative action (e.g., correction via the Application Data Sheet).

Response: After considering the comments submitted about the correct inventorship fee, the Office is reducing the fee to $600 (large entity rate) from the $1,000 fee proposed in the NPRM. Also, the Office has decided not to assess this fee if an applicant submits a statement that the request to correct or change the inventorship is due solely to the cancelation of claims in the application. *See* fee rationale at *Part V. Individual Fee Rationale* for more background information about this fee. For further explanation about why this fee will be charged in the various circumstances identified above by commenters, see the Office's response to PPAC Comment 23.

Assignment Fees

Comment 65: A commenter recommended that the USPTO either (1) provide an automated assignment recordation framework by linking the Electronic Filing System (EFS-Web) and the Electronic Patent Assignment System (EPAS), or (2) authorize the transfer of a patent from the inventor to the original applicant without the recordation of an assignment.

Response: 37 CFR 1.46(b)(1) provides that for assignee-applicants, evidence of the assignment or obligation to assign should be recorded in the Office ''no later than the date the issue fee is paid in the application.'' Accordingly, assignment recordation is not a prerequisite for the transfer of rights in an application from an inventor to an assignee. With regard to linking EFS-Web and EPAS, the Office has already instituted a process that allows the Office to transfer data from one system to the other for the limited purpose of facilitating the filing of ''assignment statements'' in patent applications. An ''assignment statement'' is an assignment that contains the information and statements of an oath or declaration. As explained in the AIA Inventor's Oath or Declaration Quick Reference Guide, the patent application must first be filed via EFS-Web. Then, preferably on the same day the application was filed via EFS-Web, the assignment-statement should be recorded in EPAS. There is a box in EPAS that the applicant must check in order to notify the Office that the assignment statement is being used as the inventor's oath or declaration. The Office will then place a copy of the assignment statement into the application file. The Guide is available at *http://www.uspto.gov/aia_implementation/inventors-oath-or-declaration-quick-reference-guide.pdf*.

VII. Discussion of Specific Rules

In this section the Office provides tables of all fees set or adjusted in the final rule. To permit the reader to crosswalk the fee changes contained in this final rule with individual fee amounts contained in the Office's fee schedule (*see http://www.uspto.gov/web/offices/ac/qs/ope/fee100512.htm*), Tables 42 through 52 contain a distinct row for each individual grouping of fee

codes (i.e., large, small, and micro entity). Therefore, when multiple types of fees are contained within the same CFR section (e.g., application size fees at 1.16(s)), the Office lists each type of fee and its associated fee code separately (e.g., utility, design, plant, reissue, and provisional application size fees). Thus, where appropriate, the CFR sections are repeated for each of the respected fee codes in the tables.

When rules are added or modified for reasons other than fee amount changes, the Office provides explanatory language after the respective table summarizing the fee amount changes (i.e., § 1.17 fees for correction of inventorship).

Title 37 of the Code of Federal Regulations, Parts 1, 41, and 42 are amended to read as follows:

Section 1.16: Sections 1.16(a) through (s) are amended to set forth the application filing, excess claims, search, examination, and application size fees for patent applications filed as authorized under section 10 of the Act. This section would no longer distinguish between applications filed before or after December 8, 2004, because section 11 of the AIA no longer makes the distinction. The changes to the fee amounts indicated in § 1.16 are shown in Table 42.

TABLE 42

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.16(a)	1011/2011/3011	Basic Filing Fee—Utility	390	195	280	140	70
1.16(a)	4011	Basic Filing Fee—Utility (electronic filing for small entities).	N/A	98	N/A	70	N/A
1.16(b)	1012/2012/3012	Basic Filing Fee—Design	250	125	180	90	45
1.16(b)	1017/2017/3017	Basic Filing Fee—Design (CPA)	250	125	180	90	45
1.16(c)	1013/2013/3013	Basic Filing Fee—Plant	250	125	180	90	45
1.16(d)	1005/2005/3005	Provisional Application Filing Fee.	250	125	260	130	65
1.16(e)	1014/2014/3014	Basic Filing Fee—Reissue	390	195	280	140	70
1.16(e)	1019/2019/3019	Basic Filing Fee—Reissue (CPA).	390	195	280	140	70
1.16(f)	1051/2051/3051	Surcharge—Late Filing Fee, Search Fee, Examination Fee or Oath or Declaration.	130	65	140	70	35
1.16(g)	1052/2052/3052	Surcharge—Late Provisional Filing Fee or Cover Sheet.	50	25	60	30	15
1.16(h)	1201/2201/3201	Independent Claims in Excess of Three.	250	125	420	210	105
1.16(h)	1204/2204/3204	Reissue Independent Claims in Excess of Three.	250	125	420	210	105
1.16(i)	1202/2202/3202	Claims in Excess of 20	62	31	80	40	20
1.16(i)	1205/2205/3205	Reissue Claims in Excess of 20	62	31	80	40	20
1.16(j)	1203/2203/3203	Multiple Dependent Claim	460	230	780	390	195
1.16(k)	1111/2111/3111	Utility Search Fee	620	310	600	300	150
1.16(l)	1112/2112/3112	Design Search Fee	120	60	120	60	30
1.16(m)	1113/2113/3113	Plant Search Fee	380	190	380	190	95
1.16(n)	1114/2114/3114	Reissue Search Fee	620	310	600	300	150
1.16(o)	1311/2311/3311	Utility Examination Fee	250	125	720	360	180
1.16(p)	1312/2312/3312	Design Examination Fee	160	80	460	230	115
1.16(q)	1313/2313/3313	Plant Examination Fee	200	100	580	290	145
1.16(r)	1314/2314/3314	Reissue Examination Fee	760	380	2,160	1,080	540
1.16(s)	1081/2081/3081	Utility Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	320	160	400	200	100
1.16(s)	1082/2082/3082	Design Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	320	160	400	200	100
1.16(s)	1083/2083/3083	Plant Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	320	160	400	200	100
1.16(s)	1084/2084/3084	Reissue Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	320	160	400	200	100
1.16(s)	1085/2085/3085	Provisional Application Size Fee—For Each Additional 50 Sheets That Exceeds 100 Sheets.	320	160	400	200	100

Section 1.17: Sections 1.17(a)(1) through (a)(5), (c), (e) through (i), (k) through (m), and (p) through (t) are amended and (d) and (e)(2) are added to set forth the application processing fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.17 are shown in Table 43.

TABLE 43

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.17(a)(1)	1251/2251/3251	Extension for Response Within First Month.	150	75	200	100	50
1.17(a)(2)	1252/2252/3252	Extension for Response Within Second Month.	570	285	600	300	150
1.17(a)(3)	1253/2253/3253	Extension for Response Within Third Month.	1,290	645	1,400	700	350
1.17(a)(4)	1254/2254/3254	Extension for Response Within Fourth Month.	2,010	1,005	2,200	1,100	550
1.17(a)(5)	1255/2255/3255	Extension for Response Within Fifth Month.	2,730	1,365	3,000	1,500	750
1.17(c)	1817/2817/3817	Request for Prioritized Examination.	4,800	2,400	4,000	2,000	1,000
1.17(d)	NEW	Correct Inventorship After First Action on Merits.	N/A	N/A	600	300	150
1.17(e)(1)	1801/2801/3801	Request for Continued Examination (RCE) (1st request) (*see* 37 CFR 1.114).	930	465	1,200	600	300
1.17(e)(2)	NEW	Request for Continued Examination (RCE) (2nd and subsequent request).	N/A	N/A	1,700	850	425
1.17(f)	1462/2462/3462	Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(f) (Group I).	400	N/A	400	200	100
1.17(g)	1463/2463/3463	Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(g) (Group II).	200	N/A	200	100	50
1.17(h)	1464/2464/3464	Petitions Requiring the Petition Fee Set Forth in 37 CFR 1.17(h) (Group III).	130	N/A	140	70	35
1.17(i)(1)	1053/2053/3053	Non-English Specification	130	N/A	140	70	35
1.17(i)(2)	1808	Other Publication Processing Fee.	130	N/A	130	N/A	N/A
1.17(i)(2)	1803	Request for Voluntary Publication or Republication.	130	N/A	130	N/A	N/A
1.17(k)	1802	Request for Expedited Examination of a Design Application.	900	N/A	900	450	225
1.17(l)	1452/2452/3452	Petition to Revive Unavoidably Abandoned Application.	630	315	640	320	160
1.17(m)	1453/2453/3453	Petition to Revive Unintentionally Abandoned Application.	1,890	945	1,900	950	475
1.17(p)	1806/2806/3806	Submission of an Information Disclosure Statement.	180	N/A	180	90	45
1.17(q)	1807	Processing Fee for Provisional Applications.	50	N/A	50	N/A	N/A
1.17(r)	1809/2809/3809	Filing a Submission After Final Rejection (*see* 37 CFR 1.129(a)).	810	405	840	420	210
1.17(s)	1810/2810/3810	For Each Additional Invention to be Examined (*see* 37 CFR 1.129(b)).	810	405	840	420	210
1.17(t)	1454/2454/3454	Acceptance of an Unintentionally Delayed Claim for Priority, or for Filing a Request for the Restoration of the Right of Priority.	1,410	N/A	1,420	710	355

Correction of Inventorship: The Office sets the fee to correct inventorship after the first action on the merits at $600 to encourage reasonable diligence and a bona fide effort to ascertain the actual inventorship as early as possible and to provide that information to the Office prior to examination. As discussed in *Part V. Individual Fee Rationale,* the fee will not be required when inventors are deleted and the request to correct or change inventorship is accompanied by a statement that the request to correct or change the inventorship is due solely to

the cancelation of claims in the application.

Section 1.17(d) is added, as follows: For correction of inventorship in an application after the first action on the merits:

By a micro entity (§ 1.29)	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

Request for Continued Examination (RCE): As discussed in *Part V. Individual Fee Rationale,* section of this final rule, the Office divides the fee for RCEs into two parts: (1) A lower fee for a first RCE; and (2) a second, higher fee for a second or subsequent RCE.

Section 1.17(e) is amended as follows: To request continued examination pursuant to § 1.114:

(1) For filing a first request for continued examination pursuant to § 1.114 in an application:

By a micro entity (§ 1.29)	$300.00
By a small entity (§ 1.27(a))	600.00
By other than a small or micro entity	1,200.00

(2) For filing a second or subsequent request for continued examination pursuant to § 1.114 in an application:

By a micro entity (§ 1.29)	$425.00
By a small entity (§ 1.27(a))	850.00
By other than a small or micro entity	1,700.00

Section 1.18: Sections 1.18(a) through (f) are amended to set forth the patent issue fees as authorized under section 10 of the Act. This section now distinguishes between issue and publication fees paid before or after January 1, 2014. The changes to the fee amounts indicated in § 1.18 are shown in Table 44.

TABLE 44

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.18(a)(1)	1501/2501/3501	Utility Issue Fee, paid on or after January 1, 2014.	1,770	885	960	480	240
1.18(a)(1)	1511/2511/3511	Reissue Issue Fee, paid on or after January 1, 2014.	1,770	885	960	480	240
1.18(a)(2)	1501/2501/3501	Utility Issue Fee, paid before January 1, 2014.	1,770	885	1,780	890	445
1.18(a)(2)	1511/2511/3511	Reissue Issue Fee, paid before January 1, 2014.	1,770	885	960	480	240
1.18(b)(1)	1502/2502/3502	Design Issue Fee, paid on or after January 1, 2014.	1,010	505	560	280	140
1.18(b)(2)	1502/2502/3502	Design Issue Fee, paid before January 1, 2014.	1,010	505	1,020	510	255
1.18(c)(1)	1503/2503/3503	Plant Issue Fee, paid on or after January 1, 2014.	1,390	695	760	380	190
1.18(c)(2)	1503/2503/3503	Plant Issue Fee, paid before January 1, 2014.	1,390	695	1,400	700	350
1.18(d)(1)	1504	Publication Fee for Early, Voluntary, or Normal Publication, paid on or after January 1, 2014.	300	N/A	0	N/A	N/A
1.18(d)(2)	1504	Publication Fee for Early, Voluntary, or Normal Publication, paid before January 1, 2014.	300	N/A	300	N/A	N/A
1.18(d)(3)	1505	Publication Fee for Republication.	300	N/A	300	N/A	N/A
1.18(e)	1455	Filing an Application for Patent Term Adjustment.	200	N/A	200	N/A	N/A
1.18(f)	1456	Request for Reinstatement of Term Reduced.	400	N/A	400	N/A	N/A

Publication Fees: As discussed in *Part V. Individual Fee Rationale,* the Office is not adjusting fee for republication of a patent application (1.18(d)(2)). The Office keeps this fee at its existing rate for each patent application that must be published again after a first publication for $0.

Section 1.18 is amended by revising paragraph (d) to include:

(1) Publication fee on or after January 1, 2014	$0.00
(2) Publication fee before January 1, 2014	300.00
(3) Republication fee (§ 1.221(a))	300.00

Section 1.19: Sections 1.19(a) through (g) are amended to set forth the patent document supply fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.19 are shown in Table 45.

