AUTHENTICATED
U.S. GOVERNMENT
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FEDERAL REGISTER

Vol. 79 Thursday,

No. 34 February 20, 2014

Pages 9621–9854

OFFICE OF THE FEDERAL REGISTER

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

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

National Endowment for the Humanities

Institute of Museum and Library Services

45 CFR Part 1100

RIN 3135–AA26; 3136–AA31; 3137–AA23

Statement for the Guidance of the Public—Organization, Procedure and Availability of Information

AGENCY: National Endowment for the Arts, National Endowment for the Humanities, and Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

ACTION: Final rule.

SUMMARY: The National Endowment for the Arts (NEA), the National Endowment for the Humanities (NEH), and the Institute of Museum and Library Services (IMLS) are amending their joint Freedom of Information Act (FOIA) regulations, to remove any reference to the NEH, the Federal Council on the Arts and the Humanities (FCAH), an agency for which the NEH provides legal counsel, and the IMLS. The NEA, the NEH and the IMLS are amending these joint regulations because each agency has adopted or plans to adopt its own separate FOIA regulations.

DATES: *Effective Date:* March 24, 2014.

FOR FURTHER INFORMATION CONTACT: Andrew Christopher, Assistant General Counsel, Institute of Museum and Library Services, 202–653–4712.

SUPPLEMENTARY INFORMATION: The NEA, the NEH, the IMLS, and the FCAH make up the National Foundation on the Arts and Humanities (Foundation). The Foundation was established by the National Foundation on the Arts and Humanities Act of 1965, 20 U.S.C. 951 *et seq.* The NEA, the NEH (for itself and on behalf of the FCAH), and the former Institute of Museum Services (now, the IMLS) last revised the joint regulations on December 21, 1987. Each of these agencies has decided to issue separate FOIA regulations or plans to adopt its own separate FOIA regulations; therefore, they are amending 45 CFR part 1100. Concurrently with this amendment, NEH has adopted new FOIA regulations for itself and the FCAH in 45 CFR part 1171, and IMLS has adopted new FOIA regulations for itself in 45 CFR part 1184. NEA intends to propose new FOIA regulations for itself in 45 CFR part 1160. On July 8, 2013, the Foundation published a proposed rule in the **Federal Register** (78 FR 40664) and requested public comments on the proposed rule. The Foundation received one public comment, which was taken into consideration before adopting the final rule.

E.O. 12866, Regulatory Review

This rule is not a ''significant regulatory action'' under Executive Order 12866 and therefore is not subject to Office of Management and Budget (OMB) review.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), NEA, NEH, and IMLS have certified that this rule will not have a significant economic impact on a substantial number of small entities. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records that agencies process for requesters. Thus, fees assessed for processing FOIA requests are nominal.

Unfunded Mandates Reform Act of 1995

For purposes of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, the rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804, as amended. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

NEA, NEH, and IMLS have determined that the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* does not apply to the rule because the rule does not contain information collection requirements that require OMB approval.

List of Subjects in 45 CFR Part 1100

Administrative practice and procedure, Freedom of Information.

For the reasons stated in the preamble, the NEA, the NEH (for itself and on behalf of the FCAH), and the IMLS amend 45 CFR part 1100 as follows:

PART 1100—STATEMENT FOR THE GUIDANCE OF THE PUBLIC—ORGANIZATION, PROCEDURE AND AVAILABILITY OF INFORMATION

■ 1. The authority citation for part 1100 continues to read as follows:

Authority: 5 U.S.C. 552, as amended by Pub. L. 99–570, 100 Stat. 3207.

■ 2. In § 1100.1 revise paragraph (a) to read as follows:

§ 1100.1 Definitions.

(a) *Agency* means the National Endowment for the Arts.

* * * * *

■ 3. Revise § 1100.2 to read as follows:

§ 1100.2 Organization.

The National Foundation on the Arts and the Humanities was established by the National Foundation on the Arts and the Humanities Act of 1965, 20 U.S.C. 951 *et seq.* The Foundation is composed of the National Endowment for the Arts, the National Endowment for the Humanities, the Institute of Museum

and Library Services, and the Federal Council on the Arts and the Humanities. The Institute of Museum and Library Services became a part of the National Foundation on the Arts and the Humanities pursuant to the Museum and Library Services Act, as amended (20 U.S.C. 9102). Each Endowment is headed by a Chairman and has an advisory national council composed of 26 presidential appointees. The Institute of Museum and Library Services is headed by a Director and has a National Museum and Library Services Board composed of 20 presidential appointees, the Director, and IMLS's Deputy Directors for the Offices of Library Services, and Museum Services. The Federal Council on the Arts and the Humanities, comprised of Executive branch officials and appointees of the legislative branch, is authorized to make agreements to indemnify against loss or damage for certain exhibitions and advise on arts and humanities matters. The National Endowment for the Humanities, the Federal Council on the Arts and Humanities, and the Institute of Museum and Library Services no longer follow the regulations under this part. The procedures for disclosing records of the National Endowment for the Humanities and the Federal Council on the Arts and the Humanities are available at 45 CFR part 1171. The procedures for disclosing records of the Institute of Museum and Library Services are available at 45 CFR part 1184.

■ 4. Revise § 1100.3 to read as follows:

§ 1100.3 Availability of information to the public.

(a) Descriptive brochures of the organization, programs, and function of the National Endowment for the Arts are available upon request. Inquiries involving work of the National Endowment for the Arts should be addressed to the National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506. The telephone number of the National Endowment for the Arts is (202) 682–5400.

(b) The head of the National Endowment for the Arts is responsible for the effective administration of the Freedom of Information Act. The head of the National Endowment for the Arts pursuant to this responsibility hereby directs that every effort be expended to facilitate service to the public with respect to the obtaining of information and records.

(c) Requests for access to records of the National Endowment for the Arts may be filed by mail with the General Counsel of the National Endowment for the Arts or by email at *FOIA@arts.gov.* All requests should reasonably describe the record or records sought. Requests submitted should be clearly identified as being made pursuant to the Freedom of Information Act.

■ 5. Revise § 1100.4 to read as follows:

§ 1100.4 Current index.

The National Endowment for the Arts shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated and which is required to be made available pursuant to 5 U.S.C. 552(a)(1) and (2). Publication and distribution of such indices has been determined by the Foundation to be unnecessary and impracticable. The indices will be provided upon request at a cost not to exceed the direct cost of the duplication.

■ 6. In § 1100.5 revise paragraphs (a), (b)(1), and the first sentence in the introductory text of paragraph (c) to read as follows:

§ 1100.5 Agency procedures for handling requests for documents.

(a) Upon receiving a request for documents in accordance with the rules of this part, the General Counsel or respective Assistant General Counsel serving as the Freedom of Information Act Officer of the National Endowment for the Arts shall determine whether or not the request shall be granted in whole or in part.

* * * * *

(b)(1) Any party whose request for documents has been denied in whole or in part may file an appeal no later than ten (10) working days following receipt of the notification of denial. Appeals must be addressed to the Chairman, National Endowment for the Arts, Washington, DC 20506.

* * * * *

(c) In unusual circumstances, the time limits prescribed to determine a request for documents with respect to initial actions or actions on appeal may be extended by written notice from the General Counsel or respective Assistant General Counsel serving as the Freedom of Information Act Officer of the National Endowment for the Arts. * * * * * * * * *

■ 7. Revise § 1100.7 introductory text and paragraph (a) to read as follows:

§ 1100.7 Foundation report of actions.

On or before March 1 of each calendar year, the National Endowment for the Arts shall submit a report of its activities with regard to public information requests during the preceding calendar year to the Speaker of the House of Representatives and to the President of the Senate. The report shall include:

(a) The number of determinations made by National Endowment for the Arts not to comply with requests for records made to the agency under the provisions of this part and the reasons for each such determination;

* * * * *

India Pinkney,

General Counsel, National Endowment for the Arts.

Michael P. McDonald,

General Counsel, National Endowment for the Humanities.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services.

[FR Doc. 2014–03544 Filed 2–19–14; 8:45 am]

BILLING CODE 7537–01–P; 7536–01–P; 7036–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 27, 73, and 74

[MM Docket No. 93–177; FCC 13–115]

An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's Third Report and Order; An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification. This document is consistent with the *Third Report and Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the requirements.

DATES: 47 CFR 1.30002, 1.30003, 1.30004, 73.875, 73.1675, and 73.1690, are effective February 20, 2014.

Applicability date: The applicability date of the amendments to 47 CFR 1.30000, 1.30001, 22.371, 27.63, 73.45, 73.316, 73.685, 73.1692, 73.6025, and 74.1237 published November 5, 2013 (78 FR 66288) is February 20, 2014.

FOR FURTHER INFORMATION CONTACT: Peter Doyle, Chief, Media Bureau,

Audio Division, at (202) 418–2789, or email *Peter.Doyle@fcc.gov <mailto:Peter.Doyle@fcc.gov>,* or Susan Crawford, Assistant Division Chief, Media Bureau, Audio Division, (202) 418–2700, or email *Susan.Crawford@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that, on February 10, 2014, OMB approved the new information collection requirements contained in the Commission's *Third Report and Order,* FCC 13–115, published at 78 FR 66288, November 5, 2013. The OMB Control Number is 3060–1121. The Commission publishes this notice as an announcement of the effective date of the requirements. If you have any comments on the burden estimates listed below, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street SW., Washington, DC 20554. Please include the OMB Control Number, 3060–1121, in your correspondence. The Commission will also accept your comments via the Internet if you send them to *PRA@fcc.gov <mailto:PRA@fcc.gov>*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov <mailto:fcc504@fcc.gov>* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received OMB approval on February 10, 2014, for the new information collection requirements contained in the Commission's rules at 47 CFR 1.30002, 1.30003, 1.30004, 73.875, 73.1675, and 73.1690.

Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–1121.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Pub. L. 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–1121.

OMB Approval Date: February 10, 2014.

OMB Expiration Date: February 28, 2017.

Title: Sections 1.30002, 1.30003, 1.30004, 73.875, 73.1657 and 73.1690, Disturbance of AM Broadcast Station Antenna Patterns.

Form No.: Not applicable.

Respondents: Business or other for-profit entities and Not-for-profit Institutions.

Number of Respondents and Responses: 1,195 respondents and 1,195 responses.

Estimated Time per Response: 1–2 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,960 hours.

Total Annual Cost: $1,078,200.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On August 14, 2013, the Commission adopted the Third Report and Order and Second Order on Reconsideration in the matter of An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 13–115. In the Third Report and Order in this proceeding, the Commission harmonized and streamlined the Commission's rules regarding tower construction near AM stations.

In AM radio, the tower itself functions as the antenna. Consequently, a nearby tower may become an unintended part of the AM antenna system, reradiating the AM signal and distorting the authorized AM radiation pattern. The Commission's old rules contained several sections concerning tower construction near AM antennas that were intended to protect AM stations from the effects of such tower construction, specifically, Sections 73.1692, 22.371, and 27.63. These old rule sections imposed differing requirements on the broadcast and wireless entities, although the issue is the same regardless of the types of antennas mounted on a tower. Other rule parts, such as Part 90 and Part 24, entirely lacked provisions for protecting AM stations from possible effects of nearby tower construction. In the Third Report and Order the Commission adopted a uniform set of rules applicable to all services, thus establishing a single protection scheme regarding tower construction near AM tower arrays. The Third Report and Order also designates ''moment method'' computer modeling as the principal means of determining whether a nearby tower affects an AM radiation pattern. This serves to replace time-consuming direct measurement procedures with a more efficient computer modeling methodology that is reflective of current industry practice.

New Information Collection Requirements

47 CFR 1.30002(a) requires a proponent of construction or modification of a tower within a specified distance of a nondirectional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(b) requires a proponent of construction or modification of a tower within a specified distance of a directional AM station, and also exceeding a specified height, to notify the AM station at least 30 days in advance of the commencement of construction. If the tower construction or modification would distort the AM pattern, the proponent shall be responsible for the installation and maintenance of detuning equipment.

47 CFR 1.30002(c) states that proponents of tower construction or alteration near an AM station shall use moment method modeling, described in § 73.151(c), to determine the effect of the construction or alteration on an AM radiation pattern.

47 CFR 1.30002(f) states that, with respect to an AM station that was authorized pursuant to a directional proof of performance based on field strength measurements, the proponent of the tower construction or modification may, in lieu of the study described in § 1.30002(c), demonstrate through measurements taken before and after construction that field strength values at the monitoring points do not exceed the licensed values. In the event that the pre-construction monitoring point values exceed the licensed values, the proponent may demonstrate that post-construction monitoring point values do not exceed the pre-

construction values. Alternatively, the AM station may file for authority to increase the relevant monitoring point value after performing a partial proof of performance in accordance with § 73.154 to establish that the licensed radiation limit on the applicable radial is not exceeded.

47 CFR 1.30002(g) states that tower construction or modification that falls outside the criteria described in paragraphs § 1.30002(a) and (b) is presumed to have no significant effect on an AM station. In some instances, however, an AM station may be affected by tower construction notwithstanding the criteria set forth in paragraphs § 1.30002(a) and (b). In such cases, an AM station may submit a showing that its operation has been affected by tower construction or alteration. Such showing shall consist of either a moment method analysis or field strength measurements. The showing shall be provided to (i) the tower proponent if the showing relates to a tower that has not yet been constructed or modified and otherwise to the current tower owner, and (ii) to the Commission, within two years after the date of completion of the tower construction or modification. If necessary, the Commission shall direct the tower proponent to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(h) states that an AM station may submit a showing that its operation has been affected by tower construction or modification commenced or completed prior to or on the effective date of the rules adopted in this Part pursuant to MM Docket No. 93–177. Such a showing shall consist of either a moment method analysis or of field strength measurements. The showing shall be provided to the current owner and the Commission within one year of the effective date of the rules adopted in this Part. If necessary, the Commission shall direct the tower owner, if the tower owner holds a Commission authorization, to install and maintain any detuning apparatus necessary to restore proper operation of the AM antenna.

47 CFR 1.30002(i) states that a Commission applicant may not propose, and a Commission licensee or permittee may not locate, an antenna on any tower or support structure, whether constructed before or after the effective date of these rules, that is causing a disturbance to the radiation pattern of the AM station, as defined in paragraphs § 1.30002(a) and (b), unless the applicant, licensee, or tower owner completes the new study and notification process and takes appropriate ameliorative action to correct any disturbance, such as detuning the tower, either prior to construction or at any other time prior to the proposal or antenna location.

47 CFR 1.30003(a) states that when antennas are installed on a nondirectional AM tower the AM station shall determine operating power by the indirect method (see § 73.51). Upon the completion of the installation, antenna impedance measurements on the AM antenna shall be made. If the resistance of the AM antenna changes, an application on FCC Form 302–AM (including a tower sketch of the installation) shall be filed with the Commission for the AM station to return to direct power measurement. The Form 302–AM shall be filed before or simultaneously with any license application associated with the installation.

47 CFR 1.30003(b) requires that, before antennas are installed on a tower in a directional AM array, the proponent shall notify the AM station so that, if necessary, the AM station may determine operating power by the indirect method (see § 73.51) and request special temporary authority pursuant to § 73.1635 to operate with parameters at variance. For AM stations licensed via field strength measurements (see § 73.151(a)), a partial proof of performance (as defined by § 73.154) shall be conducted both before and after construction to establish that the AM array will not be and has not been adversely affected. For AM stations licensed via a moment method proof (see § 73.151(c)), the proof procedures set forth in § 73.151(c) shall be repeated. The results of either the partial proof of performance or the moment method proof shall be filed with the Commission on Form 302–AM before or simultaneously with any license application associated with the installation.

47 CFR 1.30004(a) requires proponents of proposed tower construction or modification to an existing tower near an AM station that are subject to the notification requirement in §§ 1.30002 to provide notice of the proposed tower construction or modification to the AM station at least 30 days prior to commencement of the planned tower construction or modification. Notification to an AM station and any responses may be oral or written. If such notification and/or response is oral, the party providing such notification or response must supply written documentation of the communication and written documentation of the date of communication upon request of the other party to the communication or the Commission. Notification must include the relevant technical details of the proposed tower construction or modification, and, at a minimum, also include the following: Proponent's name and address; coordinates of the tower to be constructed or modified; physical description of the planned structure; and results of the analysis showing the predicted effect on the AM pattern, if performed.

47 CFR 1.30004(b) requires that a response to a notification indicating a potential disturbance of the AM radiation pattern must specify the technical details and must be provided to the proponent within 30 days.

47 CFR 1.30004(d) states that if an expedited notification period (less than 30 days) is requested by the proponent, the notification shall be identified as ''expedited,'' and the requested response date shall be clearly indicated.

47 CFR 1.30004(e) states that in the event of an emergency situation, if the proponent erects a temporary new tower or makes a temporary significant modification to an existing tower without prior notice, the proponent must provide written notice to potentially affected AM stations within five days of the construction or modification of the tower and cooperate with such AM stations to remedy any pattern distortions that arise as a consequence of such construction.

47 CFR 73.875(c) requires an LPFM applicant to submit an exhibit demonstrating compliance with § 1.30003, as applicable, with any modification of license application filed solely pursuant to paragraphs (c)(1) and (c)(2) of this section, where the installation is on or near an AM tower, as defined in § 1.30002.

47 CFR 73.1675(c)(1) states that where an FM, TV, or Class A TV licensee or permittee proposes to mount an auxiliary facility on an AM tower, it must also demonstrate compliance with § 1.30003 in the license application.

47 CFR 73.1690(c) requires FM, TV, or Class A TV station applicants to submit an exhibit demonstrating compliance with § 1.30003, as applicable, with a modification of license application, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located on or near an AM tower, as defined in § 1.30002.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–03608 Filed 2–19–14; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 120723270–4100–02]

RIN 0648–BC39

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 95 to the Fishery Management Plan for Groundfish

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement Amendment 95 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). These regulations modify halibut prohibited species catch (PSC) management in the Gulf of Alaska (GOA) by establishing halibut PSC limits for the GOA in Federal regulation and reducing the GOA halibut PSC limits for the trawl and hook-and-line gear sectors. The reduction to the trawl gear PSC limit also proportionately reduces a subset of trawl halibut PSC limits (also called sideboard limits) for American Fisheries Act, Amendment 80, and Central GOA Rockfish Program vessels. These regulations also incorporate three measures to minimize adverse economic impacts on fishing industry sectors. First, the reductions for these sectors will be phased-in over 3 years. Second, this action allows the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the subsequent season. Third, this action combines management of the deep-water and shallow-water halibut PSC limits from May 15 to June 30, which allows the aggregate halibut PSC limit to be used in either the deep-water or shallow-water fishery. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and other applicable laws.

DATES: Effective March 24, 2014.

ADDRESSES: Electronic copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), Finding of No Significant Impact (FONSI) prepared for this action, collectively ''the Analysis,'' FMP, and proposed rule are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Obren Davis or Rachel Baker, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Regulatory Authority

NMFS establishes regulations to implement Amendment 95 to the FMP. NMFS manages the GOA groundfish fisheries in the exclusive economic zone off Alaska under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at subpart H of 50 CFR part 600. The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982.

Background

NMFS published a Notice of Availability for Amendment 95 on August 29, 2013 (78 FR 53419), with comments invited through October 28, 2013. NMFS published a proposed rule to implement Amendment 95 on September 17, 2013 (78 FR 57106) with comments invited through October 17, 2013. NMFS approved Amendment 95 on November 27, 2013. NMFS received comments on the FMP amendment and the proposed rule from 29 different entities. A summary of these comments and the responses by NMFS are provided under ''Response to Comments'' below. Those comments did not result in any modification to the proposed rule.

A detailed review of the provisions of Amendment 95, the proposed regulations, and the rationale for these regulations is provided in the preamble to the proposed rule (78 FR 57106, September 17, 2013) and is not repeated here. In addition to the **Federal Register**, the proposed rule is available from the NMFS Alaska Region Web site (see **ADDRESSES**). The preamble to this final rule provides a brief review of the regulatory changes made by this final rule.

NMFS manages halibut PSC in groundfish fisheries under the authority of the Magnuson-Stevens Act. Prohibited species catch in the GOA is catch that may not be retained unless required under Section 3.6 of the FMP. The FMP and implementing regulations currently authorize the Council to recommend, and NMFS to approve, annual halibut PSC limits as a component of the proposed and final groundfish harvest specifications. Consistent with the Magnuson-Stevens Act's National Standard 1 and National Standard 9, NMFS uses halibut PSC limits to minimize halibut bycatch in the groundfish fisheries to the extent practicable, while achieving, on a continuing basis, the optimum yield from the groundfish fisheries. The use of halibut PSC limits in the groundfish fisheries reduces halibut bycatch and promotes conservation of the halibut resource.

A PSC limit is an apportioned, non-retainable amount of fish provided to a groundfish fishery to limit the bycatch of that prohibited species (i.e., halibut) in a fishery. NMFS establishes halibut PSC limits to constrain the amount of halibut bycatch in the groundfish fishery. As described in Section 3.6 of the FMP, when a halibut PSC limit is reached in a specific management area, further fishing with specific types of gear or modes of operation is prohibited by those who take their halibut PSC limit in that area. Thus, halibut PSC limits impose an upper-limit on halibut bycatch. Halibut bycatch primarily occurs in the trawl and hook-and-line groundfish fisheries, although it also is incurred by vessels using pot and jig gear. Halibut bycatch in the groundfish fisheries may affect commercial, sport, and subsistence halibut fishing opportunities by decreasing the amount of halibut available for those fisheries.

NMFS manages groundfish fisheries by closing directed fishing for a given species when a species' total allowable catch (TAC) or seasonal apportionment of a TAC is harvested. In addition, reaching an annual or seasonal trawl or hook-and-line halibut PSC limit results in closure of groundfish directed fisheries using that gear in the GOA for the remainder of the year or season, even if some of the groundfish TAC assigned to that gear for that fishery remains unharvested. NMFS manages halibut bycatch in the GOA by (1) establishing annual halibut PSC limits, and (2) apportioning those limits to fishery categories and seasons to accommodate halibut PSC needs in specific groundfish fisheries.

Historically, halibut PSC limits have been set during the annual groundfish harvest specifications process. The Council recommends proposed groundfish harvest specifications in October each year for the subsequent 2-year period. A 2-year harvest specification cycle allows harvest limits to be specified for a sufficient duration to ensure that catch limits are in place at the start of the second year. This allows fisheries to begin on January 1, pending the final publication of the subsequent set of harvest specifications. The proposed harvest specifications are published in the **Federal Register** for a 30-day comment period and final harvest specifications usually are published between mid-February and March of each year. The total annual halibut PSC limit in the GOA was set at 2,273 mt in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013). Of this amount, 1,973 mt is apportioned to trawl gear and 300 mt is apportioned to hook-and-line gear. This action reduces these limits, as described below under ''Actions Implemented by this Rule.''

Section 679.21(d)(5) authorizes NMFS to seasonally apportion the annual trawl and hook-and-line halibut PSC limits after consultation with the Council. The halibut PSC limits were most recently apportioned into five seasons for trawl gear and three seasons for the other hook-and-line fishery through the 2013 and 2014 GOA harvest specifications (78 FR 13162, February 26, 2013). During the annual harvest specifications process, the specific amount of halibut PSC limit is assigned to each of these seasons. The halibut PSC limit established for the demersal shelf rockfish (DSR) fishery in the eastern GOA management area is not subject to seasonal apportionment. Additional detail on the annual apportionment of halibut PSC limit by season and fishery is provided in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013).

Actions Implemented by This Rule

This action (1) establishes GOA halibut PSC limits in Federal regulation; (2) reduces the GOA halibut PSC limits for vessels using trawl and hook-and-line gear; (3) proportionately reduces trawl halibut PSC sideboard limits for American Fisheries Act (AFA), Amendment 80, and Central GOA Rockfish Program vessels; and (4) implements two management measures to modify the accounting of halibut PSC sideboard limits for Amendment 80 vessels and halibut PSC used by trawl vessels from May 15 through June 30. This action minimizes halibut PSC limits to the extent practicable consistent with National Standard 9, while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery. This action also supersedes the halibut PSC limits in the proposed 2014 and 2015 harvest specifications for the GOA (78 FR 74079, December 10, 2013).

Action 1: Establishment of GOA Halibut PSC Limits in Federal Regulation

This action incorporates the overall annual GOA halibut PSC limits for the trawl and hook-and-line sectors in Federal regulations at § 679.21. This replaces the process of establishing halibut PSC limits through the annual groundfish harvest specifications process. Since the GOA halibut PSC limits now are published in Federal regulations, they may only be modified by a regulatory amendment. Although this action establishes annual halibut PSC limits in Federal regulation, the Council and NMFS will continue to use the annual harvest specification process to apportion the trawl and hook-and-line sector's halibut PSC limits between fisheries and gear categories. The Council must consider the best available information when recommending these apportionments of halibut PSC limits consistent with existing regulations at § 679.21(d)(5).

Action 2: Reduction of the GOA Halibut PSC Limits for the Hook-and-Line and Trawl Sectors

This action reduces the GOA halibut PSC limits for vessels harvesting groundfish in the GOA. The GOA halibut PSC limit for each gear and fishery category is reduced from the annual halibut PSC limits specified in the proposed 2014 and 2015 harvest specifications for the GOA (78 FR 74079, December 10, 2013). These reductions apply to the 300 mt halibut PSC limit previously specified to the hook-and-line gear sector and the 1,973 mt halibut PSC limit previously specified to the trawl gear sector. Actual reductions vary by sector. The full reductions for the hook-and-line DSR fishery and the hook-and-line catcher/processor sector are implemented upon effectiveness of this rule. The reductions for the trawl sector and hook-and-line catcher vessel sectors are phased-in over 3 years. These halibut PSC limit reductions are described below.

This action reduces the PSC limits for the hook-and-line DSR fishery and the other hook-and-line sectors by different amounts. First, this action reduces the halibut PSC limit for the hook-and-line DSR fishery in the Southeast Outside District by 1 mt, from 10 mt in 2013, to 9 mt in 2014 and each year thereafter. Second, this action reduces the halibut PSC limit for the hook-and-line catcher/processor sector by 7 percent in 2014, and retains that level thereafter. Third, the halibut PSC limit for the other hook-and-line catcher vessel sector is reduced over 3 years, beginning with a 7-percent reduction in 2014, another 5-percent reduction in 2015, and an additional 3 percent in 2016. This results in a total reduction of 15 percent in 2016, compared to the 2013 halibut PSC limit, and the reduced limit is effective thereafter.

This action incorporates the existing other hook-and-line halibut PSC limit of 290 mt in regulation. That amount is the beginning basis for annually apportioning the other hook-and-line halibut PSC limit between the hook-and-line catcher vessel and catcher/processor sectors, using existing formulas that divide this limit between these two sectors (see (§ 679.21(d)(4)(iii)). These calculations are necessary to incorporate annual changes to the Pacific cod distribution between the Western and Central GOA management areas, which affects how the other hook-and-line halibut PSC limit is divided between the catcher vessel and catcher/processor sectors. Each sector's apportionment will then be reduced by the actual percentage reductions implemented by this action.

The trawl halibut PSC limit reductions implemented by this action are based on reductions from the currently specified trawl halibut PSC limit of 1,973 mt, as established in the final 2013 and 2014 harvest specifications for the GOA (78 FR 13162, February 26, 2013). Similar to the other hook-and-line catcher vessel sector, the halibut PSC limit for the trawl sector will be reduced by 15 percent and phased in over 3 years. The halibut PSC limit will be reduced by 7 percent in 2014, another 5 percent in 2015, and an additional 3 percent in 2016. This results in a total reduction of 15 percent in 2016 as compared to the 2013 halibut PSC limit. This new PSC limit will remain in effect each year thereafter.

The trawl halibut PSC limit of 191.4 mt apportioned to the Central GOA Rockfish Program (Rockfish Program) is not reduced by this action. The Rockfish Program (76 FR 81248, December 27, 2011) requires NMFS to assign 191.4 mt of the deep-water fishery's halibut PSC limit apportionment to participants in the Rockfish Program. This fixed amount is used to support fishing for specific allocations of groundfish species under that program (see Table 28d to part 679). The Rockfish Program

was exempted from these halibut PSC limit reductions because participants in the Rockfish Program already had their apportionment of halibut PSC limit reduced relative to historic use of halibut PSC in the Central GOA rockfish fisheries upon implementation of the Rockfish Program on December 27, 2011.

In order to maintain the Rockfish Program's halibut PSC limit, NMFS will subtract 191.4 mt of the halibut PSC limit that is apportioned to the Rockfish Program from the overall trawl halibut PSC limit before calculating the percentage reductions to the trawl halibut PSC limit implemented by this action. The 191.4 mt amount will be added back to the trawl halibut PSC limit after calculating the 7, 12, and 15 percent annual reduction during the phased-in implementation of the trawl halibut PSC limit reductions. This will prevent the percentage reductions to the overall annual GOA trawl halibut PSC limit from being applied to the halibut PSC limit apportioned to the Rockfish Program.

The annual halibut PSC limit apportionments for the deep-water fishery, shallow-water fishery, and each of those fisheries' respective seasonal apportionments will continue to be recommended by the Council and published in the annual harvest specifications, rather than in Federal regulations. The halibut PSC limit reductions implemented by this action also will result in reductions to the trawl sector's seasonal apportionments of halibut PSC limits.

The following tables illustrate the reductions that will be made to the proposed 2014 halibut PSC limits (78 FR 74079, December 10, 2013) in the final 2014 and 2015 harvest specifications. These examples portray the 7-percent reduction to the trawl and hook-and-line sectors that are implemented in 2014 with this action, as well as the 1 mt reduction to the DSR fishery's halibut PSC limit. The additional percentage reductions in 2015 and later years that also are implemented by this action are not included in the examples presented in these tables.

Table 1 lists the 2014 halibut PSC limits and allowances that will be established for trawl and hook-and-line sectors. Table 2 portrays the 2014 seasonal apportionments of halibut PSC limits between the trawl deep-water and shallow-water fisheries. Finally, Table 3 lists the 2014 seasonal apportionment of halibut PSC limits between the hook-and-line catcher vessel and catcher/processor sectors. Each of the specific halibut PSC limits and apportionments included in these three tables will be implemented through the final 2014 and 2015 harvest specifications for the GOA, which is an outgrowth of the proposed 2014 and 2015 harvest specifications.

NMFS intends to incorporate the halibut PSC limit reductions (7 percent) implemented through this action into the final 2014 and 2015 harvest specifications. This includes reductions to the halibut PSC limits, apportionments, and sideboard limits that were included in the proposed 2014 and 2015 harvest specifications (78 FR 74079, December 10, 2013). The final 2014 and 2015 harvest specifications also will include the additional halibut PSC limit reduction (12 percent) for the hook-and-line catcher vessel and trawl sectors for 2015. NMFS anticipates that the final 2014 and 2015 harvest specifications will be effective in March 2014.

TABLE 1—2014 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS INCORPORATING A 7-PERCENT REDUCTION TO THE TRAWL AND OTHER HOOK-AND-LINE SECTORS AND A 1 MT REDUCTION TO THE DSR HOOK-AND-LINE SECTOR

[Values are in metric tons]

Trawl gear			Hook-and-line gear				
			Other than DSR			DSR	
Season	Percent	Amount	Season	Percent	Amount	Season	Amount
January 20–April 1	27.5	508	January 1–June 10	86	233	January 1–December 31	9
April 1–July 1	20	370	June 10–September 1	2	5		
July 1–September 1	30	554	September 1–December 31	12	32		
September 1–October 1	7.5	139					
October 1–December 31	15	277					
Total		1,848			270		9

TABLE 2—2014 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES FISHERY AND THE SHALLOW-WATER SPECIES FISHERY CATEGORIES

[Values are in metric tons]

Season	Shallow-water fishery	Deep-water fishery	Total
January 20–April 1	416	92	508
April 1–July 1	92	277	369
July 1–September 1	185	370	555
September 1–October 1	139	[1]	139
Subtotal January 20–October 1	832	739	1,571
October 1–December 31			277
Total			1,848

[1] Any remainder.

TABLE 3—2014 APPORTIONMENT OF THE "OTHER HOOK-AND-LINE FISHERIES" ANNUAL HALIBUT PSC ALLOWANCE BETWEEN THE HOOK-AND-LINE GEAR CATCHER VESSEL AND CATCHER/PROCESSOR SECTORS

[Values are in metric tons]

"Other hook-and-line" allowance	Hook-and-line sector	Percent of annual amount	Sector annual amount	Season	Seasonal percentage	Sector seasonal amount
270	Catcher Vessel	57.3	154	January 1–June 10	86	132
				June 10–September 1	2	3
				September 1–December 31	12	18
	Catcher/Processor	42.7	115	January 1–June 10	86	99
				June 10–September 1	2	2
				September 1–December 31	12	14

Action 3: Reduce the Halibut PSC Sideboard Limits for AFA, Amendment 80, and Rockfish Program Vessels

Over time, a variety of halibut PSC use limits, commonly known as sideboard limits, have been implemented to restrict the amount of halibut PSC limit available to specific participants in GOA groundfish fisheries. Sideboard limits serve as fishery-specific limits that require participants subject to the sideboard limit to stop fishing for specific groundfish once that sideboard limit is reached. Sideboard limits were adopted as part of the AFA, Amendment 80, and Central GOA Rockfish catch share programs to prevent program participants from using the flexibility provided by catch share allocations to increase their harvests in fisheries not subject to exclusive allocations. Regulations that establish halibut PSC sideboard limits are at § 679.64(b)(4) for non-exempt AFA catcher vessels subject to GOA halibut PSC sideboard limits, § 679.92(b)(2) for the Amendment 80 sector, and § 679.82(e) for catcher/processors that opt-out of a Rockfish Program cooperative and are subject to GOA halibut PSC sideboard limits.

This action does not revise the regulations that establish the methodology for calculating the specific percentage of the trawl halibut PSC limit apportioned to the AFA Program, Amendment 80 sector, or Rockfish Program as halibut PSC sideboard limits. Rather, the AFA Program, Amendment 80 sector, and Rockfish Program halibut PSC sideboard limits will continue to be calculated during the annual harvest specifications process as percentages of the GOA halibut PSC limit apportioned to the trawl sector. However, because the annual trawl halibut PSC limit is reduced by this action, the annual amount of each of these management program's halibut PSC sideboard limit also is proportionately reduced. Examples of the reductions to the halibut PSC sideboard limits implemented by this action are provided in the proposed rule for this action (78 FR 57106, September 17, 2013).

Action 4: Implement Changes to the Accounting of Halibut PSC Sideboard Limits for Amendment 80 Vessels and Revise Halibut PSC Apportionments Used by Trawl Vessels From May 15 Through June 30

This action implements two management measures that are intended to provide operational flexibility to trawl sectors that are constrained by current regulatory restrictions associated with halibut PSC sideboard limits and the segregation of trawl halibut PSC apportionments between the deep-water and shallow-water fisheries. These management measures will (1) allow the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season, and (2) allow NMFS to combine available trawl halibut PSC limit apportionments in the second season deep-water and shallow-water fisheries for use in either fishery from May 15 through June 30. These management measures will help to maintain groundfish harvest while minimizing halibut bycatch by these sectors to the extent practicable. The measures will provide the Amendment 80 sectors and deep-water and shallow-water trawl fisheries additional flexibility and the incentive to participate in fisheries at times of the year that may have lower halibut PSC rates relative to other times of the year. Both of these measures are summarized below.

The first management measure allows the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season so that the Amendment 80 sector can, potentially, maximize their groundfish catch by using their halibut PSC sideboard limits more efficiently. Non-exempt AFA catcher vessels, Rockfish Program vessels, and vessels not operating under sideboard limits already have this flexibility. Regulations at § 679.92(b)(2) prevent Amendment 80 vessels from using more halibut PSC sideboard limit than is available in each deep-water or shallow-water fishery and season. If the Amendment 80 deep-water or shallow-water seasonal halibut PSC sideboard limit is reached, then all directed fishing for all species in that fishery close in the GOA for that season. This action amends § 679.92(b)(2) to allow Amendment 80 vessels to roll over unused halibut PSC sideboard limits from one season to the next season.

The second management measure amends regulations at § 679.21(d)(4) to allow all GOA trawl participants to access, on an annual basis, any remaining halibut PSC limits from the first season in either the deep-water fishery or shallow-water fishery during the second season from May 15 through June 30 (except vessels managed under Amendment 80 halibut PSC sideboard limits). Under combined management of halibut PSC limits from May 15 through June 30, GOA trawl gear vessels will be able to use halibut PSC limits that remain in the deep-water complex or shallow-water complex in either the deep-water or shallow-water fisheries. The second season will remain open as long as the combined halibut PSC limit is available. This combination of the management of the deep-water and shallow-water halibut PSC limits from May 15 to June 30 will allow the trawl sector to use remaining second season halibut PSC limits in either fishery complex and provide the trawl sector with greater opportunity to fully harvest TAC for more economically valuable species. After the second season is complete on June 15, NMFS will re-specify halibut PSC limits for the third season, and resume separate management of halibut PSC limits in the deep-water and shallow-water fishery complexes.

Changes From the Proposed Rule

This rule does not change any of the proposed regulations contained in the proposed rule prepared for this action (78 FR 74079, December 10, 2013).

Summary of Regulatory Changes

This action makes the following changes to regulations at 50 CFR part 679:

- Revise § 679.21, prohibited species bycatch management, to incorporate explicit annual GOA halibut PSC limits for the trawl and hook-and-line fisheries, add the incremental reduction of the annual PSC limit over a 3-year period, and provide NMFS the ability to re-specify halibut PSC limits in the second season deep-water and shallow-water species fishery categories to aggregate the available halibut PSC limits for use in either fishery.
- Revise § 679.92, Amendment 80 Program halibut PSC use caps and sideboard limits, to remove restrictions on the roll over of seasonal halibut PSC sideboard limits from one season to the next season.
- Revise Table 38 to 50 CFR part 679 to incorporate in this table the seasonal halibut PSC sideboard limit roll over provisions made in § 679.92.

Response to Comments

NMFS received 29 comment letters containing 34 substantive comments during the public comment periods on the notice of availability for Amendment 95 and the proposed rule to implement Amendment 95. Commenters varied in their support for and opposition to Amendment 95. NMFS also received two letters that were not relevant to the proposed action. No changes were made to this final rule in response to the comment letters received. NMFS' response to the public comments on Amendment 95 and the proposed rule to implement Amendment 95 is presented below.

General Comments

Comment 1: Several commenters expressed general support for Amendment 95 to the FMP and its implementing regulations.

Response: NMFS acknowledges the comment.

Comment 2: Several commenters asserted that the comment period for the proposed rule was inadequate and asked for an extension of the comment period. The commenters noted that from October 1, 2013, through October 16, 2013, portions of the Federal government were shut-down due to a lapse of appropriations. The commenters stated that this shutdown affected their ability to contact NMFS staff during a portion of the comment period for the notice of availability and the proposed rule to implement Amendment 95. Some commenters believed they were disadvantaged by not being able to discuss elements of the action with agency staff during the public comment period.

Response: NMFS does not believe that an extended comment period was warranted because the government shutdown did not prevent the public from reviewing the proposed rule, the Analysis prepared for this action, or submitting comments, either electronically or in writing, on the notice of availability and the proposed rule during the period from October 1, 2013, through October 16, 2013. NMFS considered comments received during the comment periods on the proposed rule (September 17 through October 17, 2013) and the notice of availability (August 29 through October 28, 2013) in this final rule. These comment periods occurred prior to and after the shutdown. NMFS notes that the public was also afforded multiple opportunities to provide comments to the Council as it developed Amendment 95 (see Section 1.2.3 of the Analysis that describes the Council action on Amendment 95).

Comments Associated With the Range of Alternatives and Practicability of Halibut PSC Reductions

Comment 3: The Secretary should partially disapprove Amendment 95. The proposed 15-percent reduction is not practicable for the trawl fleet to meet without additional management tools, such as a catch share program, or other measures that allow harvesters and processors to better manage operations and more effectively manage halibut PSC. The proposed 15 percent PSC limit reduction would have far reaching negative economic effects due to the potential reduction of groundfish harvest. NMFS should only implement the first 7-percent step of the proposed halibut PSC limit reduction for the trawl sector.

Response: NMFS approved Amendment 95 on November 26, 2013. Section 303(a)(3) of the Magnuson-Stevens Act requires that NMFS, acting on behalf of the Secretary of Commerce, can disapprove a plan amendment only after specifying the applicable law with which the plan amendment is inconsistent; the nature of such inconsistencies; and recommendations concerning the actions that could be taken by the Council to conform such plan amendment to the requirements of applicable law. Before approving Amendment 95, NMFS considered these factors and concluded that Amendment 95 is not inconsistent with applicable law. For the following reasons, NMFS believes that limiting the reduction in trawl PSC limits to only 7 percent relative to the current trawl PSC limits would not meet the objectives of the action to minimize halibut bycatch to the extent practicable.

Amendment 95 minimizes halibut PSC to the extent practicable considering the management measures currently available to the GOA groundfish fleet, the derby-style prosecution of some components of the groundfish fishery, the uncertainty about the extent to which halibut PSC in the groundfish fishery has adverse effects on the halibut resource, and the need to ensure that catch in the trawl (and hook-and-line) fisheries contributes to the achievement of optimum yield in the groundfish fisheries. As described in the proposed rule (78 FR 57106, September 17, 2013) and Section 4.6.3 of the Analysis, the Amendment 95 halibut PSC limit reductions may result in earlier groundfish season closures, attendant reductions in target groundfish catches when the lower seasonal PSC limit is reached, and forgone groundfish revenue for sectors that are unable to fully prosecute TAC limits. Participants in the groundfish fisheries could also incur additional costs associated with halibut PSC avoidance.

Although the proposed halibut PSC limit reductions may result in earlier season closures and an attendant reduction in target groundfish catches when the lower seasonal PSC limit is reached, the frequency and extent of early season closures and effects of such closures will vary across gear types and segments of the fleets to the extent that fleets are willing to change fishing behavior in response to lower PSC limits. If sector participants are successful in taking action to control halibut PSC use to avoid a closure, additional gross revenues may be gained. Historical records and NMFS' management experience in the trawl fisheries indicate that the amount of halibut PSC in the GOA groundfish fisheries can be reduced through increased communication among industry participants and coordination of fishing activities and effort. Section 4.6.4 of the Analysis reviewed potential measures that could be adopted by participants to reduce halibut PSC and factors that are likely to affect the willingness of participants to adopt these measures.

The Analysis considered not only changes in trawl sector revenues, but also changes in costs resulting from the

fleets' altered fishing behavior to minimize halibut bycatch. However, these effects are not possible to directly quantify with available information. The effects on communities are summarized in Section 4.6.7 of the Analysis, and examined in detail in Appendix 7 to the Analysis. Appendix 7 also summarizes mitigating factors for possible adverse impacts on the primary GOA communities associated with the trawl groundfish fishery. The halibut PSC limit reductions implemented by this final rule balance the potential financial effects of reduced groundfish harvests and increased costs to groundfish fleets, the benefits of minimizing bycatch to the extent practicable, the potential benefits that may occur from reducing a known source of mortality to the halibut stock, and potential additional harvest opportunity that may accrue to other users of the halibut resource.

The Council and NMFS recognize that the trawl and catcher vessel hook-and-line sectors will likely experience the largest economic constraints following implementation of this action. Therefore, Amendment 95 implements three measures to minimize adverse economic impacts on the trawl and catcher vessel hook-and-line sectors to the extent practicable. First, this action would phase in the reductions for these sectors over three years to mitigate the impact the halibut PSC limit reductions have on groundfish fishery revenue while the fleets modify their fishing behaviors and adopt measures such as those described in Section 4.6.4 of the Analysis to reduce halibut PSC. This action would reduce halibut PSC limits assigned to the trawl and catcher vessel sectors by 7 percent in the first year of implementation, an additional 5 percent in the second year, and the final 3 percent in the third year. Second, this action would allow the Amendment 80 sector to roll over unused halibut PSC sideboard limits from one season to the next season. Finally, this action would combine management of the deep-water and shallow-water halibut PSC limits from May 15 to June 30 for use in either fishery. These measures are described under Action 2 and Action 4 in the preamble.

In addition, the Council and NMFS recognized that additional restrictions beyond those considered in this action would not meet the stated purpose and need for the action because of the relatively limited ability of the trawl and hook-and-line fleets to adapt to additional constraints on halibut PSC (see Sections 2.4 and 3.8.1.7 of the Analysis). The Council is actively developing an action known as the GOA trawl bycatch management program, with a primary objective of improving incentives for PSC reduction and PSC management while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery.

Comment 4: The EA did not consider a reasonable range of alternatives because the maximum PSC limit reduction analyzed was 15 percent. The EA should have analyzed PSC limit reductions of up to 50 percent.

Response: The EA analyzes a reasonable range of alternatives that meet the purpose and need for the proposed action. As explained in Section 2.5 of the Analysis and in the preamble to the proposed rule (78 FR 57106, September 17, 2013), while some members of the public recommended greater halibut PSC limit reductions, greater halibut PSC limit reductions do not meet the purpose and need for this action (see Section 1.1 of the Analysis). The proposed action and its alternatives minimize halibut PSC to the extent practicable and achieve, on a continuing basis, the optimum yield from the groundfish fishery. The Council and NMFS developed a suite of alternatives in consideration of the management measures currently available to the groundfish fleet, the derby-style prosecution of some components of the groundfish fishery, the uncertainty about the extent to which halibut PSC in the groundfish fishery has adverse effects on the halibut resource, and the need to ensure that catch in the trawl and hook-and-line fisheries contributes to the achievement of optimum yield in the groundfish fisheries. Halibut bycatch cannot be avoided completely and more stringent PSC limit reductions would severely limit the groundfish fleet. Section 4.6.3 of the Analysis notes that reductions of halibut PSC limits beyond those considered in this action would have been likely, on average, to constrain the total groundfish harvests from the trawl and hook-and-line fleets in each year since 2003. Section 4.6.4 of the Analysis notes that given the existing management measures in the trawl and hook-and-line fleets, the ability of these fleets and fishery managers to limit halibut PSC, while achieving optimum yield on a continuing basis, is limited.

Comment 5: NMFS should disapprove Amendment 95 and remand it to the Council for development of alternatives that would implement higher levels of PSC limit reductions. The Council and NMFS did not adequately address key halibut stock uncertainties or fully consider the impacts of halibut PSC on the halibut stock and on the directed halibut fisheries.

Response: NMFS approved Amendment 95 on November 26, 2013. As noted in the response to Comment 3, section 303(a)(3) of the Magnuson-Stevens Act requires that NMFS, acting on behalf of the Secretary of Commerce, can disapprove a plan amendment only after specifying the applicable law with which the plan amendment is inconsistent; the nature of such inconsistencies; and recommendations concerning the actions that could be taken by the Council to conform such plan amendment to the requirements of applicable law. Before approving Amendment 95, NMFS considered these factors and concluded that Amendment 95 is not inconsistent with applicable law. Specifically, NMFS considered whether the range of alternatives considered by the Council and NMFS was consistent with the National Environmental Policy Act (NEPA). As noted in the responses to Comments 3 and 4, the range of alternatives considered is consistent with the purpose and need for the action to minimize halibut bycatch in the groundfish fisheries to the extent practicable. NMFS did not identify a need for the Council to consider a range of alternatives beyond those considered. NMFS notes that nothing in this action would preclude the Council or NMFS from considering additional changes in halibut PSC limits through a subsequent action. Delaying action pending additional analysis of halibut PSC data would be inconsistent with National Standard 9 obligations to minimize halibut bycatch to the extent practicable, and would delay the benefits of reducing halibut PSC to the extent practicable in groundfish fisheries.

Comment 6: In addition to considering halibut PSC limit reductions greater than 15 percent, there should be additional consideration of prioritizing the apportionment of halibut PSC to gear types with relatively lower bycatch than other gear types and modifying the behavior of the fisheries with high bycatch.

Response: NMFS interprets this comment as requesting that NMFS establish PSC limits based on the relative rates of halibut PSC use among the groundfish fisheries. This approach would be inconsistent with the overall purpose and need for this action, and would be outside the scope of this action. Furthermore, it would require that the Council and NMFS establish a method for assessing bycatch rates and apportioning halibut PSC among those gear types. Such an approach would not necessarily result in lower halibut PSC, but would reapportion the existing

halibut PSC limits. NMFS notes that this action does not alter the process for the apportionment of PSC limits among gear types, and during the harvest specification process the Council considers factors relevant to the apportionment of PSC limits among gear types. Section 679.21(d)(3) and (4) establish the annual halibut PSC limit apportionments to trawl and hook-and-line gear in the GOA through the annual groundfish harvest specification process. The apportionment of halibut PSC limits by gear, fishery category, and seasons under the annual harvest specifications process provides the opportunity for groundfish harvests in specific fisheries. This apportionment process ensures that halibut PSC limit is available for use in groundfish fisheries earlier in the year (e.g., the trawl deep-water fisheries in the first season), but limits that use so that halibut PSC limit remains to support other groundfish fisheries that occur later in the year (e.g., the trawl shallow-water fisheries in the fourth season). The limits assigned to each season reflect halibut PSC likely to be taken during specific seasons by specific fisheries.

The commenter did not provide a specific method to accomplish their recommendation, but NMFS encourages the commenter to participate in the Council process associated with the annual harvest specifications, particularly with respect to providing potential suggestions for apportioning halibut PSC limits.

Comments Associated With Halibut Biology and Conservation

Comment 7: Halibut PSC limit reductions are needed in the GOA groundfish fisheries because halibut PSC has direct impacts on the halibut stock and on the directed halibut fisheries.

Response: This action is necessary to minimize halibut PSC to the extent practicable. NMFS notes that the impacts of halibut PSC, and the reductions in halibut PSC limits implemented by this action, on the halibut stock and on the directed halibut fisheries are uncertain. In recommending Amendment 95, the Council considered the best scientific information available on the biological condition of the halibut stock (see Section 3.2 of the Analysis). Recent declines in halibut exploitable biomass, particularly in the GOA, underscore the need to minimize bycatch of halibut in the groundfish fisheries to the extent practicable. Since the current GOA halibut PSC limits were established, the total biomass and abundance of halibut has varied, and in recent years the stock is experiencing an ongoing decline in size-at-age for all ages in all areas. While the cause of this decline in size-at-age is not fully understood, the commercial and charter halibut sectors have experienced decreased catch limits as a result.

The Council and NMFS considered the potential for GOA halibut PSC limit reductions to lead to future increases in the amount of halibut available for the direct halibut fisheries. Section 3.2.8 of the Analysis describes that reductions in halibut mortality resulting from reductions in PSC in the groundfish fisheries could contribute to future increases in halibut biomass, may promote improved halibut reproductive potential, and may contribute to increased halibut yields available to harvesters in the directed halibut fisheries. However, the Analysis also estimates that any potential increases in halibut biomass from reduced PSC are likely to be relatively small, and as a result, are unlikely to have a significant impact on the halibut stock or the directed halibut fisheries (see Section 2.4 of the Analysis). Overall, the 2011 halibut PSC in the GOA represented only approximately 12 percent of the known removals from the halibut exploitable biomass in the GOA, as portrayed in Section 3.2.2 of the Analysis. Therefore, reductions in existing halibut PSC limits would not be expected to result in substantial changes in the halibut biomass or the amount available to other halibut resource users. As noted in Section 2.4 of the Analysis, the Council considered a range of alternatives to assess the impacts of minimizing halibut bycatch to the extent practicable while preserving the potential for the full harvest of the TACs assigned to the trawl and hook-and-line sectors. The Council considered the trade-offs between the halibut saved and the forgone groundfish catch. Based on this information, NMFS has determined that the GOA halibut PSC limit reductions implemented by this final rule are precautionary measures given the uncertainty of the impacts of halibut PSC on the halibut stock and other users of the halibut resource.

Comment 8: NMFS should implement greater halibut PSC limit reductions in the groundfish fisheries. Halibut PSC limits have not changed appreciably for many years, while the catch limits in directed halibut fisheries have significantly decreased. While commercial and charter fishermen have made sacrifices to conserve the halibut resource as the population diminishes, the groundfish fishery has been allowed to continue taking the same level of bycatch. This has resulted in an inequitable distribution of halibut conservation measures between the groundfish and directed halibut fisheries.

Response: The Council and NMFS determined that it was necessary to evaluate halibut PSC limits for the GOA groundfish fisheries. NMFS agrees that GOA halibut PSC limits have remained relatively constant in recent years as catch limits for the commercial and charter halibut fisheries have declined. However, the purpose and need for this action is not to reduce halibut PSC limits proportional with changes in directed fishery allocations. The purpose and need for the action is to minimize bycatch to the extent practicable while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery by preserving the potential for the full harvest of the TACs assigned to the trawl and hook-and-line sectors. Sections 3.2.3 and 3.2.5 of the Analysis describe trends in bycatch of halibut in the groundfish fisheries and directed halibut harvests.

This action implements reductions to halibut PSC limits, which are limits specifically applicable to the groundfish fisheries. Section 2.5 of the Analysis notes that the Council considered larger reductions to halibut PSC limits than those implemented by this final rule. However, halibut bycatch cannot be avoided completely, and more stringent PSC limit reductions would severely limit the ability of the groundfish fleet to fully harvest total allowable catches of groundfish species. Therefore, greater reductions in halibut PSC limits are not practicable and do not meet the purpose and need for this action.

Information presented in the Section 4.6.3 of the Analysis shows that reductions beyond those considered in this action would have limited groundfish harvests, on average, in almost all years since 2003. The proposed rule and Section 4.6.4 of the Analysis describe that the Council considered the ability of trawl and hook-and-line groundfish fisheries to reduce halibut PSC use, how much of the halibut PSC limit had been left unused by each sector in the past, and the potential effects of reduced PSC limits on GOA groundfish catch and revenue. Section 4.6.3 of the Analysis provided estimates of groundfish catch and revenue that would have been forgone in the GOA groundfish fisheries if halibut PSC limits had been reduced from the halibut PSC limits in place from 2003 through 2010. Reduced halibut PSC limits could potentially impact revenue generated from the groundfish fisheries, and some

groundfish fisheries may not harvest their full TAC. Currently, most of the groundfish fleet in the GOA is involved in competitive fisheries and does not have available tools, such as catch share programs or fishery cooperatives, that have been demonstrated to successfully reduce halibut PSC and still maintain current harvest levels of groundfish (for example, see the discussion of the Rockfish Program in Section 4.5.5 of the Analysis). Therefore, the Council and NMFS determined that reductions to halibut PSC limits beyond those implemented by this final rule are not practicable.

Comment 9: The proposed halibut PSC limit reductions are critical to the conservation of the halibut stock and to reducing impacts on other halibut users and fishing communities.

Response: Halibut PSC limit reductions may reduce a known source of mortality from the halibut biomass in the GOA, which in turn could benefit the directed halibut fisheries as well as other halibut resource users (also see response to Comment 8). However, as noted in response to Comment 7, the impacts of halibut PSC, and the reductions in halibut PSC limits implemented by this action on the halibut stock and on the directed halibut fisheries, are uncertain. In selecting the preferred alternative, the Council considered changes in groundfish and halibut management programs and fishing patterns, environmental conditions, fishing technology, and knowledge of halibut and groundfish stocks. The Council considered the trade-offs between the halibut saved and the forgone groundfish catch.

The Analysis examines the impacts of potential halibut PSC limit reductions on the directed halibut fisheries in Section 4.6.2. This includes projections of the potential amount of halibut that could be available for harvest in the charter and commercial individual fishing quota (IFQ) fisheries, depending on different reduction levels to the hook-and-line and trawl halibut PSC limits. It also includes estimates of increases in revenue in the charter and commercial individual fishing quota (IFQ) fisheries due to halibut PSC limit reductions in the groundfish fisheries. The Analysis demonstrates that there may be a potential benefit to the directed halibut fisheries and the consumers of halibut harvested in those fisheries under various halibut PSC limit reductions.

Comment 10: The proposed reductions in halibut PSC limits are minimal compared to the reductions to the directed halibut fishery catch limits. Therefore, NMFS should implement the full halibut PSC reductions in the first year of implementation as a starting point for future reductions to halibut PSC limits.

Response: NMFS acknowledges that the commercial and sport halibut fisheries have been subject to decreased annual catch limits in recent years, as described in Section 4.5.1 of the Analysis. However, the purpose and need for the action is to minimize bycatch to the extent practicable while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery by preserving the potential for the full harvest of the TACs assigned to the trawl and hook-and-line sectors. The trawl and catcher vessel hook-and-line sectors will likely experience the largest economic constraints following implementation of this action. Consistent with National Standard 8, this action phases in the 15-percent reduction over the course of three years to minimize the adverse economic consequences of Amendment 95 on the trawl and catcher vessel hook-and-line sectors to the extent practicable. NMFS intends that phasing in the halibut PSC limit reductions for these sectors will mitigate the impact Amendment 95 will have on groundfish fishery revenue while the fleets modify their fishing behaviors and adopt measures such as those described in Section 4.6.4 of the Analysis. Additional reductions to halibut PSC limits may be implemented through subsequent actions should further minimization of halibut bycatch in the groundfish fisheries be practicable.

Comment 10: Biological uncertainties associated with the halibut resource warrant a more precautionary approach to halibut bycatch management than the halibut PSC reductions proposed in Amendment 95. The precautionary approach requires that fisheries policies manage risks so as to minimize serious or irreversible damage to the resource until further evidence is gathered. The reductions to halibut PSC proposed in Amendment 95 are not precautionary enough given the uncertainties associated with the long-term impacts of halibut PSC removals on juvenile and female halibut, depressed growth rates, and migration patterns.

Response: Section 3.2 of the Analysis presents a summary of the current condition of the Pacific halibut stock, including a discussion of the uncertainties mentioned by the commenter. The discussion in the EA is based on stock assessment and biological information that is primarily derived from the IPHC's research and findings. The Council and NMFS considered the information presented in the Analysis, the best available scientific information, in recommending and implementing Amendment 95. This action follows the precautionary principle by implementing conservation measures to reduce overall halibut PSC in the groundfish fisheries even though there is limited data and information to determine the impact of halibut PSC on halibut stocks. Although the effects of halibut PSC in the groundfish fishery on the halibut fishery are uncertain, this action reduces the overall potential impacts by reducing existing halibut PSC limits in the groundfish fisheries. The halibut PSC limit reductions in the groundfish fisheries minimize bycatch to the extent practicable given the tools currently available to the fleet, the derby style prosecution of the fishery, the uncertainty about whether the bycatch has adverse effects on the halibut stocks, and the need to ensure that the trawl and hook-and-line fisheries contribute to the achievement of optimum yield in the groundfish fisheries.

Comment 11: Climate change and ocean acidification effects warrant a precautionary approach to halibut PSC. NMFS should consider climate change as an important factor that warrants a more precautionary approach, i.e., higher halibut PSC limit reductions.

Response: NMFS did consider the potential effects of climate change in Sections 3.7 and 3.8.2 of the Analysis. Section 3.8.2 of the Analysis notes that ''long-term climate change and regime shifts could have impacts on the reproductive success of Pacific halibut depending on the direction of the shift. It has been shown that warm trends favor recruitment while cool trends weaken recruitment in most fish species including halibut.'' Notwithstanding this information, the extent to which climate change impacts halibut stocks is uncertain. This action adheres to the precautionary principle by implementing conservation measures to reduce overall halibut PSC in the groundfish fisheries to the extent practicable even though there is limited data and information to determine the extent of climate change impacts on the halibut resource or the extent to which halibut PSC impacts halibut stocks.

NMFS continues to study a variety of environmental factors associated with the GOA and Bering Sea and Aleutian Islands (BSAI) ecosystems. Examples of such research may be accessed at the Web site for the Habitat and Ecological Processes Research Program, *http://www.afsc.noaa.gov/HEPR/default.php.* NMFS will continue to monitor the best available scientific information

concerning climate change and ocean acidification in coordination with the IPHC. This action does not preclude NMFS from considering and implementing additional management measures in the future in response to new information on climate change or ocean acidification.

Comment 12: The EA incorrectly characterizes the environmental baseline and the description of status quo is wrong because the EA relies on environmental analyses that predate the recent and sharp halibut decline. Delay action pending additional scientific research that addresses some of the uncertainties regarding the halibut resource.

Response: The EA contained in the Analysis summarizes previous NEPA documents for context and background, and incorporates those documents by reference to focus the EA analysis on the issues ripe for decision and eliminate repetitive discussions. The EA does not rely on these documents to define the environmental baseline. In the EA, the environmental baseline is the current existing conditions at the time of the analysis. The EA summarizes the most recent relevant information from a variety of sources to characterize the environmental baseline. Importantly, the EA provides the best available information from a variety of sources, including the IPHC on halibut biomass and explains recent trends in abundance (see Section 3.2.4 of the Analysis).

In the EA, Alternative 1 is the no action alternative, which is the status quo. The EA correctly describes no action/status quo as the PSC limits that would be in place if NMFS took no action to reduce them under any of the action alternatives. The EA provides great detail on the recent relevant information from a variety of sources to characterize halibut PSC in the groundfish fisheries under the status quo PSC limits. The EA also provides detailed information on halibut PSC in the groundfish fisheries relative to total fishery removals (see Section 3.2.3 of the Analysis).

The EA provides the information necessary to make an informed decision on the proposed action to reduce halibut PSC limits to the extent practicable. The EA sharply defines the issues, rigorously explores and objectively evaluates the alternatives, and provides a clear basis for choice among the alternatives. While NMFS and the IPHC are continually conducting scientific research to improve our understanding of the halibut resource, the EA provides sufficient information to make an informed decision on this action. Delaying action pending additional research would delay the benefits of minimizing halibut PSC to the extent practicable in groundfish fisheries, and would be inconsistent with National Standard 9 obligations to minimize bycatch to the extent practicable.

Comment 13: The EA does not adequately address NMFS' past, present, or prospective inability to monitor halibut PSC in the trawl fisheries. The EA fails to disclose that current halibut PSC data is flawed because of low coverage rates under the restructured Observer Program. NMFS' management uncertainties require more restrictive PSC limits.

Response: NMFS uses observers to monitor halibut PSC. NMFS' Catch Accounting System (CAS) generates reliable estimates of halibut PSC in the groundfish fisheries using observer data. The CAS uses the highest resolution of data when available and, if needed for fisheries without high resolution data, generates estimates using observer data from vessels in the same gear, area, or target category. The methods NMFS uses to estimate bycatch through the CAS are further described in ''Cahalan, J., J. Mondragon, and J. Gasper. 2010. Catch sampling and estimation in the Federal groundfish fisheries off Alaska. U.S. Dep. Commer., NOAA Tech. Memo. NMFS–AFSC–205, 42 p.'' This publication is available on the NMFS Alaska Region's Web site at *http://www.afsc.noaa.gov/Publications/AFSC-TM/NOAA-TM-AFSC-205.pdf.*

The restructured Observer Program improved the quality of the observer data NMFS uses to estimate halibut PSC by collecting more representative data and deploying observers relative to fishing effort (fisheries with more effort receive more observers). Importantly, the restructured observer program uses a scientifically-based method to deploy observers that improves the reliability of data collection and addresses statistical bias in observer data caused by the old program. Further, to address concerns with ensuring adequate coverage for PSC limits, NMFS maintained a higher coverage rate for the majority of vessels in the partial coverage category that are managed under PSC limits relative to smaller vessels in the partial coverage category that are typically not managed under PSC limits in 2013 and 2014. Further information can be found in the final rule implementing the restructured observer program (77 FR 70062, November 21, 2012). Additional detail on the deployment of observers in the partial coverage category is available in the final 2014 Annual Deployment Plan on the NMFS Web site at *http://www.alaskafisheries.noaa.gov/sustainablefisheries/observers/default.htm.*

NMFS has continued to improve its management of halibut PSC limits in the groundfish fisheries. Comprehensive recordkeeping and reporting requirements for catch reporting by participants in the groundfish fisheries, the development of more real-time electronic catch reporting, and the restructured Observer Program have decreased management uncertainty about halibut PSC in the GOA. The EA provides the best available information on halibut PSC in the groundfish fisheries (see Section 3.2.3 of the Analysis). Analysis of halibut PSC data is ongoing and NMFS continually improves the estimates of catch and bycatch in the groundfish fisheries. However, these improvements do not change the issues addressed by the proposed action. In taking final action, the Council recognized the potential for underestimation of halibut PSC in the groundfish fisheries and cited that as one of the reasons for recommending the reduced halibut PSC limit in Amendment 95 (see Section 2.4 of the Analysis).

Comment 14: The Council should implement a long-term halibut PSC limit reduction plan.

Response: This action implements reductions to halibut PSC limits in the GOA groundfish fisheries. Once the reductions are fully implemented in 2016, the Council could choose to evaluate the effects of the reductions made by this action, and could recommend further halibut PSC limit reductions to the extent such reductions are practicable. Furthermore, the Council has undertaken a variety of efforts to limit the bycatch of halibut in the GOA groundfish fisheries over time, and continues to evaluate whether additional PSC restrictions are warranted. Appendix 3 to the Analysis summarizes the Council's action to reduce or limit halibut removals. NMFS encourages the commenter to participate in the Council process with respect to actions that may reduce or modify PSC limits.

Comment 15: NMFS should direct the Council to consider alternatives that implement marine reserves that provide a no-trawl buffer to account for the impacts of bycatch on communities reliant on halibut subsistence.

Response: NMFS notes that the purpose and need for the action is to minimize halibut bycatch in the groundfish fishery to the extent practicable while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery. Implementing a series of marine

reserves that would limit trawling would have a range of effects on the groundfish fisheries outside of the scope of this action. NMFS notes that this action would reduce the amount of halibut PSC in trawl and hook-and-line fisheries, and these measures could provide additional harvest opportunities for other users of the halibut resource, including subsistence users. Currently, subsistence users are not constrained by any limit on the amount of allowable harvest (see Sections 3.2.7 and 4.6.2.3 of the Analysis). This action would not establish any additional limitation on subsistence users.

Comment 16: Evaluate the need to do an environmental impact statement (EIS) for Amendment 95 and groundfish fishery impacts on halibut. If NMFS is not going to do an EIS, then make the Finding of No Significant Impact (FONSI) available for public review prior to approving Amendment 95. This action is similar to the Bering Sea Chinook salmon PSC action that required NMFS to complete an EIS.

Response: NMFS did evaluate the need to do an EIS for Amendment 95 in preparing the EA and FONSI. NMFS prepared an EA that discloses the potential impacts of the proposed action and its alternatives (see **ADDRESSES**). The EA analysis did not identify any potentially significant impacts from any of the alternatives. NMFS prepared a FONSI (see **ADDRESSES**) for Amendment 95 that describes in more detail why NMFS determined that the action will not significantly impact the quality of the human environment. Based on this FONSI, an EA is the appropriate NEPA analysis for this action and preparation of an EIS is not warranted. NMFS prepares FONSIs based on the analysis in the EA, and the draft EA was available for public review prior to approving Amendment 95.

NMFS prepared an EIS for the action to manage Chinook salmon PSC in the Bering Sea pollock fishery to assist agency planning and decision-making. That action was novel, controversial, and far more complicated because it involved fundamental changes to the way the Bering Sea pollock fishery was managed that were only possible because that fleet is managed under a catch share program. Assessing and understanding the impacts of bycatch on Chinook abundance was also more complex with uncertainty in ocean abundance and in rivers of origin for bycaught Chinook salmon.

Comment 17: Produce a Supplemental Information Report that evaluates the significant changes in halibut population in light of PSC impacts because there have been substantial biological and ecological changes, important scientific research on migration, and changes in fishery intensity and effort since the development of these programmatic analyses.

Response: NMFS agrees that there have been changes in halibut abundance and the halibut fisheries, as well as advancements in scientific understanding. The EA evaluates the impacts of halibut PSC in light of these changes (see Section 3.2 of the Analysis). Further, the IPHC comprehensively assesses these types of changes on an annual basis in its stock assessment process (see Section 3.2.4.2 of the Analysis for a description of the IPHC stock assessment process).

The Council is in the process of preparing a Supplemental Information Report for the 2004 Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement. This Supplemental Information Report will include an assessment of the impacts of the groundfish fisheries on halibut. The Council plans on reviewing a draft Supplemental Information Report at its February 2014 meeting. Interested members of the public are encouraged to participate in the Council process for this issue.

Comments Associated With the Effects on Other Halibut User Sectors and Communities

Comment 18: The halibut PSC limit reductions imposed on the trawl sector through Amendment 95 will minimally benefit other halibut user groups, such as the halibut IFQ and charter sectors.

Response: The purpose and need for the action is to minimize bycatch to the extent practicable while at the same time achieving, on a continuing basis, the optimum yield from the groundfish fishery by preserving the potential for the full harvest of the TACs assigned to the trawl and hook-and-line sectors. The Analysis does estimate that any potential increases in halibut biomass from reduced PSC is likely to be relatively small given that the existing halibut PSC limits in the GOA groundfish fishery are a relatively small proportion of the known removals from the halibut exploitable biomass. However, halibut savings from the groundfish fisheries halibut PSC limit reductions may modestly benefit the directed halibut fisheries in the long-term. The Analysis examines the impacts of potential halibut PSC limit reductions on the directed halibut fisheries in Section 4.6.2. This includes projections of the potential amount of halibut that could be available for harvest in the charter and commercial IFQ fisheries, depending on different reduction levels to the hook-and-line and trawl halibut PSC limits. It also includes estimates of increases in revenue in the charter and commercial individual fishing quota (IFQ) fisheries due to halibut PSC limit reductions in the groundfish fisheries. The Analysis demonstrates that there is a potential benefit to the directed halibut fisheries and the consumers of halibut harvested in those fisheries under various halibut PSC limit reductions. (Also see the response to Comment 9.)

As noted in the response to Comment 7, the 2011 halibut PSC in the GOA represented only approximately 12 percent of the known removals from the halibut exploitable biomass in the GOA, as portrayed in Section 3.2.2 of the Analysis. Therefore, reductions in existing halibut PSC limits may not result in substantial changes in the halibut biomass or the amount available to other halibut resource users. (see Section 2.4 of the Analysis).

Comment 19: The removal of halibut by the groundfish trawl fishery is causing localized depletion of halibut around GOA communities dependent on halibut for subsistence purposes, including Kodiak Island villages. Localized depletion has resulted in declines in halibut subsistence harvests in these areas. The Analysis does not consider the impacts of these issues on communities dependent on halibut for subsistence purposes.

Response: NMFS notes that the purpose and need for this action is to minimize bycatch of halibut overall to the extent practicable. However, this does not include reducing halibut bycatch in specific areas or addressing possible localized depletion of halibut in specific areas. The latter issue is outside of the scope of this action. Sections 3.2.8 and 3.3.5.2 of the Analysis describe the potential localized effects of halibut PSC on the halibut resource. Section 3.2.7 of the Analysis describes the halibut subsistence fishery. Although Section 3.2.7 of the Analysis notes that subsistence harvests have decreased in recent years, the survey conducted by the State of Alaska on halibut subsistence that is cited in Section 3.2.7 (*http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/Subsistence_report2010.pdf*) notes that a variety of factors could affect subsistence harvest rates. Halibut subsistence harvest rates could be affected by changes in participation in the Subsistence Halibut Registration Certificate program administered by NMFS that allows for improved accounting of subsistence

harvests, changes in subsistence harvest survey methods, or other changes in subsistence harvest patterns with a range of possible causes that can vary from community to community. Overall, this action could benefit non-commercial user groups, such as subsistence halibut fishermen, in the long-term by minimizing a known source of halibut mortality. Because this action would result in a reduction in halibut PSC limits relative to the status quo, it would be expected to reduce the overall impact of halibut PSC on other users of the halibut resource (also see the response to Comment 9).

Comment 20: NMFS did not sufficiently analyze the effects of this action on communities dependent on the halibut resource. The community impact analysis overemphasized adverse impacts to trawl dependent communities and failed to consider the adverse impacts of PSC to halibut dependent communities.

Response: The Analysis examines the potential effects of halibut PSC limit reductions on communities engaged in groundfish fisheries, as well as those engaged or dependent on halibut fisheries (see Section 4.6.7 and Appendix 7). In general, it is not possible to quantitatively differentiate potential impacts of the different GOA halibut PSC limit reduction alternatives on an individual community basis. Qualitatively, however, it is possible to anticipate the communities where adverse impacts, if any, would most likely accrue, along with the nature, direction, and at least rough order of magnitude of those impacts. Groundfish dependent communities may experience various degrees of adverse economic effects due to halibut PSC limit reductions, especially within the GOA groundfish trawl sector in Kodiak, and those processing operations in Kodiak substantially dependent on GOA groundfish trawl deliveries of flatfish in particular. Halibut-dependent communities may experience some positive effects as halibut PSC limits are decreased, whereas some communities could experience a combination of effects since residents participate in both the groundfish fisheries and commercial halibut fisheries.

Comment 21: The RIR underestimates the adverse economic impacts of halibut PSC to directed halibut fishery users. The RIR uses outdated economic information and fails to adequately account for the increased long-term value to participants in directed halibut fisheries in the GOA that would occur from reductions in halibut PSC in the groundfish fisheries.

Response: Section 4.6.2 of the Analysis uses the best available economic information to examine the costs and benefits of halibut PSC limit reductions on the halibut fisheries. Section 4.6.1 describes the assumptions made about potential economic impacts on directed halibut users and the rationale for the assumptions made. Although alternative assumptions may be possible about the potential economic impact of the alternatives, the Analysis provides a clear rationale for the choices made.

Cost and revenue information is not available for individual charter and commercial halibut fishing operations in the GOA. Therefore, the Analysis estimated the increased amount of halibut that would be available to the charter and IFQ fisheries from reduced PSC limits and the potential increases in revenues for the charter and IFQ fisheries from the estimated increased halibut harvests. A complete analysis of net benefits to the directed halibut fisheries would require information on the charter fishing fleet's costs, including opportunity costs, and revenues. Information would also be needed on the consumer surplus of the charter clients. Additionally, cost and revenue information would be needed for the IFQ fleet and the processors of their halibut catch, as well as data on consumer surplus of the people that purchase halibut. This information is not available for the charter and IFQ fisheries off Alaska.

Comment 22: Amendment 95 and the proposed rule under-value the recreational halibut fishery. The Analysis uses outdated information and inappropriate indicators, such as the cost of charter halibut trips, to estimate the economic impacts of halibut PSC reductions on the charter halibut fisheries.

Response: As described in the response to Comment 21, the Council and NMFS do not have information to quantify the net benefits of reduced halibut PSC limits to the charter fishery. Similarly, information is not available to quantify the overall economic contribution of the recreational halibut fishery in Alaska at a local, regional, or statewide level. Section 4.8 of the Analysis states that Amendment 95 is not expected to positively or negatively impact the amount of halibut available for unguided sport fishermen, since the PSC reductions are not anticipated to affect their overall harvest.

Section 4.6.2.2 of the Analysis examines the effects of halibut PSC limit reductions on the charter halibut fisheries with available information. The Analysis estimated the economic impacts of Amendment 95 on the charter sector using the projected increase in the amount of halibut available for harvest in the charter sector from reduced halibut PSC limits. Estimated increases in the amount of halibut that may be available to the charter halibut fishery vary depending on the level of halibut PSC limit reductions. The Analysis also estimated the increase in gross revenues for the charter sector from the projected increased halibut harvests. Even at the highest level of PSC reductions analyzed, expected revenue increases to the charter sector are relatively modest. Changes in gross revenue for the charter fleet were very small in Area 2C. Only two halibut were estimated to be added to the charter limit for each 5-percent decrease in the PSC limit. This estimate excluded migration of halibut from the IPHC's assessment model, so the value may be underestimated. The potential effects of halibut migration were excluded from the model due to the uncertainty in estimating the amount of migration that may occur between management areas. In Area 3A, the increase in the charter sector's gross revenue was estimated at about $10,000 for each 5-percent reduction to the hook-and-line PSC limit and $140,000 for each 5-percent reduction to the trawl PSC limit (see Section 3.2.8 in the Analysis). Area 3B does not have a developed charter fishery for halibut, in part due to the remote location of potential charter fishing ports. Therefore, the Analysis assumed that increases in directed halibut harvests resulting from halibut PSC limit reductions would accrue to the commercial IFQ fleet.

Comment 23: The economic analysis for Amendment 95 is flawed because it underestimates the net benefits of halibut PSC reductions to directed halibut fisheries and fails to consider the adverse impacts of the ongoing reallocation of the halibut resource to the groundfish fishery through PSC. This undermines the ''Net Benefit'' finding.

Response: The Council and NMFS have determined that the Analysis provides a comprehensive description of the projected costs and benefits of varying levels of halibut PSC limit reductions considered for this action. This includes examining the effects of halibut PSC limit reductions on the groundfish fisheries, which could experience decreased groundfish catches due to reduced halibut PSC limits. It also includes examining potential positive effects on other halibut fisheries (commercial, charter, and subsistence) due to projected

increases in halibut availability due to PSC limit reductions. The net benefit finding (see Section 4.9) summarizes the combined effects with respect to the net benefits to the Nation that may arise out of the halibut PSC limit reductions analyzed and implemented by this action. NMFS believes that this net benefit conclusion is valid and well-reasoned using the best available information, and not flawed as characterized by the commenter. (Also see the response to Comments 21 and 22.)

Comments Associated With Fisheries Management Issues

Comment 24: The current management system for GOA groundfish fisheries creates rigid seasonal and fishery apportionment categories that prevent efficient use of PSC by the trawl sector, which makes it impracticable for the trawl fleet to adapt to a 15-percent halibut PSC limit reduction.