TABLE 45

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.19(a)(1)	8001	Printed Copy of Patent w/o Color, Delivery by USPS, USPTO Box, or Electronic Means.	3	N/A	3	N/A	N/A
1.19(a)(2)	8003	Printed Copy of Plant Patent in Color.	15	N/A	15	N/A	N/A
1.19(a)(3)	8004	Color Copy of Patent (other than plant patent) or SIR Containing a Color Drawing.	25	N/A	25	N/A	N/A
1.19(a)(1)	8005	Patent Application Publication (PAP)	3	N/A	3	N/A	N/A
1.19(b)(1)(i)(A) ..	8007	Copy of Patent Application as Filed	20	N/A	20	N/A	N/A
1.19(b)(1)(i)(B) ..	8008	Copy of Patent-Related File Wrapper and Contents of 400 or Fewer Pages, if Provided on Paper.	200	N/A	200	N/A	N/A
1.19(b)(1)(i)(C) ..	8009	Additional Fee for Each Additional 100 Pages of Patent-Related File Wrapper and (Paper) Contents, or Portion Thereof.	40	N/A	40	N/A	N/A
1.19(b)(1)(i)(D) ..	8010	Individual Application Documents, Other Than Application as Filed, per Document.	25	N/A	25	N/A	N/A
1.19(b)(1)(ii)(A)	8007	Copy of Patent Application as Filed	20	N/A	20	N/A	N/A
1.19(b)(1)(ii)(B)	8011	Copy of Patent-Related File Wrapper and Contents if Provided Electronically or on a Physical Electronic Medium as Specified in 1.19(b)(1)(ii).	55	N/A	55	N/A	N/A
1.19(b)(1)(ii)(C)	8012	Additional Fee for Each Continuing Physical Electronic Medium in Single Order of 1.19(b)(1)(ii)(B).	15	N/A	15	N/A	N/A
1.19(b)(1)(iii)(A)	8007	Copy of Patent Application as Filed	20	N/A	20	N/A	N/A
1.19(b)(1)(iii)(B)	8011	Copy of Patent-Related File Wrapper and Contents if Provided Electronically or on a Physical Electronic Medium.	55	N/A	55	N/A	N/A
1.19(b)(2)(i)(A) ..	8041	Copy of Patent-Related File Wrapper Contents That Were Submitted and Are Stored on Compact Disk or Other Electronic Form (e.g., compact disks stored in artifact folder), Other Than as Available in 1.19(b)(1); First Physical Electronic Medium in a Single Order.	55	N/A	55	N/A	N/A
1.19(b)(2)(i)(B) ..	8042	Additional Fee for Each Continuing Copy of Patent-Related File Wrapper Contents as Specified in 1.19(b)(2)(i)(A).	15	N/A	15	N/A	N/A
1.19(b)(2)(ii)	8043	Copy of Patent-Related File Wrapper Contents That Were Submitted and are Stored on Compact Disk, or Other Electronic Form, Other Than as Available in 1.19(b)(1); If Provided Electronically Other Than on a Physical Electronic Medium, per Order.	55	N/A	55	N/A	N/A
1.19(b)(3)	8013	Copy of Office Records, Except Copies of Applications as Filed.	25	N/A	25	N/A	N/A
1.19(b)(4)	8014	For Assignment Records, Abstract of Title and Certification, per Patent.	25	N/A	25	N/A	N/A
1.19(c)	8904	Library Service	50	N/A	50	N/A	N/A
1.19(d)	8015	List of U.S. Patents and SIRs in Subclass.	3	N/A	3	N/A	N/A
1.19(e)	8016	Uncertified Statement re Status of Maintenance Fee Payments.	10	N/A	10	N/A	N/A
1.19(f)	8017	Copy of Non-U.S. Document	25	N/A	25	N/A	N/A

TABLE 45—Continued

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.19(g)	8050	Petitions for Documents In Form Other Than That Provided By This Part, or In Form Other Than That Generally Provided by Director, to be Decided in Accordance With Merits.	AT COST	N/A	AT COST	N/A	N/A

Section 1.20: Sections 1.20(a) through (k) are amended to set forth the reexamination fees, disclaimer fees, maintenance fees, and supplemental examination fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.20 are shown in Table 46.

TABLE 46

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.20(a)	1811	Certificate of Correction	100	N/A	100	N/A	N/A
1.20(b)	1816	Processing Fee for Correcting Inventorship in a Patent.	130	N/A	130	N/A	N/A
1.20(c)(1)	1812	Request for *Ex Parte* Reexamination.	17,750	N/A	12,000	6,000	3,000
1.20(c)(3)	1821/2821/3821	Reexamination Independent Claims in Excess of Three and also in Excess of the Number of Such Claims in the Patent Under Reexamination.	250	125	420	210	105
1.20(c)(4)	1822/2822/3822	Reexamination Claims in Excess of 20 and Also in Excess of the Number of Claims in the Patent Under Reexamination.	62	31	80	40	20
1.20(c)(6)	1824	Filing a Petition in a Reexamination Proceeding, Except for Those Specifically Enumerated in §§ 1.550(i) and 1.937(d).	1,930	N/A	1,940	970	485
1.20(c)(7)	1812	For a Refused Request for *Ex parte* Reexamination Under § 1.510 (included in the request for *ex parte* reexamination fee at 1.20(c)(1)).	830	N/A	3,600	1,800	900
1.20(d)	1814/2814	Statutory Disclaimer, Including Terminal Disclaimer.	160	80	160	N/A	N/A
1.20(e)	1551/2551/3551	Maintenance Fee Due at 3.5 Years.	1,150	575	1,600	800	400
1.20(f)	1552/2552/3552	Maintenance Fee Due at 7.5 Years.	2,900	1,450	3,600	1,800	900
1.20(g)	1553/2553/3553	Maintenance Fee Due at 11.5 Years.	4,810	2,405	7,400	3,700	1,850
1.20(h)	1554/2554/3554	Maintenance Fee Surcharge—3.5 Years—Late Payment Within 6 Months.	150	75	160	80	40
1.20(h)	1555/2555/3555	Maintenance Fee Surcharge—7.5 Years—Late Payment Within 6 Months.	150	75	160	80	40
1.20(h)	1556/2556/3556	Maintenance Fee Surcharge—11.5 Years—Late Payment Within 6 Months.	150	75	160	80	40
1.20(i)(1)	1557/2557/3557	Maintenance Fee Surcharge After Expiration—Late Payment is Unavoidable.	700	N/A	700	350	175
1.20(i)(2)	1558/2558/3558	Maintenance Fee Surcharge After Expiration—Late Payment is Unintentional.	1,640	N/A	1,640	820	410

TABLE 46—Continued

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.20(j)(1)	1457	Extension of Term of Patent	1,120	N/A	1,120	N/A	N/A
1.20(j)(2)	1458	Initial Application for Interim Extension (*see* 37 CFR 1.790).	420	N/A	420	N/A	N/A
1.20(j)(3)	1459	Subsequent Application for Interim Extension (*see* 37 CFR 1.790).	220	N/A	220	N/A	N/A
1.20(k)(1)	1826	Processing and Treating a Request for Supplemental Examination.	5,140	N/A	4,400	2,200	1,100
1.20(k)(2)	1827	*Ex Parte* Reexamination Ordered as a Result of a Supplemental Examination Proceeding.	16,120	N/A	12,100	6,050	3,025
1.20(k)(3)(i)	1828	For Processing and Treating, in a Supplemental Examination Proceeding, a Non-Patent Document Over 20 Sheets in Length, per Document Between 21–50 Pages.	170	N/A	180	90	45
1.20(k)(3)(ii)	1829	For Processing and Treating, in a Supplemental Examination Proceeding, a Non-Patent Document Over 20 Sheets in Length, per Document for Each Additional 50 Sheets or Fraction Thereof.	280	N/A	280	140	70

Section 1.21: Sections 1.21(a)(1), (a)(2), (a)(4), (a)(5), (a)(7), (a)(8), (a)(9), (a)(10), (e), (g) through (k), and (n) are amended to set forth miscellaneous fees and charges as authorized under section 10 of the Act. This section includes a fee related to the enrollment of registered patent attorneys and agents (*see* § 1.21(a)(7)), the collection of which has been stayed since 2009. *See www.uspto.gov/ip/boards/oed/practitioner/agents/forregisteredpractitioners.jsp*. In the calculations for this rulemaking, the Office has assumed that it will not collect these fees. The Office also has published a separate Notice of Proposed Rulemaking in the **Federal Register**, Changes to Representation of Others Before the United States Patent and Trademark Office, 77 FR 64190 (Oct. 18, 2012), in which it has proposed to remove these fees entirely. Although that rulemaking may remove the fee entirely, it will not affect this rulemaking since the Office has assumed in this rulemaking that it will not collect the fee. The changes to the fee amounts indicated in § 1.21 are shown in Table 47.

TABLE 47

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.21(a)(1)(i)	9001	Application Fee (non-refundable)	40	N/A	40	N/A	N/A
1.21(a)(1)(ii)(A)	9010	For Test Administration by Commercial Entity.	200	N/A	200	N/A	N/A
1.21(a)(1)(ii)(B)	9011	For Test Administration by the USPTO.	450	N/A	450	N/A	N/A
1.21(a)(2)	9003	Registration to Practice or Grant of Limited Recognition under § 11.9(b) or (c).	100	N/A	100	N/A	N/A
1.21(a)(2)	9025	Registration to Practice for Change of Practitioner Type.	100	N/A	100	N/A	N/A
1.21(a)(4)	9005	Certificate of Good Standing as an Attorney or Agent.	10	N/A	10	N/A	N/A
1.21(a)(4)(i)	9006	Certificate of Good Standing as an Attorney or Agent, Suitable for Framing.	20	N/A	20	N/A	N/A
1.21(a)(5)(i)	9012	Review of Decision by the Director of Enrollment and Discipline under § 11.2(c).	130	N/A	130	N/A	N/A
1.21(a)(5)(ii)	9013	Review of Decision of the Director of Enrollment and Discipline under § 11.2(d).	130	N/A	130	N/A	N/A

TABLE 47—Continued

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.21(a)(7)(i)	9015	Annual Fee for Registered Attorney or Agent in Active Status.	118	N/A	120	N/A	N/A
1.21(a)(7)(ii)	9016	Annual Fee for Registered Attorney or Agent in Voluntary Inactive Status.	25	N/A	25	N/A	N/A
1.21(a)(7)(iii)	9017	Requesting Restoration to Active Status from Voluntary Inactive Status.	50	N/A	50	N/A	N/A
1.21(a)(7)(iv)	9018	Balance of Annual Fee Due upon Restoration to Active Status from Voluntary Inactive Status.	93	N/A	100	N/A	N/A
1.21(a)(8)	9019	Annual Fee for Individual Granted Limited Recognition.	118	N/A	120	N/A	N/A
1.21(a)(9)(i)	9020	Delinquency Fee for Annual Fee	50	N/A	50	N/A	N/A
1.21(a)(9)(ii)	9004	Reinstatement to Practice	100	N/A	100	N/A	N/A
1.21(a)(10)	9014	Application Fee for Person Disciplined, Convicted of a Felony or Certain Misdemeanors under § 11.7(h).	1,600	N/A	1,600	N/A	N/A
1.21(e)	8020	International Type Search Report	40	N/A	40	N/A	N/A
1.21(g)	8902	Self-Service Copy Charge, per Page	0.25	N/A	0.25	N/A	N/A
1.21(h)(1)	NEW	Recording Each Patent Assignment, Agreement or Other Paper, per Property if Submitted Electronically.	N/A	N/A	0	N/A	N/A
1.21(h)(2)	8021	Recording Each Patent Assignment, Agreement or Other Paper, per Property if not Submitted Electronically.	40	N/A	40	N/A	N/A
1.21(i)	8022	Publication in Official Gazette	25	N/A	25	N/A	N/A
1.21(j)	8023	Labor Charges for Services, per Hour or Fraction Thereof.	40	N/A	40	N/A	N/A
1.21(k)	8024	Unspecified Other Services, Excluding Labor.	AT COST	N/A	AT COST	N/A	N/A
1.21(k)	9024	Unspecified Other Services, Excluding Labor.	AT COST	N/A	AT COST	N/A	N/A
1.21(n)	8026	Handling Fee for Incomplete or Improper Application.	130	N/A	130	N/A	N/A

Section 1.21 is amended by revising paragraph (h) as follows: For recording each assignment, agreement, or other paper relating to the property in a patent or application, per property:

If submitted electronically, on or after January 1, 2014	$0.00
If not submitted electronically	40.00

Section 1.27: Section 1.27(c)(3) is amended to provide that the payment of the exact amount of the small entity transmittal fee set forth in § 1.445(a)(1) or the small entity international search fee set forth in § 1.445(a)(2) to a Receiving Office other than the United States Receiving Office in the exact amount established for that Receiving Office pursuant to PCT Rule 16 will also be treated as a written assertion of entitlement to small entity status. This change applies the national practice of permitting an applicant to obtain small entity status by payment of certain national fees in the small entity amount to international applications.

Section 1.27 is amended to include the following language at paragraph (c)(3):

Assertion by payment of the small entity basic filing, basic transmittal, basic national fee, or international search fee. The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in § 1.16(a), 1.16(b), 1.16(c), 1.16(d), 1.16(e), the small entity transmittal fee set forth in § 1.445(a)(1), the small entity international search fee set forth in § 1.445(a)(2) to a Receiving Office other than the United States Receiving Office in the exact amount established for that Receiving Office pursuant to PCT Rule 16, or the small entity basic national fee set forth in § 1.492(a), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing, basic transmittal, or basic national fee is inadvertently selected in error.

* * * * *

Section 1.445: Sections 1.445(a)(1)(i), and (a)(2) through (a)(4) are amended to set forth the international application transmittal and search fees as authorized under section 10 of the Act. This section now distinguishes between issue and publication fees paid before or after January 1, 2014. The changes to the fee amounts indicated in § 1.445 are shown in Table 48.

TABLE 48

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars) Effective Jan. 1, 2014		
			Large	Small	Large	Small	Micro
1.445(a)(1)(i)(A) and (B).	1601	PCT International Stage Transmittal Fee.	240	N/A	240	120	60
1.445(a)(2)(i) and (ii).	1602	PCT International Stage Search Fee—Regardless of Whether There is a Corresponding Application (*see* 35 U.S.C. 361(d) and PCT Rule 16).	2,080	N/A	2,080	1,040	520
1.445(a)(3)(i) and (ii).	1604	PCT International Stage Supplemental Search Fee When Required, per Additional Invention.	2,080	N/A	2,080	1,040	520
1.445(a)(4)(i) and (ii).	1621	Transmitting Application to International Bureau to Act as Receiving Office.	240	N/A	240	120	60

Correction of Inventorship: Section 1.48 is amended to add a new paragraph that will require the fee set in § 1.17(d) when inventors are deleted, except for when the request to correct or change inventorship is accompanied by a statement that the request to correct or change the inventorship is due solely to the cancelation of claims in the application.

Section 1.48 is amended by adding the following language at paragraph (c): Any request to correct or change the inventorship under paragraph (a) of this section filed after the Office action on the merits has been given or mailed in the application must also be accompanied by the fee set forth in § 1.17(d), unless the request is accompanied by a statement that the request to correct or change the inventorship is due solely to the cancelation of claims in the application.