Response: GOA halibut PSC is managed under the FMP and applicable Federal regulations in 50 CFR part 679. This includes halibut PSC limits that are apportioned by gear, season and sector. NMFS notes that while existing fishery management measures in the GOA may appear to be inflexible, they were designed to divide the available annual halibut PSC limits so that it is available throughout the year, and to a variety of different fisheries with very different operating characteristics. The trawl sector's PSC limits reflect the estimated halibut PSC in different target fisheries throughout the year. Such fisheries may be very dependent on the seasonal distribution and aggregation of groundfish species, such as Pacific cod. Historically, the trawl PSC limit seasonal apportionments have adequately supported groundfish target species. There is some flexibility in the available management measures. For example, unused amounts of seasonal halibut PSC limits may be carried forward to subsequent seasons.

As noted in response to Comment 3, the historical records and NMFS' management experience in the trawl fisheries indicates that the amount of halibut PSC in the GOA groundfish fisheries can be used more efficiently by increased communication among industry participants and coordination of fishing activities and effort. The current management system for GOA groundfish fisheries does not prevent the trawl fleet from improving communication and coordination to avoid and more efficiently use halibut PSC. Furthermore, this action amends regulations to allow available trawl halibut PSC limit apportionments in the second season deep-water and shallow-water fisheries to be combined and made available for use in either fishery from May 15 through June 30. This is intended to provide additional flexibility to the trawl fleet and help maintain this sector's groundfish harvest while minimizing halibut bycatch to the extent practicable. This change is described above under ''Action 4.''

Comment 25: There is a disincentive for halibut PSC avoidance due to disparate fleets that operate in different management areas, with different operating characteristics, and different fisheries. Reduced halibut PSC limits will exacerbate the issue associated with a common PSC limit for trawl fisheries.

Response: The Analysis examines the potential effects of halibut PSC limit reductions across gear types and segments of the fleet (see Section 4.6.5). This includes a discussion that considers both the potential for halibut avoidance measures to be effective in the various management areas and target fisheries of the GOA, as well as the potential for interactions between fisheries sectors to affect the inclination of participants to adopt avoidance measures. Section 4.6.5 notes that although different fleets have different incentives and abilities to respond to halibut PSC limit reductions, there are a variety of formal and informal arrangements and tools available to all of the affected fleets. Section 4.6.5 also notes that because trawl and hook-and-line PSC limits are managed separately, fleets will need to coordinate among participants within the same gear category, and not across all participants in all fisheries.

Comment 26: The proposed rule sets a timeline for phasing in PSC limit reductions, which should provide the fishing industry with time to adapt their fishing practices to meet these new PSC limits.

Response: NMFS agrees. The Council chose a phased-in implementation of the reductions to allow affected fleets to adapt to the lower halibut PSC limits, thereby minimizing detrimental economic effects that could occur due to foregone or curtailed groundfish harvesting opportunities. (Also see the response to Comment 3.)

Comments Associated With the Magnuson-Stevens Act and National Standards

Comment 27: The reductions to the halibut PSC limits comply with the mandate to achieve optimum yield, as required under National Standard 1 of the Magnuson-Stevens Act. Optimum yield is not determined solely by the amount of the target fishery that may be harvested, but by overall benefits to the Nation.

Response: NMFS agrees. Section 6.1 of the Analysis addresses National Standard 1. Specific to National Standard 1, the Analysis concludes that the overall benefits to the Nation may be positively affected by the action. Pacific halibut is a valuable species to commercial, recreational, and cultural entities. If halibut PSC limits are reduced, while concurrently limiting the amount of foregone groundfish catch, net benefits to the Nation will accrue.

Comment 28: Amendment 95 and the proposed rule are not consistent with National Standard 3 because of weakened protections for halibut in the GOA relative to other jurisdictions. National Standard 3 provides that ''to the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.'' National Standard 3 guidelines provide that the purpose of the standard is ''to induce a comprehensive approach to fishery management that is not jeopardized when fish live in waters of more than one jurisdiction,'' and that ''the geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks of fish, and not be overly constrained by political boundaries.'' Halibut PSC is managed differently in the GOA when compared to other IPHC regulatory areas. For example, all other IPHC regulatory areas require 100 percent observer coverage on trawl vessels, and trawl fisheries in IPHC regulatory areas 2B and 2A have been subject to greater reductions in halibut PSC than those that will be imposed by Amendment 95. NMFS' management of halibut PSC in the GOA falls short of measures implemented in other IPHC regulatory areas. Therefore Amendment 95 is inconsistent with National Standard 3.

Response: NMFS interprets this comment as suggesting that Amendment 95 does not implement halibut PSC management measures or limits that are comparable or equivalent to those that have been implemented in IPHC regulatory areas 2A and 2B. However, consistent with National Standards 1 and 9, the Council evaluated measures that minimize halibut bycatch in the GOA groundfish fisheries to the extent practicable while continuing to allow the GOA groundfish fisheries the opportunity to achieve optimum yield efficiently. Management measures implemented in IPHC regulatory areas 2A and 2B are under the jurisdiction of

other entities and are not within the jurisdiction of the North Pacific Fishery Management Council.

The comment also suggests that NMFS, through its implementation of Amendment 95, does not manage halibut throughout its range or in close coordination with interrelated stocks of fish and is therefore inconsistent with Magnuson-Stevens Act National Standard 3. However, Amendment 95 does not directly manage halibut or halibut fisheries. Actions taken by the Council to manage halibut fisheries are developed under the authority of the Halibut Act, and National Standard 3 of the Magnuson-Stevens Act does not apply to such actions.

NMFS implements Amendment 95 to manage the GOA groundfish fisheries under the authority of the Magnuson-Stevens Act by reducing the upper limit on the amount of halibut bycatch that may be taken by the GOA trawl and hook-and-line groundfish fisheries. This action is consistent with National Standard 3 in that NMFS manages the GOA groundfish fisheries as a unit, throughout their range, and NMFS manages interrelated stocks of the groundfish fisheries as a unit or in close coordination. Even if National Standard 3 imposes obligations on NMFS to manage the GOA groundfish fisheries halibut PSC as a unit throughout the groundfish fisheries' range, measures taken to minimize halibut PSC need not be identical for each geographic area.

Section 3.6.2.1 of the FMP describes that the IPHC manages the Pacific halibut stocks in its jurisdiction through regulations implementing the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773k). Halibut is not managed under the FMP. However, the Council manages halibut bycatch limits under the FMP and believes that treatment of halibut as a prohibited species is appropriate. In addition, the FMP states that under the Magnuson-Stevens Act, it is the Council's responsibility to recommend conservation and management measures, such as Amendment 95, that minimize halibut bycatch in the groundfish fisheries to the extent practicable.

Comment 29: Amendment 95 and the proposed rule are inconsistent with National Standard 4 because the proposed reductions fail to take into account the increasing share of the halibut resource that has been allocated to groundfish fishery participants through PSC. The GOA halibut PSC limits do not promote conservation or equity because they do not reflect changes in the exploitable biomass and do not require the trawl sector to share in the costs of recovering the resource.

Response: The Council and NMFS have determined that Amendment 95 is consistent with National Standard 4 (see Section 6.1 of the Analysis). National Standard 4 provides that ''conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, such allocation shall be (A) fair and equitable to all such fishermen, (B) reasonably calculated to promote conservation, and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.'' (16 U.S.C. 1851)

Nothing in the alternatives requires consideration of considers residency as a criterion for the Council's decision. Residents of various states, including Alaska and states of the Pacific Northwest, participate in the major sectors affected by the proposed action. No discriminations are made among fishermen based on residency or any other criteria. No geographic apportionment of halibut PSC is provided through this action.

As described in the responses to Comments 8 and 9 and in Sections 1.1 and 1.3 of the Analysis, the objective for Amendment 95 is to minimize halibut PSC to the extent practicable while achieving, on a continuing basis, the optimum yield from the groundfish fishery. NMFS uses halibut PSC limits to minimize the amount of halibut bycatch in the groundfish fishery to the extent practicable. The halibut PSC limits implemented by this action are not an allocation of, or an allowance for, halibut bycatch in the groundfish fishery. Rather, the halibut PSC limits impose an absolute limit on the amount of halibut bycatch that may be caught by the GOA groundfish trawl and hook-and-line fisheries.

In developing Amendment 95, the Council considered equity among halibut user groups, recognizing that users in the directed halibut fisheries have been impacted by reductions in catch limits and additional harvest restrictions as the halibut stock has declined (see Sections 3.2.8 and 4.6.2 of the Analysis). The Council also recognized that reductions in halibut PSC limits likely will constrain groundfish harvests in some years and that these reductions could result in reduced revenues and increased costs for participants in those fisheries (see Sections 4.6.3 and 4.6.5 of the Analysis). Amendment 95 balances these considerations to achieve the stated objective for the action.

As noted in the response to Comment 8, recent declines in halibut exploitable biomass and decline in size-at-age, particularly in the GOA, underscore the need to minimize bycatch of halibut in the groundfish fisheries to the extent practicable. While the causes of these declines are not well understood, Section 3.2.8 of the Analysis describes that reductions in halibut mortality resulting from reductions in PSC in the groundfish fisheries could contribute to future increases in halibut biomass, may promote improved halibut reproductive potential, and may contribute to increased halibut yields available to harvesters in the directed halibut fisheries.

Comment 30: The analysis does not adequately address National Standard 8 with respect to the effects of the trawl fisheries on subsistence use of the halibut resource.

Response: See the response to Comment 19.

Comment 31: The halibut PSC limit reductions meet the mandate of National Standard 9, which stipulates that bycatch be minimized to the extent practicable.

Response: NMFS agrees with this comment.

Comment 32: The action does not meet National Standard 9's requirement to minimize bycatch to the extent practicable.

Response: This action is specifically intended to control removals of halibut in the groundfish fisheries in the GOA. The practicability of reducing halibut removals in groundfish fisheries is discussed in Section 4.6 of the Analysis and in the response to Comments 3 and 12.

Comment 33: The proposed rule appears to improperly juxtapose National Standards 1 and 9 by presuming that the two standards are at odds, and that bycatch reductions are only practicable if the reductions allow for an optimum yield that is calculated separately from bycatch considerations. This in inconsistent with the Magnuson-Stevens Act's intent and construction.

Response: The preferred alternative that is implemented by this action balances the need to minimize halibut bycatch to the extent practicable consistent with National Standard 9, with the requirement to achieve optimum yield in the groundfish fishery, consistent with National Standard 1. In developing the preferred alternative, NMFS and the Council have appropriately balanced obligations under National Standard 1 and National Standard 9. This action provides the flexibility for participants in the groundfish fisheries to potentially harvest the TAC, which is one aspect of achieving optimum yield on a

continuing basis. As noted in the Analysis and in the preamble to the proposed rule, this action minimizes bycatch to the extent practicable by recognizing the range of management tools currently available to the groundfish fisheries to avoid halibut bycatch (also see the response to Comment 3). This action is likely to reduce, in some years, the ability for the groundfish fleet to fully harvest its allocation (see Sections 4.6.3 and 4.6.5 in the Analysis). Although the proposed halibut PSC limit reductions may result in earlier season closures and an attendant reduction in target groundfish catches, when the lower seasonal PSC limit is reached, the frequency and extent of early season closures will vary across gear types and segments of the fleets to the extent that fleets are willing to change fishing behavior in response to lower PSC limits. The fact that this action would reduce halibut PSC, and likely result in a reduced ability for harvests, reflects a well-reasoned and articulated balance between National Standard 1 and 9.

Comment 34: To be consistent with the requirements of the Magnuson-Stevens Act, the Council and NMFS should consider the optimum yield for halibut as a target species in addition to considering optimum yield for the fisheries in which halibut is caught as bycatch.

Response: As described in the proposed rule and in Section 6.1 of the Analysis, Amendment 95 is consistent with the Magnuson-Stevens Act. The purpose of this action is to minimize halibut bycatch to the extent practicable and to achieve, on a continual basis, the optimum yield from the groundfish fishery. As described in the response to Comment 28, Amendment 95 implements a halibut PSC management program in the GOA groundfish fisheries that is comprehensive and coordinated with IPHC's management of the Pacific halibut stock in Convention waters. The Analysis examined the potential effects of the alternatives considered under this action with respect to the effects of halibut PSC limit reductions on the groundfish fisheries, halibut biomass, and other user groups such as the directed halibut fishery (see Sections 4.6.2, 3.2.8, and 4.6.3 of the Analysis). The Council has recommended, and NMFS has implemented, a variety of programs that directly regulate different components of the halibut fisheries, including commercial, charter, and subsistence. Furthermore, as described in the response to Comment 28, Amendment 95 provides a halibut PSC management program in the GOA groundfish fisheries that is comprehensive and coordinated with IPHC's management of the Pacific halibut stock in Convention waters.

Classification

The NMFS Assistant Administrator has determined that Amendment 95 to the FMP and this rule are necessary for the conservation and management of the groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable law.

This rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a Final Regulatory Flexibility Analysis, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The preambles to the proposed rule and this final rule serve as the small entity compliance guide. This action does not require any additional compliance from small entities that is not described in the preambles. Copies of the proposed rule and this final rule are available from the NMFS Web site at *http://alaskafisheries.noaa.gov.*

Final Regulatory Flexibility Analysis

This final regulatory flexibility analysis (FRFA) incorporates the Initial Regulatory Flexibility Analysis (IRFA), a summary of the significant issues raised by the public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. NMFS published the proposed rule on September 17, 2013 (78 FR 57106), with comments invited through October 17, 2013. An IRFA was prepared and summarized in the ''Classification'' section of the preamble to the proposed rule. The FRFA describes the impacts on small entities, which are defined in the IRFA for this action and not repeated here. Analytical requirements for the FRFA are described in Regulatory Flexibility Act, section 304(a)(1) through (5), and summarized below.

The FRFA must contain:

1. A succinct statement of the need for, and objectives of, the rule;

2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary 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;

3. A description 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;

4. 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 the type of professional skills necessary for preparation of the report or record; and

5. 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 ''universe'' of entities to be considered in a FRFA generally includes only those small entities that can reasonably be expected to be directly regulated by the action. If the effects of the rule fall primarily on a distinct segment of the industry, or portion thereof (e.g., user group, gear type, geographic area), that segment would be considered the universe for purposes of this analysis.

In preparing a FRFA, an agency may provide either a quantifiable or numerical description of the effects of a rule (and alternatives to the rule), or more general descriptive statements, if quantification is not practicable or reliable.

Need for and Objectives of This Final Action

The Council developed a purpose and need statement defining the reasons for considering this action, as described in Section 1.1 of the Analysis for this action (see **ADDRESSES**). The Magnuson-Stevens Act National Standards require balancing optimum yield with minimizing bycatch and minimizing adverse impacts to fishery dependent communities. Pacific halibut bycatch taken incidentally in GOA groundfish fisheries is a concern because halibut is a resource that is shared by many other user groups, including the directed halibut fishery, sport, and subsistence users. Since existing GOA halibut PSC limits were established, the total biomass and abundance of halibut has varied, and in recent years the stocks have experienced an ongoing decline in size at a given age. Given this species

importance to a variety of user groups, the Council chose to evaluate the existing halibut PSC limits, which was followed by a recommendation to reduce the halibut PSC limits for the hook-and-line and trawl gear sectors.

Summary of Significant Issues Raised During Public Comment

No comments were received that raised significant issues in response to the IRFA specifically; therefore, no changes were made to the rule as a result of comments on the IRFA. However, several comments were received on the economic impacts of Amendment 95 on different sectors of the industry. For a summary of the comments received and the agency's responses, refer to the section above titled ''Response to Comments,'' particularly the sections titled ''Comments Associated with the Range of Alternatives and Practicability of Halibut PSC Reductions'' and ''Comments Associated with the Effects on Other Halibut User Sectors and Communities.''

Number and Description of Directly Regulated Small Entities

On June 20, 2013, the Small Business Administration issued a final rule revising the small business size standards for several industries effective July 22, 2013 (78 FR 37398, June 20, 2013). The rule increased the size standard for Finfish Fishing from $4.0 to 19.0 million, Shellfish Fishing from $4.0 to 5.0 million, and Other Marine Fishing from $4.0 to 7.0 million. Id. at 37400 (Table 1). The new size standards were used to prepare the FRFA for this action.

The entities directly regulated by this final action are those entities that participate in harvesting groundfish from the Federal or parallel groundfish fisheries of the GOA with trawl gear or hook-and-line gear (excluding sablefish). These directly regulated entities include the groundfish catcher vessels and groundfish catcher/processor vessels active in the GOA. We also consider those entities with halibut PSC sideboard limits, which include non-exempt AFA catcher vessels, Amendment 80 catcher/processors, and catcher/processors operating in Rockfish Program cooperatives, to be directly regulated. Fishing vessels are considered small entities if their total annual gross receipts, from all of their activities combined, are less than $19.0 million. This FRFA estimates the number of harvesting vessels that are considered small entities, but these estimates may overstate the number of small entities because (1) some vessels may also be active as tender vessels in the salmon fishery, fish in areas other than Alaska and the West Coast, or generate revenue from other non-fishing sources; and (2) all affiliations are not taken into account, especially if the vessel has affiliations not tracked in available data (i.e., ownership of multiple vessel or affiliation with processors) and may be misclassified as a small entity. The Analysis for this action identified an estimated 486 total vessels considered directly regulated small entities in 2012, the most recent year of available data on the size of regulated entities.

There are 65 Western Alaska communities that work through six non-profit Community Development Quota (CDQ) groups that are considered small entities for Regulatory Flexibility Act purposes. The CDQ groups' ownership of harvesting vessels that operate in the GOA means that some of the CDQ groups' activities could be directly regulated in the same manner as other small entities that own vessels harvesting groundfish in the GOA.

The AFA vessels, Amendment 80 catcher/processors, and Central GOA Rockfish fisheries operate under sideboard limits of halibut PSC and are therefore directly regulated. These cooperative entities are structured to increase the joint profits to their members. In 2012, there were seven inshore AFA cooperatives, two Amendment 80 cooperatives, and two Central GOA Rockfish cooperatives that are considered large entities for this action.

Description of Significant Alternatives Considered

The Council considered an extensive series of alternatives, options, and suboptions to reduce halibut PSC limits in the GOA, including the ''no action'' alternative. The RIR presents the complete set of alternatives (see **ADDRESSES**). Alternative 1, the Status Quo/No Action alternative, would retain the process of changing GOA halibut PSC limits through the annual groundfish harvest specification process. Alternative 2 would amend the FMP to remove setting GOA halibut PSC limits from the annual harvest specification process and instead establish the limits in Federal regulation. Alternative 2 includes two options. Option 1, Status Quo/No Action, would retain the existing 1,973 mt trawl and 300 mt hook-and-line gear halibut PSC limits provided in the final 2013 and 2014 annual harvest specifications for the GOA and place them in Federal regulation. Option 2 would revise the current GOA halibut PSC limits and write the new limits into Federal regulation. Alternative 2, Option 2, contained a number of suboptions for the amount of halibut PSC limit reduction by trawl and the hook-and-line fisheries, and additional measures. Other significant alternatives to the rule that were considered are discussed in Section 2.1.4 of the Analysis. Alternative 3, the preferred alternative, includes a suite of options and suboptions that considered a range of different halibut PSC limit reductions and modifications to halibut PSC sideboard limit management.

Other than Alternative 1, the Status Quo/No Action Alternative, all of the alternatives and options that were considered, including the Council's preferred alternative, would implement the halibut PSC limits through Federal regulation to reduce uncertainty about the final annual halibut PSC limit, which may benefit small entities. Based on the best available scientific information, none of the alternatives to the preferred alternative appear to have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and other applicable statutes (as reflected in this action), while minimizing any significant adverse economic impact on small entities beyond those achieved under this action. This action will minimize bycatch to the extent practicable while providing mechanisms to reduce the impacts on small entities in the GOA groundfish fisheries by phasing-in reductions to these halibut PSC limit reduction measures over several years and establishing other measures described in this rule to ensure more efficient use of the available halibut PSC limits.

Recordkeeping and Recording Requirements

This action does not modify recordkeeping or reporting requirements.

Federal Rules That May Duplicate, Overlap, or Conflict With This Action

The Analysis did not reveal any Federal rules that duplicate, overlap, or conflict with this final action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: February 12, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.,* 1801 *et seq.,* 3631 *et seq.;* and Pub. L. 108–447.

■ 2. In § 679.21,
■ a. Remove paragraph (d)(2);
■ b. Redesignate paragraphs according to the following table;

Redesignate paragraph	As paragraph
(d)(4)	(d)(2)
(d)(5)	(d)(4)
(d)(6)	(d)(5)
(d)(7)	(d)(6)
(d)(8)	(d)(7)

■ c. Revise paragraph (d)(1), newly redesignated paragraph (d)(2), paragraph (d)(3) heading, paragraphs (d)(3)(i) and (d)(3)(ii), and newly redesignated paragraphs (d)(4)(iii)(C) and (d)(6)(ii); and
■ d. Add paragraph (d)(4)(iii)(D) to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(1) *Notification and public comment*—(i) *Proposed and final apportionments.* NMFS will publish in the **Federal Register** proposed and final apportionments of the halibut PSC limits in paragraphs (d)(2) and (3) of this section in the notification required under § 679.20.

(ii) *Modification of apportionments.* NMFS, by notification in the **Federal Register**, may change the halibut PSC apportionments during the year for which they were specified, based on new information of the types set forth in this paragraph (d).

(iii) *Public comment.* NMFS will accept public comment on the proposed halibut PSC apportionments for a period specified in the notice of proposed halibut PSC apportionments published in the **Federal Register**. NMFS will consider comments received on proposed halibut PSC apportionments and, after consultation with the Council, will publish notification in the **Federal Register** specifying the final halibut PSC apportionments.

(2) *Hook-and-line gear and pot gear annual halibut PSC limit.* (i) The annual total PSC limit of halibut caught while conducting any hook-and-line gear fishery for groundfish in the GOA is an amount of halibut equivalent to the amount of halibut mortality established for each of the fishery categories in paragraphs (d)(2)(i)(A) and (B) of this section. The notification at paragraph (d)(1) of this section also may specify a halibut PSC limit for the pot gear fisheries.

(A) *Demersal shelf rockfish, Southeast Outside (SEO) District.* The halibut PSC limit in the demersal shelf rockfish fishery in the SEO District is 9 mt.

(B) *Other hook-and-line fishery.* The halibut PSC limit in the other hook-and-line gear fishery is established according to the provisions of paragraphs (d)(2)(iii) and (d)(2)(iv) of this section.

(ii) *Hook-and-line fishery categories.* For purposes of apportioning the hook-and-line halibut PSC limit among fisheries, the following fishery categories are specified and defined in terms of round-weight equivalents of those GOA groundfish species for which a TAC has been specified under § 679.20.

(A) *Demersal shelf rockfish, SEO District.* Fishing with hook-and-line gear in the SEO District of the Eastern GOA regulatory area during any weekly reporting period that results in a retained catch of demersal shelf rockfish that is greater than the retained amount of any other fishery category defined under this paragraph (d)(2)(ii).

(B) *Other hook-and-line fishery.* Fishing with hook-and-line gear during any weekly reporting period that results in a retained catch of groundfish and is not a demersal shelf rockfish fishery defined under paragraph (d)(2)(ii)(A) of this section.

(iii) Apportionment of the GOA halibut PSC limit among other hook-and-line catcher vessels and catcher/processors.

(A) Catcher vessels using hook-and-line gear in the other hook-and-line fishery will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows:

$$290\ mt * \frac{(1.4\%(X_{WGOA}) + 21.3\%(X_{CGOA}))}{((19.8\% + 1.4\%)(X_{WGOA}) + ((5.1\% + 21.3\%)(X_{CGOA})}$$

(B) Catcher/processors using hook-and-line gear in the other hook-and-line fishery will be apportioned part of the GOA halibut PSC limit in proportion to the total Western and Central GOA Pacific cod allocations, where X is equal to annual TAC, as follows:

$$290\ mt * \frac{(19.8\%(X_{WGOA}) + 5.1\%(X_{CGOA}))}{((19.8\% + 1.4\%)(X_{WGOA}) + ((5.1\% + 21.3\%)(X_{CGOA})}$$

(C) No later than November 1, any halibut PSC limit allocated under paragraph (d)(2)(ii)(B) of this section not projected by the Regional Administrator to be used by one of the hook-and-line sectors during the remainder of the fishing year will be made available to the other sector.

(iv) *Other hook-and-line fishery annual PSC limit reductions.* The annual halibut PSC limits established for the other hook-and-line fishery under paragraph (d)(2)(iii) of this section are reduced, as follows:

Vessel category	Annual PSC limit percent reduction from the annual halibut PSC limit established under paragraph (d)(2)(iii) of this section.	Effective years
(A) Catcher vessel	7	2014.
	12	2015.
	15	2016 and each year thereafter.
(B) Catcher/processor	7	2014 and each year thereafter.

(3) *Trawl gear annual halibut PSC limit.* (i) The annual total PSC limit of halibut caught while conducting any trawl gear fishery for groundfish in the GOA is an amount of halibut equivalent to 1,973 mt of halibut mortality. This amount is reduced as follows:

Percent reduction from 1,973 mt	Annual trawl gear PSC limit (mt) [1]	Effective years
7	1,848	2014.
12	1,759	2015.
15	1,705	2016 and each year thereafter.

[1] This amount maintains the 191 mt annual allocation to the Rockfish Program (see Table 28d to this part) from the 1,973 mt halibut PSC limit, while reducing the remainder of the annual trawl gear halibut PSC limit by the percentage listed in the first column.

(ii) *PSC allowance.* The halibut PSC limit specified for vessels using trawl gear may be further apportioned as PSC allowances to the fishery categories listed in paragraph (d)(3)(iii) of this section, based on each category's proportional share of the anticipated halibut PSC mortality during a fishing year and the need to optimize the amount of total groundfish harvest under the halibut PSC limit. The sum of all PSC allowances will equal the halibut PSC limit established under paragraph (d)(3)(i) of this section.

* * * * *

(4) * * *

(iii) * * *

(C) The amount of unused halibut PSC not reapportioned under the provisions described in § 679.21(d)(4)(iii)(B) will not be available for use as halibut PSC by any person for the remainder of that calendar year.

(D) *Combined management of trawl halibut PSC limits from May 15 through June 30.* NMFS will combine management of available trawl halibut PSC limits in the second season deep-water and shallow-water species fishery categories for use in either fishery from May 15 through June 30 during the current fishery year. Halibut PSC sideboard limits for the Amendment 80 and AFA sectors will continue to be defined as deep-water and shallow-water species fisheries from May 15 through June 30. NMFS will re-apportion the halibut PSC limit between the deep-water and shallow-water species fisheries after June 30 to account for actual halibut PSC use by each fishery category during May 15 through June 30. The Regional Administrator will issue a **Federal Register** notice to reapportion the amounts of trawl halibut PSC to each species fishery category.

* * * * *

(6) * * *

(ii) *Hook-and-line fisheries.* If, during the fishing year, the Regional Administrator determines that U.S. fishing vessels participating in any of the three hook-and-line gear and operational type fishery categories listed under paragraph (d)(2) of this section will catch the halibut PSC allowance, or apportionments thereof, specified for that fishery category under paragraph (d)(1) of this section, NMFS will publish notification in the **Federal Register** closing the entire GOA or the applicable regulatory area, district, or operation type to directed fishing with hook-and-line gear for each species and/or species group that composes that fishing category.

* * * * *

■ 3. In § 679.92, revise paragraph (b)(2) introductory text to read as follows:

§ 679.92 Amendment 80 Program use caps and sideboard limits.

* * * * *

(b) * * *

(2) *GOA halibut PSC sideboard limits.* All Amendment 80 vessels, other than the fishing vessel GOLDEN FLEECE as specified in paragraph (d) of this section, may not use halibut PSC in the fishery categories and management areas, greater than the amounts specified in Table 38 to this part during January 1 through December 31 of each year. Any residual amount of a seasonal sideboard halibut PSC limit may carry forward to the next season limit. This restriction on halibut PSC usage does not apply to the following two exceptions:

* * * * *

■ 4. Revise Table 38 to part 679 to read as follows:

TABLE 38 TO PART 679—GOA AMENDMENT 80 SIDEBOARD LIMIT FOR HALIBUT PSC FOR THE AMENDMENT 80 SECTOR

In the . . .	The maximum percentage of the total GOA halibut PSC limit that may be used by all Amendment 80 qualified vessels subject to the halibut PSC sideboard limit as those seasons[1] are established in the annual harvest specifications is . . .				
	Season 1	Season 2	Season 3	Season 4	Season 5
Shallow-water species fishery as defined in § 679.21(d)(3)(iii)(A) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.	0.48	1.89	1.46	0.74	2.27
Deep-water species fishery as defined in § 679.21(d)(3)(iii)(B) in the GOA or adjacent waters open by the State of Alaska for which it adopts a Federal fishing season.	1.15	10.72	5.21	0.14	3.71

[1] Any residual amount of a seasonal sideboard halibut PSC limit may carry forward to the next season limit (see § 679.92(b)(2)).

[FR Doc. 2014–03631 Filed 2–19–14; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 79, No. 34
Thursday, February 20, 2014

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

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2014–BT–TP–0006]

RIN 1904–AD16

Energy Conservation Program for Certain Commercial and Industrial Equipment: Test Procedure for Commercial Packaged Boilers

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

ACTION: Request for information (RFI).

SUMMARY: The U.S. Department of Energy (DOE) is initiating a rulemaking and data collection process to consider amendments to DOE's test procedure for commercial packaged boilers. This rulemaking is intended to fulfill DOE's statutory obligation to review its test procedures for covered products at least once every seven years. As part of this process, DOE is considering the potential for adoption of part-load efficiency measurement as part of this test procedure rulemaking for commercial packaged boilers. To help inform the test procedure rulemaking, DOE has identified a variety of issues on which it is seeking comment, as outlined in this document; these issues mainly concern part-load operation and efficiency, appropriate operating conditions for both part-load and full-load operation, and the integration of part-load measurements into the applicable energy efficiency metric. Although DOE welcomes comment on all aspects of its test procedure, DOE is particularly interested in receiving comments and data from stakeholders and the public on these topics.

DATES: DOE will accept written comments, data, and information on this document, on or before March 24, 2014.

ADDRESSES: Interested persons are encouraged to submit comments electronically. However, interested persons may submit comments, identified by docket number EERE–2014–BT–TP–0006 or Regulation Identifier Number (RIN) 1904–AD16, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: CommPackagedBoilers2014TP0006@ee.doe.gov* Include docket number EERE–2014–BT–TP–0006 and/or RIN 1904–AD16 in the subject line of the message. All comments should clearly identify the name, address, and if appropriate, organization of the commenter. Submit electronic comments in WordPerfect, Microsoft Word, portable document format (PDF), or American Standard Code for Information Interchange (ASCII) file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted. For further information on the rulemaking process, see section III of this document (Public Participation).

Docket: The docket is available for review at *www.regulations.gov*, including **Federal Register** notices, comments, and other supporting documents/materials (search EERE–2014–BT–TP–0006). All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/product.aspx/productid/74*. This Web page contains a link to the docket for this document on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. James Raba, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8654. Email: *commercial_packaged_boilers@ee.doe.gov*.

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. Email: *Eric.Stas@hq.doe.gov*.

For information on how to submit or review comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Email: *Brenda.Edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Authority and Background
II. Discussion
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I. Authority and Background

Title III, Part C [1] of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317, as codified), Public Law 95–619, Title IV § 441(a), sets forth various provisions designed to improve energy efficiency for consumer products and certain commercial and industrial equipment and established the ''Energy Conservation Program for Certain Industrial Equipment'' (hereafter referred to as ''covered equipment'').[2] The Energy Policy Act of 1992 (EPACT 1992), Public Law 102–486, amended EPCA to add commercial packaged boilers as a type of covered equipment. (42 U.S.C. 6311(1)) The Energy

[1] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

[2] All references to EPCA in this document refer to the statute as amended through the American Energy Manufacturing Technical Corrections Act (AEMTCA), Public Law 112–210 (Dec. 18, 2012).

Independence and Security Act of 2007 (EISA 2007), Public Law 110–140, further revised EPCA to require that not later than six years after issuance of any final rule establishing or amending a standard,[3] the Secretary of Energy must publish either a notice of determination that the standards for a given type of equipment do not need to be amended, or a notice of proposed rulemaking (NOPR) including new proposed standards. (42 U.S.C. 6313(a)(6)(C)(i)) Additionally, EPCA (as amended) requires DOE to update its test method each time the relevant industry test procedure is modified (42 U.S.C. 6314(a)(4)(B)) and to evaluate its test procedure for each covered class once every seven years (42 U.S.C. 6314(a)(1)(A)).

To fulfill these requirements set forth in EPCA, DOE has initiated a rulemaking to consider amended energy conservation standards for commercial packaged boilers, and, in parallel, DOE will evaluate the commercial packaged boilers test procedure found in the Code of Federal Regulations (CFR) at 10 CFR 431.86, Uniform test method for the measurement of energy efficiency of commercial packaged boilers. DOE issued a notice of public meeting and availability of the Framework Document on August 28, 2013, which was published in the **Federal Register** on September 3, 2013. 78 FR 54197. The Framework Document explains the issues, analyses, and process that DOE is considering for the development of energy conservation standards. Both in the Framework Document and in a public meeting held on October 1, 2013, DOE solicited public comment regarding its approach to the rulemaking process and identified particular issues for which DOE sought comment. The comments received included suggestions for the revision of the DOE test procedure.

In support of its test procedure rulemaking, DOE conducts in-depth technical analyses of publicly-available test standards and other relevant information. DOE continually seeks data and public input to improve its testing methodologies to more accurately reflect consumer use and to produce repeatable results. In general, DOE requests information, comment, and supporting data about representative and repeatable methods for measuring the energy use of commercial packaged boilers. In particular, DOE seeks comment and information about the topics below.

[3] The AEMTCA amendments to EPCA later revised the timeframe for this review requirement for energy conservation standards to ''[e]very 6 years.'' (42 U.S.C. 6313(a)(6)(C)(i))

II. Discussion

The DOE test procedure for commercial packaged boilers, set forth at 10 CFR 431.86, incorporates Hydronics Institute/Air-Conditioning, Heating, and Refrigeration Institute Standard BTS–2000 (Rev 06.07), *Method to Determine Efficiency of Commercial Space Heating Boilers*. This test procedure determines the steady-state efficiency of steam or hot water boilers operating at full load.[4] However, through a review of equipment available in the market, DOE understands that the commercial packaged boiler industry is increasingly utilizing modulating burners. Modulating burners are capable of reducing the fuel input rate to more closely match the space heating demand. Because the current test procedure at 10 CFR 431.86 only measures steady-state efficiency at maximum firing rate, it does not account for differences in efficiency when the boiler is operated at lower firing rates. Therefore, DOE is considering test procedure amendments that would adopt part-load test conditions and measurements to more accurately reflect the efficiency of commercial packaged boilers that use modulating burner technology.

In general, DOE requests comment, information, and data about adopting methodologies and measurements to determine part-load efficiency of commercial packaged boilers. Further, DOE particularly requests comment, information, and data about the following:

(1) Should DOE only consider adding a measurement of commercial packaged boiler efficiency at the minimum fuel input ratio in addition to the maximum fuel input? If not, then at what fuel input ratio(s)—fraction of maximum rated capacity—should the efficiency of a commercial packaged boiler be measured?

(2) What are the appropriate inlet and outlet water temperatures (or the appropriate mean temperature and temperature difference between the inlet and outlet water temperatures (ΔT)) for part-load testing conditions of hot water boilers. Should this temperature difference (ΔT) be the same as when testing at full capacity?

(3) How many hours can modulating burners be expected or designed to operate under part-load and full-load conditions, respectively, over the course of a year in a typical or average installation?

(4) What benefits and burdens are associated with a part-load efficiency rating and combining the different operating points into a single weighted metric? What are potential ways to combine them?

(5) When considering part-load operation, how would the measurement and inclusion of jacket, sensible, and infiltration losses be addressed in an annual weighted efficiency metric?

(6) What, if any, would be the added test burden of accounting for part-load operation and associated measurement of jacket, sensible, and infiltration losses?

DOE understands that current test conditions (*i.e.,* temperatures and pressures) required under 10 CFR 431.86 and BTS–2000 may differ from typical operating conditions in the field and/or the conditions for which a boiler was designed. While laboratory testing conditions cannot necessarily duplicate field performance, they are intended to provide a reasonable basis for comparison of boiler efficiency and to generate repeatable results, while approximating actual operating conditions to the extent possible. DOE understands that testing conditions prescribed by BTS–2000 may warrant revision. Accordingly, DOE seeks input and comment about:

(1) What are appropriate supply and return water temperatures for hot water boilers operating at full-load and the effect on steady-state efficiency (thermal or combustion) of this potential revision?

(2) What is appropriate steam pressure for steam boilers operating at full-load and the effect on steady-state efficiency (thermal or combustion) of this potential revision? What are concerns, if any, about the impacts on the amount of water carry over and the system operation?

(3) What design characteristics of boilers currently on the market would potentially prohibit testing (short-term operation) at the operating conditions currently prescribed by 10 CFR 431.86 and BTS–2000?

III. Public Participation

DOE invites all interested parties to submit in writing by the date specified previously in the **DATES** section of this RFI, comments and information on matters addressed in this document and on other matters relevant to DOE's consideration of amended test procedures for commercial packaged boilers.

DOE considers public participation to be a very important part of the process

[4] Thermal efficiency is measured for all types of boilers except for oil-fired and gas-fired hot water boilers greater than 2,500,000 Btu/h in rated capacity, for which combustion efficiency is used.

for developing test procedures. DOE actively encourages the participation and interaction of the public during the comment period at each stage of the rulemaking process. Interactions with and between members of the public provide a balanced discussion of the issues and assist DOE in the rulemaking process. Anyone who wishes to be added to the DOE mailing list to receive future notices and information about this rulemaking should contact Ms. Brenda Edwards at (202) 586–2945, or via email at *Brenda.Edwards@ee.doe.gov*.

Issued in Washington, DC, on February 7, 2014.

Kathleen B. Hogan,

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

[FR Doc. 2014–03299 Filed 2–19–14; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 222

[Docket No. R–1484]

RIN 7100 AE14

Identity Theft Red Flags (Regulation V)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing to amend its Identity Theft Red Flags rule, which implements section 615(e) of the Fair Credit Reporting Act (FCRA). The Red Flag Program Clarification Act of 2010 (Clarification Act) added a definition of ''creditor'' in FCRA section 615(e) that is specific to section 615(e). Accordingly, the proposed rule would amend the definition of ''creditor'' in the Identity Theft Red Flags rule to reflect the definition of that term as added by the statute. The proposed rule would also update a cross-reference in the Identity Theft Red Flags rule to reflect a statutory change in rulemaking authority.

DATES: Comments must be received on or before April 21, 2014.

ADDRESSES: You may submit comments, identified by Docket No. R–1484, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov*. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov*. Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Kara L. Handzlik, Counsel, Legal Division, at (202) 452–3852, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

On November 9, 2007, the Board, along with the other banking agencies [1] and the Federal Trade Commission (FTC) (collectively, the ''Agencies''), published final rules and guidelines on identity theft ''red flags'' (''Red Flags rule'') to implement section 615(e) of the Fair Credit Reporting Act (FCRA) (15 U.S.C. 1681m(e)).[2] The final rules require each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, to develop and implement an identity theft prevention program in connection with new and existing accounts. The program must include reasonable policies and procedures for detecting, preventing, and mitigating identity theft. The Agencies also issued guidelines to assist financial institutions and creditors in developing and implementing a program, including a supplement that provides examples of red flags.

The Red Flags rule, implemented in the Board's Regulation V Subpart J, defines the terms ''credit'' and ''creditor'' by cross-reference to FCRA section 603(r)(5). 15 U.S.C. 1681a(r)(5). Section 603(r)(5) defines the terms ''credit'' and ''creditor'' by cross-reference to section 702 of the Equal Credit Opportunity Act (ECOA). ECOA section 702 defines ''creditor'' as ''any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.'' 15 U.S.C. 1691a(e). The ECOA defines ''credit'' as ''the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.'' 15 U.S.C. 1691a(d). Thus, the FCRA's red flags provisions have been broadly applied to banks, finance companies, automobile dealers, mortgage brokers, utility companies, and telecommunications companies. 12 CFR 222.90(b)(5).

The scope of the Board's Red Flags rule is set forth in § 222.90(a), which states that the Board's rule applies to financial institutions and creditors that are state member banks (other than national banks) and their respective operating subsidiaries, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Financial institutions and creditors that are not covered by the Board's rule are covered by substantially identical rules issued by other federal agencies.

II. The Red Flag Program Clarification Act of 2010

On December 18, 2010, Congress enacted the Red Flag Program Clarification Act of 2010 (the Clarification Act).[3] The Clarification Act amended section 615(e) of the FCRA (15 U.S.C. 1681m(e)) by adding a definition of the term ''creditor'' specific to section 615(e). The Clarification Act continues to define creditor by cross-reference to

[1] The other banking agencies included the Office of the Comptroller of the Currency (OCC); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS); and National Credit Union Administration (NCUA). The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) added the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) to the list of agencies with rulemaking and enforcement authority under the Fair Credit Reporting Act with respect to the Red Flags rule. Public Law 111–203, 124 Stat. 1376 (2010).

[2] 72 FR 63718 (Nov. 9, 2007).

[3] Public Law 111–319, 124 Stat. 3457 (Dec. 18, 2010).

the ECOA's definition of creditor, but limits the application of the red flags provisions of the FCRA to only those creditors that regularly and in the ordinary course of business: (a) Obtain or use consumer reports, directly or indirectly, in connection with a credit transaction; (b) furnish information to consumer reporting agencies, as described in FCRA section 623, in connection with a credit transaction; or (c) advance funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person. 15 U.S.C. 1681m(e)(4)(A).

The Clarification Act's revised definition excludes, however, those creditors that advance funds on behalf of a person for expenses incidental to a service provided by the creditor to that person. 15 U.S.C. 1681m(e)(4)(B). The legislative intent of narrowing the definition of ''creditor'' in the Red Flags rule was to exclude from coverage those persons that sell a product or service for which the consumer can pay later, such as lawyers and doctors.[4]

The Clarification Act also grants authority to the Board and the other agencies to determine, through a rulemaking, whether there are other creditors that offer or maintain accounts that are subject to a reasonably foreseeable risk of identity theft that should be subject to the Red Flags rule. 12 U.S.C. 1681m(e)(4)(C). The Board is not using its discretionary rulemaking authority at this time to extend the application of its Red Flags rule to additional creditors.

III. Proposed Amendment

The Board is proposing to amend the definition of ''creditor'' in Regulation V (12 CFR 222.90) to conform the rule to the definition of ''creditor'' in FCRA as amended by the Clarification Act. As noted above, the existing definition of ''creditor'' in § 222.90(b)(5) makes a cross-reference to the general definition of ''creditor'' in section 603(r)(5) of the FCRA and provides a list of examples of lenders. The proposed revised definition of ''creditor'' in § 222.90(b)(5) would instead cross-reference the more limited definition of creditor in section 615(e) of the FCRA, which is specific to the statute's red flags provisions. Accordingly, proposed § 222.90(b)(5) provides that ''creditor has the same meaning as in 15 U.S.C. 1681m(e)(4).''

As discussed above, the Red Flags rule requires each financial institution and creditor that holds any consumer account, or other account for which there is a reasonably foreseeable risk of identity theft, to develop and implement an identity theft prevention program. Under the revised definition, creditors that do not regularly and in the ordinary course of business: (a) Obtain or use consumer reports in connection with a credit transaction; (b) furnish information to consumer reporting agencies in connection with a credit transaction; or (c) advance funds to or on behalf of a person, would no longer be covered by the rule. The Board notes, however, that the Red Flags rule still covers all financial institutions, regardless of whether they meet the revised definition of creditor.[5]

The Board is also proposing to update a citation in Supplement A to Appendix J of the Red Flags rule. Supplement A to Appendix J includes a cross-reference to the Board's definition of a ''notice of address discrepancy'' in Regulation V (12 CFR 222.82(b)). Pursuant to the Dodd-Frank Act, the Board's rulemaking authority for the notice of address discrepancy provisions of the FCRA (15 U.S.C. 1681c(h)) transferred to the Consumer Financial Protection Bureau (CFPB). Accordingly, the Board is proposing to update the cross-reference to the CFPB's definition of a ''notice of address discrepancy'' in the CFR's Regulation V § 1022.82(b).[6]

IV. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* As noted above, the Clarification Act amended the definition of ''creditor'' in the FCRA for purposes of the red flags provisions. The Board is proposing to amend the definition of ''creditor'' in its Red Flags rule to reflect the revised definition of that term in the Clarification Act. As also noted above, the Board is proposing to update a cross-reference in the Red Flags rule to reflect the CFPB's rulemaking authority for the notice of address discrepancy provisions in the FCRA.

2. *Small entities affected by the proposed rule.* The proposed rule would amend the definition of ''creditor'' in the Board's Regulation V Subpart J to conform to the revised definition of that term in the Clarification Act. The proposed definition continues to refer to the FCRA definition of ''creditor,'' which references the ECOA definition of ''creditor,'' but limits the application of the red flags provisions to only those creditors that regularly and in the ordinary course of business: (a) Obtain or use consumer reports in connection with a credit transaction; (b) furnish information to consumer reporting agencies in connection with a credit transaction; or (c) advance funds to or on behalf of a person, based on an obligation of the person to repay the funds or repayable from specific property pledged by or on behalf of the person. 12 U.S.C. 1681m(e)(4)(A). Creditors that advance funds on behalf of a person for expenses incidental to a service provided by the creditor to that person are excluded from the definition. Small entity creditors that do not meet this more limited definition would no longer be covered by the rule. However, small entities that are financial institutions would still be covered by the rule, regardless of whether they meet the revised definition of creditor.

The proposed rule would also update a cross-reference in the Red Flags rule to reflect the CFPB's rulemaking authority for the notice of address discrepancy provisions in the FCRA. This revision would have no effect on small entities because there is no substantive difference between the Board's definition of a ''notice of address discrepancy'' and the CFPB's definition.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule does not impose any new recordkeeping, reporting, or compliance requirements on small entities. Small entities that no longer meet the

[4] 156 Cong. Rec. S8289 (daily ed. Nov. 30, 2010) (statement of Sen. Dodd).

[5] The Board has consulted and coordinated with the other banking agencies, the FTC, the CFTC, and the SEC with respect to this proposed rulemaking to amend the Red Flags rule to conform it to the Clarification Act. The Board understands that the other banking agencies will act separately with respect to any necessary updates to each of the banking agency's Red Flags rules. The FTC issued an interim final rule that amends the definition of ''creditor'' in its Red Flags rule, consistent with the revised definition in the Clarification Act. *See* 77 FR 72712 (Dec. 6, 2012). The CFTC and SEC issued final Red Flags rules implementing section 615 of FCRA, which includes the definition of ''creditor'' as set forth in the Clarification Act. *See* 76 FR 23638 (Apr. 19, 2013).

[6] The Board notes that there is no substantive difference between the Board's definition of a ''notice of address discrepancy'' and the CFPB's definition. The Board also notes that it plans to make further revisions to Regulation V outside of this Red Flags rulemaking to reflect changes in rulemaking authority.

narrower definition of ''creditor'' would not have to comply with the requirements of the Red Flags rule. However, small entity financial institutions would still be required to comply with the Red Flags rule, regardless of whether they meet the revised definition of creditor.

4. *Other federal rules.* The Board has not identified any federal statutes or regulations that would duplicate, overlap, or conflict with the proposed revision.

5. *Significant alternatives to the proposed revisions.* The proposed revisions to the definition of ''creditor'' and the cross-reference to the definition of a ''notice of address discrepancy'' reflect statutory changes. The Board does not believe there are significant alternatives to these revisions. Although the Board has authority to determine through a rulemaking that any other creditor that offers or maintains accounts that are subject to a reasonably foreseeable risk of identity theft is subject to the Red Flags rule, the Board does not believe it is appropriate to use its discretionary rulemaking authority at this time.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Federal Reserve by the Office of Management and Budget (OMB). The proposed rule contains no requirements subject to the PRA.

List of Subjects in 12 CFR Part 222

Banks, banking, Consumer protection, Holding companies, Safety and soundness, and State member banks.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend Regulation V, 12 CFR part 222, as set forth below:

PART 222—FAIR CREDIT REPORTING (REGULATION V)

■ 1. The authority citation for part 222 continues to read as follows:

Authority 5 U.S.C. 1681b, 1681c, 1681m and 1681s; Secs. 3, 214, and 216, Pub. L. 108–159, 117 Stat. 1952.

■ 2. Amend § 222.90 by revising paragraph (b)(5) to read as follows:

§ 222.90 Duties regarding the detection, prevention, and mitigation of identity theft.

* * * * *

(b) * * *

(5) *Creditor* has the same meaning as in 15 U.S.C. 1681m(e)(4).

* * * * *

■ 3. Amend Supplement A to Appendix J by revising example 3. to read as follows:

Appendix J to Part 222—Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation

* * * * *

Supplement A to Appendix J

* * * * *

■ 3. A consumer reporting agency provides a notice of address discrepancy, as defined in 12 CFR 1022.82(b).

* * * * *

By order of the Board of Governors of the Federal Reserve System, February 10, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–03264 Filed 2–19–14; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Docket No. R–1482]

RIN 7100 AE12

Truth in Savings (Regulation DD)

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is proposing to repeal its Regulation DD, 12 CFR part 230, which was issued to implement the Truth in Saving Act (TISA). Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) transferred rulemaking authority for a number of consumer financial protection laws, including TISA, from the Board to the Bureau of Consumer Financial Protection (Bureau). In December 2011, the Bureau published an interim final rule establishing its own Regulation DD to implement TISA (Bureau Interim Final Rule).[1] The Bureau Interim Final Rule substantially duplicates the Board's Regulation DD. Credit unions are not subject to either the Board's or Bureau's Regulation DD, and are covered instead by a substantially identical regulation issued by the National Credit Union Administration (NCUA) pursuant to 12 U.S.C. 4311.

Under section 1029 of the Dodd-Frank Act, the Board retains authority to issue rules for certain motor vehicle dealers that offer consumer financial services and are not subject to the Bureau's regulatory authority. The Board is not aware of any entities that are motor vehicle dealers engaging in activities subject to TISA that would be subject to the Board's authority under section 1029 of the Dodd-Frank Act. Accordingly, the Board is proposing to repeal its Regulation DD.

DATES: Comments must be received on or before April 21, 2014.

ADDRESSES: You may submit comments, identified by Docket No. R–1482, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: regs.comments@federalreserve.gov.* Include the docket number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets NW.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Vivian W. Wong, Counsel, Division of Consumer and Community Affairs, at (202) 452–3667, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.,* historically has been implemented by the Board's Regulation DD, published at 12 CFR part 230. The

[1] 12 CFR part 1030. *See* 76 FR 79276 (Dec. 21, 2011).

purpose of the act and regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield, the interest rate, and other account terms. An official staff commentary interprets the requirements of the Board's Regulation DD (12 CFR part 230 (Supp. I)). Credit unions are governed by a substantially similar regulation issued by the NCUA at 12 CFR part 707.

Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011. In connection with the transfer of the Board's rulemaking authority for TISA, the Bureau published an interim final rule to establish its own Regulation DD, 12 CFR part 1030, to implement TISA (Bureau Interim Final Rule).[2] The Bureau Interim Final Rule substantially duplicated the Board's Regulation DD and made only certain non-substantive, technical, formatting, and stylistic changes. The Bureau Interim Final Rule did not impose any new substantive obligations on regulated entities.

Under section 1029(a) of the Dodd-Frank Act, the Bureau may not exercise any rulemaking, supervisory, enforcement or any other authority over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, subject to certain exceptions.[3] Section 1029(c) of the Dodd-Frank Act further provides that nothing in the Dodd-Frank Act should be construed to modify, limit, or supersede the authority of the Board with respect to a motor vehicle dealer described in section 1029(a) of the Dodd-Frank Act.[4] Accordingly, to the extent that a motor vehicle dealer described in section 1029(a) of the Dodd-Frank Act was subject to one of the Board's consumer financial service regulations, the Board's regulation would continue to apply.

II. Statutory Authority

As noted above, Title X of the Dodd-Frank Act transferred rulemaking authority for TISA from the Board to the Bureau, effective July 21, 2011. Pursuant to Section 1029 of the Dodd-Frank Act, however, the Board retains rulemaking authority for consumer financial protection laws to the extent that such laws could cover motor vehicle dealers identified in Section 1029(a) of the Dodd-Frank Act.

III. Discussion

TISA and the Board's Regulation DD apply only to depository institutions. *See* 12 U.S.C. 4301; 12 CFR 230.1(c). For this purpose, the term ''depository institution'' includes ''an institution defined in Section 19(b)(1)(A)(i) through (vi) of the Federal Reserve Act (12 U.S.C. 461), except credit unions defined in Section 19(b)(1)(A)(iv).'' 12 U.S.C. 4313(6); 12 CFR 230.2(j). Depository institutions are generally subject to restrictions on the types of activities in which they may engage as principal. *See e.g.,* 12 U.S.C. 24 (Seventh) and 12 U.S.C. 1831a. These activities are restricted to those that are necessary to carry on the business of banking and other limited financial activities. Based on these restrictions, the Board believes that motor vehicle dealers, as defined in Section 1029(a) of the Dodd-Frank Act, that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both, could not also be depository institutions subject to TISA. Consequently, the Board is publishing a proposed rule for public comment to repeal the Board's Regulation DD, 12 CFR part 230. The Board, requests comment, however, on whether any motor vehicle dealers identified in Section 1029(a) of the Dodd-Frank Act are or could become depository institutions for purposes of TISA.

IV. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities. Based on its analysis, and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* Title X of the Dodd-Frank Act transferred rulemaking authority for a number of consumer financial protection laws from the Board to the Bureau, effective July 21, 2011, including TISA. The Bureau issued the Bureau Interim Final Rule to implement TISA in connection with the transfer of TISA rulemaking authority to the Bureau. Pursuant to Section 1029 of the Dodd-Frank Act, however, the Board retains rulemaking authority for consumer financial protection laws to the extent that such laws could cover motor vehicle dealers identified in Section 1029(a) of the Dodd-Frank Act. The Board does not believe that any motor vehicle dealers identified in Section 1029(a) of the Dodd-Frank Act are or could become depository institutions subject to TISA. Consequently, the Board is proposing to repeal the Board's Regulation DD, 12 CFR part 230.

2. *Small entities affected by the proposed rule.* The Board does not believe that any motor vehicle dealers identified in Section 1029(a) of the Dodd-Frank Act are or could become depository institutions subject to TISA. Therefore, the Board believes the proposed rule would not affect any entity, including any small entity.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would repeal the Board's Regulation DD, 12 CFR part 230, and would therefore not impose any recordkeeping, reporting, or compliance requirements on any entities.

4. *Other federal rules.* The Board has not identified any federal rules that duplicate, overlap, or conflict with the proposed repeal of the Board's Regulation DD, 12 CFR part 230.

5. *Significant alternatives to the proposed revisions.* The Board is not aware of any significant alternatives that would further minimize any significant economic impact of the proposed rule on small entities, but solicits comment on this approach.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C.

[2] 76 FR 79276 (Dec. 21, 2011). Section 1100B of the Dodd-Frank Act did not grant the Bureau TISA rulemaking authority over credit unions or repeal the NCUA's TISA rulemaking authority over credit unions under 12 U.S.C. 4311.

[3] Section 1029(a) of the Dodd-Frank Act states: ''Except as permitted in subsection (b), the Bureau may not exercise any rulemaking, supervisory, enforcement, or any other authority . . . over a motor vehicle dealer that is predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.'' 12 U.S.C. 5519(a). Section 1029(b) of the Dodd-Frank Act states: ''Subsection (a) shall not apply to any person, to the extent such person (1) provides consumers with any services related to residential or commercial mortgages or self-financing transaction involving real property; (2) operates a line of business (A) that involves the extension of retail credit or retail leases involving motor vehicles; and (B) in which (i) the extension of retail credit or retail leases are provided directly to consumers and (ii) the contract governing such extension of retail credit or retail leases is not routinely assigned to an unaffiliated third party finance or leasing source; or (3) offers or provides a consumer financial product or service not involving or related to the sale, financing, leasing, rental, repair, refurbishment, maintenance, or other servicing of motor vehicles, motor vehicle parts, or any related or ancillary product or service.'' 12 U.S.C. 5519(b).

[4] 12 U.S.C. 5519(c).

3506; 5 CFR part 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Federal Reserve by the Office of Management and Budget (OMB). The proposed rule contains no collections of information under the PRA. *See* 44 U.S.C. 3502(3). Accordingly, there is no paperwork burden associated with the proposed rule.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Reporting and recordkeeping requirements, Truth in savings.

Authority and Issuance

PART 230—[REMOVED AND RESERVED]

For the reasons set forth in the preamble, under the authority of 12 U.S.C. 5581, the Board proposes to remove and reserve Regulation DD, 12 CFR part 230.

By order of the Board of Governors of the Federal Reserve System, February 10, 2014.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2014–03266 Filed 2–19–14; 8:45 am]

BILLING CODE P

FARM CREDIT ADMINISTRATION

12 CFR Part 612

RIN 3052–AC44

Standards of Conduct and Referral of Known or Suspected Criminal Violations; Standards of Conduct

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA, we, or our) proposes to amend its regulations governing standards of conduct of directors, employees, and agents of Farm Credit System (System) institutions, excluding the Federal Agricultural Mortgage Corporation. The amendments would clarify and strengthen reporting requirements and prohibitions, require institutions to establish a Code of Ethics, and enhance the role of the Standards of Conduct Official.

DATES: You may send comments on or before May 21, 2014.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by email or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- Email: Send us an email at *reg-comm@fca.gov*.
- FCA Web site: *http://www.fca.gov*. Select ''Public Commenters,'' then ''Public Comments'' and follow the directions for ''Submitting a Comment.''
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov*. Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove email addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Jacqueline R. Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4056,

or

Mary Alice Donner, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4056.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of this proposed rule are to:

- Clarify and strengthen the regulations in part 612, subpart A, regarding standards of conduct;
- Modify definitions;
- Clarify reporting requirements and prohibitions on the purchase of System institution acquired property and lending transactions;
- Strengthen responsibility and accountability requirements for System institution Standards of Conduct Officials, boards of directors (or board), employees, and agents; and
- Require each System institution to adopt a Code of Ethics.

The FCA has not made significant changes to its standards of conduct regulations since 1994, and we have determined that it is appropriate to strengthen and modernize the rule. The proposed rule would add new provisions, clarify and augment some of the current provisions and provide additional flexibility for others. The proposed rule is organized differently from the current rule. Sections on director and employee reporting and prohibited conduct are repositioned to improve the logical flow of the rule. The proposed rule adds a new § 612.2136 on conflicts of interest, a new § 612.2165(a) on Code of Ethics, a new § 612.2165(c) on allowing exceptions to certain rules if no conflict of interest exists, and new requirements in § 612.2180 addressing standards of conduct for agents. It also adds new standards of conduct responsibilities to System institutions (proposed § 612.2160) and to the Standards of Conduct Official (proposed § 612.2170). We solicit comments on our proposed amendments.

II. Section-by-Section Analysis

A. Definitions [§ 612.2130]

The proposed rule would have some new and some modified definitions:

Code of Ethics. The proposed rule would define ''Code of Ethics'' as a written set of standards, rules, values, and guidance that an institution uses to ensure the ethical conduct of those who sign it, and that reflects professionalism and discourages misconduct so the best interests of the institution are advanced.

Controlled entity and *entity controlled by.* The proposed rule would continue to provide that a controlled entity includes an interest in an entity in which the individual, directly or indirectly or acting through or in concert with one or more persons, owns 5 percent or more of the equity of the entity; owns, controls, or has the power to vote 5 percent or more of any class of voting securities of the entity; or has the power to exercise a controlling influence over the management of the entity. The FCA is aware that in other contexts the definition of ''controlled entity'' or ''entity controlled by'' may mean having an ownership interest with a greater threshold than 5 percent; however, the purpose of this rule is to ensure that institution directors and employees are completely objective in their decision-making, and are not in any way influenced by personal interests. The FCA believes that a

reasonable person could conclude that a director or employee could be influenced to act favorably toward an entity in which he or she had an economic interest of 5 percent or more. Therefore, directors and employees should report these interests and should abstain from decision-making with regard to them. So, for the purpose of this rule only, a ''controlled entity'' or ''entity controlled by'' is defined as an entity in which the director or employee has an interest of 5 percent or more, alone or in concert with others, directly or indirectly.

Employee. The proposed rule would clarify the definition of ''employee'' to include non-salaried employees such as hourly wage earners.

Entity. The proposed rule would add unincorporated business entities to the definition of ''entity''.

Family. The proposed rule would add to the current definition of ''family'' associations or relationships that are in the nature of a family relationship. This is intended to modernize the definition of family to include non-traditional relationships, and adoptions and other relationships where an adult who is not related to a child acts as a parent to a child living in the home. Each System institution is encouraged to provide more explanation and discussion of the regulatory definition in its standards of conduct policies and procedures.

Material. The proposed rule would not change the definition of ''material.'' However, each System institution must set specific parameters on what constitutes a material financial interest or transaction. The value of a material financial interest or transaction may change depending on the circumstances and, to some extent, the geographic location of the institution involved. The institution's determination of materiality would be subject to FCA examination.

The institution's policies and procedures may include *de minimis* values below which a financial interest is determined by the board not to be material. The *de minimis* amount is necessarily System institution-specific, and must be appropriate to the institution's size, location and risk tolerance. A *de minimis* amount is an amount or value representing an interest that is so insignificant that no reasonable person could conclude that it would influence a director or employee's ability to act impartially and in the best interests of the System institution. The institution would need to adequately support the values established in its determination of *de minimis* or not material, and this determination would be subject to FCA examination.

Officer. We propose to replace ''secretary'' with corporate secretary.

Ordinary course of business. We propose to remove ''two'' concerning transactions between persons and add ''agents'' to those for whom preferential treatment should be avoided.

Signed. We would add a definition of ''signed'' to have the same meaning as set forth in § 620.1 of the chapter, to provide for greater uniformity in our regulations and to clarify electronic signatures are acceptable.

Unincorporated business entities. We would add a definition of ''unincorporated business entities'' to have the same meaning as set forth in § 611.1151 of the chapter.

B. Director and Employee Responsibilities and Conduct—Generally [Proposed § 612.2135]

The section heading would be replaced with ''responsibilities and conduct'' but otherwise this section is not substantively changed. The words ''and guidance'' are added to paragraph (b) to make clear that in addition to regulations, policy statements, instructions and procedures, directors and employees must observe guidance of the FCA, to the best of their abilities.

C. Conflicts of Interest [Proposed § 612.2136]

The proposed rule would add a new § 612.2136 on conflicts of interest. This section is added to require directors, employees, and agents to take affirmative action to report conflicts of which they are aware. It is intended to compel them to take ownership of and invest in their ethical responsibilities. Paragraph (a) would specifically require directors, employees, and agents to disclose any conflicts of interests they may have in any matters, activities or transactions pending at the System institution to the Standards of Conduct Official. It would require immediate reporting of conflicts of interests and would supplement employee's and director's existing annual and periodic reporting requirements. Paragraph (b) would require recusal from any board action on, discussion of, or any other official action on or discussion of, those matters. For example, if a director or employee were to purchase farm equipment such as a combine harvester from a known borrower, the purchase should be reported and reviewed by the Standards of Conduct Official for conflicts. If the borrower has a matter or transaction pending at the institution, the director or employee would be recused from that matter. Note that if the purchase were financed it would be a lending transaction covered by §§ 612.2145 and 612.2155. Working together with other provisions of the rule, this section is intended to bolster the directors', employees', and agents' loyalty to the System institution and to reinforce personal responsibility and accountability in avoiding conflicts and acting ethically.

The requirements of disclosure and recusal in this section apply not only to directors, employees, and agents, but also those consultants, professionals or experts who are hired to give advice on a matter, transaction or activity but may not necessarily meet our definition of ''agent''. If the consultant, professional or expert has an interest that may compromise his or her complete impartiality in a matter, transaction or activity for which his or her expertise is sought, paragraph (a) requires that he or she disclose that interest and paragraph (b) requires that he or she refrain from further discussion of System business with respect to that matter, transaction or activity.

System institutions must develop policies and procedures to implement this section. Such policies and procedures could include procedures for waiver of the recusal requirement if the Standards of Conduct Official determines in writing that the conflict would not interfere with the person's ability to perform impartially and in the best interest of the System institution. In the absence of such waiver procedures, recusal is required.

D. Director Reporting [Current § 612.2145 Is Proposed § 612.2140]

We would revise § 612.2140(b)(1) to require that each director report all ''material'' financial interests with other directors, employees, agents or borrowers of the employing, supervised, and supervising institution. We believe this section is necessary to help directors and Standards of Conduct Officials identify and avoid potential conflicts of interests. Because the proposed rule would require directors to report only material financial interests we believe the requirement will not be unduly burdensome or intrusive.

As discussed in the section-by-section analysis above, each System institution must develop policies and procedures that provide parameters for that which constitutes a ''material'' financial interest, and may develop policies and procedures that set forth a certain *de minimis* value that would not be considered material for reporting requirements. Reporting of material financial interests is intended to assist the Standards of Conduct Official in

identifying and resolving conflict situations and to help a director identify areas of prohibited conduct. A material financial interest does not necessarily mean that a conflict of interest exists or that the interest would unduly influence the director in his or her position.

Like the current rule, the proposed rule would require directors to report the name of any relative or person residing in the director's household, any business partner, or any entity controlled by the director or such persons (alone or in concert) if the director knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's institution. This rule does not require a director to solicit information from these persons or entities to determine whether they had or have transactions with the institution. However, the FCA presumes that a director would know or have reason to know whether or not a relative or other persons residing in the director's household had or has transactions with the institution.

E. Directors—Prohibited Conduct [Current § 612.2140 Is Proposed § 612.2145]

In our current rule, director prohibited conduct and the related limited exceptions are included in the same discussion. In proposed § 612.2145(a), we set forth the basic rules for prohibited conduct. In proposed § 612.2145(b), we set forth the specific limitations and exceptions to the prohibitions. We believe this change is necessary to remove any possible ambiguity from the meaning of the prohibitions. Most of these changes are straightforward, but proposed § 612.2145(a)(6) and (b)(3) regarding acquired property and proposed § 612.2145(a)(7) and (b)(4) regarding lending transactions require special discussion.

The proposed rule would clarify the circumstances under which directors may and may not purchase property that a System institution has owned or acquired by foreclosure or similar action. These proposed changes are not substantive; they are clarifications of the rule. Proposed § 612.2145(a)(6) would provide that, among other things, a director may not knowingly acquire, directly or indirectly, property that was owned or acquired by the employing, supervising or supervised institution as a result of foreclosure or similar action. Proposed § 612.2145(b)(3) would set forth an exception to the acquired property prohibition in proposed § 612.2145(a)(6). The exception would apply only if the director did not participate in the deliberations or decision to foreclose, or to take similar action, or to dispose of the property or in establishing the terms of the sale, *and* (1) the director acquired the property through inheritance, or (2) the System institution did not own the property or an interest in the property at any time during the 12-month period before the director's acquisition of the property, or (3) the director acquired the property through public auction with open competitive bidding and the Standards of Conduct Official determined, *before the director acquired the property,* that the director does not have an advantage over other bidders as a result of the director's position and that no other conflict of interest or the appearance thereof exists.

By open competitive bidding, we mean bidding that is both competitive, allowing involvement of all interested parties, and that is open and unsealed. Open competitive bidding affords all interested parties an opportunity to counter-bid. The advantage to open bidding is that it discourages unethical behavior or favoritism. A public auction can be accomplished on-line as long as there is an opportunity for all who may be interested to bid.

The proposed language does not reflect a substantive change from the intent of this original regulatory provision regarding acquired property. However, we believe that because of the scope of misunderstanding and misapplication of the original provision, the revision is necessary.

Proposed § 612.2145(a)(7) would provide that a director must not directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of a director, employee, or agent of the employing, supervising or supervised institution or a borrower or loan applicant of the employing institution. This section addresses lending and borrowing relationships. It prohibits a director from entering into a lending or borrowing transaction with those who may have a financial relationship with the System institution. Lending and borrowing relationships include providing guarantees or stand-by letters of credit and similar forms of financial obligation.

The FCA recognizes that there are many situations in which a director may enter into lending transactions or business relationships that involve financing with other directors, employees, agents, borrowers or loan applicants in the ordinary course of business. Therefore, to keep the provision from being unduly restrictive, proposed § 612.2145(b)(4) would set forth an exception to the proposed § 612.2145(a)(7) prohibition. The exception would apply if: (1) The transaction is with a relative or any person residing in the director's household; or (2) the transaction is undertaken in an official capacity in connection with the institution's discounting, lending or participation relationships with OFIs and other lenders; or (3) the Standards of Conduct Official determines, as authorized under board policy and in the manner outlined in the rule, that the potential for a conflict of interest is insignificant. The Standards of Conduct Official's determination must be in writing; document that the transaction is in the ordinary course of business or is not material in value or amount; document that the director did not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way; and most importantly, the Standards of Conduct Official's determination be made before the director enters into the transaction. The Standards of Conduct Official must renew this determination annually, as applicable. For example, if a director and a borrower contemplate an ongoing business relationship by which the director purchases grain from a borrower on credit on a regular basis, the Standards of Conduct Official would have to review this relationship for conflicts. Once reviewed, to the extent this is an ongoing relationship in the ordinary course of business, the Standards of Conduct Official would not have to review each and every transaction, but would renew on an annual basis his or her determination that the ongoing relationship remains in the ordinary course of business and does not create a conflict.

The Standards of Conduct Official cannot ratify prohibited conduct after the fact. If the transaction has been entered into without a pre-existing Standards of Conduct Official determination, then the FCA could consider the director to have violated this provision of the regulation.

As discussed, each System institution must set specific parameters on what constitutes a material financial interest or transaction and also what is in the ordinary course of business in the local environment. Whether or not to establish a *de minimis* threshold for review would be left to the discretion of each System institution board; however, as discussed above, if the institution does establish a *de minimis* value, it must do so under policies and procedures subject to FCA examination. The institution's board must not

establish the *de minimis* value to be so high or so ambiguous as to circumvent the intent of this rule.

F. Employee Reporting [Current § 612.2155 Is Proposed § 612.2150]

This provision would require employees to report all ''material'' financial interests with directors, employees, agents or borrowers of the employing, supervised, and supervising institution. This change can be found in proposed § 612.2150(b)(1) and is parallel to the change for directors in proposed § 612.2140(b)(1).

G. Employees—Prohibited Conduct [Current § 612.2150 Is Proposed § 612.2155]

This provision has been changed from the current § 612.2150 and the revisions are parallel to the changes for director prohibited conduct, where applicable.

H. Joint Employees [Proposed § 612.2157]

This section, like the current rule, prohibits an officer of a Farm Credit Bank (FCB) or agricultural credit bank (ACB) from contemporaneously working as an employee at an association in its district. Also, this provision prohibits a non-officer employee of a FCB or ACB from serving as an officer of an association in its district. The FCA recognizes that occasionally the System may benefit from having a FCB or an ACB officer serve at an association. Therefore, this provision is modified from the original to allow joint employee relationships with the written approval of the Standards of Conduct Official if the bank board of directors agrees that the interests of both System institutions outweighs the potential for conflicts of interest or conflicts related to devotion of time to official duties. The bank must provide written notice to the FCA before the joint relationship begins, and the FCA may object within 10 calendar days of receiving the bank's notice.

I. Institution Responsibilities [Proposed § 612.2160]

The proposed rule would update this section to require new responsibilities and accountability of System institutions in overseeing the standards of conduct program.

Proposed § 612.2160(a)(1) would require the institution to dedicate appropriate resources to support the standards of conduct program. The Standards of Conduct Official has many duties and responsibilities, and depending on the size of the institution it may not be possible for one person to satisfactorily manage all of these responsibilities. Each System institution should dedicate personnel and resources as necessary to ensure that the standards of conduct program is carried out thoroughly and in compliance with this rule.

Proposed § 612.2160(a)(3) would require the institution to notify the FCA immediately of any known or suspected material standards of conduct violations. This notification can come directly from the board of directors, or from the Standards of Conduct Official as separately required in proposed § 612.2170(b)(7). The requirement is added here to make clear that the institution itself is accountable for notifying the FCA of known or suspected standards of conduct violations.

Proposed § 612.2160(e) would require the institution to ensure that directors and employees certify annually that they will adhere to the institution's standards of conduct policy and Code of Ethics. System institutions would be required under § 612.2160(f) to have documentation that agents (1) are subject to applicable industry or professional ethics standards, or (2) have certified to adhere to the provisions of the System institution's Code of Ethics applicable to agents. The certifications could be performed in various ways including electronic signatures.

Proposed § 612.2160(g) would require that System institutions make compliance with the standards of conduct program a component of the risk assessment process subject to periodic audit, as established by the audit committee, by a person or entity independent of the standards of conduct program. We would expect an institution to audit the standards of conduct program at least once every 3 to 4 years consistent with its risk assessment and audit planning process. The scope and depth of the audit would be determined and documented by the institution.

Proposed § 612.2160(h) would require institutions to establish an effective method of internal controls over the reporting, disclosing, and other requirements of this part, including controls for the confidentiality of information reported to and maintained by the Standards of Conduct Official. It would require institutions to establish an effective method of internal controls over the audit of the standards of conduct program.

J. Code of Ethics, Policies and Procedures [Proposed § 612.2165]

Many of the provisions in proposed § 612.2165 would be the same as the provisions in current § 612.2165. However, each institution should have a strong sense of its role in the System's mission and should have a culture of corporate and personal responsibility to further that mission. Therefore, in addition to adopting internal standards of conduct policies and procedures, proposed § 612.2165(a) would require each System institution to adopt a Code of Ethics that applies to directors and employees and that includes a provision for the ethical conduct of agents. Each institution would be required to provide a copy of its Code of Ethics to directors, employees, and agents. Directors and employees would be required to sign the institution's Code of Ethics. Agents not subject to industry or professional ethics standards would be required to certify that they will adhere to the institution's Code of Ethics provision applicable to agents.

The proposed rule sets forth minimum specific guidelines that each System institution's Code of Ethics would be required to meet. The institution's Code of Ethics must promote honest and ethical conduct including the ethical handling of actual or apparent conflicts of interest; promote integrity and compliance with laws and regulations; prohibit dishonesty, fraud or deceit and discourage any conduct or act that would adversely reflect on the reputation, integrity or competency of the System; prohibit misuse of office and provide for the prompt reporting of any person or persons who violates the institution's Code of Ethics or engages in any activity that may require further investigation under § 612.2301, subpart B of the part, to the Standards of Conduct Official.

Proposed § 612.2165(a)(3) would require each institution's board to adopt policies and procedures concerning the use of unincorporated business entities (UBEs) that, at a minimum, ensure that all transactions between the UBE and System institution directors, employees, and agents are conducted at arm's length. These policies and procedures must ensure that System institution directors, employees, and agents comply with their employing institution standards of conduct policies and procedures and this rule in their interactions with the UBE. For example, System institution directors, employees, and agents cannot purchase acquired property from a UBE except in compliance with this rule and their institution's standards of conduct policies and procedures.

The FCA believes that each System institution must review and update its standards of conduct policies and

procedures, as necessary, to strengthen them. The FCA expects each System institution to modernize and augment its existing standards of conduct policies and procedures to ensure the highest standards of honesty, ethics, integrity, impartiality and conduct. In doing this, each System institution should establish reasonable criteria for business relationships and transactions relevant to its business, geographic location, and customer base. The standards outlined in this rule serve as a minimum bar against which each System institution should build and develop stronger internal standards of conduct policies and procedures.

Proposed § 612.2165(b)(2) would require System institutions to outline authorities and responsibilities of the Standards of Conduct Official. Included in this requirement would be the authority and responsibility to review for compliance with this subpart all loans considered for approval by the supervisory bank under §§ 614.4460 and 614.4470, respectively. System institution loans to directors and employees and loans to FCA employees and others subject to §§ 614.4460 and 614.4470 present unique conflict of interest issues. The System institutions should ensure that credit decisions with respect to these loans are made without favoritism or special terms. These loans, which include insider loans, warrant a higher level of scrutiny for possible conflict or undue influence than non-insider loans.

Proposed § 612.2165(b)(14) would clarify the circumstances under which an institution's policies and procedures must prohibit the purchase and retirement of the institution's preferred stock. This section does not place a restriction on the issuance or retirement of borrower stock associated with a director or employee loan transaction.

Proposed § 612.2165(b)(16) would require the board in its policies and procedures to provide for annual training on standards of conduct. Training presents an opportunity to continually educate directors and employees on standards of conduct issues and the importance of ethical behavior.

Proposed § 612.2165(b)(17) would require the institution to report to the FCA exceptions authorized by the institution board under § 612.2165(c).

The FCA recognizes that some of the provisions of the rule may prohibit activity where no actual or apparent conflict of interest exists. Therefore, proposed § 612.2165(c)(1) would allow each System institution to adopt policies and procedures by which the System institution board of directors may grant a written exception to certain standards of conduct rules under this subpart. The FCA proposes that rules for which an exception may be granted on a case-by-case basis are a reporting requirement, an employee or director prohibition on disclosure of information not generally available to the public, an employee prohibition on serving as an officer of a non-System entity in the district or of a non-System financial institution, a restriction on an employee serving jointly at a bank and association as discussed in proposed § 612.2157, and the 5-percent threshold for defining a controlled entity. For example, under proposed § 612.2165(c)(1) a board could allow an exception to the prohibition with respect to an individual director's interest in a ''controlled entity'' where that director indirectly owns more than 5 percent of the equity and the Standards of Conduct Official determines based on the facts and circumstances that there is no potential for conflict of interest. As another example, this provision would allow the board to approve an exception to the prohibition on an employee serving as an officer or director of a non-System entity that transacts business with the System institution in its district (proposed § 612.2155(a)(4)), if the Standards of Conduct Official determines that there is no conflict of interest.