Section 1.482: Sections 1.482(a)(1) and (a)(2) are amended to set forth the international application preliminary examination fees as authorized under section 10 of the Act. This section now distinguishes between issue and publication fees paid before or after January 1, 2014. The changes to the fee amounts indicated in § 1.482 are shown in Table 49.

TABLE 49

CFR Section	Fee code	Description	Current fees (dollars)		Final Fees (dollars) Effective Jan. 1 2014		
			Large	Small	Large	Small	Micro
1.482(a)(1)(i) (A) and (B).	1605	PCT International Stage Preliminary Examination. Fee—U.S. was the ISA	600	N/A	600	300	150
1.482(a)(1)(ii) (A) and (B).	1606	PCT International Stage Preliminary Examination. Fee—U.S. was not the ISA	750	N/A	760	380	190
1.482(a)(2) (i) and (ii).	1607	PCT International Stage Supplemental Examination Fee per Additional Invention.	600	N/A	600	300	150

Section 1.492: The fee amounts in § 1.492(a), (b)(1) through (b)(4), (c)(1), (c)(2), (d) through (f), (h), (i) and (j) are amended to set forth the basic national, excess claims, search, examination, and application size fees for international patent applications entering the national stage as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 1.492 are shown in Table 50.

TABLE 50

CFR Section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.492(a)	1631/2631	Basic PCT National Stage Fee	390	195	280	140	70
1.492(b)(1)	1640/2640	PCT National Stage Search Fee—U.S. was the ISA or IPEA and All Claims Satisfy PCT Article 33(1)–(4).	0	0	0	0	0
1.492(b)(2)	1641/2641	PCT National Stage Search Fee—U.S. was the ISA.	120	60	120	60	30

TABLE 50—Continued

CFR Section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
1.492(b)(3)	1642/2642	PCT National Stage Search Fee—Search Report Prepared and Provided to USPTO.	500	250	480	240	120
1.492(b)(4)	1632/2632	PCT National Stage Search Fee—All Other Situations.	630	315	600	300	150
1.492(c)(1)	1643/2643	PCT National Stage Examination Fee—U.S. was the ISA or IPEA and All Claims Satisfy PCT Article 33(1)–(4).	0	0	0	0	0
1.492(c)(2)	1633/2633	National Stage Examination Fee—All Other Situations.	250	125	720	360	180
1.492(d)	1614/2614	PCT National Stage Claims—Extra Independent (over three).	250	125	420	210	105
1.492(e)	1615/2615	PCT National Stage Claims—Extra Total (over 20).	62	31	80	40	20
1.492(f)	1616/2616	PCT National Stage Claims—Multiple Dependent.	460	230	780	390	195
1.492(h)	1617/2617	Search Fee, Examination Fee or Oath or Declaration After Thirty Months From Priority Date.	130	65	140	70	35
1.492(i)	1618/2618	English Translation After Thirty Months From Priority Date.	130	N/A	140	70	35
1.492(j)	1681/2681	PCT National Stage Application Size Fee—for Each Additional 50 Sheets that Exceeds 100 Sheets.	320	160	400	200	100

Section 41.20: Sections 41.20(a) and (b) are amended to set forth the appeal fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 41.20 are shown in Table 51.

TABLE 51

CFR Section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
41.20(a)	1405	Petitions to the Chief Administrative Patent Judge under 37 CFR 41.3.	400	N/A	400	N/A	N/A
41.20(b)(1)	1401/2401	Notice of Appeal	630	315	800	400	200
41.20(b)(2)(i)	1402/2402	Filing a Brief in Support of an Appeal in an Application or *Ex Parte* Reexamination Proceeding.	630	315	0	0	0
41.20(b)(2)(ii)	NEW	Filing a Brief in Support of an Appeal in an *Inter Partes* Reexamination Proceeding.	N/A	N/A	2,000	1,000	500
41.20(b)(3)	1403/2403	Request for Oral Hearing	1,260	630	1,300	650	325
41.20(b)(4)	NEW	Forwarding an Appeal in an Application or *Ex Parte* Reexamination Proceeding to the Board.	N/A	N/A	2,000	1,000	500

Appeal Fees: As discussed in *Part V. Individual Fee Rationale,* the Office is adjusting the fee structure for appeal fees to recognize that after some notices of appeal are filed, the matter is resolved, and there is no need to take the ultimate step of forwarding the appeal to the PTAB for a decision. The Office is setting a new fee to forward an appeal in an application or *ex parte* reexamination proceeding to the PTAB for review.

Section 41.20(b) is amended by adding a new paragraph (4).

Section 41.37: Section 41.37 is amended by revising paragraphs (a) and (b).

Section 41.45: Section 41.45.

Section 42.15: Sections 42.15(a) through (d) are amended to set forth the *inter partes* review and post-grant review or covered business method patent review of patent fees as authorized under section 10 of the Act. The changes to the fee amounts indicated in § 42.15 are shown in Table 52.

TABLE 52

CFR section	Fee code	Description	Current fees (dollars)		Final fees (dollars)		
			Large	Small	Large	Small	Micro
42.15(a)(1)	1406	*Inter Partes* Review Request Fee—Up to 20 Claims.	27,200	N/A	9,000	N/A	N/A
42.15(a)(2)	NEW	*Inter Partes* Review Post-Institution Fee—Up to 15 Claims.	N/A	N/A	14,000	N/A	N/A
42.15(a)(3)	1407	In Addition to the *Inter Partes* Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	600	N/A	200	N/A	N/A
42.15(a)(4)	NEW	In addition to the *Inter Partes* Post-Institution Fee, for Requesting Review of Each Claim in Excess of 15.	N/A	N/A	400	N/A	N/A
42.15(b)(1)	1408	Post-Grant or Covered Business Method Patent Review Request Fee—Up to 20 Claims.	35,800	N/A	12,000	N/A	N/A
42.15(b)(2)	NEW	Post-Grant or Covered Business Method Patent Review Post-Institution Fee—Up to 15 Claims.	N/A	N/A	18,000	N/A	N/A
42.15(b)(3)	1409	In Addition to the Post-Grant or Covered Business Method Patent Review Request Fee, for Requesting Review of Each Claim in Excess of 20.	800	N/A	250	N/A	N/A
42.15(b)(4)	NEW	In Addition to the Post-Grant or Covered Business Method Patent Review Post-Institution Fee, for Requesting Review of Each Claim in Excess of 15.	N/A	N/A	550	N/A	N/A
42.15(c)(1)	XXXX	Derivation Petition	400	N/A	400	N/A	N/A
42.15(d)	1411	Request to Make a Settlement Agreement Available.	400	N/A	400	N/A	N/A

Section 42.15: Section 42.15 is added.

VIII. Rulemaking Considerations

A. Regulatory Flexibility Act

The USPTO publishes this Final Regulatory Flexibility Analysis (FRFA) as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601, *et seq.*) to examine the impact of the Office's rule to implement the fee setting provisions of the Leahy-Smith America Invents Act (Pub. L. 112–29, 125 Stat. 284) (the Act) on small entities.

Under the RFA, whenever an agency is required by 5 U.S.C. 553 (or any other law) to publish a notice of proposed rulemaking (NPRM), the agency must prepare a FRFA, unless the agency certifies under 5 U.S.C. 605(b) that the rule, if implemented, will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 604, 605. The Office published an Initial Regulatory Flexibility Analysis (IRFA), along with the NPRM, on September 6, 2012 (77 FR 55028). The Office received no comments from the public directly applicable to the IRFA, as stated below in Item 2.

1. A Statement of the Need for, and Objectives of, the Rule

The objective of the rule is to implement the fee setting provisions of section 10 of the Act by setting or adjusting patent fees to recover the aggregate cost of patent operations, including administrative costs, while facilitating effective administration of the U.S. patent system. The Act strengthened the patent system by affording the USPTO the ''resources it requires to clear the still sizeable backlog of patent applications and move forward to deliver to all American inventors the first rate service they deserve.'' H.R. Rep. No. 112–98(I), at 163 (2011). In setting fees under the Act, the Office seeks to secure a sufficient amount of aggregate revenue to recover the aggregate cost of patent operations, including for achieving strategic and operational goals, such as reducing the current patent application backlog, decreasing patent application pendency, improving patent quality, upgrading patent business IT capability and infrastructure, and implementing a sustainable funding model. As part of these efforts, the Office will use a portion of the patent fees to fund a patent operating reserve, a step toward achieving the Office's financial sustainability goals. In addition, the Office includes multipart and staged fees for requests for continued examination and appeals, both of which aim to foster innovation and increase prosecution options. Additional information on the Office's strategic goals may be found in the Strategic Plan, available at *http://www.uspto.gov/about/stratplan/USPTO_2010-2015_Strategic_Plan.pdf.* Additional information on the Office's goals and operating requirements may be found in the annual budgets, available at *http://www.uspto.gov/about/stratplan/budget/fy13pbr.pdf.* The legal basis for the rule is section 10 of the Act.

2. A Statement of the Significant Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis, a Statement of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

The Office did not receive any public comments in response to the IRFA. The Office received comments about fees in general as well as particular fees, including comments about the applicability of certain fees to small entities. Overall, the comments expressed support for the discounts to

small entities. However, some comments questioned why the discounts could not be larger or applicable to additional fees, and other comments requested that the requirements to qualify as a small or micro entity be relaxed. The Office responded to these comments with additional explanations of the statutory requirements that do not permit the Office to make such changes. Details of those comments are discussed and analyzed above in *Part VI. Discussion of Comments.*

3. The Response of the Agency to Any Comments Filed by the Chief Counsel for Advocacy of the Small Business Administration in Response to the Proposed Rule, and a Detailed Statement of Any Change Made to the Proposed Rule in the Final Rule as a Result of the Comments

The Office did not receive any comments filed by the Chief Counsel for Advocacy of the Small Business Administration in response to the proposed rule.

4. A Description of and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

SBA Size Standard

The Small Business Act (SBA) size standards applicable to most analyses conducted to comply with the RFA are set forth in 13 CFR 121.201. These regulations generally define small businesses as those with less than a specified maximum number of employees or less than a specified level of annual receipts for the entity's industrial sector or North American Industry Classification System (NAICS) code. As provided by the RFA, and after consulting with the SBA, the Office formally adopted an alternate size standard for the purpose of conducting an analysis or making a certification under the RFA for patent-related regulations. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office 60 (Dec. 12, 2006). The Office's alternate small business size standard consists of the SBA's previously established size standard for entities entitled to pay reduced patent fees. *See* 13 CFR. 121.802.

Unlike the SBA's generally applicable small business size standards, the size standard for the USPTO is not industry-specific. The Office's definition of a small business concern for RFA purposes is a business or other concern that: (1) Meets the SBA's definition of a ''business concern or concern'' set forth in 13 CFR 121.105; and (2) meets the size standards set forth in 13 CFR 121.802 for the purpose of paying reduced patent fees, namely, an entity: (a) Whose number of employees, including affiliates, does not exceed 500 persons; and (b) which has not assigned, granted, conveyed, or licensed (and is under no obligation to do so) any rights in the invention to any person who made it and could not be classified as an independent inventor, or to any concern that would not qualify as a nonprofit organization or a small business concern under this definition. *See* Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations, 71 FR 67109 (Nov. 20, 2006), 1313 Off. Gaz. Pat. Office at 63 (Dec. 12, 2006).

If a patent applicant self-identifies on a patent application as qualifying as a small entity for reduced patent fees under the Office's alternative size standard, the Office captures this data in the Patent Application Location and Monitoring (PALM) database system, which tracks information on each patent application submitted to the Office.

Small Entities Affected by This Rule

Small Entity Defined

The Act provides that fees set or adjusted under section 10(a) ''for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent'' with respect to the application of such fees to any ''small entity'' (as defined in 37 CFR 1.27) that qualifies for reduced fees under 35 U.S.C. 41(h)(1). 125 Stat. at 316–17. 35 U.S.C. 41(h)(1), in turn, provides that certain patent fees ''shall be reduced by 50 percent'' for a small business concern as defined by section 3 of the SBA, and to any independent inventor or nonprofit organization as defined in regulations described by the Director.

Micro Entity Defined

Section 10(g) of the Act creates a new category of entity called a ''micro entity.'' 35 U.S.C. 123; *see also* 125 Stat. at 318–19. Section 10(b) of the Act provides that the fees set or adjusted under section 10(a) ''for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced * * * by 75 percent with respect to the application of such fees to any micro entity as defined by [new 35 U.S.C.] 123.'' 125 Stat. at 315–17.

35 U.S.C. 123(a) defines a ''micro entity'' as an applicant who certifies that the applicant: (1) Qualifies as a small entity as defined in 37 CFR 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or Patent Cooperation Treaty (PCT) applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and (4) has not assigned, granted, conveyed, and is not under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity exceeding the income limit set forth in (3) above. *See* 125 Stat. at 318.

35 U.S.C. 123(d) also defines a ''micro entity'' as an applicant who certifies that: (1) The applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

Estimate of Number of Small Entities Affected

The changes in the rule apply to any entity, including a small or micro entity, that pays any patent fee set forth in the final rule. The reduced fee rates (50 percent for small entities and 75 percent for micro entities) apply to any small entity asserting small entity status and to any micro entity certifying micro entity status for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.

The Office reviews historical data to estimate the percentages of application filings asserting small entity status. Table 53 presents a summary of such small entity filings by type of application (utility, reissue, plant, design) over the last five years.

TABLE 53—NUMBER OF PATENT APPLICATIONS FILED IN LAST FIVE YEARS *

	FY 2012 **	FY 2011	FY 2010	FY 2009	FY 2008	Average
Utility:						
All	530,915	504,089	479,332	458,901	466,258	488,014
Small	132,198	126,878	122,329	113,244	116,891	122,367
% Small	24.9	25.2	25.5	24.7	25.1	25.1
Reissue:						
All	1,212	1,139	1,138	1,035	1,080	1,125
Small	278	265	235	237	258	255
% Small	22.9	23.3	20.7	22.9	23.9	22.0
Plant:						
All	1,181	1,106	1,013	988	1,331	1,123
Small	576	574	472	429	480	506
% Small	48.8	51.9	46.6	43.4	36.1	45.1
Design:						
All	32,258	30,270	28,577	25,575	28,217	28,975
Small	15,806	14,699	15,133	14,591	14,373	14,921
% Small	49	48.6	53.0	57.1	50.9	48.66
Total:						
All	565,566	536,604	510,060	486,499	496,886	519,236
Small	148,858	142,416	138,169	128,501	132,002	138,049
% Small	26.3	26.5	27.1	26.4	26.6	26.6

* The patent application filing data in this table includes RCEs.
** FY 2012 application data are preliminary and will be finalized in the FY 2013 Performance and Accountability Report (PAR).

Because the percentage of small entity filings varies widely between application types, the Office has averaged the small entity filing rates over the past five years for those application types to estimate future filing rates by small and micro entities. Those average rates appear in the last column of Table 53, above. As discussed previously in this Final Rule, the Office estimates that the number of patent applications filed will increase annually (despite fee increases), and the Office estimates that small entity filing rates also will continue to grow for the next five years.

The Office forecasts the number of projected patent applications (i.e., workload) for the next five years using a combination of historical data, economic analysis, and subject matter expertise. The Office estimates that UPR patent application filings would grow by 5.0 percent each year beginning in FY 2013 and continuing through FY 2017. The Office forecasts design patent applications independently of UPR applications because they exhibit different behavior. The Office previously estimated that design patent application filings would grow by 2.0 percent each year beginning in FY 2013 and continuing through FY 2017. These filing estimates, however, were established prior to an analysis of elasticity based on fee adjustments. The FY 2013 President's Budget (page 36, ''USPTO Fee Collection Estimates/Ranges'') further describes the Office's workload forecasting methodology, which involves reviewing economic factors and other relevant indicators about the intellectual property environment. Exhibit 12 of the Budget presents additional performance goals and measurement data, including the forecasted patent application filing growth rate as described above.

Using the estimated filings for the next five years, the average historic rates of small entity filings, and the Office's elasticity estimates, Table 54 presents the Office's estimates of the number of patent application filings by all applicants, including small entities, over the next five fiscal years by application type. As stated in *Part V. Individual Fee Rationale* of this final rule, and taking into account elasticity, the Office estimated that applicants would file 1.3 percent fewer new (serialized) patent applications during FY 2013 than the number estimated to be filed in the absence of a fee increase (with new fee schedule implementation for half the fiscal year). The Office further estimated that 2.7 percent fewer new patent applications would be filed during FY 2014, and 4.0 percent fewer new patent applications would be filed in FY 2015, in response to the fee adjustment. Beginning in FY 2016, the Office estimated that the growth in new patent applications filed would return to the same levels anticipated in the absence of a fee increase. The Office's estimate of the number of patent application filings by small entities represents an upper bound. Some entities may file more than one application in a given year.

The Office has undertaken an elasticity analysis to examine how fee adjustments may impact small entities, and in particular, whether increases in fees would result in some such entities not submitting applications. Elasticity measures how sensitive patent applicants and patentees are to fee amounts or changes. If elasticity is low enough (demand is *inelastic*), then fee increases will not reduce patenting activity enough to negatively impact overall revenues. If elasticity is high enough (demand is *elastic*), then increasing fees will decrease patenting activity enough to decrease revenue. The Office analyzes elasticity at the overall filing level across all patent applicants regardless of entity size. Additional information about elasticity estimates is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1* in the document entitled ''*USPTO Section 10 Fee Setting—Description of Elasticity Estimates.*'' Table 54 reflects estimates for total numbers of applicants, including the portion of small entity applicants. These estimates include reductions in the application growth rate (as described in the previous paragraph) based on the estimated elasticity effect included in Table 2 of the aforementioned *Description of Elasticity Estimates* document. This estimated elasticity effect is multiplied by the estimated number of patent applications in the absence of a fee increase to obtain the estimates in Table 54. *See* the appendix on elasticity for additional detail on the Office's elasticity estimates and methodology.

TABLE 54—ESTIMATED NUMBERS OF PATENT APPLICATIONS IN FY 2013–FY 2017

	FY 2012 (current)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
Utility:						
All	530,915	548,307	566,524	585,187	614,503	645,285
Small	132,198	94,668	98,430	102,776	107,926	113,333
Reissue:						
All	1,212	685	679	673	693	714
Small	278	109	108	107	110	113
Plant:						
All	1,181	1,034	1,025	1,015	1,025	1,035
Small	576	371	368	364	368	371
Design:						
All	32,258	31,994	31,910	31,810	32,446	33,095
Small	15,806	11,038	11,009	10,974	11,194	11,418
Total:						
All	565,566	582,020	600,138	618,685	648,667	680,129
Small	148,858	106,186	109,915	114,221	119,598	125,235

5. A Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Requirement and Type of Professional Skills Necessary for Preparation of the Report or Record

This rule will not change the burden of existing reporting and recordkeeping requirements for payment of fees. The current requirements for small entities will continue to apply to small entities. The process to assess whether an entity can claim micro entity status requires the same skill currently required to assess whether an entity can claim small entity status. The projected reporting and recordkeeping requirements for an entity to certify eligibility for micro entity fee reductions are minimal (namely, a brief certification). These minimal requirements will not require any professional skills beyond those required to file and prosecute an application. Therefore, the professional skills necessary to file and prosecute an application through issue and maintenance remain unchanged under this rule. This rule only sets or adjusts patent fees and does not set procedures for asserting small or micro entity status, as previously discussed.

The full fee schedule (*see Part VII. Discussion of Specific Rules*) is set forth in the final rule. The fee schedule sets or adjusts 351 patent fees. This fee schedule includes 94 fees for which there are small entity fee reductions, and 93 fees for which there are micro entity fee reductions. One fee, Statutory Disclaimer (37 CFR 1.20(d)), was formerly eligible for a small entity fee reduction, but is no longer eligible for such a reduction under section 10(b) of the Act. Similarly, Basic Filing Fee—Utility (37 CFR 1.16(a)(1), electronic filing for small entities), is set expressly for small entities in section 10(h) of the Act, and there is no corresponding large or micro entity fee.

Commensurate with changes to large entity fees, small entities will pay more than they do currently for 47 percent of the fees currently eligible for the 50 percent fee reduction. However, more fees are reduced for small entities under the Act. As a result, they will pay less than they do currently for 44 percent of the fees eligible for the 50 percent reduction (5 percent of the fees stay the same and the balance are newly set fees). Additionally, micro entities are eligible for fee reductions of 75 percent. Compared to what they would have paid as small entities under the current fee schedule, micro entities will pay less for 87 percent of the fees eligible for reduction.

6. A Description of the Steps the Agency Has Taken to Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each One of the Other Significant Alternatives to the Rule Considered by the Agency Which Affect the Impact on Small Entities Was Rejected

The USPTO considered several alternative approaches to the rule, discussed below, including retaining current fees, full cost recovery of fees, an across-the-board adjustment to fees, and the proposal submitted to the PPAC on February 7, 2012. The discussion begins with a description of the fee schedule adopted in this rule and then addresses each alternative considered in turn.

i. Alternative 1: Patent Fee Schedule in the Final Rule—Set and Adjust Section 10 Fees

The USPTO chose the patent fee schedule in this final rule because it will enable the Office to achieve its goals effectively and efficiently without unduly burdening small entities, erecting barriers to entry, or stifling incentives to innovate. The alternative selected here achieves the aggregate revenue needed for the Office to offset aggregate costs, and is therefore beneficial to all entities that seek patent protection. Also, the alternative selected here offers small entities a 50 percent fee reduction and micro entities a 75 percent fee reduction. As discussed in Item 5 above, the final patent fee schedule includes a total of 94 reduced fees for small entities and 93 reduced fees for micro entities. Compared to the current patent fee schedule, small entities will see 41 small entity fees decrease and micro entities will see 81 fees decrease (when compared to the rate they would have paid as a small entity under the current fee schedule).

Given the three-month operating reserve target estimated to be achieved after the five-year planning period of FY 2013—FY 2017 (in FY 2018) under this selected alternative, small and micro entities will pay some higher fees than under some of the other alternatives considered. However, the fees are not as high as those initially proposed to PPAC (Alternative 4), which achieved the three-month target operating reserve in FY 2016. Instead, in the adopted alternative, the Office decided to slow the growth of the operating reserve and lower key fee amounts in response to comments and feedback the PPAC received from IP stakeholders and other interested members of the public during

and following the PPAC fee setting hearings.

The selected alternative secures the Office's required revenue to meet its aggregate costs, while meeting the strategic goals of a patent application pendency decrease and patent application backlog reduction that will benefit all applicants, especially small and micro entities. Pendency is one of the most important factors in an analysis of patent fee proposal alternatives. Decreasing patent application pendency increases the private value of patents because patents are granted sooner, thus allowing patent holders to more quickly commercialize their innovations. Reducing pendency may also allow for earlier disclosure of the scope of protection, which reduces uncertainty regarding the scope of patent rights and validity of claims for patentees, competitors, and new entrants. All patent applicants should benefit from the decreased pendency that will be realized under the selected alternative. While some of the other alternatives discussed make progress toward the pendency decrease (and related backlog reduction) goal, the selected alternative is the only one that does so in a way that does not pose undue costs on patent applicants and holders while still achieving the Office's other strategic goals.

The selected alternative is also uniquely responsive to stakeholder feedback in ways the other alternatives are not, including multipart and staged fees for requests for continued examination, appeals, and several of the new trial proceedings, including *inter partes* review and post-grant review. These inclusions in the selected alternative aim to *foster innovation* and *increase patent prosecution options for applicants* and patent holders, as discussed in the *Part V. Individual Fee Rationale* section of Supplementary Information in this final rule. Two examples illustrate how the selected fee structure is responsive to stakeholder feedback. First, the Office sets two fees for RCEs. The fee for an initial RCE is set below cost; the fees for a second and any subsequent RCEs are set above the amount of the first RCE, estimated to be slightly below cost recovery. A lower first RCE fee continues to allow for use of this option, when necessary; only the more intensive use of this process via a second or subsequent RCE, which impacts compact prosecution, requires higher fees. Second, the Office stages the payment of the appeal fees to recover additional cost at later points in time and thereby minimize the cost impacts on applicants associated with withdrawn final rejections. The Office sets (1) a $800 notice of appeal fee, (2) a $0 fee when filing the brief, and (3) a $2,000 fee when forwarding the appeal file—containing the appellant's Brief and the Examiner's Answer—to the PTAB for review. This reduction from the fees proposed in the NPRM recognizes stakeholder feedback about the appeal fees being too high and the total cost of the appeal process was too front-end focused. The approach aims to: Provide *patent prosecution options for applicants* and appellants, stabilize the fee structure by recovering cost at the points in time where appeals cost is the most significant, and seek ways to minimize the cost impact on applicants associated with withdrawn rejections.

When estimating aggregate revenue, the Office assumed that the fees in this rule would become effective by April 1, 2013, except for issue, pre-grant publication, international stage Patent Cooperation Treaty fees, and assignment fee changes which become effective January 1, 2014. The final patent fee schedule, as compared to existing fees (labeled Alternative 1—Final Patent Fee Schedule—Set and Adjust Section 10 Fees) is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*, in the document entitled ''*USPTO Section 10 Fee Setting—FRFA Tables.''* Fee changes for small and micro entities are included in the tables. For the purpose of calculating the dollar and percent fee change, fees for micro entities are compared to current fees for small entities. For the comparison between final patent fees and current fees, as noted above, the ''current fees'' column displays the fees that were effective as of October 5, 2012.

ii. Other Alternatives Considered

In addition to the fee schedule set forth in Alternative 1, above, the Office considered several other alternative approaches.

a. Alternative 2: Fee Cost Recovery

The USPTO considered setting most individual large entity fees at the cost of performing the activities related to the particular service, while implementing the small and micro entity fee reductions for eligible fees. Fees that are not typically set using cost data as an indicator were set at current rates. Under this alternative, maintenance fees would be set at a level sufficient to ensure that the Office would be able to recover the cost of mandatory expenses and offset the revenue loss from small and micro entity discounts (approximately half of the current maintenance fee rates). Additional information about the methodology for determining the cost of performing the activities, including the cost components related to respective fees, is available for review at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1* in the document titled ''*USPTO Section 10 Fee Setting—Activity-Based Information and Costing Methodology.''*

It is common practice in the Federal Government to set a particular fee at a level to recover the cost of that service. In OMB Circular A–25: *User Charges,* the OMB states that user charges (fees) should be sufficient to recover the full cost to the Federal Government of providing the particular service, resource, or good, when the Government is acting in its capacity as sovereign. However, the Office projected a significant revenue shortfall under this alternative, defeating the goals of this rulemaking.

First, this alternative would not provide sufficient funds to offset the required fee reductions for small and micro entities. Even after adjusting maintenance fees upward, aggregate revenue would suffer considerably. In response, it would be necessary for the Office to reduce operating costs (i.e., examination capacity (hiring), IT system upgrades, and various other initiatives), the loss of which would negatively impact the Office's ability to meet the financial, strategic, and policy goals of this rulemaking.

Moreover, this alternative presents significant barriers to seeking patent protection, because front-end fees would increase significantly for all applicants, even with small and micro entity fee reductions. The high costs of entry into the patent system could lead to a significant decrease in the incentives to invest in innovative activities among all entities, and especially for small and micro entities. Likewise, there would be no improvements in fee design, such as the multipart RCE fees or staging the appeal fees included in Alternative 1.

In sum, this alternative is inadequate to accomplish the goals and strategies as stated in *Part III* of this rulemaking and so the Office has not adopted it.