The exceptions under proposed § 612.2165(c)(1) would have to be approved on a case-by-case basis by the institution's board, based on a recommendation of the Standards of Conduct Official. The Standards of Conduct Official's recommendation would need to be strongly supported by a written determination that the prohibition is not necessary to avoid a conflict or appearance of a conflict or to ensure impartiality, objectivity and public confidence in the System institution. The determination would have to be documented in the institution's files and renewed at least annually. The institution board would impose appropriate conditions, as the circumstances may dictate. In addition, the board would provide for periodic review of the criteria to determine whether the board continues to support the Standards of Conduct Official's recommendation. The exceptions approved would be subject to FCA examination, and to its determination of whether the prohibition of the activity is necessary to avoid a conflict or appearance of a conflict or to ensure impartiality, objectivity and public confidence in the System institution.

The FCA specifically requests comment on whether the provisions proposed are appropriate for board waiver and whether other provisions should be considered. There are some transactions so susceptible to conflicts that the FCA would not consider permitting a waiver of the rule prohibiting them. The rules prohibiting directors, employees, and agents from acquiring property could not be waived. The rules prohibiting an employee from acting as a real estate agent or broker could not be waived, and the rule prohibiting an employee from acting as an agent or broker in connection with the sale and placement of insurance could not be waived. Finally the requirement to comply with the institution's standards of conduct policies and Code of Ethics could not be waived. As previously stated, there may be other rules for which an institution board may appropriately consider granting a waiver, and the FCA specifically requests comment on the waiver provisions of this proposal and what those rules may be.

Proposed paragraph (c)(2) of this section would allow the institution board to consider a standing exception to director and employee reporting requirements under proposed §§ 612.2140 and 612.2150, respectively. As an example, policies and procedures under proposed § 612.2165(c)(2) could allow an exception to the requirement that a director report the name and nature of a business or any entity on whose board the director sits, if the entity is a nonprofit organization such as a Chamber of Commerce, or a place of worship, and the Standards of Conduct Official determines that the potential for conflict is insignificant with respect to that category of entity.

Proposed paragraph (c)(2) would also permit the board to establish policies and procedures that provide for a standing exception to the restrictions in proposed §§ 612.2145(b)(4) and 612.2155(b)(6) on lending transactions, if the potential for conflict is insignificant because the transaction is not material, or it is in the ordinary course of business. An institution may identify certain lending transactions that fall under a certain dollar value and are *de minimis* or immaterial. Those transactions falling below such identified amounts would not have to be reported to or reviewed by the Standards of Conduct Official. In addition, an institution may identify certain types of transactions that are in the ordinary course of business. Directors and employees could enter into those ordinary course of business transactions without the prior review of the Standards of Conduct Official. However, where the ordinary course of

business transaction exceeds the *de minimis* or immaterial threshold set by the institution, the directors and employees must report such transactions, by including them in regular reports to the Standards of Conduct Official, and the Standards of Conduct Official must review them. Putting the exceptions of proposed § 612.2165(c)(2) together, a transaction that is in the ordinary course of business *and* that also is de minimis or falls below the immaterial amount would require neither director or employee reporting nor Standards of Conduct Official review.

For example, the System institution may find that certain goods and services that are offered to the public in the ordinary course of business at a fixed price, such as diesel fuel, or equipment repairs, do not raise conflict of interest concerns, even if purchased from a System borrower with credit. Institution policies and procedures could provide that these transactions would not have to be reported or approved unless they reached a certain dollar amount or value threshold. By contrast, transactions involving price negotiation, such as purchasing a tractor or other heavy farm equipment, could raise issues of impartiality or favoritism and should be subject to more scrutiny.

In addition to transactions covered in the institution's policies and procedures under proposed § 612.2165(c)(2), proposed §§ 612.2145 and 612.2155 retain the existing flexibility for an institution's Standards of Conduct Official to review a transaction before it is entered into and make a case-by-case determination that there is no conflict. The exceptions in proposed § 612.2165(c)(2) are designed to be applied to all directors and employees and as such, must be set on a conservative basis. However, a particular lending transaction that does not fall within the institutions' § 612.2165(c)(2) exceptions may still be a transaction that the Standards of Conduct Official determines has little potential for conflict when applying the rules under §§ 612.2145 and 612.2155. Proposed § 612.2165(f) reminds each System institution that the FCA may determine that a transaction or activity constitutes a conflict of interest notwithstanding the System institution's board of director finding to the contrary. Section 612.2165(d) and (e) are included to prevent misuse of the requirements under this section to evade conflict of interest rules and situations. Finally, institution policies and procedures should provide for periodic review by the System institution board.

K. Standards of Conduct Official [Proposed § 612.2170]

We would revise § 612.2170(a) to require that there must be an internal employee who also serves as the institution's Standards of Conduct Official and who would be accountable to the institution's board for all standards of conduct matters. The FCA believes that an in-house Standards of Conduct Official is in the best position to advise the board because they are in-tune with the day-to-day operations of the institution. In addition, in order to foster a culture of highest integrity and ethical conduct, it is important to have a Standards of Conduct Official who has a constant presence at, relationship with, and respect of, the employees of the institution. The proposed rule would require the institution's board of directors to provide for other employees to assist the Standards of Conduct Official as needed to ensure the effective operations of the institution's standards of conduct program.

Proposed § 612.2170(b) would enhance and clarify the responsibility and accountability of the Standards of Conduct Official. The Standards of Conduct Official must receive, actively review, and maintain the reports required by the rule. Proposed § 612.2170(b)(6) would require the Standards of Conduct Official to report to the board no less than annually on the effectiveness of the institution's standards of conduct policy and its implementation. This report should include an evaluation of the extent to which safeguards are in place to avoid conflicts of interest and standards of conduct policy violations and should present the opportunity to make improvements to the standards of conduct program.

The Standards of Conduct Official must also present any violations of the standards of conduct policy to the board for appropriate action. Section 612.2170(b)(7) would requires the Standards of Conduct Official to report to the institution's board and to the FCA all suspected criminal and, in addition, any standards of conduct violations that may have an adverse impact on continued public confidence in the System or any of its institutions.

Proposed § 612.2170(c) would provide that a Farm Credit bank may provide assistance to an affiliated association's board of directors and Standards of Conduct Official in complying with this part. Proposed § 612.2170(d) would provide that an institution may use an outside counsel or consultant to assist the institution in meeting standards of conduct requirements. However, the institution's in-house Standards of Conduct Official would be responsible for overseeing the outside counsel or consultant.

Proposed § 612.2170(e) would provide that the Standards of Conduct Official must coordinate appropriate training with the institution's board on an annual basis.

L. Standards of Conduct for Agents [Current § 612.2260 Is Proposed § 612.2180]

It is important for System institutions to hold their agents to the same high ethical standards held by their directors and employees. The proposed rule would require that institutions document that agents representing System institutions in contacts with third parties or who provide professional or consultant services such as legal, accounting, and appraisal, are subject to industry or professional ethics standards and that the institution provide each agent a copy of the institution's standards of conduct policy and Code of Ethics. The proposed rule would further require that an agent who is not subject to industry or professional ethics standards must certify to the System institution that the agent will adhere to the provisions of the institution's Code of Ethics applicable to agents. Agents play an important role in System institutions and this rule would help achieve high ethical standards at every level throughout the System.

To avoid the appearance of conflicts in the disposition or purchase of institution-owned or institution-acquired real or personal property, we propose that agents must agree to prohibitions similar to those that apply to employees. The proposed rule would prohibit agents from acquiring any interest in real or personal property if it was owned or acquired by the employing institution or any supervised or supervising institution as a result of foreclosure or similar action at any time during the agent's employment. The prohibition would apply for as long as the property is owned or acquired by the System institution, and for 12 months after the property is transferred out of the System institution or after the agency relationship is terminated, whichever occurs first.

M. Purchase of System Obligations [Current § 612.2270 Is Proposed § 612.2190]

We revised this section to clarify that directors and employees may not purchase any obligation of a System institution except as specifically stated.

III. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 612

Agriculture, Banks, Banking, Conflict of interests, Crime, Investigations, Rural areas.

For the reasons stated in the preamble, part 612 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 612—STANDARDS OF CONDUCT AND REFERRAL OF KNOWN OR SUSPECTED CRIMINAL VIOLATIONS

■ 1. The authority citation for part 612 continues to read as follows:

Authority: Secs. 5.9, 5.17, 5.19 of the Farm Credit Act (12 U.S.C. 2243, 2252, 2254).

■ 2. Subpart A, consisting of §§ 612.2130 through 612.2270, is revised to read as follows:

Subpart A—Standards of Conduct

Sec.

612.2130 Definitions.
612.2135 Responsibilities and conduct.
612.2136 Conflicts of interest.
612.2140 Director reporting.
612.2145 Directors—prohibited conduct.
612.2150 Employee reporting.
612.2155 Employees—prohibited conduct.
612.2157 Joint employees.
612.2160 Institution responsibilities.
612.2165 Code of ethics, policies, and procedures.
612.2170 Standards of Conduct Official.
612.2180 Standards of Conduct for agents.
612.2190 Purchase of System obligations.
612.2260 [Reserved]
612.2270 [Reserved]

Subpart A—Standards of Conduct

§ 612.2130 Definitions.

For purposes of this part, the following terms are defined:

Agent means any person, other than a director or employee, who currently represents a System institution in contacts with third parties or who currently provides professional services to a System institution, such as legal, accounting, appraisal, and other similar services.

Code of Ethics means a written set of standards, rules, values, and guidance that is used to ensure the ethical conduct of those who sign it, and that reflects professionalism and discourages misconduct so that the best interests of the institution are advanced.

Conflicts of interest or the appearance thereof exists when a person has a financial interest in a transaction, relationship, or activity that actually affects or has the appearance of affecting the person's ability to perform official duties and responsibilities in a totally impartial manner and in the best interest of the employing institution when viewed from the perspective of a reasonable person with knowledge of the relevant facts.

Controlled entity and *entity controlled by,* for the purposes of this rule only, means an interest in an entity in which the individual, directly or indirectly, or acting through or in concert with one or more persons:

(1) Owns 5 percent or more of the equity;

(2) Owns, controls, or has the power to vote 5 percent or more of any class of voting securities; or

(3) Has the power to exercise a controlling influence over the management of policies of such entity.

Employee means any salaried officer or part-time, full-time, temporary salaried employee or any non-salaried employee who receives a wage.

Entity means a corporation, company, association, firm, joint venture, partnership (general or limited), unincorporated business entity, society, joint stock company, trust (business or otherwise), fund or other organization or institution.

Family means an individual and spouse and anyone having the following relationship to either: parent, spouse, son, daughter, sibling, stepparent, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, nephew, niece, grandparent, grandson, granddaughter, and the spouses of the foregoing and anyone whose association or relationship with the director or employee is the equivalent of the foregoing.

Financial interest means an interest in an activity, transaction, property, or relationship with a person or an entity that involves receiving or providing something of monetary value or other present or deferred compensation.

Financially obligated with means having a joint legally enforceable obligation with, being financially obligated on behalf of (contingently or otherwise), having an enforceable legal obligation secured by property owned by another, or owning property that secures an enforceable legal obligation of another.

Material, when applied to a financial interest or transaction or series of transactions, means that the interest or transaction or series of transactions is of such magnitude that a reasonable person with knowledge of the relevant facts would question the ability of the person who has the interest or is party to such transaction(s) to perform the person's official duties objectively and impartially and in the best interest of the institution and its statutory purpose.

Mineral interest means any interest in minerals, oil, or gas, including, but not limited to, any right derived directly or indirectly from a mineral, oil, or gas lease, deed, or royalty conveyance.

OFI means other financing institutions that have established an access relationship with a Farm Credit bank or an agricultural credit bank under section 1.7(b)(1)(B) of the Act.

Officer means the chief executive officer, president, chief operating officer, vice president, corporate secretary, treasurer, general counsel, chief financial officer, and chief credit officer of each System institution, and any person not so designated who holds a similar position of authority.

Ordinary course of business, when applied to a transaction, means:

(1) A transaction that is usual and customary between or among persons who are in business together; or

(2) A transaction with a person who is in the business of offering the goods or services that are the subject of the transaction on terms that are not preferential. Preferential means that the transaction is not on the same terms as those prevailing at the same time for comparable transactions for other persons who are not directors, employees, or agents of a System institution.

Person means individual or entity.

Relative means any member of the family as defined in this section.

Service corporation means each service corporation chartered under the Act.

Signed, has the same meaning as set forth in § 620.1 of this chapter.

Standards of Conduct Official means the official designated under § 612.2170.

Supervised institution is a term which only applies within the context of a System bank or an employee of a System bank and refers to each association supervised by that bank.

Supervising institution is a term that only applies within the context of an association or an employee of an association and refers to the bank that supervises that association.

System institution and *institution* mean any bank, association, or service corporation, chartered under the Act in the Farm Credit System, including the Farm Credit Banks, banks for cooperatives, agricultural credit banks, Federal land bank associations, agricultural credit associations, Federal land credit associations, production credit associations, and the Federal Farm Credit Banks Funding Corporation.

Unincorporated business entities (UBE) has the same meaning as set forth in § 611.1151 of this chapter.

§ 612.2135 Responsibilities and conduct.

(a) Directors and employees of all System institutions must maintain high standards of industry, honesty, integrity, impartiality, and conduct in order to ensure the proper performance of System business and continued public confidence in the System and each of its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) To achieve these high standards of conduct, directors and employees must observe, to the best of their abilities, the letter and intent of all applicable local, state, and Federal laws and regulations and policy statements, instructions, procedures, and guidance of the Farm Credit Administration. System institutions must exercise diligence and good judgment in carrying out their duties, obligations, and responsibilities.

§ 612.2136 Conflicts of interest.

(a) Each director, employee, and agent of a System institution, and consultants who provide expert or professional services to the System institution, must:

(1) Take measures to avoid conflicts of interest;

(2) Disclose conflicts of interest in any matters, activities or transactions pending at the System institution, or in the case of consultants, experts or professionals, disclose conflicts of interest in the matter, activity, or transaction for which they are providing services, including financial or other personal or official interests that may present a conflict of interest or the appearance thereof, to the Standards of Conduct Official; and

(b) If a person subject to paragraph (a) of this section has a conflict of interest in a matter, transaction or activity subject to official action, or before the board of directors, then the person must:

(1) Disclose to the official or the board all material non-privileged information relevant to the consideration of the matter, activity or transaction, including:

(i) The existence, nature, and extent of the person's interests; and

(ii) The facts known to the person as to the matter, activity or transaction under consideration;

(2) Refrain from participating in the official action or board discussion of the matter, activity or transaction; and

(3) Not vote on the matter or transaction.

(c) The System institution must establish policies and procedures to enforce this section which may include procedures by which the Standards of Conduct Official may waive the recusal requirement upon his or her written determination that a conflict of interest does not exist or would not interfere with the person's ability to perform impartially and in the best interest of the System institution.

§ 612.2140 Director reporting.

(a) Annually, as of the institution's fiscal year end, and at such other times as may be required to comply with paragraph (c) of this section, each director must file a written and signed statement with the Standards of Conduct Official that fully reports:

(1) The names of any immediate family members as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by § 620.6(f) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each director must, at such intervals as the institution's board determines is necessary to effectively enforce this regulation and the institution's standards of conduct policy and Code of Ethics adopted pursuant to § 612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulations and such policy. At a minimum, these disclosures must include:

(1) All material financial interests with directors, employees, agents or borrowers of the employing, supervised, and supervising institution;

(2) The name of any relative or any person residing in the director's household, any business partner, or any entity controlled by the director or such persons (alone or in concert) if the director knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's institution; and

(3) The name and the nature of the business of any entity in which the director has a material financial interest or on whose board the director sits if the director knows or has reason to know that such entity transacts business with:

(i) The director's institution or any institution supervised by the director's institution; or

(ii) A borrower of the director's institution or any institution supervised by the director's institution.

(c) Any director who becomes or plans to become involved in any relationship, transaction, or activity that may violate the institutions' Code of Ethics or is required to be reported under this section or could constitute a conflict of interest, must promptly report in writing such involvement or plan to become involved to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) Unless a disclosure as a director candidate under part 620 of this chapter has been made within the preceding 180 calendar days, a newly elected or appointed director must report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official within 30 calendar days after the election or appointment and thereafter must comply with the requirements of this section.

§ 612.2145 Directors—prohibited conduct.

(a) *Prohibited conduct.* Except as specifically provided under paragraph (b) of this section, a director of a System institution must not:

(1) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the director, any relative of the director, any person residing in the director's household, any business partner of the director, or any entity controlled by the director or such persons (alone or in concert);

(2) Divulge or make use of any fact, information, or document not generally available to the public that is acquired by virtue of serving on the board of a System institution;

(3) Use the director's position to obtain or attempt to obtain special advantage or favoritism for the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person

transacting business with the institution, including borrowers and loan applicants;

(4) Use the director's position or information acquired in connection with the director's position to solicit or obtain, directly or indirectly, any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the director, any relative of the director, any person residing in the director's household, any business partner of the director, any entity controlled by the director or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants;

(5) Accept or solicit, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information that the director has access to by reason of serving on the board of a System institution;

(6) Knowingly acquire, directly or indirectly, any interest in any real or personal property, including mineral interests, that was owned or acquired by the employing, supervising, or any supervised institution as a result of foreclosure or similar action;

(7) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of, a director, employee, or agent of the employing, supervising or supervised institution or a borrower, or loan applicant of the employing institution; or

(8) Violate an institution's policies and procedures governing standards of conduct or Code of Ethics.

(b) *Exceptions to prohibited conduct.* (1) A director may participate in deliberations and determinations of matters prohibited under paragraph (a)(1) of this section only if the matter is one of general applicability affecting all shareholders/borrowers in a nondiscriminatory way, as determined by the Standards of Conduct Official.

(2) A director may divulge or make use of any fact, information, or document prohibited under paragraph (a)(2) of this section, only if in the performance of the director's official duties.

(3) A director may acquire an interest in any real or personal property prohibited under paragraph (a)(6) of this section only if the director did not participate in the deliberations or decision to foreclose, or take similar action, or to dispose of the property or in establishing the terms of the sale; and

(i) The director acquired the property through inheritance; or

(ii) The System institution did not own the property or interest at any time during the 12-month period before the director's acquisition of the property; or

(iii) The director acquired the property through public auction with open competitive bidding and the Standards of Conduct Official determined in writing, before the director acquired the property, that the director does not have an advantage over other bidders as a result of the director's position and that no other conflict of interest or appearance thereof exists.

(4) A director may enter into a lending transaction prohibited under paragraph (a)(7) of this section only if:

(i) The transaction is with a relative or any person residing in the director's household;

(ii) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending or participation relationships with OFIs and other lenders; or

(iii) The Standards of Conduct Official, on a case-by-case basis, determines and documents, pursuant to a board adopted policy and in the manner outlined herein, that the potential for conflict is insignificant. The Standards of Conduct Official's determination must:

(A) Be in writing;

(B) Adequately demonstrate that the transaction is in the ordinary course of business or is not material in amount or value;

(C) Adequately demonstrate that the director did not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way;

(D) Be made before the director enters into the transaction, or at the time the director is appointed or elected; and

(E) Be renewed annually, as applicable.

§ 612.2150 Employee reporting.

(a) Annually, as of the institution's fiscal yearend, and at such other times as may be required to comply with paragraph (c) of this section, each senior officer as defined in § 619.9310 of this chapter must file a written and signed statement with the Standards of Conduct Official that fully reports:

(1) The names of any immediate family members, as defined in § 620.1(e) of this chapter, or affiliated organizations, as defined in § 620.1(a) of this chapter, who had transactions with the institution at any time during the year;

(2) Any matter required to be disclosed by § 620.6(f) of this chapter; and

(3) Any additional information the institution may require to make the disclosures required by part 620 of this chapter.

(b) Each employee must, at such intervals as the institution's board determines is necessary to effectively enforce this regulation and the institution's standards of conduct policy and Code of Ethics adopted pursuant to § 612.2165, file a written and signed statement with the Standards of Conduct Official that contains those disclosures required by the regulation and such policy. At a minimum, these disclosures must include:

(1) All material financial interests with directors, employees, agents or borrowers of the employing, supervised, and supervising institutions;

(2) The name of any relative or any person residing in the employee's household, any business partner, or any entity controlled by the employee or such persons (alone or in concert) if the employee knows or has reason to know that such individual or entity transacts business with the employing institution, or any institution supervised by the employing institution; and

(3) The name and the nature of the business of any entity in which the employee has a material financial interest or on whose board the employee sits if the employee knows or has reason to know that such entity transacts business with:

(i) The employing institution or any institution supervised by the employing institution; or

(ii) A borrower of the employing institution or any institution supervised by the employing institution.

(c) Any employee who becomes or plans to become involved in any relationship, transaction, or activity that is required to be reported under this section or could constitute a conflict of interest must promptly report in writing such involvement to the Standards of Conduct Official for a determination of whether the relationship, transaction, or activity is, in fact, a conflict of interest.

(d) A newly hired employee must report matters required to be reported in paragraphs (a), (b), and (c) of this section to the Standards of Conduct Official five (5) business days after starting employment and thereafter must comply with the requirements of this part.

§ 612.2155 Employees—prohibited conduct.

(a) *Prohibited conduct.* Except as specifically provided under paragraph

(b) of this section, an employee of a System institution must not:

(1) Participate, directly or indirectly, in deliberations on, or the determination of, any matter affecting, directly or indirectly, the financial interest of the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, or any entity controlled by the employee or such persons (alone or in concert);

(2) Divulge or make use of any fact, information, or document not generally available to the public that is acquired by virtue of being an employee of a System institution;

(3) Use the employee's position to obtain or attempt to obtain special advantage or favoritism for the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants;

(4) Serve as an officer or director of an entity other than a System institution that transacts business with a System institution in the district or of any commercial bank, savings and loan, or other non-System financial institution. For the purposes of this paragraph, ''transacts business'' does not include loans by a System institution to a family-owned entity, service on the board of directors of the Federal Agricultural Mortgage Corporation, or transactions with nonprofit entities or entities in which the System institution has an ownership interest;

(5) Use the employee's position or information acquired in connection with the employee's position to solicit or obtain, directly or indirectly, any gift, fee, or other present or deferred compensation or for any other personal benefit on behalf of the employee, any relative of the employee, any person residing in the employee's household, any business partner of the employee, any entity controlled by the employee or such persons (alone or in concert), any other System institution, or any person transacting business with the institution, including borrowers and loan applicants;

(6) Accept or solicit, directly or indirectly, any gift, fee, or other present or deferred compensation that is offered or could reasonably be viewed as being offered to influence official action or to obtain information that the employee has access to by reason of employment with a System institution;

(7) Knowingly acquire, directly or indirectly, any interest in any real or personal property, including mineral interests, that was owned or acquired by the employing, supervising, or any supervised institution as a result of foreclosure or similar action;

(8) Directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of, a director, employee, or agent of the employing, supervising, or supervised institution or a borrower or loan applicant of the employing institution;

(9) Act as a real estate agent or broker;

(10) Act as an agent or broker in connection with the sale and placement of insurance; or

(11) Violate an institution's policies and procedures governing standards of conduct or Code of Ethics.

(b) *Exceptions to prohibited conduct.* (1) An employee may participate in deliberations and determinations of matters prohibited under paragraph (a)(1) of this section only if the matter is one of general applicability affecting all shareholders/borrowers in a nondiscriminatory way, as determined by the Standards of Conduct Official.

(2) An employee may divulge or make use of a fact, information, or document prohibited under paragraph (a)(2) of this section only if in the performance of official duties.

(3) Notwithstanding the prohibitions in paragraph (a)(4) of this section, an employee may serve as an officer or director of an employee credit union. With the prior approval of the board of the employing institution, an employee of a Farm Credit Bank or association may serve as a director of a cooperative that borrows from an agricultural credit bank. Prior to approving an employee's request, the board must determine whether the employee's proposed service as a director is likely to cause the employee to violate any regulations in this part or the institution's policies, e.g., the requirements relating to devotion of time to official duties.

(4) An employee may acquire an interest in real or personal property prohibited under paragraph (a)(7) of this section only if the employee did not participate in the deliberations or decision to foreclose on the property or to take action, or to dispose of the property or in establishing the terms of the sale; and

(i) The employee acquired the property through inheritance; or

(ii) The System institution did not own the property or interest at any time during the 12-month period before the employee's acquisition of the property.

(5) An employee may enter into a lending transaction prohibited under paragraph (a)(8) of this section only if:

(i) The transaction is with a relative or any person residing in the employee's household;

(ii) The transaction is undertaken in an official capacity in connection with the institution's discounting, lending, or participation relationships with OFIs and other lenders; or

(iii) The Standards of Conduct Official on a case-by-case basis, determines and documents, pursuant to a board adopted policy under § 612.2165 and in the manner outlined herein, that the potential for conflict is insignificant. The Standards of Conduct Official's determination must:

(A) Be in writing;

(B) Adequately demonstrate that the transaction is in the ordinary course of business or is not material in value or amount;

(C) Adequately demonstrate that the employee did not participate in the determination of any matter affecting the financial interests of the other party to the transaction except those matters affecting all shareholders/borrowers in a nondiscriminatory way;

(D) Be made before the transaction in question is entered into; and

(E) Be renewed annually, as applicable.

(6) Paragraph (a)(9) of this section does not apply to transactions involving the purchase or sale of real estate intended for the use of the employee, a member of the employee's family, or a person residing in the employee's household.

(7) Paragraph (a)(10) of this section does not apply to the sale or placement of insurance authorized by section 4.29 of the Act.

§ 612.2157 Joint employees.

(a) An employee of a Farm Credit bank may serve as an employee of an association in its district only if:

(1) The employee is not an officer of the Farm Credit bank and will not serve as an officer of the association; or

(2) Before such service begins, the Farm Credit bank's Standards of Conduct Official consents in writing to such service, the Farm Credit bank board of directors agrees that the interest of both System institutions outweighs the potential for conflicts of interest or conflicts related to devotion of time to official duties, the Farm Credit bank delivers written notice to the Farm Credit Administration, and the Farm Credit Administration does not object to such service within ten (10) calendar days of receiving the notice.

(b) Each institution must appropriately reflect the expense of joint employees in its financial statements.

§ 612.2160 Institution responsibilities.

Each institution must:

(a) Ensure compliance with this part by its directors, employees, and agents and at a minimum:

(1) Provide support as necessary to the Standards of Conduct program including assigning appropriate resources and staffing to the Standards of Conduct Official;

(2) Act promptly to preserve the integrity of and public confidence in the institution in any matter involving a conflict of interest or the appearance of a conflict of interest, whether or not specifically addressed by this subpart or the policies and procedures adopted pursuant to § 612.2165; and

(3) Notify the Farm Credit Administration immediately of known or suspected material standards of conduct violations as described in § 612.2170(b)(7).

(b) Take appropriate measures to ensure that all directors and employees are informed of the requirements of this regulation and policies and procedures adopted pursuant to § 612.2165.

(c) Maintain all standards of conduct policies and procedures, reports, investigations, determinations, and evidence of compliance with this part for a minimum of six (6) years.

(d) Remain informed of applicable industry approved best practices for standards of conduct.

(e) Ensure that directors and employees annually certify in writing that they will adhere to the institution's standards of conduct policy and Code of Ethics.

(f) Provide its agents a copy of the institution's standards of conduct policy and Code of Ethics;

(1) Adequately document which of its agents are subject to industry or professional ethics standards; and

(2) Require each agent that is not subject to industry or professional ethics standards to certify that he or she will adhere to the provisions of the institution's Code of Ethics applicable to agents.

(g) Ensure that compliance with the standards of conduct program is a component of the institution's risk assessment process subject to periodic audit by a person or entity independent of the program.

(h) Develop, implement and maintain an effective method of internal controls over the reporting, disclosure and other requirements of this part. The method of internal controls, at a minimum, must comply with the requirements of applicable Farm Credit Administration regulations, including § 618.8430 of this chapter and include controls for:

(1) The confidentiality of information reported to and maintained by the Standards of Conduct Official; and

(2) The audit of the standards of conduct program for compliance by a person or entity independent of the program.

§ 612.2165 Code of Ethics, policies, and procedures.

(a) Each institution's board of directors must adopt:

(1) Policies and procedures governing standards of conduct for directors, employees, and agents; and

(2) A code of Ethics that applies to directors and employees and that includes a provision for the ethical conduct of agents to ensure the avoidance of conflicts of interest in the performance of their duties. The Code of Ethics must include specific guidelines on what is acceptable and unacceptable conduct. The Code of Ethics must be signed by directors and employees. Agents must be presented with the institution's Code of Ethics, and agents not subject to industry or professional ethics standards must sign the institution's Code of Ethics provisions applicable to agents. The institution's Code of Ethics must:

(i) Promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest;

(ii) Promote integrity and compliance with applicable laws, rules and regulations governing standards of conduct;

(iii) Inform directors and employees that they will be held accountable for adhering to the institution's Code of Ethics, or in the case of agents, to industry or professional ethics standards or, in the absence thereof, to the System institution's Code of Ethics provisions applicable to agents;

(iv) Prohibit conduct involving dishonesty, fraud, or deceit and discourage the commitment of any act that reflects adversely on the reputation, integrity, or competency of the System institution or the System;

(v) Prohibit conduct involving misuse of office; and

(vi) Provide for the prompt reporting to the Standards of Conduct Official any person or persons in violation of the institution's Code of Ethics and of any activity that may require further investigation and reporting under § 612.2301;

(3) Policies and procedures related to UBEs that ensure the System institution's directors, employees, and agents and the UBE members, partners, employees and agents comply with their employing institution's standards of conduct and avoid conflicts of interest in carrying out their duties with respect to the UBE.

(b) Board policies and procedures adopted pursuant to paragraph (a) of this section must reflect due consideration of the potential adverse impact of activities permitted under the policies and procedures and must at a minimum:

(1) Establish requirements and prohibitions as are necessary to promote public confidence in the institution and the System, preserve the integrity and independence of the supervisory process, and prevent the improper use of official property, position, or information. In developing such requirements and prohibitions, the institution must address such issues as the hiring of relatives, political activity, devotion of time to duty, use of institution resources, the exchange of gifts and favors among directors and employees of the employing, supervising, and supervised institution, and the circumstances under which gifts may be accepted by directors and employees from outside sources, in light of the foregoing objectives;

(2) Outline authorities and responsibilities of the Standards of Conduct Official, including:

(i) The authority and responsibility to review for compliance with this subpart all loans before the supervisory bank's approval under §§ 614.4460 and 614.4470, respectively; and

(ii) A process to allow the Standards of Conduct Official to report matters to the board without fear of reprisal;

(3) Establish criteria for business relationships and transactions not specifically prohibited by this part between employees or directors and borrowers, loan applicants, directors, or employees of the employing, supervised, or supervising institutions, or persons transacting business with such institutions, including OFIs or other lenders having an access or participation relationship;

(4) Establish criteria under which employees may accept outside employment or compensation;

(5) Establish conditions under which employees may receive loans from System institutions;

(6) Establish conditions under which employees may acquire an interest in real or personal property that served as collateral for a loan from a System institution;

(7) Establish conditions under which employees may purchase any real or personal property of a System

institution acquired by such institution for its operations. System institutions must use open competitive bidding whenever they sell surplus property above a stated value (as established by the board) to their employees;

(8) Provide for a reasonable period of time for directors and employees to terminate transactions, relationships, or activities that are subject to prohibitions that arise at the time of adoption or amendment of the policies;

(9) Require new directors and new employees involved in transactions, relationships, and activities prohibited by these regulations or internal policies to terminate such transactions within the same time period established for existing directors or employees pursuant to paragraph (b)(8) of this section, beginning with the commencement of the director's term for new directors, and commencement of official duties for new employees, or such shorter time period as the institution may establish;

(10) Establish procedures providing for a director's, employee's, or agent's recusal from official action on any matter in which the director, employee, or agent is prohibited from participating under these regulations or the institution's policies;

(11) Establish documentation requirements demonstrating compliance with standards of conduct decisions and board policy;

(12) Establish reporting requirements, consistent with this part, to enable the institution to comply with § 620.6 of this chapter, monitor conflicts of interest, and monitor recusal compliance;

(13) Establish appeal procedures available to any employee to whom any required approval has been denied;

(14) Prohibit directors and employees from purchasing or retiring any preferred stock of the institution in advance of the release of material non-public information concerning the institution to other stockholders;

(15) Establish when directors and employees may purchase and retire their preferred stock in the institution;

(16) Require annual training and other appropriate measures to ensure that all directors and employees are educated on best practices for ethical behavior and standards of conduct and perform their duties and responsibilities in an objective and impartial manner; and

(17) Require that the institution report to the Farm Credit Administration exceptions authorized by the board pursuant to paragraph (c) of this section.

(c) Board policies and procedures adopted pursuant to paragraphs (a) and (b) of this section may provide for:

(1) The board to consider a case-by-case exception to conflicts of interest requirements (§ 612.2136), director and employee reporting requirements (§§ 612.2140 and 612.2150), the 5-percent threshold on controlled entity (§ 612.2130), joint employee prohibitions (§ 612.2157), employee prohibitions on serving as an officer or director of a non-System financial institution (§ 612.2155(a)(4)), and director and employee prohibitions on sharing information (§§ 612.2145(a)(2) and 612.2155(a)(2), respectively). An exception may be authorized only upon board approval after the board considers the written recommendation of the Standards of Conduct Official. The recommendation must be adequately supported by the Standards of Conduct Official's written determination that in that particular matter or transaction application of the prohibition subject to the exception is not necessary to avoid a conflict of interest, to avoid the appearance of a conflict of interest or to ensure the confidence in the impartiality and objectivity of the director, employee, or System institution. The board must provide for periodic review of the criteria to determine whether the exception continues to be appropriate. If the board approves an exception, it may impose appropriate conditions, such as requiring a written disqualification or additional public disclosure.

(2) Exceptions to reporting requirements under §§ 612.2140 and 612.2150 and exceptions to the requirements under §§ 612.2145(b)(4) and 612.2155(b)(6) that the Standards of Conduct Official review a lending transaction before it is entered into. Broad based exceptions in policies may be authorized only if the potential for conflict of interest in that category of interests or transactions is insignificant. The potential for conflict of interest may only be considered insignificant if:

(i) The board determines, under its policies and procedures, that the type of interest or transaction is so immaterial in amount or value that no reasonable person with knowledge of all the facts could conclude that the interest or transaction would influence a director's or employee's ability to act impartially and in the best interests of the System institution. For this exception, transactions otherwise prohibited under §§ 612.2145 and 612.2155 do not require the prior approval of the Standards of Conduct Official or reporting under §§ 612.2140 and 612.2150; or

(ii) The board determines, under its policies and procedures that the types of interests or transactions covered by the exception or reporting requirement are in the ordinary course of business. For this exception, transactions otherwise prohibited under §§ 612.2145 and 612.2155 do not require the prior approval of the Standards of Conduct Official but must be reported under §§ 612.2140 and 612.2150, and must be reviewed by the Standards of Conduct Official at least annually; and

(iii) The board must consider the written recommendation of the Standards of Conduct Official in developing these policy exceptions. The recommendation must be adequately supported by the Standards of Conduct Official's written determination that the amount of value in the transaction or the particular type of interest or transaction, does not require application of the reporting requirement or prohibition subject to the exception and is not necessary to avoid a conflict of interest, to avoid the appearance of a conflict of interest or to ensure the confidence in the impartiality and objectivity of the director, employee, or System institution.

(d) An institution's directors and employees, including the Standards of Conduct Official, must not engage in any act or practice to evade the prohibitions and other requirements of this part.

(e) The Farm Credit Administration may take appropriate action against any institution, director or employee who or that has entered into any transaction for the purpose of evading the requirements of this part.

(f) Notwithstanding the exceptions that may be authorized and approved under this subpart, the Farm Credit Administration may find that a particular financial interest or transaction, relationship, or activity constitutes a conflict of interest or the appearance of a conflict of interest.

§ 612.2170 Standards of Conduct Official.

(a) Each institution's board of directors must:

(1) Designate an officer of the institution as its Standards of Conduct Official; and

(2) Authorize other employees of the institution or outside counsel or consultants to assist the Standards of Conduct Official as needed, and dedicate resources as needed, to ensure the effective operations of the institution's standards of conduct program for compliance with institution policies and the Farm Credit Administration's standards of conduct regulations.

(b) The Standards of Conduct Official must:

(1) Advise directors, director candidates, employees, and potential

new employees concerning the provisions of this part;

(2) Receive, review, and maintain reports required by this part;

(3) Make such determinations as are required by this part;

(4) Maintain records of determinations as are required by this part;

(5) Make appropriate investigations, as directed by the institution's board;

(6) Report to the board no less than annually on the effectiveness of the institution's standards of conduct policy and its implementation;

(7) Report promptly to the institution's board and the Office of General Counsel, Farm Credit Administration, all cases where:

(i) A preliminary investigation indicates that a Federal criminal statute pursuant to subpart B of this part may have been violated;

(ii) An investigation results in the resignation or discharge of an employee or the resignation or potential removal of a director; or

(iii) A known or suspected criminal or standards of conduct violation by a director, employee or agent may have an adverse impact on continued public confidence in the System or any of its institutions.

(8) Investigate or cause to be investigated all cases involving:

(i) Possible violations of criminal statutes by a director, employee or agent;

(ii) Possible violations of §§ 612.2136, 612.2145 and 612.2155, and applicable policies and procedures approved under § 612.2165;

(iii) Complaints received against the directors, employees, and agents of such institution; and

(iv) Possible violations of other provisions of this part or when the activities or suspected activities of a director, employee or agent are of a sensitive nature and could affect continued public confidence in the institution or System.

(c) A Farm Credit bank may provide assistance to an affiliated association's board of directors and Standards of Conduct Official in complying with this part.

(d) A System institution may use an outside counsel or consultant to assist in complying with this part. However, the Standards of Conduct Official must oversee the outside counsel or consultant and remains accountable to the board.

(e) The Standards of Conduct Official must coordinate with the board and management in administering annual training to ensure that directors and employees remain informed of the institution's current standards of conduct policy and Code of Ethics.

§ 612.2180 Standards of conduct for agents.

(a) Agents of System institutions must maintain high standards of honesty, integrity, and impartiality in order to ensure the proper performance of System business and continued public confidence in the System and its institutions. The avoidance of misconduct and conflicts of interest is indispensable to the maintenance of these standards.

(b) System institutions must utilize safe and sound business practices in the engagement, utilization, and retention of agents. These practices must provide for the selection of qualified and reputable agents. Agents representing a System institution in contacts with third parties or who provide consultant or professional services such as legal, accounting and appraisal, must review and acknowledge receipt of the institution's Code of Ethics. Agents must certify to the System institution that the agent will adhere to the agent's professional or industry ethics standards, or to the institution's Code of Ethics provisions applicable to agents. Employing System institutions are responsible for the actions of their agents, and must take appropriate investigative and corrective action in the case of a breach of fiduciary duties by the agent or failure of the agent to carry out its duties.

(c) System institutions must exercise special diligence and control, through good business practices, to avoid or control situations that have inherent potential for sensitivity, either real or perceived. These areas include the employment of agents who are related to directors or employees of System institutions; the solicitation and acceptance of gifts, contributions, or special considerations by agents; and the use of System and borrower information obtained in the course of the agent's association with System institutions.

(d) An agent may not knowingly acquire, directly or indirectly, except through inheritance, any interest in real or personal property, including a mineral interest, that was owned by the employing institution or any supervised or supervising institution as a result of foreclosure or similar action during the agent's employment. This prohibition applies for one (1) year after the transfer of the property out of the System institution or after the termination of the agent relationship, whichever occurs first.

§ 612.2190 Purchase of System obligations.

(a) Employees and directors of System institutions must not purchase any obligation of a System institution, including any joint, consolidated, or Systemwide obligation, unless such obligation is:

(1) Part of an offering available to the general public; and

(2) Purchased through a dealer or dealer bank affiliated with a member of the selling group designated by the Federal Farm Credit Banks Funding Corporation or purchased in the secondary market.

(b) A director or employee of the Federal Farm Credit Banks Funding Corporation must not purchase or otherwise acquire, directly or indirectly, except by inheritance, any obligation of a System institution, including any joint, consolidated, or Systemwide obligation.

§ 612.2260 and 612.2270 [Reserved]

Dated: February 7, 2014.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2014–03098 Filed 2–19–14; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0092; Directorate Identifier 2014–CE–002–AD]

RIN 2120–AA64

Airworthiness Directives; GROB-WERKE Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain GROB-WERKE Models G115EG and G120A airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an 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 left hand elevator flange. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 7, 2014.

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 proposed AD, contact Grob Aircraft AG, Customer Service, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Germany, telephone: + 49 (0) 8268–998–105; fax; + 49 (0) 8268–998–200; email: *productsupport@grob-aircraft.com;* Internet: *grob-aircraft.com.* You may review this 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* by searching for and locating Docket No. FAA–2014–0092; 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 proposed 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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0092; Directorate Identifier 2014–CE–002–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2014–0004, dated January 7, 2014 (referred to after this as ''the MCAI''), to correct an unsafe condition for certain GROB-WERKE Models G115EG and G120A airplanes. The MCAI states:

> An operator of a G 115E aeroplane reported finding a crack during scheduled maintenance on the left hand (LH) elevator flange, part number (P/N) 115E–3761.06. The design of the right hand (RH) elevator flange, P/N 115E–3762.07, is identical. A similar design is used for the elevator flanges installed on G 120A and G–120A–I aeroplanes, P/N 120A–3561.20(A) and P/N 120A–3562.20(A). Therefore, the reported deficiency may also exist on G 120 aeroplanes.
>
> This condition, if not detected and corrected, could lead to elevator failure, resulting in reduced control of the aeroplane.
>
> To address this potential unsafe condition, GROB Aircraft AG issued Service Bulletins (SB) MSB1078–194 and SB MSB1121–140 to provide instruction for inspection and corrective action.
>
> For the reasons described above, this AD requires repetitive inspections of both elevator flanges on an aeroplane to detect any crack, and, depending on findings, replacement of the affected part.

You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0092.

Relevant Service Information

GROB Aircraft has issued Service Bulletin No. MSB1078–194/1 and Service Bulletin No. MSB1121–140, both dated December 3, 2013. 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 Proposed AD

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

Costs of Compliance

We estimate that this proposed AD will affect 6 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $510, or $85 per product.

In addition, we estimate that any necessary follow-on actions would take about 8 work-hours and require parts costing approximately $306 for the left hand (LH) elevator flange and $365 for the right hand (RH) elevator flange. We estimate a cost of $986 to replace the LH elevator flange per product and $1,045 to replace the RH elevator flange 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

GROB–WERKE: Docket No. FAA–2014–0092; Directorate Identifier 2014–CE–002–AD.

(a) Comments Due Date

We must receive comments byApril 7, 2014.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GROB-WERKE Model G115E airplanes, all serial numbers, and Model G120A airplanes, serial numbers 85001 through 85007, 85026 through 85056, and 85058, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 55: Stabilizers.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an 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 left hand elevator flange. We are issuing this AD to detect and correct cracks in the left hand and right hand elevator flanges, which could cause the elevator to fail and could result in reduced control.

(f) Actions and Compliance

Unless already done, do the actions in paragraphs (f)(1) through (f)(3) of this AD:

(1) Within the next 30 days after the effective date of this AD and repetitively thereafter at intervals not to exceed 100 hours time-in-service (TIS), inspect the left hand (LH) and the right hand (RH) elevator flanges, part number (P/N) 115E–3761.06 and P/N 115E–3762.07, or P/N 120A–3561.20(A) and P/N 120A–3562.20(A), as applicable, for cracks. Do the inspections following GROB Aircraft Service Bulletin No. MSB1078–194/1, dated December 3, 2013, or GROB Aircraft Service Bulletin No. MSB1121–140, dated December 3, 2013, as applicable.

(2) If any crack is found during any inspection required in paragraph (f)(1) of this AD, before further flight, replace the affected elevator flange with a serviceable part. Do the replacement following GROB Aircraft Service Bulletin No. MSB1078–194/1, dated December 3, 2013, or GROB Aircraft Service Bulletin No. MSB1121–140, dated December 3, 2013, as applicable.

(3) As of the effective date of this AD, only install an elevator flange P/N 115E–3761.06, P/N 115E–3762.07, P/N 120A–3561.20(A), or P/N 120A–3562.20(A), if it has been inspected following GROB Aircraft Service Bulletin No. MSB1078–194/1, dated December 3, 2013, or GROB Aircraft Service Bulletin No. MSB1121–140, dated December 3, 2013, as applicable, and is free of any cracks.

(g) Credit for Actions Accomplished in Accordance With Previous Service Information for Model G115E Airplanes

This paragraph provides credit for the initial inspection required in paragraph (f)(1) of this AD and any replacement required in paragraph (f)(2) based on the result of the initial inspection if already done before the effective date of this AD following GROB Aircraft Service Bulletin No. MSB1078–194, dated November 26, 2013.

(h) 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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4123; fax: (816) 329–4090; email: *karl.schletzbaum@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.

(i) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2014–0004, dated January 7, 2014; and GROB Aircraft Service Bulletin No. MSB1078–194, dated November 26, 2013, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0092. For service information related to this AD, contact Grob Aircraft AG, Customer Service, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Germany, telephone: + 49 (0) 8268–998–105; fax; + 49 (0) 8268–998–200; email: *productsupport@grob-aircraft.com;* Internet: *grob-aircraft.com.* You may review this 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.

Issued in Kansas City, Missouri, on February 11, 2014.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–03606 Filed 2–19–14; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, and 416

[Docket No. SSA–2012–0068]

RIN 0960–AH53

Submission of Evidence in Disability Claims

AGENCY: Social Security Administration.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to clarify our regulations to require you to inform us about or submit all evidence known to you that relates to your disability claim, subject to two exceptions for certain privileged communications. This

requirement would include the duty to submit all evidence obtained from any source in its entirety, unless subject to one of these exceptions. We also propose to require your representative to help you obtain the information or evidence that we would require you to submit under our regulations. These modifications to our regulations would better describe your duty to submit all evidence that relates to your disability claim and enable us to have a more complete case record on which to make more accurate disability determinations and decisions.

DATES: To ensure that your comments are considered, we must receive them by no later than April 21, 2014.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2012–0068 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend this method for submitting your comments. Visit the Federal eRulemaking portal at *http://www.regulations.gov.* Use the Web page's *Search* function to find docket number SSA–2012–0068 and then submit your comment. Once you submit your comment, the system will issue you a tracking number to confirm your submission. You will not be able to view your comment immediately because we must manually post each comment. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Janet Truhe, Office of Disability Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 966–7203. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Social Security Act (Act) gives the Commissioner of Social Security broad rulemaking authority to issue regulations governing the production of evidence that we use to adjudicate disability claims under title II and title XVI.[1] Additionally, the Act provides that we will not find that an individual is disabled ''unless [he or she] furnishes such medical and other evidence of the existence thereof as the Commissioner of Social Security may require.'' [2]

There has been recent public and media interest in what our regulations require regarding the submission of evidence in disability claims, particularly regarding the duty to submit unfavorable evidence. There have been allegations that when some representatives submit evidence to us, they deliberately withhold evidence they deem unfavorable to the claimant. We also know, based on our program experience, that we do not always receive complete evidence. This public and media interest has drawn congressional attention.[3] In particular, members of Congress have asked about the relationship between the Social Security Protection Act of 2004 (SSPA) and the duty to submit potentially unfavorable evidence in disability claims. The SSPA authorized us to penalize a person who withholds a fact, which the person knows or should know is material to the determination of any initial or continuing right to benefits. In light of congressional interest and our program experience, we have again reviewed our regulations that govern the submission of evidence.

Our current regulations describe a claimant's duty to submit medical and non-medical evidence in several ways. For example, in § 404.1512(a), we state that you ''must bring to our attention everything that shows that you are blind or disabled,'' which may only include evidence that is favorable to your claim.[4] In §§ 404.1512(c) and 416.912(c), however, we state that you ''must provide evidence, without redaction, showing how your impairment(s) affects your functioning during the time you say that you are disabled,'' which may include evidence that is unfavorable to your claim. Similarly, our current regulations governing the conduct of claimants' representatives describe their related duty to submit evidence in several ways. For example, in §§ 404.1740(b)(1) and 416.1540(b)(1), we require representatives to ''obtain the information and evidence that the claimant wants to submit in support of his or her claim,'' which may only include evidence that is favorable to the disability claim. In §§ 404.1740(b)(2) and 416.1540(b)(2), however, we require representatives to assist the claimant in complying ''with our requests for information or evidence,'' which may include evidence that is unfavorable to the claim.

In reviewing our regulations on the submission of evidence, we also considered Congress' actions in enacting the SSPA. When it enacted the SSPA, Congress authorized us to impose a civil monetary penalty against any person who omits from a statement or representation or otherwise withholds disclosure of a fact that is material to the determination of any initial or continuing right to benefits or payments, if the person knows or should know that omitting or withholding the fact is misleading.[5] The sheer volume of disability claims we decide each year makes the need for a complete case record imperative. In fiscal year 2012, for example, we completed more than 3.2 million initial disability claims and more than 820,000 hearing requests.[6] Clarifying our rules regarding a claimant's duty to submit all

[1] *See* 42 U.S.C. 405(a) and 1383(d)(1).

[2] 42 U.S.C. 423(d)(5)(A). *See also* 42 U.S.C. 1382c(a)(3)(H)(i) (making the provisions of section 423(d)(5) applicable under title XVI).

[3] *See, e.g.,* The Social Security Administration: Is It Meeting Its Responsibility to Save Taxpayer Dollars and Serve the Public?: Hearing Before the S. Comm. on Finance, 112th Cong. 18–19, 52–54 (2012), *available at http://www.finance.senate.gov/hearings/hearing/?id=35b30665-5056-a032-52b7-89db5b56d235;* Fourth in a Hearing Series on Securing the Future of the Social Security Disability Insurance Program: Hearing Before the Subcomm. on Social Security of the H. Comm. on Ways and Means, 112th Cong. (2012), *available at http://waysandmeans.house.gov/news/documentsingle.aspx?DocumentID=326594;* Minority Staff Report, S. Perm. Subcomm. on Investigations, Social Security Disability Programs: Improving the Quality of Benefit Award Decisions 5–6 (2012), *available at http://www.hsgac.senate.gov/download/report-psi-minority-staff-report_-social-security-disability-programs-improving-the-quality-of-benefit-award-decisions.*

[4] *See also* 20 CFR 416.912(a).

[5] Social Security Protection Act of 2004, § 201, 42 U.S.C. 1320a–8.

[6] Social Security Administration, *Performance and Accountability Report, Fiscal Year 2012,* at 56, 62, *available at http://www.socialsecurity.gov/finance/2012/Full%20FY%202012%20PAR.pdf.*

evidence that relates to the disability claim would enable us to obtain more complete case records and adjudicate claims more accurately.

As part of our reevaluation of the regulations governing the duty to submit evidence in disability claims, we also consulted with the Administrative Conference of the United States (ACUS) [7] and requested recommendations on how our regulations could better articulate the duty to submit all evidence that relates to the disability claim. ACUS issued its Final Report in October 2012.[8] Although the particular content of any regulation was beyond the scope of ACUS's Final Report, ACUS did identify several principles and options that have guided our efforts in this area.

First, ACUS recommended that any proposed regulation should place disclosure obligations directly on claimants rather than on their representatives (if any), just as Federal courts place discovery and other evidence-production obligations on civil litigants, not their counsel. Second, ACUS recommended that any proposed disclosure obligations should apply both to attorney and non-attorney representatives. Third, ACUS recommended that we should write any disclosure obligations so that they do not intrude on any established legal privileges, including the attorney-client privilege or (assuming it is applicable in this context) the work-product doctrine. The obligations should not, among other things, require a claimant (or his or her representative) to disclose his or her subjective opinions regarding the evidence. Finally, ACUS recommended that we should write any disclosure obligations in a way that would minimize the extent to which a claimant and his or her representative must make subjective judgments as to the legal relevance of particular evidence. We now propose to clarify our regulations regarding the submission of evidence, based in part on the recommendations and principles in ACUS's Final Report and mindful of the concerns that prompted Congress to amend section 1129 of the Act, 42 U.S.C. 1320a–8, as part of the SSPA. The modifications we propose to our regulations will provide more certainty about the duty to submit all evidence that relates to disability claims.

Proposed Changes

The Claimant's Duty To Submit Evidence

We propose to revise §§ 404.1512(a) and 416.912(a) to require you to inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled.[9] This would include evidence that may be either favorable or unfavorable to your claim. As part of this proposal, we would remove our current requirement in sections 404.1512(a) and 416.912(a) that you ''must furnish medical and other evidence that we can use to reach conclusions about your medical impairment(s).'' The duty to inform us about or submit all evidence that relates to your disability claim would include all of the types of evidence we need to determine disability under our regulations and would remove the need for you to determine what evidence is ''material'' to the disability determination. In addition, by requiring you to inform us about *or* submit all evidence that relates to your disability claim, we would clarify that we are not shifting our responsibility for developing the record to you. Our disability system is non-adversarial, and we assist claimants in developing the medical and non-medical evidence we need to determine whether or not they are disabled.[10]

We also propose to add a new paragraph to current §§ 404.1512(b) and 416.912(b), which would set forth two exceptions to what we mean by ''evidence.'' [11] First, in proposed §§ 404.1512(b)(2)(i) and 416.912(b)(2)(i), we would exclude oral and written communications between you and your representative that are subject to the attorney-client privilege, unless you voluntarily disclose the communication to us. The attorney-client privilege protects confidential communications between a client and his or her attorney in order to obtain and provide sound legal assistance.[12] Its purpose is to encourage attorneys and their clients to communicate fully and frankly.[13] This privilege does not apply to communications with non-attorney representatives, but we would also exclude from the definition of evidence communications between claimants and their non-attorney representatives that would be subject to the attorney-client privilege, if the non-attorney representative were an attorney. As recommended by ACUS in its Final Report, we believe that any proposed disclosure obligations ''should apply both to attorney and non-attorney representatives.'' [14]

The attorney-client privilege ''only protects disclosure of communications; it does not protect disclosure of the underlying facts by those who communicated with the attorney.'' [15] For example, if you write a letter to your representative disclosing the names of your medical source(s), the privilege would preclude disclosure of the letter, but not the names of your medical source(s).

Second, in proposed §§ 404.1512(b)(2)(ii) and 416.912(b)(2)(ii), we propose to exclude your representative's analysis of your claim, unless he or she voluntarily discloses it to us. By ''analysis of your

[7] ACUS is ''an independent federal agency dedicated to improving the administrative process through consensus-driven applied research, providing nonpartisan expert advice and recommendations for improvement of federal agency procedures.'' About the Administrative Conference of the United States (ACUS), *available at http://www.acus.gov/about-administrative-conference-united-states-acus.*

[8] Administrative Conference of the United States, *SSA Disability Benefits Programs: The Duty of Candor and Submission of All Evidence* (Oct. 15, 2012) (''ACUS Final Report''), *available at http://www.acus.gov/sites/default/files/documents/ACUS_Final_Report_SSA_Duty_of_Candor.pdf.*

[9] Under the Act, a claimant must prove to us that he or she is blind or disabled. 42 U.S.C. 423(d)(5)(A) and 1382c(a)(3)(H)(i). A claimant is disabled only if he or she is unable to do any substantial gainful activity because he or she has a medically determinable impairment that can be expected to result in death or which has lasted or can be expected to last for a period of at least 12 continuous months. 42 U.S.C. 423(d)(1)(A) and 1382c(3)(A). To be found disabled, a claimant must also be both ''unable to do [his or her] previous work'' and unable to do ''any other kind of substantial gainful work which exists in the national economy.'' 42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B).

[10] For example, consistent with our duty under the Act, we must develop a claimant's ''complete medical history,'' generally for at least the 12 months preceding the application date. 42 U.S.C. 423(d)(5)(B) and 1382c(a)(3)(H)(i); 20 CFR 404.1512(d) and 416.912(d). In addition, at the hearings level, administrative law judges have a duty ''to investigate the facts and develop the arguments both for and against granting benefits.'' *Sims* v. *Apfel,* 530 U.S. 103, 111 (2000).

[11] We describe what we mean by ''evidence'' in current §§ 404.1512(b)(1)–(8) and 416.912(b)(1)–(8) (proposed sections 404.1512(b)(1)(i)–(viii), 416.912(b)(1)(i)–(viii)). We do not propose any changes to these sections other than to add the phrase ''and other program physicians, psychologists, or other medical specialists'' to current §§ 404.1512(b)(6) and 416.912(b)(6) (proposed sections 404.1512(b)(1)(vi), 416.912(b)(1)(vi)) in conformity with the cross-references that appear in these sections. We inadvertently omitted this phrase when we last revised these sections.

[12] *See Upjohn* v. *United States,* 449 U.S. 383, 389 (1981).

[13] *Id.*

[14] ACUS Final Report at 38. ACUS made this recommendation after consulting with the National Organization of Social Security Claimants' Representatives and the National Association of Disability Representatives (whose members also include non-attorney representatives). Both of these advocate groups recommended that any proposed changes to our evidence regulations apply to all claimant representatives without distinction between attorneys and non-attorneys. *Id.* at A–5 and A–8.

[15] *Upjohn,* 449 U.S. at 395.

claim,'' we generally mean the information that is subject to the attorney work product doctrine.[16] This doctrine protects an attorney's analysis, theories, mental impressions, and notes.[17] Its purpose is to provide an attorney with a degree of privacy within which to carefully and thoroughly prepare his or her client's case.[18]

We do not intend, however, to incorporate into these proposed rules the full scope of the work product doctrine under Rule 26(b) of the Federal Rules of Civil Procedure. Rather, consistent with our broad authority under the Act to ''adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits,'' [19] these proposed rules incorporate a more limited version of the work product doctrine than would apply under the Federal Rules. Under these proposed rules, your representative's ''analysis of your claim'' does not include certain material that we may consider in determining whether or not you are entitled to or eligible for the benefits for which you have applied. For example, if your representative takes notes during a discussion with one of your medical sources about your condition, we would consider those notes your representative's analysis of your claim, and they would be protected from disclosure under these proposed rules. However, if your medical source sends your representative medical records or a written opinion about your condition, your representative could not withhold those records and that opinion based on the work product doctrine. Those documents would be subject to the duty of disclosure under these proposed rules.

To clarify this point, we provide in proposed §§ 404.1512(b)(2)(ii) and 416.912(b)(2)(ii) that your representative's ''analysis of your claim'' means information that is subject to the attorney work product doctrine, but does not include medical evidence, medical source opinions, or any other factual matter that we may consider in determining whether or not you are entitled to or eligible for benefits. We then provide a cross-reference to new paragraph (b)(2)(iv), where we further explain the scope of the privileges within the context of these proposed rules.

Although the work product doctrine applies only to attorneys, we also exclude from the definition of evidence documents that would be subject to the work product privilege, if the non-attorney representative were an attorney, to the same extent that we have discussed above.

We also propose revising §§ 404.1512(c) and 416.912(c) to clarify that it is *your* responsibility to inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled.[20] In addition, when you submit evidence to us from another source, we would require you in proposed §§ 404.1512(c) and 416.912(c) to submit that evidence in its entirety. For example, if you obtain your patient file from one of your medical sources, we would require you to submit *all* of the medical records in that file. When we last revised §§ 404.1512(c) and 416.912(c) to require that you provide evidence ''without redaction,'' we explained at the time that this means, for example, you must not redact evidence from a medical report you submit to us.[21] As ACUS pointed out in its Final Report, however, we did not define ''without redaction'' or fully explain what we meant by this requirement.[22] Therefore, one could interpret ''without redaction'' to mean either within a document or among a group of documents.[23] We intend our proposed requirement for submission of evidence in its entirety to clarify that we mean both types of redaction.

Finally, in proposed §§ 404.1512(c)(1) and 416.912(c)(1), we would clarify that, if we ask you, you must inform us about your medical source(s). We currently request the names and addresses of all of your medical source(s) on the adult and child disability applications; [24] such information is within the scope of your current responsibility to submit evidence that shows you are blind or disabled.[25] However, as part of our clarification of your duty to inform us about or submit all evidence that relates to your disability claim, we believe we should expressly list this type of evidence with the other types referenced in current §§ 404.1512(c)(1)–(6) and 416.912(c)(1)–(6).

The Representative's Duty To Submit Evidence

As stated above, we propose to place the duty to submit evidence directly on claimants, not their representatives, if represented. Therefore, we propose to revise §§ 404.1740(b)(1) and 416.1540(b)(1) to require that representatives help obtain the information or evidence that claimants must submit under our proposed regulations. By requiring representatives to help obtain the information or evidence that claimants must submit, we would clarify that we are not shifting our responsibility to develop the record to claimants' representatives.

Other Changes

We propose to make a number of other non-substantive changes to the current rules. We are proposing these changes for clarity and consistency and to correct minor grammatical errors. For example, we propose to revise some language from passive to active voice. We would also make conforming changes to §§ 404.900, 405.1, and 416.1400, which introduce and explain the nature of the administrative review process, and §§ 404.935, 405.331, and 416.1435, which pertain to a claimant's duty to submit evidence at the hearings level.

Clarity of This Proposed Rule

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make it easier to understand.

For example:

- Would more, but shorter, sections be better?
- Are the requirements in the rule clearly stated?
- Have we organized the material to suit your needs?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format make the rule easier to understand, e.g., grouping and order of sections, use of headings, paragraphing?

[16] *See Hickman* v. *Taylor,* 329 U.S. 495, 510–12 (1947).

[17] *Id.* at 511.

[18] *Id.* at 510–11.

[19] 42 U.S.C. 405(a) and 1383(d)(1); *see Heckler* v. *Campbell,* 461 U.S. 458, 466 (1983) (recognizing the Commissioner's ''exceptionally broad authority'' under section 405(a) ''to prescribe standards for applying certain sections of the [Social Security] Act.'' (Alteration in original)).

[20] In so doing, we would place the disclosure obligation directly on claimants rather than on their representatives ''just as discovery and other evidence-production obligations in federal courts are placed on civil litigants, not their counsel.'' ACUS Final Report at 38.

[21] *See* 71 FR 16424, 16437 (2006).

[22] *See* ACUS Final Report at 7.

[23] *Id.*

[24] These are the Form SSA–3368–BK, Disability Report—Adult and the Form SSA–3820–BK, Disability Report—Child.

[25] *See* §§ 404.1512(a) and (c) and 416.912(a) and (c).

When will we start to use this rule?

We will not use this rule until we evaluate public comments and publish a final rule in the **Federal Register**. All final rules we issue include an effective date. We will continue to use our current rules until that date. If we publish a final rule, we will include a summary of relevant comments we received, responses to them, and an explanation of how we will apply the new rule.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 13563

We consulted with the Office of Management and Budget (OMB) and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed it.

Regulatory Flexibility Act

We certify that this proposed rule would not have a significant economic impact on a substantial number of small entities because it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

Paperwork Reduction Act

This NPRM imposes no reporting or recordkeeping requirements subject to OMB clearance.

References

We consulted the references cited in the footnotes when we developed these proposed rules. We included these references in the rulemaking record for these proposed rules and will make them available for inspection by interested individuals who make arrangements with the contact person identified above.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; and 96.004, Social Security—Survivors Insurance)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 405

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability insurance, Public assistance programs, Reporting and recordkeeping requirements, Social Security, Supplemental Security Income (SSI).

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: February 11, 2014.

Carolyn W. Colvin,

Acting Commissioner of Social Security.

For the reasons stated in the preamble, we propose to amend subparts J, P, and R of part 404, subparts A and D of part 405, and subparts I, N, and O of part 416 as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.900 by revising paragraph (b) to read as follows:

§ 404.900 Introduction

* * * * *

(b) *Nature of the administrative review process.* In making a determination or decision in your case, we conduct the administrative review process in an informal, non-adversarial manner. Subject to the limitations on Appeals Council consideration of additional evidence (*see* §§ 404.970(b) and 404.976(b)), we will consider at each step of the review process any information you present as well as all the information in our records. You may present the information yourself or have someone represent you, including an attorney. If you are dissatisfied with our decision in the review process, but do not take the next step within the stated time period, you will lose your right to further administrative review and your right to judicial review, unless you can show us that there was good cause for your failure to make a timely request for review.

* * * * *

■ 3. Revise § 404.935 to read as follows:

§ 404.935 Submitting evidence prior to a hearing before an administrative law judge.

You should submit information or evidence as required by § 404.1512 or any summary of the evidence to the administrative law judge with the request for hearing or within 10 days after filing the request, if possible. Each party shall make every effort to ensure that the administrative law judge receives all of the evidence (*see* § 404.1512) or all of the evidence is available at the time and place set for the hearing.

Subpart P—[Amended]

■ 4. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 5. In § 404.1512, revise paragraphs (a) through (c) to read as follows:

§ 404.1512 Evidence.

(a) *General.* In general, you have to prove to us that you are blind or disabled. You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled. We will consider only impairment(s) you say you have or about which we receive evidence.

(b) *What we mean by ''evidence.''* Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim.

(1) Evidence includes, but is not limited to:

(i) Objective medical evidence, that is, medical signs and laboratory findings as defined in § 404.1528(b) and (c);

(ii) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;

(iii) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings;

(iv) Information from other sources, as described in § 404.1513(d);

(v) Decisions by any governmental or nongovernmental agency about whether or not you are disabled or blind (*see* § 404.1504);

(vi) At the initial level of the administrative review process, when a State agency disability examiner makes

the initial determination alone (*see* § 404.1615(c)(3)), opinions provided by State agency medical and psychological consultants and other program physicians, psychologists, or other medical specialists based on their review of the evidence in your case record (*see* § 404.1527(e)(1)(ii));

(vii) At the reconsideration level of the administrative review process, when a State agency disability examiner makes the determination alone (*see* § 404.1615(c)(3)), findings, other than the ultimate determination about whether or not you are disabled, made by the State agency medical or psychological consultants and other program physicians, psychologists, or other medical specialists at the initial level of the administrative review process, and other opinions they provide based on their review of the evidence in your case record at the initial and reconsideration levels (*see* § 404.1527(e)(1)(iii)); and

(viii) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether or not you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record (*see* §§ 404.1527(e)(2)–(3)).

(2) *Exceptions.* Notwithstanding paragraph (b)(1) of this section, evidence does not include:

(i) Oral or written communications between you and your representative that are subject to the attorney-client privilege, unless you voluntarily disclose the communication to us; or

(ii) Your representative's analysis of your claim, unless he or she voluntarily discloses it to us. Your representative's ''analysis of your claim,'' means information that is subject to the attorney work product doctrine, but it does not include medical evidence, medical source opinions, or any other factual matter that we may consider in determining whether or not you are entitled to benefits (*see* paragraph (b)(2)(iv) of this section).

(iii) The provisions of paragraph (b)(2)(i) apply to communications between you and your non-attorney representative only if the communications would be subject to the attorney-client privilege, if your non-attorney representative were an attorney. The provisions of paragraph (b)(2)(ii) apply to the analysis of your claim by your non-attorney representative only if the analysis of your claim would be subject to the attorney work product doctrine, if your non-attorney representative were an attorney.

(iv) The attorney-client privilege generally protects confidential communications between an attorney and his or her client that are related to providing or obtaining legal advice. The attorney work product doctrine generally protects an attorney's analysis, theories, mental impressions, and notes. In the context of your disability claim, neither the attorney-client privilege nor the attorney work product doctrine allows you to withhold factual information, medical source opinions, or other medical evidence that we may consider in determining whether or not you are entitled to benefits. For example, if you tell your representative about the medical sources you have seen, your representative cannot refuse to disclose the identity of those medical sources to us based on the attorney-client privilege. As another example, if your representative asks a medical source to complete an opinion form related to your impairment(s), symptoms, or limitations, your representative cannot withhold the completed opinion form from us based on the attorney work product doctrine. The attorney work product doctrine would not protect the source's opinions on the completed form, regardless of whether or not your representative used the form in his or her analysis of your claim or made handwritten notes on the face of the report.

(c) *Your responsibility.* You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled. When you submit evidence from another source, you must submit that evidence in its entirety. If we ask you, you must inform us about:

(1) Your medical source(s);

(2) Your age;

(3) Your education and training;

(4) Your work experience;

(5) Your daily activities both before and after the date you say that you became disabled;

(6) Your efforts to work; and

(7) Any other factors showing how your impairment(s) affects your ability to work. In §§ 404.1560 through 404.1569a, we discuss in more detail the evidence we need when we consider vocational factors.

* * * * *

Subpart R—[Amended]

■ 6. The authority citation for subpart R of part 404 continues to read as follows:

Authority: Secs. 205(a), 206, 702(a)(5), and 1127 of the Social Security Act (42 U.S.C. 405(a), 406, 902(a)(5), and 1320a–6).

■ 7. In § 404.1740, revise paragraphs (b)(1) and (b)(2)(i) through (vii) to read as follows:

§ 404.1740 Rules of conduct and standards of responsibility for representatives.

* * * * *

(b) * * *

(1) Act with reasonable promptness to help obtain the information or evidence that the claimant must submit under our regulations, and forward the information or evidence to us for consideration as soon as practicable.

(2) * * *

(i) The claimant's medical source(s);

(ii) The claimant's age;

(iii) The claimant's education and training;

(iv) The claimant's work experience;

(v) The claimant's daily activities both before and after the date the claimant alleges that he or she became disabled;

(vi) The claimant's efforts to work; and

(vii) Any other factors showing how the claimant's impairment(s) affects his or her ability to work. In §§ 404.1560 through 404.1569a, we discuss in more detail the evidence we need when we consider vocational factors;

* * * * *

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

■ 8. The authority citation for part 405 continues to read as follows:

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

■ 9. In § 405.1, revise the first sentence of paragraph (c)(2) to read as follows:

Subpart A—[Amended]

§ 405.1 Introduction.

* * * * *

(c) * * *

(2) *Evidence considered and right to representation.* Subject to §§ 405.331 and 405.430, you must submit evidence and information to us (*see* §§ 404.1512 and 416.912). * * *

* * * * *

■ 10. In § 405.331, revise the first two sentences of paragraph (a) to read as follows:

Subpart D—[Amended]

§ 405.331 Submitting evidence to an administrative law judge.

(a) When you submit your request for hearing, you should also submit information or evidence as required by §§ 404.1512 or 416.912 of this chapter or any summary of the evidence to the administrative law judge. You must submit any written evidence no later than 5 business days before the date of the scheduled hearing. * * *

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 11. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 12. In § 416.912, revise paragraphs (a) through (c) to read as follows:

§ 416.912 Evidence.

(a) *General.* In general, you have to prove to us that you are blind or disabled. You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled. We will consider only impairment(s) you say you have or about which we receive evidence.

(b) *What we mean by ''evidence.''* Evidence is anything you or anyone else submits to us or that we obtain that relates to your claim.

(1) Evidence includes, but is not limited to:

(i) Objective medical evidence, that is, medical signs and laboratory findings as defined in § 416.928(b) and (c);

(ii) Other evidence from medical sources, such as medical history, opinions, and statements about treatment you have received;

(iii) Statements you or others make about your impairment(s), your restrictions, your daily activities, your efforts to work, or any other statements you make to medical sources during the course of examination or treatment, or to us during interviews, on applications, in letters, and in testimony in our administrative proceedings;

(iv) Information from other sources, as described in § 416.913(d);

(v) Decisions by any governmental or nongovernmental agency about whether or not you are disabled or blind (*see* § 404.1504);

(vi) At the initial level of the administrative review process, when a State agency disability examiner makes the initial determination alone (*see* § 416.1015(c)(3)), opinions provided by State agency medical and psychological consultants and other program physicians, psychologists, or other medical specialists based on their review of the evidence in your case record (*see* § 416.927(e)(1)(ii));

(vii) At the reconsideration level of the administrative review process, when a State agency disability examiner makes the determination alone (*see* § 416.1015(c)(3)), findings, other than the ultimate determination about whether or not you are disabled, made by the State agency medical or psychological consultants and other program physicians, psychologists, or other medical specialists at the initial level of the administrative review process, and other opinions they provide based on their review of the evidence in your case record at the initial and reconsideration levels (*see* § 416.927(e)(1)(iii)); and

(viii) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether or not you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record (*see* §§ 416.927(e)(2)–(3)).

(2) *Exceptions.* Notwithstanding paragraph (b)(1) of this section, evidence does not include:

(i) Oral or written communications between you and your representative that are subject to the attorney-client privilege, unless you voluntarily disclose the communication to us; or

(ii) Your representative's analysis of your claim, unless he or she voluntarily discloses it to us. Your representative's ''analysis of your claim,'' means information that is subject to the attorney work product doctrine, but it does not include medical evidence, medical source opinions, or any other factual matter that we may consider in determining whether or not you are eligible for benefits (*see* paragraph (b)(2)(iv) of this section).

(iii) The provisions of paragraph (b)(2)(i) apply to communications between you and your non-attorney representative only if the communications would be subject to the attorney-client privilege, if your non-attorney representative were an attorney. The provisions of paragraph (b)(2)(ii) apply to the analysis of your claim by your non-attorney representative only if the analysis of your claim would be subject to the attorney work product doctrine, if your non-attorney representative were an attorney.

(iv) The attorney-client privilege generally protects confidential communications between an attorney and his or her client that are related to providing or obtaining legal advice. The attorney work product doctrine generally protects an attorney's analysis, theories, mental impressions, and notes. In the context of your disability claim, neither the attorney-client privilege nor the attorney work product doctrine allows you to withhold factual information, medical source opinions, or other medical evidence that we may consider in determining whether or not you are eligible for benefits. For example, if you tell your representative about the medical sources you have seen, your representative cannot refuse to disclose the identity of those medical sources to us based on the attorney-client privilege. As another example, if your representative asks a medical source to complete an opinion form related to your impairment(s), symptoms, or limitations, your representative cannot withhold the completed opinion form from us based on the attorney work product doctrine. The attorney work product doctrine would not protect the source's opinions on the completed form, regardless of whether or not your representative used the form in his or her analysis of your claim or made handwritten notes on the face of the report.

(c) *Your responsibility.* You must inform us about or submit all evidence known to you that relates to whether or not you are blind or disabled. When you submit evidence from another source, you must submit that evidence in its entirety. If we ask you, you must inform us about:

(1) Your medical source(s);

(2) Your age;

(3) Your education and training;

(4) Your work experience;

(5) Your daily activities both before and after the date you say that you became disabled;

(6) Your efforts to work; and

(7) Any other factors showing how your impairment(s) affects your ability to work. In §§ 416.960 through 416.969a, we discuss in more detail the evidence we need when we consider vocational factors.

* * * * *

Subpart N—[Amended]

■ 13. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 14. Amend § 416.1400 by revising paragraph (b) to read as follows:

§ 416.1400 Introduction

* * * * *

(b) *Nature of the administrative review process.* In making a determination or decision in your case, we conduct the administrative review process in an informal, non-adversarial manner. Subject to the limitations on Appeals Council consideration of additional evidence (*see* §§ 416.1470(b) and 416.1476(b)), we will consider at each step of the review process any information you present as well as all the information in our records. You may present the information yourself or have someone represent you, including an attorney. If you are dissatisfied with our decision in the review process, but do not take the next step within the stated time period, you will lose your right to further administrative review and your right to judicial review, unless you can show us that there was good cause for your failure to make a timely request for review.

* * * * *

■ 15. Revise § 416.1435 to read as follows:

§ 416.1435 Submitting evidence prior to a hearing before an administrative law judge.

You should submit information or evidence as required by § 416.912 or any summary of the evidence to the administrative law judge with the request for hearing or within 10 days after filing the request, if possible. Each party shall make every effort to ensure that the administrative law judge receives all of the evidence (*see* § 416.912) or all of the evidence is available at the time and place set for the hearing.

Subpart O—[Amended]

■ 16. The authority citation for subpart O of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1127, and 1631(d) of the Social Security Act (42 U.S.C. 902(a)(5), 1320a–6, and 1383(d)).

■ 17. In § 416.1540, revise paragraphs (b)(1) and (b)(2)(i) through (vii) to read as follows:

§ 416.1540 Rules of conduct and standards of responsibility for representatives.

* * * * *

(b) * * *

(1) Act with reasonable promptness to help obtain the information or evidence that the claimant must submit under our regulations, and forward the information or evidence to us for consideration as soon as practicable.

(2) * * *

(i) The claimant's medical source(s);

(ii) The claimant's age;

(iii) The claimant's education and training;

(iv) The claimant's work experience;

(v) The claimant's daily activities both before and after the date the claimant alleges that he or she became disabled;

(vi) The claimant's efforts to work; and

(vii) Any other factors showing how the claimant's impairment(s) affects his or her ability to work. In §§ 416.960 through 416.969a, we discuss in more detail the evidence we need when we consider vocational factors;

* * * * *

[FR Doc. 2014–03426 Filed 2–19–14; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA–2012–N–0378]

Physical Medicine Devices; Withdrawal of Proposed Effective Date of Requirement for Premarket Approval for Shortwave Diathermy for All Other Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing the proposed rule the Agency issued in the **Federal Register** of July 6, 2012. In that document, FDA proposed to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the class III preamendment device, shortwave diathermy (SWD) for all other uses. In response to the requirements issued in the Food and Drug Administration Safety and Innovation Act (FDASIA) and new information received during a panel meeting, FDA is withdrawing the proposed rule and proposing a different action.