The fee schedule for Alternative 2: Fee Cost Recovery is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*, in the document entitled ''*USPTO Section 10 Fee Setting—FRFA Tables.''* Fee changes for small and micro entities are included in the tables. For the purpose of calculating the dollar and percent fee change, fees for micro entities are compared to current fees for small entities. For the comparison between final patent fees and current fees, as

noted above, the ''current fees'' column displays the fees that were effective as of October 5, 2012.

b. Alternative 3: Across-the-Board Adjustment

In some past years, and as became effective on October 5, 2012, (*see* CPI Adjustment of Patent Fees for Fiscal Year 2013, 77 FR 54360 (Sept. 5, 2012)), the USPTO used its authority to adjust statutory fees annually according to changes in the CPI, which is a commonly used measure of inflation. Building on this prior approach, Alternative 3 would set fees by applying a 6.7 percent, multi-year, across-the-board inflationary increase to the baseline (status quo) beginning in FY 2013. The 6.7 percent represents the estimated cumulative inflationary adjustment from FY 2013 through FY 2016. The Office selected this time period to represent the fiscal year in which the fees would be effective through the fiscal year in which the operating reserve will approach the target level. As estimated by the CBO at the time the NPRM published, projected inflationary rates by fiscal year are: 1.4 percent in FY 2013, 1.5 percent in FY 2014, 1.6 percent in FY 2015, and 2.0 percent in FY 2016. (The rates listed are consistent with the analysis presented in the NPRM. The CBO has since updated its rates.) Each percentage rate for a given year applies to the following year, e.g., a 1.4 percent increase for FY 2013 is applied to FY 2014. These rates are multiplied together to account for the compounding effect occurring from year-to-year; the rounded result is 6.7 percent. When estimating aggregate revenue, the Office estimated that most fees under this alternative would become effective by April 1, 2013.

Under this alternative, the Office would not collect enough revenue to achieve both of the strategic goals identified in *Part III. Rulemaking Goals and Strategies* within the timeframes identified in the Budget. This alternative would implement the small and micro entity fee reductions for eligible fees, but would also retain the same fee relationships and subsidization policies as the status quo (baseline) alternative. There would be no improvements in fee design, such as the multipart RCE fees or staging the appeal fees included in Alternative 1. Further, the Office projects that the aggregate revenue generated from this alternative would be sufficient to recover the aggregate cost of steady state patent operations, but would not go far enough to meet both of the Office's strategic goals to improve the timeliness of patent processing (through reducing patent applications in backlog and pendency) and to implement a sustainable funding model for operations (by establishing a three-month patent operating reserve). It is important for the Office to balance accomplishing both goals together so that once it achieves the pendency goals, it has sufficient resources to maintain them. Alternative 3 builds the three-month patent operating reserve during the five-year planning period, but does not generate sufficient aggregate revenue to also achieve the patent application pendency goals by FY 2016 and FY 2017. In fact, the revenue generated by Alternative 3 during FY 2013 is not only insufficient to hire 1,000 patent examiners (like Alternatives 1 and 4), but also uses $55 million of the operating reserve to pay for the 1,500 patent examiners hired in FY 2012 and maintain steady state operations. In sum, this alternative is inadequate to accomplish the goals and strategies as stated in *Part III. Rulemaking Goals and Strategies* of this rulemaking and so the Office has not adopted it.

The fee schedule for Alternative 3: Across-the-Board Adjustment is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*, in the document entitled ''*USPTO Section 10 Fee Setting—FRFA Tables.*'' Fee changes for small and micro entities are included in the tables. For the purpose of calculating the dollar and percent fee change, fees for micro entities are compared to current fees for small entities. For the comparison between proposed fees and current fees, the ''current fees'' column displays the fees that were effective as of October 5, 2012 (which includes the 2012 CPI increase).

c. Alternative 4: Initial Proposal to the PPAC

The fee structure initially delivered to the PPAC on February 7, 2012, and published during the public hearings in February 2012, which is consistent with the FY 2013 President's Budget, would achieve the USPTO's strategic goals and objectives, including reducing backlog and pendency.

This alternative is nearly the same as the selected alternative (Alternative 1). As described in *Part V. Individual Fee Rationale* of this rule, some fees would be set to achieve cost recovery for specific patent-related services, while many others would be set either below or above cost. For example, like alternatives 1 and 3, the Office, under this alternative would subsidize front-end fees set below cost (e.g., file, search, and examination) by setting back-end fees (e.g., issue and maintenance) above cost to enable a low cost of entry into the patent system. In some cases, fee rates would be set at a level during patent prosecution so that an applicant pays certain fees at a point in time relative to the amount of information available to make a decision about proceeding. Specifically, fees would be set low during prosecution when there is less certainty about the value of an applicant's invention, then begin to rise gradually starting at issue and continuing through maintenance fees at different stages of the patent lifecycle (e.g., 3.5, 7.5, and 11.5 years) when a patent holder has greater certainty in the value of the invention. This structure also considers the relationship among individual fees and the cost of operational processes, including some targeted adjustments to fees where the gap between cost and current fees is greatest.

The fee schedule for this alternative would achieve higher revenue than each of the other alternatives considered. It would permit the Office to fund the operating reserve at a rapid pace, reaching its three-month target level in FY 2016. When estimating aggregate revenue, the Office estimated that fees under this alternative would become effective by April 1, 2013.

However, during the PPAC hearings and comment period, stakeholders raised concerns about the rate of growth associated with the operating reserve. While most of the Office's stakeholders agree with the need for an operating reserve, many raised concerns about the need to reach the target so quickly. Stakeholders opined that such a rate of growth would impose too great of a burden on the patent user community. Many were also concerned that the fee rates associated with achieving the operating reserve target so quickly would be too high. Although this alternative would meet the Office's revenue goals, the Office ultimately rejected this alternative because it would have a greater economic impact on all entities (including small and micro entities) than the selected alternative. A modified version of this alternative (with a number of lower fees) became the selected alternative (Alternative 1).

The fee schedule for Alternative 4: Initial Proposal to PPAC is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*, in the document entitled ''*USPTO Section 10 Fee Setting—FRFA Tables.*'' Fee changes for small and micro entities are included in the tables. For the purpose of calculation the dollar and percent fee change, fees for micro entities are compared to current fees for

small entities. For the comparison between proposed fees and current fees, the ''current fees'' column displays the fees that were effective as of October 5, 2012 (which includes the 2012 CPI increase).

d. Alternative 5: Retain Current Fees (Status Quo)

The Office considered a no-action alternative. This alternative would retain the status quo, meaning that the Office would not expand the range of fees eligible for a small entity discount (50 percent), nor would it go a step further and provide micro entities with the 75 percent fee reduction that Congress provided in section 10 of the Act. This approach would not provide sufficient aggregate revenue to accomplish all of the Office's goals as set forth in *Part III. Rulemaking Goals and Strategies* of this rule or the Strategic Plan, including hiring the examiners needed to decrease the backlog of patent applications, meeting patent application pendency goals, improving patent quality, advancing IT initiatives, and achieving sustainable funding.

The status quo alternative would be detrimental to micro entities, because the final rule includes a 75 percent fee reduction for micro entities that will result in those applicants paying less under the final patent fee schedule than they would under the status quo. Moreover, small entities generally would be harmed because fewer small entity discounts would be available.

The status quo approach would result in inadequate funding for effective patent operations. It also would result in increased patent application pendency levels and patent application backlog. It further would prevent the USPTO from meeting the goals in its Strategic Plan that are designed to achieve greater efficiency and improve patent quality. These results would negatively impact small entities just as they would negatively impact all other patent applicants. While the Office would continue to operate and make some progress toward its goals, the progress would be much slower, and in some cases, initial improvements would be eradicated in the out-years (e.g., patent application pendency and the patent application backlog would increase in the out-years as the Office fails to increase examination capacity to keep pace with incoming applications). Likewise, IT improvement activities would continue, but at a slower rate due to funding limitations.

iii. Alternative Approaches

In the IRFA, the USPTO also considered four other approaches specified by the RFA, namely: (1) Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarifying, consolidating, or simplifying compliance and reporting requirements under the rule for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of the rule, or any part thereof. 5 U.S.C. 603(c). The USPTO discusses each of these specified approaches below, and describes how the final rule adopts these approaches.

Differing Requirements

As discussed above, the changes in this rulemaking establish differing requirements for small and micro entities that take into account the reduced resources available to them. Specifically, micro entities would pay a 75 percent reduction in patent fees under the final patent fee schedule.

For non-micro small entities, this final rule would not only retain the existing 50 percent patent fee reduction but also expand the availability of such small entity fee reductions to 26 patent fees that currently are not eligible for small entity reductions. The increased availability of fee reductions for both small and micro entities arises from the fact that section 10(b) of the Act provides that reductions apply to all fees for ''filing, searching, examining, issuing, appealing, and maintaining patent applications and patents.'' Prior to the AIA, small entity fee reductions applied only to fees set under 35 U.S.C. 41(a) and 41(b). By increasing the scope of fees eligible for reductions, the AIA allows the USPTO to do more to ease burdens and reduce the entry barriers for small and micro entities to take part in the patent system.

This rulemaking sets fee levels but does not set or alter procedural requirements for asserting small or micro entity status. To pay reduced patent fees, small entities must merely assert small entity status. The small entity may make this assertion by either checking a box on the transmittal form, ''Applicant claims small entity status,'' or by paying the small entity fee exactly. The Office established (in a separate rulemaking) that a micro entity submit a form certifying micro entity status. *See* Changes to Implement Micro Entity Status for Paying Patent Fees, 77 FR 75019 (Dec. 19, 2012). The instant final rule does not change any reporting requirements for any small entity. For both small and micro entities, the burden to establish their status is nominal (making an assertion or submitting a certification), and the benefit of the fee reductions (50 percent for small entities and 75 percent for micro entities) is significant.

This final rule makes the best use of differing requirements for small and micro entities. It also makes the best use of the redesigned fee structure, as discussed further below.

Clarification, Consolidation, or Simplification of Requirements

The final rule clarifies, consolidates, and simplifies the current compliance requirements. These changes incorporate certain options to stage fees (break fees into multiple parts), so that applicants can space out the payment of fees and make decisions about some fees at later stages in the application process when they have more information. Applicants also can receive partial refunds when some parts of a service prove not to be needed.

For example, the Office establishes in this final rule that appeal fees be spread out across different stages of the appeal process so that an applicant can pay a smaller fee to initiate the appeal, and then not pay for the bulk of the appeal fee until, if, and when the appeal is forwarded to the PTAB after the Examiner's Answer is filed. Thus, if a small or micro entity initiates an appeal, but the appeal does not go forward because the examiner withdraws the rejection, the small entity will pay less for the appeal process than under the current fee structure (where the bulk of the appeal fees would be paid up front even if the appeal does not go forward). Additionally, the Office sets fees for the administrative trials (*inter partes* review, post-grant review, and covered business method review) before the PTAB to be paid in multiple parts. With *inter partes* review, for instance, the Office would return fees for post-institution services should a petition not be instituted. Similarly, the Office establishes that fees paid for post-institution review of a large number of claims be returned if the Office only institutes the review of a subset of the requested claims. These options for staging and splitting fees into multiple parts will benefit small and micro entities, who will be able to spread out their payments of fees, and in some instances potentially receive refunds of fees where only a portion of a particular service is ultimately provided. *See* Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program

for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012).

This final rule makes the best use of this alternative approach.

Performance Standards

Performance standards do not apply to the final rule.

Exemption for Small Entities

The final rule includes a new 75 percent reduction in fees for micro entities, and an expansion of the 50 percent reduction in fees for small entities. The Office considered exempting small and micro entities from paying patent fees, but determined that the USPTO would lack statutory authority for this approach. Section 10(b) of the Act provides that ''fees set or adjusted under subsection (a) for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents *shall* be reduced by 50 percent [for small entities] and *shall* be reduced by 75 percent [for micro entities].'' (Emphasis added). Neither the AIA nor any other statute authorizes the USPTO to simply exempt small or micro entities, as a class of applicants, from paying patent fees.

B. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be economically significant for purposes of Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007). The Office has developed an RIA as required for rulemakings deemed to be economically significant. The complete RIA is available at *http://www.uspto.gov/aia_implementation/fees.jsp#heading-1*. The Office received the following comments related to Executive Order 12866.

Comment 1: A commenter noted that the agency must comply with Executive Order 12866 in setting section 10 fees. The commenter also noted that Executive Order 12866 requires the Office to consider other causes and solutions to the problem before issuing regulations.

Response: As demonstrated in this section and the rulemaking as a whole, the USPTO has complied with the mandates of Executive Order 12866. Consistent with the directives in Executive Order 12866, the Office concurs and has both reviewed other causes (including a statutory fee structure that prevented the Office from realigning or adjusting fees to quickly and effectively respond to market demand or changes in processing costs) and analyzed alternative solutions (including alternative fee structures and leaving the fees unchanged). The Office also has provided extensive opportunities for public input into the fee setting process like the PPAC public hearings and public comment period and the roadshows conducted in September 2012, before issuing this final rule.

C. Executive Order 13563 (Improving Regulation and Regulatory Review)

In order to comply with Executive Order 13563, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

D. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

E. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808), the United States Patent and Trademark Office has submitted a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office.

F. Unfunded Mandates Reform Act of 1995

The changes in this final rule do not involve a Federal intergovernmental mandate that will result in the expenditure by state, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501–1571.

G. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3549) requires the USPTO to consider the impact of paperwork and other information collection burdens imposed on the public. This final rule involves information collection requirements that are subject to review by the OMB under the PRA. The collection of information involved in this notice was submitted to OMB with the proposed rulemaking as a new information collection request and was preapproved under OMB control number 0651–0072. The information collection will be available at the OMB's Information Collection Review Web site at: *www.reginfo.gov/public/do/PRAMain.*

1. Summary

This final rule will collect two fees not specifically delineated in an existing information collection request (listed in Table (A) below) and will amend the fees in several current information collections previously approved by OMB (listed in Table (B) below). The Office is consolidating these fee burdens into this collection to allow fee burden adjustments to be requested through a single fee information collection package entitled ''America Invents Act Section 10 Patent Fee Adjustments.'' This new, consolidated collection will result in the unavoidable double counting of certain fees for a short period of time. The Office will update the fee burden inventory in existing information collections to correct the double counting by submitting non-substantive change requests in each of the currently existing information collection requests (in Table (B) below) with the appropriate fee adjustments. Nothing associated with either this rulemaking or this information collection request alters the existing non-fee burden of any response to any information collection. However, because a change in some fees will change the aggregate demand for certain services, the total number of responses for some information collections will change, which in turn will change the total number of burden hours (defined

as the estimated time burden of a collection multiplied by the total responses) and respondent cost burden (burden hours multiplied by the respondent cost per hour) for some collections. These changes are detailed in the supporting statement for this information collection, and the Office will update the existing information collections to account for this change when submitting the non-substantive change requests described above.

As explained in *Part V. Individual Fee Rationale,* the USPTO adjusted several fees in response to public comment. The notice of appeal fee for large entities has been reduced from $1,000 to $800 and accordingly reduced for small entities from $500 to $400, and for micro entities from $250 to $200. The *ex parte* reexamination fee has been reduced from $15,000 to $12,000 for large entities, with corresponding reductions to $6,000 for small entities and $3,000 for micro entities. The fee for reexaminations ordered as part of supplemental examination has been reduced from $13,600 to $12,100 for large entities and to $6,050 for small entities and $3,025 for micro entities. Finally, the correct inventorship fee has been reduced from $1,000 to $600 for large entities, and correspondingly $300 for small entities and $150 for micro entities. Although the fee for the correct inventorship service has been reduced, the circumstances in which the fee is paid have also been narrowed such that the fee need not be paid if the request to correct or change inventorship is accompanied by a statement that the request is due solely to the cancelation of claims in the application. Accordingly, the Office now expects to receive 188 responses (i.e., payments of the fee) from large entities, 43 from small entities, and 19 from micro entities. Additionally, the Office has revised the expected number of responses to several information collections based on revised and decreased projections of demand for various services. Because of these revised expected responses, as explained in the Paperwork Reduction Act Supporting Statement for this rulemaking, both the hour cost burden and the non-hour cost burden have decreased from the NPRM to the Final Rule.

(A) Fees Included in This New Information Collection Request

Fee	Amount (large entity)	Amount (small entity)	Amount (micro entity)	Regulation
Correct Inventorship after First Action on the Merits	$600.00	$300.00	$150.00	37 CFR 1.17(d).
Petitions to Chief APJ Under 37 CFR 41.3	400.00	400.00	400.00	37 CFR 41.3.

(B) Existing & Pending Collections Amended Under the Rulemaking

(1) 0651–0012 Admittance to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the USPTO
(2) 0651–0016 Rules for Patent Maintenance Fees
(3) 0651–0020 Patent Term Extension
(4) 0651–0021 Patent Cooperation Treaty
(5) 0651–0027 Recording Assignments
(6) 0651–0031 Patent Processing (Updating)
(7) 0651–0032 Initial Patent Applications
(8) 0651–0033 Post Allowance and Refiling
(9) 0651–0036 Statutory Invention Registration
(10) 0651–0059 Certain Patent Petitions Requiring a Fee
(11) 0651–0063 Board of Patent Appeals and Interferences (BPAI) Actions
(12) 0651–0064 Patent Reexaminations and Supplemental Examinations
(13) 0651–0069 Patent Review and Derivation Proceedings
(14) 0651–00xx Matters Related to Patent Appeals

2. Data

Section 10 of the Act authorizes the Director of the USPTO to set or adjust all patent fees established, authorized, or charged under Title 35, U.S. Code. Agency fees associated with information collections are considered to be part of the burden of the collection of information. The data associated with this information collection request is summarized below and provided in additional detail in the supporting statement for this information collection request, available through the Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

Section 10 also provides for the creation of a ''micro entity status.'' The information collection associated with micro entity status was addressed in a separate proposed rulemaking and a separate PRA analysis. *See* 77 FR 75019 (Dec. 19, 2012).

Needs and Uses: The Agency is authorized to collect these fees by Section 10 of the Act. The public uses this information collection to pay their required fees and communicate with the Office regarding their applications and patents. The Agency uses these fees to process respondents' applications and patents, to process applicants' requests for various procedures in application and post-grant patent processing, and to provide all associated services of the Office.

OMB Number: 0651–0072.

Title: America Invents Act Section 10 Patent Fee Adjustments.

Form Numbers: None.

Type of Review: New Collection.

Likely Respondents/Affected Public: Individuals or households, businesses or other for-profit institutions, not-for-profit institutions, farms, Federal Government, and state, local, or tribal governments.

A. Estimates for All Fees, Including Both Information Added in This Collection and Information in Existing and Pending Collections

Estimated Number of Respondents for All Fees: 5,470,718 responses per year.

Estimated Time per Response for All Fees: Except as noted below for the two fees added to this collection, this information collection will not result in any change in any time per response.

Estimated Total Annual (Hour) Respondent Cost Burden for All Fees: Except as noted below for the two fees added to this collection, this information collection will not result in any change in any information requirements associated with fees set or amended by this rulemaking. Other than the two fees added to this collection, the only change in the total annual (hour) respondent cost burden results from the change in responses, which is a result of two factors. First, because the change in a fee for a particular service may cause a change in demand for that service, the total number of respondents for each service might change, altering the total annual (hour) respondent cost burden for fees covered under approved collections. This change has been fully detailed in the supporting statement and its appendices. Second, response numbers of current inventories have been updated to reflect the Office's most recent estimates.

Estimated Total Annual (Non-Hour) Respondent Cost Burden for All Fees: $2,727,479,226. The USPTO estimates

that the total fees associated with this collection, representing all fees collected across the full panoply of patent processing services provided by the Office, will be approximately $2,727,479,150 per year. (This number is different than the total revenue cited elsewhere in this rule because PRA estimates have been calculated by taking an average over three years of estimated responses and because not every fee adjusted in this rulemaking constitutes a burden under the PRA (e.g., self-service copying fees).) The amount of these fees is a $492,783,887 change from the fee amounts currently in the USPTO PRA inventory. Of this, $409,263,158 directly results from this rulemaking and $83,520,729 results from non-rulemaking factors. Additionally, the USPTO estimates that $76 in postage costs will be associated with the items added in this collection. Because the postage costs for items in existing collections have not been altered by this rulemaking, they are not part of the burden of this rulemaking.

B. Estimates for Fees Not Specifically Delineated in an Existing Information Collection Request (a Subset of All Fees in Part A. Above)

Estimated Number of Respondents for Information Added in This Collection: 412 responses per year.

Estimated Time per Response for Information Added in This Collection: The USPTO estimates that it will take the public between 2 and 4 hours to gather the necessary information, prepare the appropriate form or other documents, and submit the information to the USPTO.

Estimated Total Annual Respondent Burden Hours for Information Added in This Collection: 1,148 hours per year.

Estimated Total Annual (Hour) Respondent Cost Burden for Information Added in This Collection: $425,908 per year.

Estimated Annual (Non-Hour) Respondent Cost Burden for Information Added in This Collection: $193,426 per year. Of this amount, $128,550 directly results from this rulemaking, $64,800 results from non-rulemaking factors, and $76 results from postage.

3. Solicitation

The Office solicited comments to: (1) Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the Office, including whether the information will have practical utility; (2) evaluate the accuracy of the Office's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, or mechanical collection techniques or other forms of information technology.

The Office received one comment from members of the public regarding the Paperwork Reduction Act analysis for this rule. A summary of the comment received and the Office's response to that comment follows.

Comment 1: A commenter noted that the agency must comply with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* in setting section 10 fees.

Response: The Office agrees with this comment. As evidenced by this section, the equivalent Paperwork Reduction Act section of the Notice of Proposed Rulemaking, and the Supporting Statements submitted with both the Notice of Proposed Rulemaking and this Final Rule, the Office has complied with the requirements of the Act.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 41

Administrative practice and procedure, Inventions and patents, Lawyers.

37 CFR Part 42

Trial practice before the Patent Trial and Appeal Board.

For the reasons set forth in the preamble, 37 CFR parts 1, 41, and 42 are amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The general authority citation for 37 CFR part 1 continues to read as follows and the specific authority citation immediately after the undesignated center heading ''Fees and Payment of Money'' is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2).

* * * * *

Authority: Sections 1.16 through 1.22 also issued under 35 U.S.C. 41, 111, 119, 120, 132(b), 156, 157, 255, 302, and 311, Public Laws 103–465, 106–113, and 112–29.

■ 2. Section 1.16 is amended by revising paragraphs (a) through (s) to read as follows:

§ 1.16 National application filing, search, and examination fees.

(a) Basic fee for filing each application under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29)	$70.00
By a small entity (§ 1.27(a))	140.00
By a small entity (§ 1.27(a)) if the application is submitted in compliance with the Office electronic filing system (§ 1.27(b)(2))	70.00
By other than a small or micro entity	280.00

(b) Basic fee for filing each application for an original design patent:

By a micro entity (§ 1.29)	$45.00
By a small entity (§ 1.27(a))	90.00
By other than a small or micro entity	180.00

(c) Basic fee for filing each application for an original plant patent:

By a micro entity (§ 1.29)	$45.00
By a small entity (§ 1.27(a))	90.00
By other than a small or micro entity	180.00

(d) Basic fee for filing each provisional application:

By a micro entity (§ 1.29)	$65.00
By a small entity (§ 1.27(a))	130.00
By other than a small or micro entity	260.00

(e) Basic fee for filing each application for the reissue of a patent:

By a micro entity (§ 1.29)	$70.00
By a small entity (§ 1.27(a))	140.00
By other than a small or micro entity	280.00

(f) Surcharge for filing any of the basic filing fee, the search fee, the examination fee, or the oath or declaration on a date later than the filing date of the application, except provisional applications:

By a micro entity (§ 1.29)	$35.00
By a small entity (§ 1.27(a))	70.00
By other than a small or micro entity	140.00

(g) Surcharge for filing the basic filing fee or cover sheet (§ 1.51(c)(1)) on a date later than the filing date of the provisional application:

By a micro entity (§ 1.29)	$15.00
By a small entity (§ 1.27(a))	30.00
By other than a small or micro entity	60.00

(h) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of

each claim in independent form in excess of 3:

By a micro entity (§ 1.29)	$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity	420.00

(i) In addition to the basic filing fee in an application, other than a provisional application, for filing or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29)	$20.00
By a small entity (§ 1.27(a))	40.00
By other than a small or micro entity	80.00

(j) In addition to the basic filing fee in an application, other than a provisional application, that contains, or is amended to contain, a multiple dependent claim, per application:

By a micro entity (§ 1.29)	$195.00
By a small entity (§ 1.27(a))	390.00
By other than a small or micro entity	780.00

(k) Search fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29)	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

(l) Search fee for each application for an original design patent:

By a micro entity (§ 1.29)	$30.00
By a small entity (§ 1.27(a))	60.00
By other than a small or micro entity	120.00

(m) Search fee for each application for an original plant patent:

By a micro entity (§ 1.29)	$95.00
By a small entity (§ 1.27(a))	190.00
By other than a small or micro entity	380.00

(n) Search fee for each application for the reissue of a patent:

By a micro entity (§ 1.29)	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

(o) Examination fee for each application filed under 35 U.S.C. 111 for an original patent, except design, plant, or provisional applications:

By a micro entity (§ 1.29)	$180.00
By a small entity (§ 1.27(a))	360.00
By other than a small or micro entity	720.00

(p) Examination fee for each application for an original design patent:

By a micro entity (§ 1.29)	$115.00
By a small entity (§ 1.27(a))	230.00
By other than a small or micro entity	460.00

(q) Examination fee for each application for an original plant patent:

By a micro entity (§ 1.29)	$145.00
By a small entity (§ 1.27(a))	290.00
By other than a small or micro entity	580.00

(r) Examination fee for each application for the reissue of a patent:

By a micro entity (§ 1.29)	$540.00
By a small entity (§ 1.27(a))	1,080.00
By other than a small or micro entity	2,160.00

(s) Application size fee for any application filed under 35 U.S.C. 111 for the specification and drawings which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a micro entity (§ 1.29)	$100.00
By a small entity (§ 1.27(a))	200.00
By other than a small or micro entity	400.00

* * * * *

■ 4. Section 1.17 is amended by revising paragraphs (a) through (i). (k) through (m), and (p) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) Extension fees pursuant to § 1.136(a):

(1) For reply within first month:

By a micro entity (§ 1.29)	$50.00
By a small entity (§ 1.27(a))	100.00
By other than a small or micro entity	200.00

(2) For reply within second month:

By a micro entity (§ 1.29)	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

(3) For reply within third month:

By a micro entity (§ 1.29)	$350.00
By a small entity (§ 1.27(a))	700.00
By other than a small or micro entity	1,400.00

(4) For reply within fourth month:

By a micro entity (§ 1.29)	$550.00
By a small entity (§ 1.27(a))	1,100.00
By other than a small or micro entity	2,200.00

(5) For reply within fifth month:

By a micro entity (§ 1.29)	$750.00
By a small entity (§ 1.27(a))	1,500.00
By other than a small or micro entity	3,000.00

(b) For fees in proceedings before the Patent Trial and Appeal Board, *see* § 41.20 of this title.

(c) For filing a request for prioritized examination under § 1.102(e):

By a micro entity (§ 1.29)	$1,000.00
By a small entity (§ 1.27(a))	2,000.00
By other than a small or micro entity	4,000.00

(d) For correction of inventorship in an application after the first action on the merits:

By a micro entity (§ 1.29)	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

(e) To request continued examination pursuant to § 1.114:

(1) For filing a first request for continued examination pursuant to § 1.114 in an application:

By a micro entity (§ 1.29)	$300.00
By a small entity (§ 1.27(a))	600.00
By other than a small or micro entity	1,200.00

(2) For filing a second or subsequent request for continued examination pursuant to § 1.114 in an application:

By a micro entity (§ 1.29)	$425.00
By a small entity (§ 1.27(a))	850.00
By other than a small or micro entity	1,700.00

(f) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$100.00
By a small entity (§ 1.27(a))	200.00
By other than a small or micro entity	400.00

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.57(a)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

(g) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$50.00
By a small entity (§ 1.27(a))	100.00
By other than a small or micro entity	200.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.59—for expungement of information.

§ 1.103(a)—to suspend action in an application.

§ 1.136(b)—for review of a request for extension of time when the provisions of § 1.136 (a) are not available.

§ 1.295—for review of refusal to publish a statutory invention registration.

§ 1.296—to withdraw a request for publication of a statutory invention registration filed on or after the date the notice of intent to publish issued.

§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.

§ 1.550(c)—for patent owner requests for extension of time in *ex parte* reexamination proceedings.