DATES: The proposed rule is withdrawn on February 20, 2014.

FOR FURTHER INFORMATION CONTACT: Melissa Burns, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1646, Silver Spring, MD 20993, 301–796–5616, *Melissa.Burns@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

In the **Federal Register** of July 6, 2012 (77 FR 39953), FDA issued a proposed rule to require the filing of a PMA or a notice of completion of a PDP for the class III preamendments device, SWD for all other uses. This device applies electromagnetic energy to the body in the radio frequency bands that are currently identified as 13.56 megahertz or 27.12 megahertz and is intended for the treatment of medical conditions by means other than the generation of deep heat within body tissues (also referred to as nonthermal SWD). It is not intended for treatment of malignancies. The Agency also summarized 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 announced the opportunity for interested persons to request that the Agency change the classification of any of the aforementioned devices based on new information.

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA (126 Stat. 1056) amended section 513(e) (U.S.C. 360c(e)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) changing the process for reclassifying a device from rulemaking to an administrative order. Subsequent to the publication of the proposed rule, FDASIA's amendments to section 513 of the FD&C Act required FDA to hold a classification panel (an FDA advisory committee) meeting on the classification of this device. On May 21, 2013, FDA held a meeting of the Orthopedic and Rehabilitation Devices Panel (the Panel), to discuss the classification of nonthermal SWD devices. There was panel consensus that although the effectiveness data were very limited, nonthermal SWD devices did not fit the regulatory definition of a class III device. Coupled with the rationale that special controls could be established to reasonably demonstrate an assurance of safety and effectiveness, the Panel recommended class II (special controls) for nonthermal SWD devices (Ref. 1).

II. Withdrawal of the Proposed Rule

FDA provided an opportunity for interested parties to comment on the proposed rule for SWD for all other uses (77 FR 39953, July 6, 2012). FDA received over 240 comments to the docket in response to the 2012 proposed rule. Comments that expressed an opinion about the classification of nonthermal SWD devices were usually in favor of a class II designation. Some comments did not openly state an opinion, but included arguments against the proposed rule that could reasonably be interpreted as support for a class II designation. There were also comments that agreed with a class III designation. In addition to the comments, FDA received five separate submissions to request a change in the classification of nonthermal SWD from class III to class II. In response to these comments and findings at the Panel meeting, FDA is withdrawing the proposed rule to call for PMAs for these devices and is proposing reclassification to class II (special controls).

III. Proposed Reclassification

Elsewhere in this issue of the **Federal Register**, FDA is proposing to reclassify SWD for all other uses, currently a preamendments class III device, into class II (special controls), and to rename the device ''nonthermal shortwave therapy.'' FDA continues to review the merits of the submissions for requests for reclassification that meet the requirements under 21 CFR 860.123, submitted in response to the proposed rule.

IV. Reference

The following reference has 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, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA's Orthopedic and Rehabilitation Devices Panel transcript and other meeting materials are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/OrthopaedicandRehabilitationDevicesPanel/ucm352525.htm.*

Dated: February 13, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03593 Filed 2–19–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 890

[Docket No. FDA–2012–N–0378]

Physical Medicine Devices; Reclassification and Renaming of Shortwave Diathermy for All Other Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order; technical correction.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify the shortwave diathermy (SWD) for all other uses, a preamendments class III device, into class II (special controls), and to rename the device ''nonthermal shortwave therapy (SWT).'' FDA is proposing this reclassification on its own initiative based on new information. FDA is also proposing a technical correction in the regulation for the carrier frequency for SWD and nonthermal SWT devices. This proposed action would implement certain regulatory requirements.

DATES: Submit either electronic or written comments on this proposed order by May 21, 2014. February 21, 2014FDA intends that SWD devices for all other uses must comply with the special controls and must submit a premarket notification (510(k)) within 60 days after the effective date of the final order. See Section XII for the proposed effective date of a final order based on this proposed order.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2012–N–0378, 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 way:

- *Mail/Hand delivery/Courier (for paper 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–2012–N–0378 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: Melissa Burns, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1646, Silver Spring, MD 20993, 301–796–5616, *Melissa.Burns@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (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 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act of 2004 (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) established 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).

Section 513(a)(1) of the FD&C Act defines class II devices as those devices for which the general controls by themselves are insufficient to provide reasonable assurance of safety and effectiveness, but for which there is sufficient information to establish

special controls to provide such assurance.

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 part 807 (21 CFR part 807).

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA amended section 513(e) of the FD&C Act, changing the process for reclassifying a device from rulemaking to an administrative order. Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) of the FD&C Act or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard,* supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 389–391 (D.D.C. 1991)) or in light of changes in ''medical science'' (see *Upjohn* v. *Finch,* supra, 422 F.2d at 951). Whether data before the Agency are past or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Mfrs. Assoc.* v. *FDA,* 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1986)).

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the valid scientific evidence upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final reclassification order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed reclassification order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket.

In accordance with section 513(e)(1) of the FD&C Act, the Agency is proposing, based on new information that has come to the Agency's attention, to reclassify SWD for all other uses because general controls and special controls are sufficient to provide a reasonable assurance of safety and effectiveness. Therefore, this order proposes to reclassify SWD for all other uses into class II (special controls) and to rename the device nonthermal SWT; see Section III for more information on the name change. In addition, in this proposed order to reclassify the device to class II with special controls, FDA requires manufacturers of currently marketed SWD for all other uses to submit 510(k)s.

Section 510(m) of the FD&C Act provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to assure the safety and effectiveness of SWD for all other uses.

II. Regulatory History of the Device

On November 23, 1983, in the **Federal Register** (48 FR 53047), FDA published a final rule for classification of SWD for all other uses as class III requiring premarket approval based on recommendations made by the Physical Medicine Device Classification Panel of 1979 (the 1979 Panel). The 1979 Panel made preliminary classification recommendations for physical medicine devices during a series of meetings: August 14 and 15, 1975, March 21 and 22, 1976, March 18, 1977, October 14, 1977, and March 17, 1978. Included in this group of devices were SWD devices. The 1979 Panel recommended splitting the classification for SWD devices: SWD devices that are capable of generating therapeutic heat in specific areas of the body were recommended to be class II. However, SWD devices for any use other than delivering therapeutic deep heat (also referred to as nonthermal SWD) were recommended to be class III.

In 1987, FDA published a clarification by inserting language in the codified language stating that no effective date had been established for the requirement for premarket approval for SWD devices for any use other than delivering therapeutic deep heat (52 FR 17732, May 11, 1987).

In 2009, FDA published an order in the **Federal Register** under section 515(i) of the FD&C Act (21 U.S.C. 360i) to call for information on the remaining class III 510(k) devices (74 FR 16214, April 9, 2009). In response to that order, FDA received submissions from five SWD device manufacturers suggesting that nonthermal SWD devices could be reclassified to class II. The manufacturers stated that safety and effectiveness of these devices may be assured by general and special controls. Prior to enactment of FDASIA, FDA published a proposed rule in the **Federal Register** (77 FR 39953, July 6, 2012) to require filing of PMAs for nonthermal SWD devices. FDA received over 240 comments to the docket in response to the 2012 proposed rule. Comments that expressed an opinion about the classification of nonthermal SWD devices were usually in favor of a class II designation. Some comments did not openly state an opinion, but included arguments against the proposed rule that could reasonably be interpreted as support for a class II designation. There were also comments that agreed with a class III designation.

In addition to the comments, FDA received five separate submissions to request a change in the classification of nonthermal SWD from class III to class II.

Subsequent to the issuance of the proposed rule, FDASIA made amendments to section 513 of the FD&C Act that required FDA to hold a panel meeting on the classification of preamendment devices and publish an administrative order for reclassification of preamendment devices instead of rulemaking. On May 21, 2013, FDA held a meeting of the Orthopedic and Rehabilitation Devices Panel (the 2013 Panel), to discuss the classification of nonthermal SWD devices. There was panel consensus that although the effectiveness data were very limited, nonthermal SWD devices did not necessarily fit the regulatory definition of a class III device (life supporting, life sustaining, or of substantial importance to health). Coupled with the rationale that special controls could be established to reasonably demonstrate an assurance of safety and effectiveness, the 2013 Panel recommended the device be class II (special controls) for nonthermal SWD devices (Ref. 1). FDA is issuing this proposed order to comply with the procedural requirements created by FDASIA. As a result, elsewhere in this issue of the **Federal Register**, FDA is withdrawing the proposed rule issued on July 6, 2012, calling for PMAs and PDPs for this device pursuant to 515(b) of the FD&C Act. However, FDA continues to review the merits of the submissions for requests for reclassification that meet the requirements under 21 CFR 860.123, submitted in response to the proposed rule.

III. Device Description

SWD devices intended for therapeutic use produce a radiofrequency (RF) signal that is generated by electronic circuitry at one of two frequencies designated by the U.S. Federal Communications Commission (FCC): 27.12 or 13.56 megahertz (MHz) to induce electrical currents and voltages in body tissues. The RF signal is delivered to an antenna or applicator that produces electromagnetic fields external to the applicator. Electric and magnetic fields are induced in body tissues by the applicator.

FDA has differentiated two types of SWD devices that have been cleared through the 510(k) process: thermal and nonthermal. Thermal SWD devices are designed to deliver therapeutic deep heat below the surface of the skin. Nonthermal SWD devices do not provide therapeutic deep heat and do not intend to demonstrate a sustained temperature increase within the tissue. Nonthermal SWD devices are intended to produce their effect in tissue only through means other than therapeutic deep heating.

Because the term diathermy refers to therapeutic elevation of temperature in the tissues, nonthermal diathermy is a misnomer. FDA is proposing in this order to modify the name of the identification from how it is presently written in § 890.5290(b) (21 CFR 890.5290(b)) for additional clarification. FDA is proposing to rename this class of devices from SWD for all other uses to SWT.

Equipment to deliver SWT can be designed to emit either a pulsatile (pulsed) or a continuous wave output and sometimes provides both types of output. Thermal SWD systems cleared by FDA provide continuous wave or pulsed output and achieve therapeutic deep heating of tissues as noted above. Nonthermal SWT devices cleared by FDA deliver RF energy only in a pulsatile fashion and do not provide therapeutic deep heat to the tissues.

IV. Proposed Reclassification

FDA is proposing that SWD for all other uses be reclassified from class III to class II. FDA is also proposing to rename these devices from ''shortwave diathermy for all other uses'' to ''nonthermal shortwave therapy.'' In this proposed order, the Agency has identified special controls under section 513(a)(1)(B) of the FD&C Act that, if finalized, together with general controls (including prescription-use restrictions) applicable to the devices, would provide reasonable assurance of their safety and effectiveness. Absent the special controls identified in this proposed order, general controls applicable to the device are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

Therefore, in accordance with sections 513(e) and 515(i) of the FD&C Act and § 860.130 (21 CFR 860.130), based on new information with respect to the devices and taking into account the public health benefit of the use of the device and the nature and known incidence of the risks of the device, FDA, on its own initiative, is proposing to reclassify this preamendments class III device into class II. FDA believes that this new information is sufficient to demonstrate that the proposed special controls can effectively mitigate the risks to health identified in Section V, and that these special controls, together with general controls, will provide a reasonable assurance of safety and effectiveness for nonthermal SWT devices.

Section 510(m) of the FD&C Act authorizes the Agency to exempt class II devices from premarket notification (510(k)) submission. FDA has considered nonthermal SWT devices in accordance with the reserved criteria set forth in section 513(a) of the FD&C Act and has determined that the device does require premarket notification (510(k)). Therefore, the Agency does not intend to exempt this proposed class II device from premarket notification (510(k)) submission as provided for under section 510(m) of the FD&C Act. As stated in Section I, FDA will also require manufacturers of currently marketed SWD for all other uses devices to submit 510(k)s.

FDA is also proposing a technical correction in the regulation for the carrier frequency for these devices from ''13 MHz to 27.12 MHz'' to ''13.56 MHz or 27.12 MHz.'' The FCC has allocated the shortwave frequencies of 13.56 MHz and 27.12 MHz for medical equipment (Ref. 2). This applies to both SWD devices for use in applying therapeutic deep heat for selected medical conditions (§ 890.5290(a)) and nonthermal SWT devices (§ 890.5290(b)).

V. Risks to Health

After considering available information, including the recommendations of the panel meeting on nonthermal SWT devices held on May 21, 2013, FDA has reevaluated the risks to health associated with the use of nonthermal SWT and made revisions from those previously identified in a proposed rule issued in the **Federal Register** on July 6, 2012 (77 FR 39953). FDA has determined that the following risks to health are associated with the use of nonthermal SWT:

- *Cellular or tissue injury:* Nonthermal biological effects of nonionizing radiation may cause cellular or tissue injury.
- *Electromagnetic interference:* The electromagnetic fields generated by the device may interfere with the circuitry of other patient systems, causing adverse events in the patient, as well as adversely affecting the performance of the other patient systems, such as cardiac pacemaker and implantable defibrillator.
- *Tissue necrosis (tissue death) and burns:* Excessive energy deposition into the tissue may cause excessive heating that results in tissue damage.
- *Electrical shock:* Electrical shock hazards may pose a potential hazard to both operators and users. Excessive leakage current from the device could

result in injury, or a malfunction of the device could result in electrical shock.

- *Thermal injury from implanted leads and implanted systems with leads:* Interaction of the RF energy with an implanted lead may cause excessive heating in the tissue surrounding the lead electrodes.
- *Adverse tissue reaction:* Device materials that are not biocompatible may either directly or through the release of their material constituents: (i) produce adverse local or systemic effects, (ii) be carcinogenic, or (iii) produce adverse reproductive and developmental effects. Although medical devices may have myriad biocompatibility issues, the biocompatibility concerns from nonthermal SWT devices are likely limited to skin reactions from contact with the materials from which the applicator is made.
- *Adverse pregnancy outcome:* Exposure to the device during pregnancy can lead to congenital anomalies.
- *Risk to children:* Exposure to the device can affect the growth plates in children if applied over the growth plates.
- *Ineffective treatment:* Ineffective treatments can result in increased morbidity, delayed discharge after ambulatory surgery, and hospital readmission.

The following additional risks to health were identified by the submitters and acknowledged by the 2013 Panel: Pain, bleeding, feeling chilly and cold in response to treatment, pins and needles sensation, gout attack in patients with pre-existing gout, mild numbness in the area of treatment, abdominal pain, chest wall sensation, malaise, and headache. Many of these are infrequent and related to pain (which is already present in this patient population), the underlying condition being treated, or to the surgical procedures that precede the use of the device. Therefore, FDA does not consider these additional risks to health as being associated with the use of nonthermal SWT. The 2013 Panel also acknowledged the risk of cancer progression and metastasis, although there was some disagreement among panel members on whether it should be included. This risk was primarily based on literature from in vitro test data, which associates device use with the upregulation of certain cytokines and proteases that play a role in metastasis. FDA is not aware of any animal data, clinical data, or adverse event reports that attribute cancer progression or metastasis to nonthermal SWT. Therefore, FDA does not consider this a risk as being associated with the use of nonthermal SWT.

VI. Summary of Reasons for Reclassification

Based on the comments from the 2013 Panel meeting, the comments received in response to FDA's prior proposed rule (77 FR 39953, July 6, 2012), and FDA's assessment of new, valid scientific data related to the health benefits and risks associated with nonthermal SWT, FDA is proposing that these devices should be reclassified from class III to class II because special controls, in addition to general controls, can be established to provide reasonable assurance of safety and effectiveness of the device, and because general controls themselves are insufficient to provide a reasonable assurance of its safety and effectiveness. In addition, there is now sufficient information to establish special controls to provide such assurance.

FDA has been reviewing these devices for many years, and their risks are well known. A review of the applicable clinical literature indicates that few relevant adverse events have been reported for these devices or related devices suggesting that the device has a long-term safety profile. If properly manufactured and used as intended, FDA believes that the special controls identified in this proposed order, if finalized, together with general controls (including prescription-use restrictions and 510(k) notification requirements), are adequate to provide a reasonable assurance of safety and effectiveness for this device.

VII. Summary of Data Upon Which the Reclassification Is Based

FDA believes that the identified special controls, in addition to general controls, are sufficient to provide reasonable assurance of safety and effectiveness of these devices. Therefore, in accordance with sections 513(e) and 515(i) of the FD&C Act and § 860.130, based on new information with respect to the device and taking into account the public health benefit of the use of the device and the nature and known incidence of the risk of the device, FDA, on its own initiative, is proposing to reclassify this preamendments class III device into class II. The Agency has identified special controls that would provide reasonable assurance of their safety and effectiveness. FDA's review of the clinical literature has been previously summarized in the Executive Summary to the 2013 Panel meeting to discuss nonthermal SWT classification (Ref. 3).

In addition, the 2013 Panel reviewed and discussed recent information presented by FDA, manufacturers of SWT devices, and members of the public. This information included recent literature regarding the possible risks to health and a review of FDA's Manufacturer and User Facility Device Experience database.

The 2013 Panel agreed that nonthermal SWT devices are not ''life-supporting or life-sustaining, or of substantial importance in preventing impairment of human health.'' The 2013 Panel agreed on the potential risks to health identified by FDA and the additional risks to health identified in the comments received in response to the July 6, 2012, proposed rule (77 FR 39953). However, the 2013 Panel expressed uncertainty regarding ''abnormal cell growth'' as a risk to health, but suggested that cell membrane injury is also a potential risk to health. The 2013 Panel recommended that the following additional risks to health be included, as they were reported by those who submitted requests to change the classification: Adverse pregnancy outcome, cancer and tumor promotion, skin reactions, pain, bleeding, ineffective treatment, risk to children, feeling chilly and cold in response to treatment, sensation of localized warmth, pins and needles sensation, gout attack in patients with pre-existing gout, mild numbness in the area of treatment, abdominal pain, chest wall sensation, and headache. FDA acknowledges cellular or tissue injury, electromagnetic interference, tissue necrosis (tissue death) and burns, electrical shock, thermal injury from implanted leads and implanted systems with leads, adverse tissue reaction, adverse pregnancy outcome, risk to children, and ineffective treatment as risks to health for these devices. As explained in Section V, FDA does not believe valid scientific evidence supports the other additional risks identified by the 2013 Panel as being associated with the use of nonthermal SWT.

Regarding the benefits of nonthermal SWT devices, the 2013 Panel indicated that a certain subset of patients may benefit, but there were concerns about the veracity and the limitations of clinical trials reported in the literature. They further commented that there was limited clinical evidence presented to demonstrate effectiveness. The most compelling effectiveness evidence was presented for post-breast surgery. The 2013 Panel noted that the effect on edema was less convincing.

Regarding classification, there was general panel consensus that

nonthermal SWT devices for adjunctive used in palliative treatment of postoperative pain and edema should be class II devices with special controls. There was also general consensus by the 2013 Panel that special controls that included labeling, biocompatibility testing, electrical safety testing, electromagnetic compatibility, nonclinical performance testing, and clinical performance data were appropriate. The 2013 Panel recommended that clinical data are necessary as a special control and also recommended studies should include the following basic study design elements:

- Randomization;
- Sham control group;
- Well-defined patient population, e.g. patients having a specific surgical procedure;
- Well-defined SWT treatment parameters and device settings;
- Clinically relevant validated measures of effectiveness;
- Adequate power and sample size;
- Appropriate predefined statistical methods;
- Predefined hypothesis and success criteria; and
- Systematic collection of adverse events.

No 2013 Panel member recommended leaving these devices in class III. Regarding the issue of general controls, the 2013 Panel agreed that general controls alone are not sufficient to provide reasonable assurance of the safety and effectiveness of nonthermal SWT devices.

VIII. Proposed Special Controls

FDA believes that the following special controls, in addition to general controls, are sufficient to mitigate the risks to health described in Section V:

1. Components of the device that come into human contact must be demonstrated to be biocompatible. These devices can contact users' skin directly; therefore, a demonstration of biocompatibility would mitigate the risks of skin reactions.

2. Appropriate analysis/testing must demonstrate that the device is electrically safe and electromagnetically compatible in its intended use environment. The requirement to demonstrate electromagnetic compatibility would, in concert with other special controls, help ensure the mitigation of discomfort, pain, and tenderness resulting from burns to the skin due to excessive energy deposition by preventing electromagnetic interference with device hardware and software. In addition, this requirement would ensure the device does not interfere with other electrical equipment and would also ensure that both operators and users are properly protected from electrical hazards such as electrical shock.

3. Non-clinical testing must demonstrate that the device performs as intended under anticipated conditions of use. Non-clinical performance testing must characterize the output waveform of the device and demonstrate that the device meets appropriate output performance specifications. This requirement would mitigate the risks of cellular or tissue injury, electromagnetic interference, tissue necrosis and burn, and thermal injury from implanted leads and implanted systems. The output characteristics and the methods used to determine these characteristics, including the following, must be determined:

- Peak output power;
- Pulse width;
- Pulse frequency;
- Duty cycle;
- Characteristics of other types of modulation that may be used;
- Average measured output powered into the RF antenna/applicator;
- Specific absorption rates in saline gel test load;
- Characterization of the electrical and magnetic fields in saline gel test load for each RF antenna and prescribed RF antenna orientation/position; and
- Characterization of the deposited energy density in saline gel test load.

4. Documented clinical performance testing must demonstrate safe and effective use of the device. This requirement would mitigate ineffective treatment.

5. The labeling must include a detailed summary of the clinical testing pertinent to the use of the device and a summary of the adverse events and complications. This requirement would help mitigate the risk of adverse pregnancy outcome, risk to children, thermal injury from implanted leads and implanted systems with leads, electromagnetic interference, electric shock, tissue necrosis and burn, adverse tissue reaction, and ineffective treatment.

Table 1 shows how FDA believes that the risks to health identified in Section V can be mitigated by the proposed special controls.

TABLE 1—HEALTH RISKS AND MITIGATION MEASURES FOR NONTHERMAL SWT

Identified Risk	Mitigation Measure
Cellular or tissue injury	Non-clinical characterization and performance testing.
Electromagnetic interference	Electromagnetic compatibility testing. Non-clinical characterization and performance testing. Labeling.
Tissue necrosis (tissue death) and burns	Non-clinical characterization and performance testing. Electrical Safety Testing. Labeling.
Electrical shock	Electrical safety testing. Labeling.
Thermal injury from implanted leads and implanted systems with leads.	Non-clinical characterization and performance testing. Labeling.
Adverse tissue reaction	Biocompatibility. Labeling.
Adverse pregnancy outcome	Labeling.
Risk to children	Labeling.
Ineffective treatment	Clinical performance data. Labeling.

In addition, under 21 CFR 801.109, the sale, distribution, and use of these devices are restricted to prescription use. Prescription use restrictions are a type of general controls in section 513(a)(1)(A)(i) of the FD&C Act. Also,

under 21 CFR 807.81, the device would continue to be subject to 510(k) notification requirements.

IX. 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.

X. Paperwork Reduction Act of 1995

This proposed order refers to currently approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814, subpart B, have been approved under OMB control number 0910–0231; and the collections of information under 21 CFR part 801 have been approved under OMB control number 0910–0485.

No burden shift is associated with the reclassification of the device. This is currently a class III device for which manufacturers must submit a premarket notification (510(k)). This order proposes to reclassify the device into class II, therefore, respondents would continue to submit a premarket notification.

XI. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices. Although section 513(e) of the FD&C Act as amended requires FDA to issue final orders rather than regulations, FDASIA also provides for FDA to revoke previously issued regulations by order. FDA will continue to codify classifications and reclassifications in the Code of Federal Regulations (CFR). Changes resulting from final orders will appear in the CFR as changes to codified classification determinations or as newly codified orders. Therefore, under section 513(e)(1)(A)(i), as amended by FDASIA, in this proposed order we are proposing to revoke the requirements in § 890.5290(b)(1) related to the classification of shortwave diathermy devices for all other uses as class III devices and to codify the reclassification of nonthermal SWT devices into class II (special controls).

XII. Proposed Effective Date

FDA is proposing that any final order based on this proposed order become effective on the date of its publication in the **Federal Register** or at a later date if stated in the final order. FDA proposes that nonthermal SWT devices must comply with the special controls and must submit a 510(k) within 60 days after the effective date of the final order. FDA requests comment on whether 60 days is an appropriate time to allow manufacturers to prepare and submit 510(k)'s for these devices.

XIII. Comments

Comments submitted to the previous docket (Docket No. FDA–2012–N–0378) have been officially noted and do not need to be resubmitted. FDA has considered previous docket comments before issuing this proposed order. 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*.

XIV. 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, and are available electronically at *http://www.regulations.gov*. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA's Orthopedic and Rehabilitation Devices Panel transcript and other meeting materials are available on FDA's Web site at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/OrthopaedicandRehabilitationDevicesPanel/ucm352525.htm*.
2. 47 CFR Part 18—Industrial, Scientific, And Medical Equipment, Subpart C, § 18.301 is available at *http://www.gpo.gov/fdsys/pkg/CFR-2009-title47-vol1/xml/CFR-2009-title47-vol1-part18.xml*.
3. Executive Summary of the Orthopedic and Rehabilitation Devices Panel meeting is available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/OrthopaedicandRehabilitationDevicesPanel/ucm352525.htm*.

List of Subjects in 21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 et seq., as amended) and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 890 be amended as follows:

PART 890—PHYSICAL MEDICINE DEVICES

■ 1. The authority citation for 21 CFR part 890 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 890.5290 is amended by revising paragraphs (a)(1) and (b), and removing paragraph (c) to read as follows:

§ 890.5290 Shortwave diathermy.

(a) *Shortwave diathermy for use in applying therapeutic deep heat for selected medical conditions*—(1) *Identification.* A shortwave diathermy for use in applying therapeutic deep heat for selected medical conditions is a device that applies to specific areas of the body electromagnetic energy in the radiofrequency (RF) bands of 13.56 megahertz or 27.12 megahertz and that is intended to generate deep heat within body tissues for the treatment of selected medical conditions such as relief of pain, muscle spasms, and joint contractures, but not for the treatment of malignancies.

(2) * * *

(b) *Nonthermal shortwave therapy*—(1) *Identification.* A nonthermal shortwave therapy is a prescription device that applies to the body pulsed electromagentic energy in the RF bands of 13.56 megahertz or 27.12 megahertz and that is intended for the treatment of medical conditions except for the treatment of malignancies by means other than the generation of deep heat within body tissues as described in paragraph (a) of this section.

(2) *Class II (special controls).* The device is classified as Class II. The special controls for this device are:

(i) Components of the device that come into human contact must be demonstrated to be biocompatible;

(ii) Appropriate analysis/testing must demonstrate that the device is electrically safe and electromagnetically compatible in its intended use environment;

(iii) Non-clinical performance testing must demonstrate that the device

performs as intended under anticipated conditions of use. Non-clinical performance testing must characterize the output waveform of the device and demonstrate that the device meets appropriate output performance specifications. The output characteristics and the methods used to determine these characteristics, including the following, must be determined:

(A) Peak output power;

(B) pulse width;

(C) pulse frequency;

(D) duty cycle;

(E) characteristics of other types of modulation that may be used;

(F) average measured output powered into the RF antenna/applicator;

(G) specific absorption rates in saline gel test load;

(H) characterization of the electrical and magnetic fields in saline gel test load for each RF antenna and prescribed RF antenna orientation/position; and

(I) characterization of the deposited energy density in saline gel test load.

(iv) Documented clinical performance testing must demonstrate safe and effective use of the device.

(v) Labeling must include a detailed summary of the clinical testing pertinent to the use of the device and a summary of the adverse events and complications.

Dated: February 13, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03594 Filed 2–19–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2014–0004]

Notice of Public Hearings and Extension of Comment Period on the Proposed Changes To Require Identification of Attributable Owner

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of public hearings and extension of comment period.

SUMMARY: The United States Patent and Trademark Office (Office) published a notice on January 24, 2014, proposing changes to the rules of practice to require that the attributable owner, including the ultimate parent entity, be identified during the pendency of a patent application and at specified times during the life of a patent, and seeking written comments on the proposed changes. This initiative is one of a number of executive actions issued by the Administration that are designed to ensure issuance of the highest-quality patents, enhance competition by providing the public with more complete information about the competitive environment in which innovators operate, improve market efficiency for patent rights by making patent ownership information more readily and easily available, reduce abusive patent litigation by helping the public defend itself against frivolous litigation, and level the playing field for innovators. The Office is conducting two public hearings to discuss these proposed changes. The public hearings are an additional way for the Office to introduce the proposed changes and directly receive feedback from the public. The Office also is extending the period for public comment on the proposed changes until April 24, 2014, to provide interested members of the public with additional time to submit written comments.

DATES: *Public Hearing Dates:* The first public hearing will take place on March 13, 2014, from 1 p.m. Eastern Daylight Time (EDT) until 4 p.m. EDT, in Alexandria, Virginia.

The second public hearing will take place on March 26, 2014, from 9 a.m. Pacific Daylight Time (PDT) until noon PDT, in San Francisco, California.

Requests to Provide Oral Testimony: Those wishing to provide oral testimony at either public hearing must submit a request to do so in writing no later than February 28, 2014. Members of the public who wish to attend solely to observe need not submit a request to attend.

Comment Deadline Date: To be ensured of consideration, written comments on the proposed changes to the rules of practice to require identification of the attributable owner must be received on or before April 24, 2014.

ADDRESSES: *Public Hearings:* The first public hearing will take place at: Madison Auditorium North, Concourse Level, United States Patent and Trademark Office Headquarters, 600 Dulany Street, Alexandria, Virginia 22314.

The second public hearing will take place at: the University of California Hastings College of the Law, Louis B. Mayer Lounge, 198 McAllister Street, San Francisco, California 94102.

Requests to Provide Oral Testimony: Requests to provide oral testimony at either public hearing must be sent by electronic mail message over the Internet addressed to: *aohearingrequest@uspto.gov.*

Comments: Comments should be sent by electronic mail message over the Internet addressed to: *AC90.comments@uspto.gov.* Comments also may be submitted by postal mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of James Engel, Senior Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

Comments likewise may be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments in plain text are preferred, but comments in ADOBE® portable document format or MICROSOFT WORD® format are also acceptable. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

Comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: James Engel, Senior Legal Advisor ((571) 272–7725), or Erin M. Harriman, Legal Advisor ((571) 272–7747), Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION: The Office recently published a notice of proposed rulemaking proposing to require the disclosure of ownership information about patents and applications and requesting comments about the voluntary reporting of licensing offers and commitments and making them

available online. *See Changes to Require Identification of Attributable Owner,* 79 FR 4105 (Jan. 24, 2014). The Office is conducting two public hearings to discuss these proposed changes and receive feedback from the public. The Office also is extending the period for public comment on the proposed changes until April 24, 2014, to provide interested members of the public with additional time to submit written comments.

Members of the public who wish to provide oral testimony at either public hearing must submit a timely request (*i.e.,* must submit a request to provide oral testimony no later than February 28, 2014). Requests to provide oral testimony at either public hearing must indicate the following information: (1) The name of the person desiring to speak; (2) the person's contact information (telephone number and electronic mail address); (3) the organization(s) the person represents, if any; and (4) the hearing location where the person prefers to speak. A person must be physically present at the hearing location to provide oral testimony; virtual testimony via telephone or webcast is not available. Based on the requests received, an agenda of scheduled speakers will be sent to those speaking and posted on the Office's Internet Web site at *http://www.uspto.gov.* The number of speakers and time allotted to each speaker may be limited to ensure that all persons speaking will have a meaningful chance to do so.

Members of the public who wish to attend solely to observe need not submit a request to attend. The Office also plans to make the public hearings available via Web cast. Web cast information will be available on the Office's Internet Web site closer to the public hearing dates. A transcript of the public hearings will be available for viewing via the Office's Internet Web site at *http://www.uspto.gov,* and will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia 22314, upon request.

The public is welcome to submit written comments in response to the proposed changes in addition to, or lieu of, presenting oral testimony at these public hearings. The Office is extending the period for public comment on the proposed changes to provide interested members of the public with additional time to submit written comments. Written comments in response to the proposed changes must be received on or before April 24, 2014.

Under the proposed rulemaking, the Office plans to collect information on the ''attributable owner'' of a patent or application, which includes the titleholders, entities with rights to enforce the patent, and entities with effective control over anyone reported in the first two categories, called the ''ultimate parent entities.'' This information would be made available to the public under the proposed rulemaking at the same time a patent application is published or when a patent issues. The Office also seeks public comment on whether to permit patent applicants and owners to voluntarily report licensing offers and related information that the Office will make available to the public. The Office currently permits patent owners to request that their patents be listed in the Official Gazette as available for license or sale, and the Office would like public input on whether the Office should expand on this program to allow for the submission of more licensing information and make this information available in an accessible online format.

The Office welcomes comments on all aspects of the proposed rulemaking, but highlights the following areas (which are also highlighted in the notice of proposed rulemaking) for receipt of public input:

(1) The proposal sets forth a definition for attributable owner. The Office invites public comment on whether changes could be made to the scope of the information proposed to be collected while still achieving the objectives of the Office as set forth in the proposal.

(2) Part of the current proposed definition of attributable owner incorporates by reference the definition of ultimate parent entity set forth in 16 CFR 801.1(a)(3). The Office welcomes comments on how this definition might be modified for use at the Office. The Office recognizes that corporations sometimes transfer patents and patent applications within the corporation for legitimate reasons, such as tax savings purposes, and also welcomes comments on the impact of the proposed changes on this practice.

(3) The proposal sets forth when attributable owner information must be supplied to the Office. The Office invites public comments as to whether and when attributable owner information should be collected. For example, are there additional times during prosecution (*e.g.,* with each reply to an Office action) when the applicant should be required to update or verify attributable owner information? Is requiring updates on changes during prosecution within three months of any change in attributable owner the appropriate time frame (*i.e.,* should the time frame be more or less than three months?).

(4) The Office plans to work with its user community to implement the attributable owner information reporting system in a user-friendly manner and welcomes input on how this can best be accomplished. Subject to financial and resource constraints, for example, the Office would like to explore means to allow for the bulk processing of changes to attributable owner for portfolios of applications and patents. The Office also welcomes input on how the updating or verifying by the applicant or owner should be structured in conjunction with the payment of maintenance fees, particularly in light of the practice of outsourcing payment of maintenance fees to third parties.

(5) The Office further seeks comments on whether the Office should expand the current Official Gazette practice of allowing patent owners to list patents as available for license or sale to permit all patent applicants and owners to voluntarily report additional licensing information for the Office to make available to the public in an accessible online format. The Office welcomes input on what such licensing information should include (*i.e.,* willingness to license, as well as licensing contacts, license offer terms, commitments to license the patent, *e.g.,* on royalty-free or reasonable and non-discriminatory terms) and the interface of the online system.

Dated: February 12, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

[FR Doc. 2014–03629 Filed 2–19–14; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 2 and 7

[Docket No. PTO–T–2013–0027]

RIN 0651–AC89

Changes in Requirements for Collective Trademarks and Service Marks, Collective Membership Marks, and Certification Marks

AGENCY: United States Patent and Trademark Office, Commerce.

ACTIONS: Notice of Proposed Rulemaking.

SUMMARY: The United States Patent and Trademark Office (''USPTO'') proposes to amend the rules related to collective trademarks, collective service marks, and collective membership marks (together ''collective marks''), and certification marks to clarify application requirements, allegations of use requirements, multiple-class application requirements, and registration maintenance requirements for such marks. These proposed rule changes will codify current USPTO practice set forth in the USPTO's ''Trademark Manual of Examining Procedure'' (''TMEP'') and precedential case law. These changes also will permit the USPTO to provide the public more detailed guidance regarding registering and maintaining registrations for these types of marks and will promote the efficient and consistent processing of such marks. Further, the USPTO proposes to amend several rules beyond those related to collective marks and certification marks to create consistency with rule changes regarding such marks and to streamline the rules, by consolidating text and incorporating headings, for easier use.

DATES: Written comments must be received on or before May 21, 2014 to ensure consideration.

ADDRESSES: The USPTO prefers that comments be submitted via electronic mail message to *TMFRNotices@uspto.gov.* Written comments also may be submitted by mail to Commissioner for Trademarks, P.O. Box 1451, Alexandria, VA 22313–1451, attention Cynthia Lynch; by hand delivery to the Trademark Assistance Center, Concourse Level, James Madison Building-East Wing, 600 Dulany Street, Alexandria, Virginia, attention Cynthia Lynch; or by electronic mail message via the Federal eRulemaking Portal. See the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal eRulemaking Portal. All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number (PTO–T–2013–0027). Written comments will be available for public inspection on the USPTO's Web site at *http://www.uspto.gov* as well as at the Federal eRulemaking Portal, and at the Office of the Commissioner for Trademarks, Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included.

FOR FURTHER INFORMATION CONTACT: Cynthia Lynch, Office of the Deputy Commissioner for Trademark Examination Policy, at (571) 272–8742 or *tmpolicy@uspto.gov*.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: The proposed rules will benefit the public by providing more comprehensive and specific guidance regarding registering collective marks and certification marks. The current rules incorporate by reference the trademark and service mark application rules; however, wording in the trademark and service mark application rules sometimes may not be specifically suited to collective and certification mark applications. Therefore, the USPTO proposes to revise the rules in parts 2 and 7 of title 37 of the Code of Federal Regulations to codify current USPTO practice in TMEP sections 1302, 1303 *et seq.,* 1304, and 1306, and to state clearly and provide sufficient detail regarding the requirements for collective and certification mark applications. The USPTO also seeks to harmonize registration maintenance requirements with application requirements where appropriate.

Further, proposed rule changes beyond those related to collective marks and certification marks will provide consistency with changes made regarding those marks and streamline the rules, by consolidating text and incorporating headings, for easier use.

To provide additional context for the ensuing discussion of the amended and revised rules regarding collective marks and certification marks, the following is a brief description of those types of marks.

There are two types of collective marks as defined by section 45 of the Trademark Act of 1946, as amended (''the Act''): (1) collective trademarks or collective service marks; and (2) collective membership marks. 15 U.S.C. 1127. A collective trademark or collective service mark is used by members of a collective organization to identify and distinguish their goods or services from those of nonmembers. TMEP section 1303. By contrast, collective membership marks are used by members of a collective organization to indicate membership in the collective membership organization. TMEP section 1304.02.

Certification marks are used by authorized users to indicate the following: (1) Goods or services have been certified as to quality, materials, or mode of manufacture; (2) goods or services have been certified to originate in a specific geographic region; and/or (3) the work or labor on goods or for services was certified to have been performed by a member of a union or other organization, or to certify that the performer meets certain standards. TMEP section 1306.01. A certification mark is similar to a collective trademark or collective service mark except that the users are not members of a collective organization. *See* TMEP section 1306.09(a). That is, a collective trademark or collective service mark is used by members of an organization who meet the collective organization's standards of admission, while a certification mark is used by parties whose products or services meet the certifying organization's established standards.