§ 1.956—for patent owner requests for extension of time in *inter partes* reexamination proceedings.

§ 5.12—for expedited handling of a foreign filing license.

§ 5.15—for changing the scope of a license.

§ 5.25—for retroactive license.

(h) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$35.00
By a small entity (§ 1.27(a))	70.00
By other than a small or micro entity	140.00

§ 1.19(g)—to request documents in a form other than provided in this part.

§ 1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.102(d)—to make an application special.

§ 1.138(c)—to expressly abandon an application to avoid publication.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

(i) Processing fees:

(1) for taking action under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$35.00
By a small entity (§ 1.27(a))	70.00
By other than a small or micro entity	140.00

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.

§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.48—for correcting inventorship, except in provisional applications.

§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.

§ 1.53(b)(3)—to convert a provisional application filed under § 1.53(c) into a nonprovisional application under § 1.53(b).

§ 1.55—for entry of late priority papers.

§ 1.71(g)(2)—for processing a belated amendment under § 1.71(g).

§ 1.99(e)—for processing a belated submission under § 1.99.

§ 1.102(e)—for requesting prioritized examination of an application.

§ 1.103(b)—for requesting limited suspension of action, continued prosecution application for a design patent (§ 1.53(d)).

§ 1.103(c)—for requesting limited suspension of action, request for continued examination (§ 1.114).

§ 1.103(d)—for requesting deferred examination of an application.

§ 1.291(c)(5)—for processing a second or subsequent protest by the same real party in interest.

§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

(2) For taking action under one of the following sections which refers to this paragraph:

By other than a small or micro entity	$130.00

§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.

§ 1.221—for requesting voluntary publication or republication of an application.

* * * * *

(k) For filing a request for expedited examination under § 1.155(a):

By a micro entity (§ 1.29)	$225.00
By a small entity (§ 1.27(a))	450.00
By other than a small or micro entity	900.00

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for the unavoidably delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a micro entity (§ 1.29)	$160.00
By a small entity (§ 1.27(a))	320.00
By other than a small or micro entity	640.00

(m) For filing a petition for the revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a micro entity (§ 1.29)	$475.00
By a small entity (§ 1.27(a))	950.00
By other than a small or micro entity	1,900.00

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d) or for the document fee for a submission under § 1.290:

By a micro entity (§ 1.29)	$45.00
By a small entity (§ 1.27(a))	90.00
By other than a small or micro entity	180.00

(q) Processing fee for taking action under one of the following sections which refers to this paragraph: $50.00.

§ 1.41—to supply the name or names of the inventor or inventors after the filing date without a cover sheet as prescribed by § 1.51(c)(1) in a provisional application.

§ 1.48—for correction of inventorship in a provisional application.

§ 1.53(c)(2)—to convert a nonprovisional application filed under § 1.53(b) to a provisional application under § 1.53(c).

(r) For entry of a submission after final rejection under § 1.129(a):

By a micro entity (§ 1.29)	$210.00
By a small entity (§ 1.27(a))	420.00
By other than a small or micro entity	840.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a micro entity (§ 1.29)	$210.00
By a small entity (§ 1.27(a))	420.00
By other than a small or micro entity	840.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78) or for filing a request for the restoration of the right of priority under § 1.452:

By a micro entity (§ 1.29)	$355.00
By a small entity (§ 1.27(a))	710.00
By other than a small or micro entity	1,420.00

■ 5. Section 1.18 is revised to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original patent, except a design or plant patent, or for issuing each reissue patent:

(1) For an issue fee paid on or after January 1, 2014:

By a micro entity (§ 1.29)	$240.00
By a small entity (§ 1.27(a))	480.00
By other than a small or micro entity	960.00

(2) For an issue fee paid before January 1, 2014:

By a micro entity (§ 1.29)	$445.00
By a small entity (§ 1.27(a))	890.00
By other than a small or micro entity	1,780.00

(b) Issue fee for issuing an original design patent:

(1) For an issue fee paid on or after January 1, 2014:

By a micro entity (§ 1.29)	$140.00
By a small entity (§ 1.27(a))	280.00
By other than a small or micro entity	560.00

(2) For an issue fee paid before January 1, 2014:

By a micro entity (§ 1.29)	$255.00
By a small entity (§ 1.27(a))	510.00
By other than a small or micro entity	1,020.00

(c) Issue fee for issuing an original plant patent:

(1) For an issue fee paid on or after January 1, 2014:

By a micro entity (§ 1.29)	$190.00
By a small entity (§ 1.27(a))	380.00
By other than a small or micro entity	760.00

(2) For an issue fee paid before January 1, 2014:

By a micro entity (§ 1.29)	$350.00
By a small entity (§ 1.27(a))	700.00
By other than a small or micro entity	1,400.00

(d)

(1) Publication fee on or after January 1, 2014	$0.00
(2) Publication fee before January 1, 2014	300.00
(3) Republication fee (§ 1.221(a))	300.00

(e) For filing an application for patent term adjustment under § 1.705: $200.00.

(f) For filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) in an application for patent term adjustment under§ 1.705: $400.00.

■ 6. Section 1.19 is revised to read as follows:

§ 1.19 Document supply fees.

The United States Patent and Trademark Office will supply copies of the following patent-related documents upon payment of the fees indicated. Paper copies will be in black and white unless the original document is in color, a color copy is requested and the fee for a color copy is paid.

(a) Uncertified copies of patent application publications and patents:

(1) Printed copy of the paper portion of a patent application publication or patent including a design patent, statutory invention registration, or defensive publication document. Service includes preparation of copies by the Office within two to three business days and delivery by United States Postal Service; and preparation of copies by the Office within one business day of receipt and delivery to an Office Box or by electronic means (e.g., facsimile, electronic mail): $3.00.

(2) Printed copy of a plant patent in color: $15.00.

(3) Color copy of a patent (other than a plant patent) or statutory invention registration containing a color drawing: $25.00.

(b) Copies of Office documents to be provided in paper, or in electronic form, as determined by the Director (for other patent-related materials *see* § 1.21(k)):

(1) Copy of a patent application as filed, or a patent-related file wrapper and contents, stored in paper in a paper file wrapper, in an image format in an image file wrapper, or if color documents, stored in paper in an Artifact Folder:

(i) If provided on paper:

(A) Application as filed: $20.00.

(B) File wrapper and contents of 400 or fewer pages: $200.00.

(C) Additional fee for each additional 100 pages or portion thereof of file wrapper and contents: $40.00.

(D) Individual application documents, other than application as filed, per document: $25.00.

(ii) If provided on compact disc or other physical electronic medium in single order:

(A) Application as filed: $20.00.

(B) File wrapper and contents, first physical electronic medium: $55.00.

(C) Additional fee for each continuing physical electronic medium in the single order of paragraph (b)(1)(ii)(B) of this section: $15.00.

(iii) If provided electronically (e.g., by electronic transmission) other than on a physical electronic medium as specified in paragraph (b)(1)(ii) of this section:

(A) Application as filed: $20.00.

(B) File wrapper and contents: $55.00.

(iv) If provided to a foreign intellectual property office pursuant to a priority document exchange agreement (*see* § 1.14 (h)(1)): $0.00.

(2) Copy of patent-related file wrapper contents that were submitted and are stored on compact disc or other electronic form (e.g., compact discs stored in an Artifact Folder), other than as available in paragraph (b)(1) of this section:

(i) If provided on compact disc or other physical electronic medium in a single order:

(A) First physical electronic medium in a single order: $55.00.

(B) Additional fee for each continuing physical electronic medium in the single order of this paragraph (b)(2)(i): $15.00.

(ii) If provided electronically other than on a physical electronic medium per order: $55.00.

(3) Copy of Office records, except copies available under paragraph (b)(1) or (2) of this section: $25.00.

(4) For assignment records, abstract of title and certification, per patent: $25.00.

(c) Library service (35 U.S.C. 13): For providing to libraries copies of all patents issued annually, per annum: $50.00.

(d) For list of all United States patents and statutory invention registrations in a subclass: $3.00.

(e) Uncertified statement as to status of the payment of maintenance fees due on a patent or expiration of a patent: $10.00.

(f) Uncertified copy of a non-United States patent document, per document: $25.00.

(g) Petitions for documents in a form other than that provided by this part, or in a form other than that generally provided by the Director, will be decided in accordance with the merits of each situation. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h) and, if the petition is granted, the documents will be provided at cost.

■ 7. Section 1.20 is revised to read as follows:

§ 1.20 Post issuance fees.

(a) For providing a certificate of correction for applicant's mistake (§ 1.323): $100.00.

(b) Processing fee for correcting inventorship in a patent (§ 1.324): $130.00.

(c) In reexamination proceedings:

(1) For filing a request for *ex parte* reexamination (§ 1.510(a)):

By a micro entity (§ 1.29)	$3,000.00
By a small entity (§ 1.27(a))	6,000.00
By other than a small or micro entity	12,000.00

(2) [Reserved]

(3) For filing with a request for reexamination or later presentation at any other time of each claim in independent form in excess of 3 and also in excess of the number of claims in independent form in the patent under reexamination:

By a micro entity (§ 1.29)	$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity	420.00

(4) For filing with a request for reexamination or later presentation at any other time of each claim (whether dependent or independent) in excess of 20 and also in excess of the number of claims in the patent under reexamination (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29)	$20.00

By a small entity (§ 1.27(a))	40.00
By other than a small or micro entity	80.00

(5) If the excess claims fees required by paragraphs (c)(3) and (4) of this section are not paid with the request for reexamination or on later presentation of the claims for which the excess claims fees are due, the fees required by paragraphs (c)(3) and (4) must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(6) For filing a petition in a reexamination proceeding, except for those specifically enumerated in §§ 1.550(i) and 1.937(d):

By a micro entity (§ 1.29)	$485.00
By a small entity (§ 1.27(a))	970.00
By other than a small or micro entity	1,940.00

(7) For a refused request for *ex parte* reexamination under § 1.510 (included in the request for *ex parte* reexamination fee at § 1.20(c)(1)):

By a micro entity (§ 1.29)	$900.00
By a small entity (§ 1.27(a))	1,800.00
By other than a small or micro entity	3,600.00

(d) For filing each statutory disclaimer (§ 1.321):

By other than a small or micro entity	$160.00

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years, the fee being due by three years and six months after the original grant:

By a micro entity (§ 1.29)	$400.00
By a small entity (§ 1.27(a))	800.00
By other than a small or micro entity	1,600.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years, the fee being due by seven years and six months after the original grant:

By a micro entity (§ 1.29)	$900.00
By a small entity (§ 1.27(a))	1,800.00
By other than a small or micro entity	3,600.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years, the fee being due by eleven years and six months after the original grant:

By a micro entity (§ 1.29)	$1,850.00
By a small entity (§ 1.27(a))	3,700.00
By other than a small or micro entity	7,400.00

(h) Surcharge for paying a maintenance fee during the six-month grace period following the expiration of three years and six months, seven years and six months, and eleven years and six months after the date of the original grant of a patent based on an application filed on or after December 12, 1980:

(1) By a micro entity (§ 1.29) ..	$40.00
(2) By a small entity (§ 1.27(a))	80.00
(3) By other than a small or micro entity	160.00

(i) Surcharge for accepting a maintenance fee after expiration of a patent for non-timely payment of a maintenance fee where the delay in payment is shown to the satisfaction of the Director to have been—

(1) Unavoidable:

By a micro entity (§ 1.29)	$175.00
By a small entity (§ 1.27(a))	350.00
By other than a small or micro entity	700.00

(2) Unintentional:

By a micro entity (§ 1.29)	$410.00
By a small entity (§ 1.27(a))	820.00
By other than a small or micro entity	1,640.00

(j) For filing an application for extension of the term of a patent

(1) Application for extension under § 1.740: $1,120.00.

(2) Initial application for interim extension under § 1.790: $420.00.

(3) Subsequent application for interim extension under § 1.790: $220.00.

(k) In supplemental examination proceedings:

(1) For processing and treating a request for supplemental examination:

By a micro entity (§ 1.29)	$1,100.00
By a small entity (§ 1.27(a))	2,200.00
By other than a small or micro entity	4,400.00

(2) For *ex parte* reexamination ordered as a result of a supplemental examination proceeding:

By a micro entity (§ 1.29)	$3,025.00
By a small entity (§ 1.27(a))	6,050.00
By other than a small or micro entity	12,100.00

(3) For processing and treating, in a supplemental examination proceeding, a non-patent document over 20 sheets in length, per document:

(i) Between 21 and 50 sheets:

By a micro entity (§ 1.29)	$45.00
By a small entity (§ 1.27(a))	90.00
By other than a small or micro entity	180.00

(ii) For each additional 50 sheets or a fraction thereof:

By a micro entity (§ 1.29)	$70.00
By a small entity (§ 1.27(a))	140.00
By other than a small or micro entity	280.00

■ 8. Section 1.21 is amended by:

■ a. Revising paragraph (a);
■ b. Removing and reserving paragraph (d);
■ c. Revising paragraph (e);
■ d. Revising paragraphs (g) through (k); and
■ e. Revising paragraph (n).

The revisions read as follows:

§ 1.21 Miscellaneous fees and charges.

* * * * *

(a) Registration of attorneys and agents:

(1) For admission to examination for registration to practice:

(i) Application Fee (non-refundable): $40.00.

(ii) Registration examination fee.

(A) For test administration by commercial entity: $200.00.

(B) For test administration by the USPTO: $450.00.

(2) On registration to practice or grant of limited recognition under § 11.9(b) or (c): $100.00.

(3) [Reserved]

(4) For certificate of good standing as an attorney or agent: $10.00.

(i) Suitable for framing: $20.00.

(ii) [Reserved]

(5) For review of decision:

(i) By the Director of Enrollment and Discipline under § 11.2(c): $130.00.

(ii) Of the Director of Enrollment and Discipline under § 11.2(d): $130.00.

(6) [Reserved]

(7) Annual practitioner maintenance fee for registered attorney or agent.

(i) Active Status: $120.00.

(ii) Voluntary Inactive Status: $25.00.

(iii) Fee for requesting restoration to active status from voluntary inactive status: $50.00.

(iv) Balance due upon restoration to active status from voluntary inactive status: $100.00.

(8) Annual practitioner maintenance fee for individual granted limited recognition: $120.00.

(9)(i) Delinquency fee: $50.00.

(ii) Administrative reinstatement fee: $100.00.

(10) On application by a person for recognition or registration after disbarment or suspension on ethical grounds, or resignation pending disciplinary proceedings in any other jurisdiction; on application by a person for recognition or registration who is asserting rehabilitation from prior conduct that resulted in an adverse decision in the Office regarding the person's moral character; and on application by a person for recognition or registration after being convicted of a felony or crime involving moral turpitude or breach of fiduciary duty; on petition for reinstatement by a person excluded or suspended on ethical

grounds, or excluded on consent from practice before the Office: $1,600.00.

* * * * *

(e) International type search reports: For preparing an international type search report of an international type search made at the time of the first action on the merits in a national patent application: $40.00.

(g) Self-service copy charge, per page: $0.25.

(h) For recording each assignment, agreement, or other paper relating to the property in a patent or application, per property:

(1) If submitted electronically, on or after January 1, 2014: $0.00.

(2) If not submitted electronically: $40.00.

(i) Publication in Official Gazette: For publication in the Official Gazette of a notice of the availability of an application or a patent for licensing or sale: Each application or patent: $25.00.

(j) Labor charges for services, per hour or fraction thereof: $40.00.

(k) For items and services that the Director finds may be supplied, for which fees are not specified by statute or by this part, such charges as may be determined by the Director with respect to each such item or service: Actual cost.

* * * * *

(n) For handling an application in which proceedings are terminated pursuant to § 1.53(e): $130.00.

■ 9. Section 1.27 is amended by revising paragraph (c)(3) introductory text to read as follows:

§ 1.27 Definition of small entities and establishing status as a small entity to permit payment of small entity fees; when a determination of entitlement to small entity status and notification of loss of entitlement to small entity status are required; fraud on the Office.

* * * * *

(c) * * *

(3) Assertion by payment of the small entity basic filing, basic transmittal, basic national fee, or international search fee. The payment, by any party, of the exact amount of one of the small entity basic filing fees set forth in §§ 1.16(a), 1.16(b), 1.16(c), 1.16(d), 1.16(e), the small entity transmittal fee set forth in § 1.445(a)(1), the small entity international search fee set forth in § 1.445(a)(2) to a Receiving Office other than the United States Receiving Office in the exact amount established for that Receiving Office pursuant to PCT Rule 16, or the small entity basic national fee set forth in § 1.492(a), will be treated as a written assertion of entitlement to small entity status even if the type of basic filing, basic transmittal, or basic national fee is inadvertently selected in error.

* * * * *

■ 10. Section 1.48 is amended by adding paragraph (c) to read as follows:

§ 1.48 Correction of inventorship pursuant to 35 U.S.C. 116 or correction of the name or order of names in a patent application, other than a reissue application.

* * * * *

(c) Any request to correct or change the inventorship under paragraph (a) of this section filed after the Office action on the merits has been given or mailed in the application must also be accompanied by the fee set forth in § 1.17(d), unless the request is accompanied by a statement that the request to correct or change the inventorship is due solely to the cancelation of claims in the application.

* * * * *

■ 11. Section 1.445 is amended by revising paragraph (a) introductory text and paragraphs (a)(1)(i), (a)(2) through (4), and (b) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by law or by the Director under the authority of 35 U.S.C. 376:

(1) * * *

(i) A basic portion:

(A) For a transmittal fee paid on or after January 1, 2014:

By a micro entity (§ 1.29)	$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity	240.00

(B) For a transmittal fee paid before January 1, 2014: $240.00.

* * * * *

(2) A search fee (*see* 35 U.S.C. 361(d) and PCT Rule 16):

(i) For a search fee paid on or after January 1, 2014:

By a micro entity (§ 1.29)	$520.00
By a small entity (§ 1.27(a))	1,040.00
By other than a small or micro entity	2,080.00

(ii) For a search fee paid before January 1, 2014: $2,080.00.

(3) A supplemental search fee when required, per additional invention:

(i) For a supplemental search fee paid on or after January 1, 2014:

By a micro entity (§ 1.29)	$520.00
By a small entity (§ 1.27(a))	1,040.00
By other than a small or micro entity	2,080.00

(ii) For a supplemental search fee paid before January 1, 2014: $2,080.00.

(4) A fee equivalent to the transmittal fee in paragraph (a)(1) of this section that would apply if the USPTO was the Receiving Office for transmittal of an international application to the International Bureau for processing in its capacity as a Receiving Office (PCT Rule 19.4):

(i) For a fee equivalent to the transmittal fee in paragraph (a)(1) of this section filed on or after January 1, 2014:

By a micro entity (§ 1.29)	$60.00
By a small entity (§ 1.27(a))	120.00
By other than a small or micro entity	240.00
(ii) For a fee equivalent to the transmittal fee in paragraph (a)(1) of this section filed before January 1, 2014	240.00

(b) The international filing fee shall be as prescribed in PCT Rule 15.

■ 12. Section 1.482 is revised to read as follows:

§ 1.482 International preliminary examination fees.

(a) The following fees and charges for international preliminary examination are established by the Director under the authority of 35 U.S.C. 376:

(1) The following preliminary examination fee is due on filing the Demand:

(i) If an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

(A) For an international search fee filed on or after January 1, 2014:

By a micro entity (§ 1.29)	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

(B) For an international search fee filed before January 1, 2014: $600.00.

(ii) If the International Searching Authority for the international application was an authority other than the United States Patent and Trademark Office:

(A) For an international search fee filed on or after January 1, 2014:

By a micro entity (§ 1.29)	$190.00
By a small entity (§ 1.27(a))	380.00
By other than a small or micro entity	760.00

(B) For an international search fee filed before January 1, 2014: $750.00.

(2) An additional preliminary examination fee when required, per additional invention:

(i) For an additional preliminary examination fee filed on or after January 1, 2014:

By a micro entity (§ 1.29)	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

(ii) For an additional preliminary examination fee filed before January 1, 2014: $600.00.

(b) The handling fee is due on filing the Demand and shall be prescribed in PCT Rule 57.

■ 13. Section 1.492 is revised to read as follows:

§ 1.492 National stage fees.

The following fees and charges are established for international applications entering the national stage under 35 U.S.C. 371:

(a) The basic national fee for an international application entering the national stage under 35 U.S.C. 371:

By a micro entity (§ 1.29)	$70.00
By a small entity (§ 1.27(a))	140.00
By other than a small or micro entity	280.00

(b) Search fee for an international application entering the national stage under 35 U.S.C. 371:

(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33(1) to (4) have been satisfied for all of the claims presented in the application entering the national stage:

By a micro entity (§ 1.29)	$0.00
By a small entity (§ 1.27(a))	0.00
By other than a small or micro entity	0.00

(2) If the search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a micro entity (§ 1.29)	$30.00
By a small entity (§ 1.27(a))	60.00
By other than a small or micro entity	120.00

(3) If an international search report on the international application has been prepared by an International Searching Authority other than the United States International Searching Authority and is provided, or has been previously communicated by the International Bureau, to the Office:

By a micro entity (§ 1.29)	$120.00
By a small entity (§ 1.27(a))	240.00
By other than a small or micro entity	480.00

(4) In all situations not provided for in paragraphs (b)(1), (2), or (3) of this section:

By a micro entity (§ 1.29)	$150.00
By a small entity (§ 1.27(a))	300.00
By other than a small or micro entity	600.00

(c) The examination fee for an international application entering the national stage under 35 U.S.C. 371:

(1) If an international preliminary examination report on the international application prepared by the United States International Preliminary Examining Authority or a written opinion on the international application prepared by the United States International Searching Authority states that the criteria of novelty, inventive step (non-obviousness), and industrial applicability, as defined in PCT Article 33 (1) to (4) have been satisfied for all of the claims presented in the application entering the national stage:

By a micro entity (§ 1.29)	$0.00
By a small entity (§ 1.27(a))	0.00
By other than a small or micro entity	0.00

(2) In all situations not provided for in paragraph (c)(1) of this section:

By a micro entity (§ 1.29) $180.00.

By a small entity (§ 1.27(a))	$360.00
By other than a small or micro entity	720.00

(d) In addition to the basic national fee, for filing or on later presentation at any other time of each claim in independent form in excess of 3:

By a micro entity (§ 1.29)	$105.00
By a small entity (§ 1.27(a))	210.00
By other than a small or micro entity	420.00

(e) In addition to the basic national fee, for filing or on later presentation at any other time of each claim (whether dependent or independent) in excess of 20 (note that § 1.75(c) indicates how multiple dependent claims are considered for fee calculation purposes):

By a micro entity (§ 1.29)	$20.00
By a small entity (§ 1.27(a))	40.00
By other than a small or micro entity	80.00

(f) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim, per application:

By a micro entity (§ 1.29)	$195.00
By a small entity (§ 1.27(a))	390.00
By other than a small or micro entity	780.00

(g) If the excess claims fees required by paragraphs (d) and (e) of this section and multiple dependent claim fee required by paragraph (f) of this section are not paid with the basic national fee or on later presentation of the claims for which excess claims or multiple dependent claim fees are due, the fees required by paragraphs (d), (e), and (f) of this section must be paid or the claims canceled by amendment prior to the expiration of the time period set for reply by the Office in any notice of fee deficiency in order to avoid abandonment.

(h) Surcharge for filing any of the search fee, the examination fee, or the oath or declaration after the date of the commencement of the national stage (§ 1.491(a)) pursuant to § 1.495(c):

By a micro entity (§ 1.29)	$35.00
By a small entity (§ 1.27(a))	70.00
By other than a small or micro entity	140.00

(i) For filing an English translation of an international application or any annexes to an international preliminary examination report later than thirty months after the priority date (§ 1.495(c) and (e)):

By a micro entity (§ 1.29)	$35.00
By a small entity (§ 1.27(a))	70.00
By other than a small or micro entity	140.00

(j) Application size fee for any international application, the specification and drawings of which exceed 100 sheets of paper, for each additional 50 sheets or fraction thereof:

By a micro entity (§ 1.29)	$100.00
By a small entity (§ 1.27(a))	200.00
By other than a small or micro entity	400.00

PART 41—PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 14. The authority citation for part 41 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 3(a)(2)(A), 21, 23, 32, 41, 134, 135, and Public Law 112–29.

■ 15. Section 41.20 is revised to read as follows:

§ 41.20 Fees.

(a) *Petition fee.* The fee for filing a petition under this part is: $400.00.

(b) *Appeal fees.* (1) For filing a notice of appeal from the examiner to the Patent Trial and Appeal Board:

By a micro entity (§ 1.29)	$200.00
By a small entity (§ 1.27(a))	400.00
By other than a small or micro entity	800.00

(2)(i) For filing a brief in support of an appeal in an application or *ex parte* reexamination proceeding: $0.00.

(ii) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal in an *inter partes* reexamination proceeding:

By a micro entity (§ 1.29)	$500.00
By a small entity (§ 1.27(a))	1,000.00
By other than a small or micro entity	2,000.00

(3) For filing a request for an oral hearing before the Board in an appeal under 35 U.S.C. 134:

By a micro entity (§ 1.29)	$325.00

By a small entity (§ 1.27(a))	650.00
By other than a small or micro entity	1,300.00

(4) In addition to the fee for filing a notice of appeal, for forwarding an appeal in an application or *ex parte* reexamination proceeding to the Board:

By a micro entity (§ 1.29)	$500.00
By a small entity (§ 1.27(a))	1,000.00
By other than a small or micro entity	2,000.00

■ 16. Section 41.37 is amended by revising paragraphs (a) and (b) to read as follows:

§ 41.37 Appeal brief.

(a) *Timing.* Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31. The appeal brief fee in an application or *ex parte* reexamination proceeding is $0.00, but if the appeal results in an examiner's answer, the appeal forwarding fee set forth in § 41.20(b)(4) must be paid within the time period specified in § 41.48 to avoid dismissal of an appeal.

(b) *Failure to file a brief.* On failure to file the brief within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

* * * * *

■ 17. Section 41.45 is added to read as follows:

§ 41.45 Appeal forwarding fee.

(a) *Timing.* Appellant in an application or *ex parte* reexamination proceeding must pay the fee set forth in § 41.20(b)(4) within the later of two months from the date of either the examiner's answer, or a decision refusing to grant a petition under § 1.181 of this chapter to designate a new ground of rejection in an examiner's answer.

(b) *Failure to pay appeal forwarding fee.* On failure to fee set forth in § 41.20(b)(4) within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c) *Extensions of time.* Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time period set forth in this section. *See* § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for *ex parte* reexamination proceedings.

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 18. The authority citation for part 42 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41,135, 311, 312, 316, 321–326 and Public Law 112–29.

■ 19. Section 42.15 is revised to read as follows:

§ 42.15 Fees.

(a) On filing a petition for *inter partes* review of a patent, payment of the following fees are due:

(1) *Inter Partes* Review request fee: $9,000.00.

(2) *Inter Partes* Review Post-Institution fee: $14,000.00.

(3) In addition to the *Inter Partes* Review request fee, for requesting review of each claim in excess of 20: $200.00.

(4) In addition to the *Inter Partes* Post-Institution request fee, for requesting review of each claim in excess of 15: $400.00.

(b) On filing a petition for post-grant review or covered business method patent review of a patent, payment of the following fees are due:

(1) Post-Grant or Covered Business Method Patent Review request fee: $12,000.00.

(2) Post-Grant or Covered Business Method Patent Review Post-Institution fee: $18,000.00.

(3) In addition to the Post-Grant or Covered Business Method Patent Review request fee, for requesting review of each claim in excess of 20: $250.00.

(4) In addition to the Post-Grant or Covered Business Method Patent Review request fee Post-Institution request fee, for requesting review of each claim in excess of 15: $550.00.

(c) On the filing of a petition for a derivation proceeding, payment of the following fees is due:

(1) Derivation petition fee: $400.00.

(d) Any request requiring payment of a fee under this part, including a written request to make a settlement agreement available: $400.00.

Dated: January 11, 2013.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2013–00819 Filed 1–17–13; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

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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