Summary of Major Provisions: As stated above, the USPTO proposes to revise the rules in parts 2 and 7 of title 37 of the Code of Federal Regulations to codify current USPTO practice in TMEP sections 1302, 1303 *et seq.,* 1304, and 1306, and to state clearly, and provide sufficient detail regarding, the requirements for collective and certification mark applications, as well as to harmonize registration maintenance requirements with application requirements where appropriate. Further, the USPTO proposes to revise additional rules within these parts for consistency and clarity.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Discussion of Specific Rules

The USPTO proposes to amend the following rules: §§ 2.2, 2.20, 2.32–.34, 2.41–2.42, 2.44–2.45, 2.56, 2.59, 2.71, 2.74, 2.76, 2.86, 2.88–2.89, 2.146, 2.161, 2.167, 2.173, 2.175, 2.183, 2.193, 7.1, and 7.37.

PART 2: RULES OF PRACTICE IN TRADEMARK CASES

Rules Applicable to Trademark Cases

The USPTO proposes to amend and add terms to § 2.2, regarding definitions, to delete repetitious wording elsewhere in the rules wherever possible. Specifically, the USPTO proposes to amend § 2.2(h) to clarify that the definition of ''international application'' is limited to an application for international registration seeking an extension of protection to the United States or a subsequent designation of an international registration to the United States. The USPTO also proposes to add § 2.2(i) through (n) to set forth the following new definitions: *subsequent designation; holder; use in commerce; bona fide intention to use the mark in*

commerce; *bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce*; and *verified statement, verify, verified,* or *verification.*

Declarations

The USPTO proposes to amend § 2.20, regarding declarations in lieu of oaths, to delete from the introductory text the term ''verification,'' to correspond with the definition of that term in § 2.2(n), and to add the term ''declaration.''

Application for Registration

The USPTO proposes to amend the rule title of § 2.32 to ''Requirements for a complete trademark or service mark application.'' In addition, the USPTO proposes to add § 2.32(f) to cross-reference § 2.44 for the requirements for collective mark applications, and to add § 2.32(g) to cross-reference § 2.45 for the requirements for certification mark applications.

The USPTO proposes to amend § 2.33, regarding verified statements for trademarks or service marks, to ensure the language corresponds with other proposed rules, including the proposed new definitions in § 2.2. Also, the USPTO proposes to add § 2.33(f) to set forth the type of verified statement required for concurrent use applications under § 2.42. Additionally, the USPTO proposes to amend the title of § 2.33 to ''Verified statement for a trademark or service mark.''

The USPTO proposes to amend § 2.34, regarding filing bases for trademark or service mark applications, to ensure the language corresponds with other proposed rules, including the proposed new definitions in § 2.2, to delete the definition of ''commerce'' provided in § 2.34(c) as redundant of section 45 of the Act, and to correct a typographical error. The USPTO further proposes to amend the title to ''Bases for filing a trademark or service mark application.'' Additionally, the USPTO proposes to amend § 2.34(a)(1)(iv) to delete ''actually'' as a redundant term for consistency with proposed amendments to § 2.56(b)(2) and (c) regarding specimens, § 2.76(b)(2) regarding amendments to allege use, § 2.88(b)(2) regarding statements of use, and § 2.161(g)(1) regarding affidavits or declarations of use in commerce or excusable nonuse under section 8 of the Act. Lastly, the USPTO proposes to revise current § 2.34(b)(1)–(3) by condensing the text in § 2.34(b), and add the title ''More than one basis.''

The USPTO proposes to revise § 2.41, regarding proof of distinctiveness under section 2(f) of the Act, to specify the type of proof required to establish such a claim for trademarks, service marks, collective marks, and certification marks, and to make other changes consistent with current USPTO practice. Specifically, the USPTO proposes to revise § 2.41 as follows: in § 2.41(a), add the title ''For a trademark or service mark'' and set forth in § 2.41(a)(1)–(3) the current text in existing § 2.41; in § 2.41(b), add the title ''For a collective trademark or collective service mark'' and set forth in § 2.41(b)(1)–(3) the requirements for collective trademarks or collective service marks. The USPTO also proposes to add the following to § 2.41: in § 2.41(c), set forth the requirements for collective membership marks; and in § 2.41(d), set forth the requirements for certification marks. Further, the USPTO proposes additional revisions to correspond with the proposed new definitions in § 2.2 and include subsections with subheadings that set forth the three types of proof that can be submitted to establish distinctiveness under 15 U.S.C. 1052(f). In addition, proposed § 2.41(a)(1), (c)(1), and (d)(1) add the term ''active'' to clarify and codify current USPTO practice, *see* TMEP section 1212.04(d), that evidence of distinctiveness must be based on ownership of an *active* prior registration on the Principal Register or under the Trademark Act of 1905. Further, proposed § 2.41(a)(1) and (d)(1) clarify that such registration must be for goods or services sufficiently similar to those in the application, and proposed § 2.41(c)(1) adds that the nature of the collective membership organization must be sufficiently similar to the prior registration, and such requirement in proposed § 2.41(a)(1), (d)(1), and (c)(1) codifies precedential case law and current USPTO practice, *see In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1347, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001), *In re Rogers,* 53 USPQ2d 1741, 1744 (TTAB 1999), TMEP sections 1212.04(c), 1212.09(a). Lastly, proposed § 2.41(e) excludes from § 2.41(d) geographic matter in certification marks that indicate regional origin, because 15 U.S.C. 1052(e)(2) explicitly excepts such terms in certification marks including indications of regional origin. *See* TMEP section 1306.02.

The USPTO proposes to revise § 2.42, regarding concurrent use requirements, to incorporate requirements for collective marks and certification marks, as well as to make other changes consistent with current USPTO practice. Specifically, the USPTO proposes to revise § 2.42 as follows: add § 2.42(a), to require an application for registration as a lawful concurrent user to assert use in commerce in accordance with current USPTO practice, *see* TMEP section 1207.04(b), and the USPTO's ''Trademark Trial and Appeal Board Manual of Procedure'' section 1101.01, to require an application for concurrent use be for a mark seeking registration on the Principal Register under the Act, in accordance with current § 2.99(g), and to include all relevant application requirements, including § 2.44 for collective marks or § 2.45 for certification marks, if applicable. In addition, the USPTO proposes to add § 2.42(b) to enumerate the additional requirements for concurrent use applications set forth in the existing second sentence of current § 2.42 and to modify such text to incorporate the requirements for collective marks and certification marks. Further, the USPTO proposes to add § 2.42(c) to cross-reference current § 2.73, pertaining to amending an application to recite concurrent use, and to add § 2.42(d) to cross-reference current § 2.99, pertaining to concurrent use proceedings at the Trademark Trial and Appeal Board.

The USPTO proposes to revise § 2.44, regarding collective marks, to include all requirements for a collective mark application in one rule. Specifically, the USPTO proposes to revise § 2.44 as follows: in § 2.44(a), enumerate the application requirements for a collective mark, incorporating the relevant application requirements from current § 2.32, regarding the requirements for a complete trademark or service mark application, current § 2.44, and current USPTO practice, see TMEP sections 1303.02 *et seq.* for collective trademarks and collective service marks, and TMEP section 1304.08(c)–(f) for collective membership marks; and in § 2.44(b), specify the requirements for a verified statement that was not filed within a reasonable time after signing or was omitted from the application to correspond with proposed § 2.33(c) and § 2.34(a)(1)(i), (a)(2), (a)(3)(i), and (a)(4)(ii). The USPTO also proposes to add the following to § 2.44: in proposed § 2.44(c), specify the requirements for claiming more than one filing basis in the application to correspond with proposed § 2.34(b); in proposed § 2.44(d), specify the requirements for the verification in a concurrent use application to correspond with proposed § 2.33(f); and in proposed § 2.44(e), cross-reference the multiple-class application requirements rule in proposed § 2.86 for consistency with proposed § 2.32(e). Further, the USPTO proposes additional revisions to correspond with the proposed new

definitions in § 2.2. Also, the USPTO proposes to amend the title to ''Requirements for a complete collective mark application'' for consistency with the title in proposed § 2.32 regarding trademark and service mark application requirements.

The USPTO proposes to revise § 2.45, regarding certification marks, to include all requirements for a certification mark application in one rule, and to be consistent with the formatting of proposed § 2.44 for collective mark application requirements. Specifically, the USPTO proposes to revise § 2.45 as follows: in § 2.45(a), enumerate the application requirements for a certification mark, incorporating the relevant application requirements from current § 2.32, regarding the requirements for a complete trademark or service mark application, current § 2.45, and current USPTO practice, *see* TMEP sections 1306.06 *et seq.;* and in § 2.45(b), specify the requirements for a verified statement that was not filed within a reasonable time after signing or was omitted from the application to correspond with proposed § 2.33(c) and § 2.34(a)(1)(i), (a)(2), (a)(3)(i), and (a)(4)(ii) and proposed § 2.44(b). The USPTO also proposes to add the following to § 2.45: in proposed § 2.45(c), specify the requirements for claiming more than one filing basis in the application to correspond with proposed § 2.34(b) and proposed § 2.44(c); in proposed § 2.45(d), specify the requirements for the verification in a concurrent use application to correspond with proposed § 2.33(f) and proposed § 2.44(d); in proposed § 2.45(e), cross-reference the multiple-class application requirements rule in proposed § 2.86 for consistency with proposed § 2.32(e) and proposed § 2.44(e); and in proposed § 2.45(f), prohibit a single application from including both a certification mark and another type of mark, because the USPTO's databases preclude capturing different legal requirements for multiple types of marks in a single application, and also prohibit the registration of the same mark for the same goods and/or services as both a certification mark and another type of mark, in accordance with sections 4 and 14(5)(B) of the Act and current USPTO practice, *see* TMEP section 1306.05(a). Further, the USPTO proposes additional revisions to correspond with the proposed new definitions in § 2.2. Also, the USPTO proposes to amend the rule title to ''Requirements for a complete certification mark application; restriction on certification mark application'' for consistency with the title of proposed § 2.32 regarding trademark and service mark application requirements and proposed § 2.44 regarding collective mark application requirements.

Specimens

The USPTO proposes to amend § 2.56(b)(2) and (c), regarding specimens, to delete the term ''actually'' as a redundant term and for consistency with similar proposed amendments to § 2.34(a)(1)(iv), § 2.76(b)(2), § 2.88(b)(2), and § 2.161(g). Additionally, the USPTO proposes to amend § 2.56(b)(5) to delete ''to certify'' and replace it with ''to reflect certification of.'' Lastly, the USPTO proposes to amend § 2.56(d)(3), to delete ''audio or video cassette tape recording, CD–ROM'' and replace it with ''compact disc, digital video disc,'' in accordance with current practice, *see* TMEP section 904.03(d), (f).

The USPTO proposes to amend § 2.59, regarding substitute specimens, to change existing text to ''verified statement'' to correspond with § 2.2(n). Additionally, the USPTO proposes to amend § 2.59(a) to reference substitute specimens for a collective membership mark.

Amendment of Application

The USPTO proposes to amend § 2.71(a), regarding amendments to the identification of goods and/or services, to reference amending the description of the nature of a collective membership mark. In addition, the USPTO proposes to amend § 2.71(b)–(d) to change existing text to correspond with § 2.2(n). Further, the USPTO proposes to add § 2.71(e) to set forth that an amendment that would materially alter a certification statement pursuant to proposed § 2.45(a)(4)(i)(A) and (a)(4)(ii)(A), is not permitted, which is consistent with proposed § 2.173(f) regarding such amendments after registration.

The USPTO proposes to amend § 2.74(b), regarding the form and signature of an amendment, to change existing text to ''verification'' to correspond with § 2.2(n).

The USPTO proposes to amend § 2.76, regarding amendments to allege use, to include the relevant requirements for collective marks and certification marks, and to be consistent with proposed § 2.88 for statements of use. Specifically, the USPTO proposes to amend § 2.76 as follows: in § 2.76(a), add the title ''When to file an amendment to allege use;'' in § 2.76(a)(1) and (a)(2), include the text from existing § 2.76(a) and (c), except delete the language regarding the USPTO returning an untimely filed amendment to allege use because under current practice the USPTO will not return or review such amendment; in § 2.76(b), add the title ''A complete amendment to allege use'' and include in § 2.76(b)(1)–(5) the text from existing § 2.76(b) and (c) and the requirements for collective marks and certification marks, in § 2.76(b)(6), require the title ''Amendment to Allege Use'' on the first page of the document for those documents not filed using the Trademark Electronic Application System (TEAS); in § 2.76(c), add the title ''Minimum filing requirements for a timely filed amendment to allege use'' and include the text from existing § 2.76(e) and change existing text to ''verified statement'' to correspond with § 2.2(n); in § 2.76(d), add the title ''Deficiency notification'' and include the text from existing § 2.76(g); in § 2.76(e), add the title ''Notification of refusals and requirements'' and include the text from existing § 2.76(f), except the last two sentences regarding the USPTO providing notification of acceptance of an amendment to allege use because current practice is that a notice of approval for publication provides such notice; in § 2.76(f), add the title ''Withdrawal'' and include the text from existing § 2.76(h); in § 2.76(g), add the title ''Verification not filed within reasonable time,'' and include the text from existing § 2.76(i) and change existing text to ''verified statement'' to correspond with § 2.2(n); in § 2.76(h), add the title ''An amendment to allege use is not a response but may include amendments'' and include the text from the last sentence of existing § 2.76(f) and clarify that an amendment to allege use may include amendments in accordance with § 2.59 and § 2.71 through § 2.75; in § 2.76(i), specify the requirements for the verification in a concurrent use application under § 2.42; and in § 2.76(j), add the title ''Multiple-class application.''

Classification

The USPTO proposes to amend § 2.86, regarding multiple-class application requirements, to include the requirements for collective marks and certification marks, and to make other changes consistent with current USPTO practice. Specifically, the USPTO proposes to amend § 2.86 as follows: in § 2.86(a), set forth the requirements for a single trademark, service mark, and/or collective mark application for multiple classes, clarifying that such an application must satisfy either the trademark or service mark application requirements in § 2.32 or the collective mark application requirements in § 2.44, in addition to providing the applicable

goods, services, or nature of the collective membership organization in each appropriate international or U.S. class, and providing a fee, dates of use, and a specimen for each class based on use in commerce or a bona fide intent statement for each class based on section 1(b), 44, or 66(a) of the Act; in § 2.86(b), set forth the requirements for a single certification mark application for goods and services, clarifying that such multiple class application must satisfy the certification mark application requirements in § 2.45, in addition to identifying the applicable goods and services in each appropriate U.S. class for applications filed under section 1 or 44 or in the international classes assigned by the World Intellectual Property Organization's International Bureau for applications filed under section 66(a) of the Act, and providing a fee, dates of use, and a specimen for each class based on use in commerce or a bona fide intent statement for each class based on section 1(b), 44, or 66(a) of the Act; and in § 2.86(c), amend to include the text in the last sentence of existing § 2.86(a)(3) regarding an applicant not claiming both section 1(a) and 1(b) of the Act for identical goods or services in a single application. The USPTO also proposes to add the following to § 2.86: in proposed § 2.86(d), restrict a single application from including goods or services in U.S. Classes A and/or B and either goods or services in any international class or with a collective membership organization in U.S. Class 200, for consistency with proposed § 2.45(f); in proposed § 2.86(e), add the text from existing § 2.86(b) regarding multiple-class requirements for amendments to allege use and statements of use; and in § 2.86(f), add the text in existing § 2.86(c) regarding issuing a single registration certificate for multiple-class applications. Additionally, the USPTO proposes to amend the rule title to ''Multiple-class applications.''

Post Notice of Allowance

The USPTO proposes to amend § 2.88, regarding statements of use, to include the relevant requirements for collective marks and certification marks, and to be consistent with proposed § 2.76 for amendments to allege use. Specifically, the USPTO proposes to amend § 2.88 as follows: in § 2.88(a), add the title ''When to file a statement of use;'' in § 2.88(a)(1) and (a)(2), include the text from existing § 2.88(a), except delete the language regarding the USPTO returning a premature statement of use filed prior to issuance of a notice of allowance because under current practice the USPTO will not return or review such amendment, and include the text from existing § 2.88(c), except for the last sentence; in § 2.88(b), add the title ''A complete statement of use,'' include in § 2.88 (b)(1)–(3) the text from existing § 2.88(b), in § 2.88(b)(1)(iii) additionally include the last sentence from existing § 2.88(c), in § 2.88(b)(1)(iv) additionally include the text from existing § 2.88(i)(1)–(2), in § 2.88 (b)(6) require the title ''Statement of Use'' on the first page of the document for those documents not filed using the TEAS, and in § 2.88(b) incorporate the requirements for collective marks and certification marks and change existing text to ''verified statement'' to correspond with § 2.2(n); in § 2.88(c), add the title ''Minimum filing requirements for a timely filed statement of use,'' include the text in existing § 2.88(e), and in § 2.88(c), change existing text to ''verified statement'' to correspond with § 2.2(n); in § 2.88(d), add the title ''Deficiency notification'' and include the text from existing § 2.88(g), except for the last sentence; in § 2.88(e), add the title ''Notification of refusals and requirements'' and include the text from existing § 2.88(f), except delete the language regarding the USPTO providing notification of acceptance of a statement of use because the registration certificate provides such notice; in § 2.88(f), add the title ''Statement of use may not be withdrawn'' and include the text in the last sentence of existing § 2.88(g); in § 2.88(g), add the title ''Verification not filed within reasonable time,'' include the text from existing § 2.88(k), and change existing text to ''verified statement'' to correspond with § 2.2(n); in § 2.88(h), add the title ''Amending the application,'' include the text from the second to last sentence of existing § 2.88(f), and specify that statements of use may include amendments in accordance with § 2.51, § 2.59, and § 2.71 through § 2.75, as the TEAS on-line statement of use form will now accept such amendments within the same form; in § 2.88(i), add the requirements for the verification in a concurrent use application under § 2.42; in § 2.88(j), add the title ''Multiple-class application'' and include the text from existing § 2.88(l); and in § 2.88(k), add the title ''Abandonment'' and include the text from existing § 2.88(h). Additionally, the USPTO proposes to amend the rule title to ''Statement of use after notice of allowance.''

The USPTO proposes to amend § 2.89, regarding submitting a request for an extension of time to file a statement of use (''extension request''), to include the relevant requirements for collective marks and certification marks as well as to make other changes consistent with current USPTO practice. The USPTO proposes to amend § 2.89 as follows: in § 2.89(a), add the title ''First extension request after issuance of notice of allowance;'' in § 2.89(a)(3), change existing text to ''verified statement'' to correspond with § 2.2(n), and incorporate the requirements for collective marks and certification marks; in § 2.89(b), add the title ''Subsequent extension requests'' and a cross-reference in proposed § 2.89(b)(2) to proposed § 2.89(a)(2), as the fee requirements are the same for first and subsequent extension requests; in § 2.89(c), add the title ''Four subsequent extension requests permitted;'' in § 2.89(d), add the title ''Good cause,'' enumerate in proposed § 2.89(d)(1)–(3) the requirements for showing good cause for all marks, including collective marks and certification marks, and include the text from existing § 2.89(d) in (d)(1); in § 2.89(e), add the title ''Extension request filed in conjunction with or after a statement of use'' and amend the current text for clarity; in § 2.89(f), add the title ''Goods or services'' and incorporate the requirements for collective marks and certification marks; in § 2.89(g), add the title ''Notice of grant or denial;'' and in § 2.89(h), add the title ''Verification not filed within reasonable time,'' incorporate the requirements for collective marks and certification marks, and change existing text to ''verified statement'' to correspond with § 2.2(n).

Petitions and Action by the Director

The USPTO proposes to amend § 2.146(c), regarding petitions to the Director, to change existing text to ''verified statements'' to correspond with § 2.2(n). Additionally, the USPTO proposes to amend § 2.146(d) to specify that a petition regarding a cancelled or expired registration must be submitted to the Office within two months of the date when Office records are updated to show the registration as cancelled or expired, to ensure that all interested parties will be able to accurately determine the deadline for filing a petition under these circumstances.

Cancellation for Failure To File Affidavit or Declaration

The USPTO proposes to amend § 2.161, regarding affidavits or declarations of use in commerce or excusable nonuse under section 8 of the Act, to include the relevant requirements for collective marks and certification marks, to change existing text to correspond with § 2.2, and to make other changes consistent with

current USPTO practice. The USPTO proposes to amend § 2.161(g) to cross-reference current § 2.56 regarding specimens and remove § 2.161(g)(1)–(3), as similar language appears in current § 2.56. The USPTO proposes to add § 2.161(i) and (j), as follows, to include requirements for collective marks and certification marks to harmonize the USPTO's post registration practice with current examination practice, and to be consistent with proposed § 7.37(i)–(j), regarding affidavits or declarations of use in commerce or excusable nonuse under section 71 of the Act: in § 2.161(i), add the title ''Additional requirements for a collective mark'' and the additional requirements for such marks, *see* TMEP sections 1303.01, 1303.02(c)(i), 1304.08(f)(i)–(ii); in § 2.161(j), add the title ''Additional requirements for a certification mark'' and the additional requirements for such marks, *see* TMEP section 1306.06(f)(i)–(iii), (f)(v). The USPTO also proposes to add § 2.161(k) to cross-reference to § 7.37 regarding the requirements for a complete affidavit or declaration of use in commerce or excusable nonuse for a registration with an underlying application based on section 66(a). The sunset provision in current § 2.161(h)(3), in which § 2.161(h)(2) will no longer be applied after June 21, 2014, to affidavits or declarations filed under section 8 of the Act, is not altered by this rulemaking.

Affidavit or Declaration Under Section 15

The USPTO proposes to amend § 2.167, regarding an affidavit or declaration of incontestability under section 15 of the Act, to include the relevant requirements for collective marks and certification marks, to change existing text to ''verified'' to correspond with § 2.2(n), and to make other changes consistent with current USPTO practice. Specifically, the USPTO proposes to amend § 2.167(f) to delete the last sentence of the existing rule because, under current USPTO practice, notification acknowledging receipt of the affidavit or declaration only issues if the requirements of § 2.167(a) through (g) have been satisfied, consistent with proposed § 2.167(i). *See* TMEP section 1605. The USPTO also proposes to add § 2.167(h), (i), (j), and (k), as follows, to clarify current USPTO practice: in § 2.167(h), clarify that notification will be provided to an owner that an affidavit or declaration cannot be acknowledged if the affidavit or declaration fails to satisfy any requirements in paragraphs § 2.167(a) through (g), that the affidavit or declaration will be abandoned if a response is not received in the time specified in the notification; in § 2.167(i), clarify that a notice of acknowledgement will only issue if an affidavit or declaration satisfies § 2.167(a) through (g); in § 2.167(j), clarify that an affidavit or declaration may be abandoned by petitioning the Director under § 2.146 either before or after a notice of acknowledgement issues; and in § 2.167(k), clarify that a new affidavit or declaration with a new fee may be filed if an affidavit or declaration is abandoned. *See* TMEP section 1605.

Correction, Disclaimer, Surrender, Etc.

The USPTO proposes to amend § 2.173, regarding an amendment to a registration, to include the relevant requirements for collective marks and certification marks, to change existing text to correspond with § 2.2, and to make other changes consistent with current USPTO practice. The USPTO proposes to make the following amendments to § 2.173: in § 2.173(b)(2), cross-reference § 2.193(e)(6), regarding trademark signature requirements, and delete the language in this subsection that is similar to wording in current § 2.193(e)(6); in § 2.173(d), clarify that an amendment that would materially alter the mark will not be permitted in accordance with section 7(e) of the Act; in § 2.173(e), amend the title to ''Amendment of identification of goods, services, or collective membership organization,'' and in the text of (e), add a reference to a description of the nature of the collective membership organization; and in § 2.173(f), amend the title to ''Amendment of certification statement for certification marks'' and set forth the prohibition regarding amending a certification statement, as specified in proposed § 2.45(a)(4)(i)(A) and (a)(4)(ii)(A), in accordance with section 7(e) of the Act and for consistency with proposed § 2.71(e). The USPTO proposes to redesignate current § 2.173(f) as § 2.173(g), and redesignate current § 2.173(g) as § 2.173(h). The USPTO also proposes to add § 2.173(i) with the heading ''No amendment to add or delete a section 2(f) claim of acquired distinctiveness'' to clarify that the USPTO will not permit an amendment seeking the addition or elimination of a claim of acquired distinctiveness, just as an owner cannot amend a registration from the Supplemental to the Principal Register. *See* TMEP section 1609.09.

The USPTO proposes to amend § 2.175(b)(2), regarding correcting an owner's mistake, to change existing text to ''verified'' to correspond with § 2.2(n).

Term and Renewal

The USPTO proposes to amend § 2.183(d), regarding requirements for a renewal application, to specify that a renewal application may cover less than all the classes in a registration, in addition to covering less than all the goods or services in a registration.

General Information and Correspondence in Trademark Cases

The USPTO proposes to amend § 2.193, regarding trademark correspondence and signature requirements, to correct a typographical error in § 2.193(c)(2), to change existing text in § 2.193(e)(1) to correspond with § 2.2(n), and to revise the final sentence of § 2.193(f) to delete reference to § 10.23(c)(15) and instead refer to § 11.804, as part 10 of this chapter has been removed and reserved and the content in § 11.804 corresponds with content previously set out in § 10.23.

PART 7: RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

Subpart A—General Information

The USPTO proposes to amend § 7.1, regarding definitions, to add § 7.1(f), which incorporates by reference the definitions in proposed § 2.2(k) and (n), to apply to filings pursuant to the Protocol relating to the Madrid Agreement concerning the international registration of marks.

Subpart F—Affidavit Under Section 71 of the Act for Extension of Protection to the United States

The USPTO proposes to amend § 7.37, regarding affidavits or declarations of use in commerce or excusable nonuse under section 71 of the Act, to include the relevant requirements for collective marks and certification marks and to change existing text to correspond with § 2.2. Specifically, the USPTO proposes to add § 7.37(i) and (j) as follows, to include requirements for collective marks and certification marks so as to harmonize the USPTO's post registration practice with current examination practice, and to be consistent with proposed § 2.161(i)–(j), regarding affidavits or declarations of use in commerce or excusable nonuse under section 8 of the Act: in proposed § 7.37(i), add the title ''Additional requirements for a collective mark'' and the additional requirements for such marks, *see* TMEP sections 1303.01, 1303.02(c)(i), 1304.08(f)(i)–(ii), 1904.02(d); in proposed § 7.37(j), add

the title ''Additional requirements for a certification mark'' and additional requirements for such marks, *see* TMEP sections 1306.06(f)(i)–(iii), (f)(v), 1904.02(d). The sunset provision in current § 7.37(h)(3), in which § 7.37(h)(2) will no longer be applied after June 21, 2014, to affidavits or declarations filed under section 71 of the Act, is not altered by this rulemaking.

Rulemaking Considerations

Administrative Procedure Act: The changes in this proposed rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the changes in this proposed rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), does not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice,'' quoting 5 U.S.C. 553(b)(A)). The USPTO, however, is publishing these proposed rule changes for comment as it seeks the benefit of the public's views regarding collective and certification marks.

Regulatory Flexibility Act: As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, neither a Regulatory Flexibility Act analysis, nor a certification under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), is required. *See* 5 U.S.C. 603.

In addition, for the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office (USPTO) has certified to the Chief Counsel for Advocacy of the Small Business Administration that rule changes proposed in this document will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

To the extent the rule changes proposed in this document primarily codify existing USPTO practice set forth in the TMEP and precedential case law regarding collective marks and certification marks, those proposed rule changes impose no new burdens on applicants and registration owners. Some rule changes have been proposed to harmonize registration maintenance requirements with current application requirements. The USPTO also has proposed to change existing practice regarding maintenance requirements regarding certification marks to require filers of the first affidavit of use after registration in registrations based on Trademark Act Sections 44 and 66(a) to submit certification standards, and to require that all filers of such affidavits submit updated standards if the standards have changed or a statement indicating they have not. The USPTO does not collect or maintain statistics in trademark cases on small versus large entity applicants, and this information would be required in order to precisely calculate the number of small entities that would be affected. However, these proposed rule changes will have no impact on the vast majority of trademark owners, and only a slight effect on the very small subset of certification mark registrations, where standards previously have not been provided, or change post registration. Certification marks account for approximately 0.2% of the total number of registered marks in the USPTO database (approximately 4,000 registrations out of a total of approximately 2,000,000 registrations). For fiscal year 2013, affidavits of use for all filers have totaled approximately 170,000 of which approximately 0.2%, or 340 affidavits, were submitted for certification mark registrations. Of those 340 affidavits, only a small subset will be required to include certification standards or revised standards. Even in the event that standards must be submitted, the burden is quite minimal, as it merely involves attaching an already existing document to a filing that must otherwise be made to maintain the registration. For these reasons, the proposed rule changes will not have a significant economic impact on a substantial number of small entities.

Executive Order 12866 (Regulatory Planning and Review): The proposed rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

Executive Order 13563 (Improving Regulation and Regulatory Review): The USPTO has complied with Executive Order 13563 (Jan. 18, 2011). Specifically, the USPTO has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the proposed rule changes; (2) tailored the proposed rules 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) provided the public with a meaningful opportunity to participate in the regulatory process, including soliciting the views of those likely affected prior to issuing a notice of proposed rulemaking, 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, to the extent applicable.

Executive Order 13132 (Federalism): This proposed rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the 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. The changes proposed in this document are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this document is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

Unfunded Mandates Reform Act of 1995: The changes set forth in this proposed rulemaking 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 *et seq.*

Paperwork Reduction Act: This proposed rulemaking involves information collection requirements which are subject to review by the U.S. Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The USPTO has determined that there would be no new information collection requirements or impacts to existing information collection requirements associated with this proposed rulemaking. The collections of information involved in this proposed rulemaking have been reviewed and previously approved by OMB under control numbers 0651–0009, 0651–0050, 0651–0051, 0651–0054, 0651–0055, 0651–0056, and 0651–0061.

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 2

Administrative practice and procedure, Trademarks.

37 CFR Part 7

Administrative practice and procedure, Trademarks, International Registration.

For the reasons given in the preamble and under the authority contained in 15 U.S.C. 1123 and 35 U.S.C. 2, as amended, the USPTO proposes to amend parts 2 and 7 of title 37 as follows:

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

■ 1. The authority citation for 37 CFR part 2 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 2. Amend § 2.2 as follows:
■ a. Revise paragraphs (f) and (h).
■ b. Add paragraphs (i) through (n).

§ 2.2 Definitions.

* * * * *

(f) The acronym *TEAS* means the Trademark Electronic Application System, available at *http://www.uspto.gov.*

* * * * *

(h) The term *international application* as used in this part means an application seeking an extension of protection of an international registration to the United States or a subsequent designation of the international registration to the United States, and is filed under the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. See section 60 of the Act.

(i) The term *subsequent designation* as used in this part means a request for extension of protection of an international registration to the United States made after the International Bureau registers the mark.

(j) The term *holder* as used in this part means the natural or juristic person in whose name an international registration seeking an extension of protection to the United States is recorded on the International Register. See section 60 of the Act.

(k) The term *use in commerce* as used in this part means, in addition to the definition in section 45 of the Act:

(1) For a trademark or service mark, use of the mark in commerce by an applicant or owner on or in connection with the goods or services specified in a U.S. application, amendment to allege use, statement of use, or affidavit or declaration of use or excusable nonuse;

(2) For a collective trademark or collective service mark, use of the mark in commerce by members on or in connection with the goods or services specified in a U.S. application, amendment to allege use, statement of use, or affidavit or declaration of use or excusable nonuse;

(3) For a collective membership mark, use of the mark in commerce by members to indicate membership in the collective organization as specified in a U.S. application, amendment to allege use, statement of use, or affidavit or declaration of use or excusable nonuse; and

(4) For a certification mark, use of the mark in commerce by authorized users on or in connection with the goods or services specified in a U.S. application, amendment to allege use, statement of use, or affidavit or declaration of use or excusable nonuse.

(l) The term *bona fide intention to use the mark in commerce* as used in this part means, for a trademark or service mark, that an applicant or holder has a bona fide intention to use the mark in commerce on or in connection with the goods or services specified in a U.S. application or international application.

(m) The term *bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce* as used in this part means:

(1) For a collective trademark or collective service mark, that an applicant or holder has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce by members on or in connection with the goods or services specified in a U.S. application or international application;

(2) For a collective membership mark, that an applicant or holder has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce by members to indicate membership in the collective organization as specified in a U.S. application or international application; and

(3) For a certification mark, that an applicant or holder has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce by authorized users on or in connection with the goods or services specified in a U.S. application or international application.

(n) The term *verified statement,* and the terms *verify, verified,* or *verification* as used in this part refers to a statement that is sworn to, made under oath or in an affidavit, or supported by a declaration under § 2.20 or 28 U.S.C. 1746, and signed in accordance with the requirements of § 2.193.

■ 3. Revise the introductory text to § 2.20 to read as follows:

§ 2.20 Declarations in lieu of oaths.

Instead of an oath, affidavit, or sworn statement, the language of 28 U.S.C. 1746, or the following declaration language, may be used:

* * * * *

■ 4. Amend § 2.32 as follows:
■ a. Revise the section heading and paragraphs (a)(3)(ii), (a)(6), and (c).
■ b. Add paragraphs (f) and (g).

§ 2.32 Requirements for a complete trademark or service mark application.

(a) * * *

(3) * * *

(iii) If the applicant is a domestic partnership, the names and citizenship of the general partners; or

* * * * *

(6) A list of the particular goods or services on or in connection with which the applicant uses or intends to use the mark. In a U.S. application filed under section 44 of the Act, the scope of the goods or services covered by the section 44 basis may not exceed the scope of the

goods or services in the foreign application or registration;

* * * * *

(c) The application must include a drawing that meets the requirements of § 2.51 and § 2.52.

* * * * *

(e) For the requirements of a multiple-class application, see § 2.86.

(f) For the requirements of all collective mark applications, see § 2.44.

(g) For the requirements of a certification mark application, see § 2.45.

■ 5. Revise § 2.33 to read as follows:

§ 2.33 Verified statement for a trademark or service mark.

(a) The application must include a verified statement.

(b)(1) In an application under section 1(a) of the Act, the verified statement must allege:

That the applicant believes the applicant is the owner of the mark; that the mark is in use in commerce; that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake, or to deceive; that the specimen shows the mark as used on or in connection with the goods or services; and that the facts set forth in the application are true.

(2) In an application under section 1(b) or 44 of the Act, the verified statement must allege:

That the applicant has a bona fide intention to use the mark in commerce; that the applicant believes the applicant is entitled to use the mark in commerce on or in connection with the goods or services specified in the application; that to the best of the signatory's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of such other person, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

(c) If the verified statement in paragraph (b)(1) or (b)(2) of this section is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verified statement attesting, as of the filing date, that the mark has been in use in commerce or the applicant has had a bona fide intention to use the mark in commerce.

(d) [Reserved]

(e) In an application under section 66(a) of the Act, the verified statement, which is part of the international registration on file with the International Bureau, must allege that:

(1) The applicant/holder has a bona fide intention to use the mark in commerce;

(2) The signatory is properly authorized to execute the declaration on behalf of the applicant/holder;

(3) The signatory believes the applicant/holder to be entitled to use the mark in commerce that the U.S. Congress can regulate on or in connection with the goods or services specified in the international application/registration; and

(4) To the best of his/her knowledge and belief, no other person, firm, corporation, association, or other legal entity has the right to use the mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, firm, corporation, association, or other legal entity, to cause confusion, or to cause mistake, or to deceive.

(f) In an application for concurrent use under § 2.42, the verified statement in paragraph (b)(1) of this section must be modified to indicate that no other person except as specified in the application has the right to use the mark in commerce.

■ 6. Amend § 2.34 as follows:

■ a. Revise the section heading and paragraphs (a) introductory text, (a)(1) introductory text, (a)(1)(i), (a)(1)(iii) through (a)(1)(v), (a)(2), (a)(3) introductory text, (a)(3)(i), (a)(3)(iii), (a)(4) introductory text, (a)(4)(i)(B), (a)(4)(ii), (a)(4)(iii), (a)(5), and (b); and

■ b. Remove paragraph (c).

§ 2.34 Bases for filing a trademark or service mark application.

(a) An application for a trademark or service mark must include one or more of the following five filing bases:

(1) *Use in commerce under section 1(a) of the Act.* The requirements for an application under section 1(a) of the Act are:

(i) The applicant's verified statement that the mark is in use in commerce. If the verified statement is not filed with the initial application, the verified statement must also allege that the mark has been in use in commerce as of the application filing date;

* * * * *

(iii) The date of the applicant's first use of the mark in commerce;

(iv) One specimen showing how the applicant uses the mark in commerce; and

(v) If the application specifies more than one item of goods or services in a class, the dates of use in paragraphs (a)(1)(ii) and (iii) of this section are required for only one item of goods or services specified in that class.

(2) *Intent-to-use under section 1(b) of the Act.* In an application under section 1(b) of the Act, the applicant must verify that the applicant has a bona fide intention to use the mark in commerce. If the verified statement is not filed with the initial application, the verified statement must also allege that the applicant has had a bona fide intention to use the mark in commerce as of the application filing date.

(3) *Registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act.* The requirements for an application under section 44(e) of the Act are:

(i) The applicant's verified statement that the applicant has a bona fide intention to use the mark in commerce. If the verified statement is not filed with the initial application, the Office will require submission of the verified statement, which must also allege that the applicant has had a bona fide intention to use the mark in commerce as of the application filing date.

* * * * *

(iii) If the record indicates that the foreign registration will expire before the U.S. registration will issue, the applicant must submit a true copy, a photocopy, a certification, or a certified copy of a proof of renewal from the applicant's country of origin to establish that the foreign registration has been renewed and will be in full force and effect at the time the U.S. registration will issue. If the proof of renewal is not in the English language, the applicant must submit a translation.

(4) *Claim of priority, based upon an earlier-filed foreign application, under section 44(d) of the Act.* The requirements for an application under section 44(d) of the Act are:

(i) * * *

(B) State that the application is based upon a subsequent regularly filed application in the same foreign country, and that any prior-filed application has been withdrawn, abandoned, or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(ii) The applicant's verified statement that the applicant has a bona fide intention to use the mark in commerce. If the verified statement is not filed with the initial application, the Office will require submission of the verified

statement, which must also allege that the applicant has had a bona fide intention to use the mark in commerce as of the application filing date.

(iii) Before the application can be approved for publication, or for registration on the Supplemental Register, the applicant must establish a basis under section 1 or 44 of the Act.

(5) *Extension of protection of an international registration under section 66(a) of the Act.* In an application under section 66(a) of the Act, the international application or subsequent designation requesting an extension of protection to the United States must contain a signed declaration that meets the requirements of § 2.33(a), (e).

(b) *More than one basis.* In an application under section 1 or 44 of the Act, an applicant may claim more than one basis, provided the applicant satisfies all requirements for the bases claimed. In such case, the applicant must specify each basis, followed by the goods or services to which that basis applies. An applicant must specify the goods or services covered by more than one basis. Section 1(a) and 1(b) of the Act may not both be claimed for identical goods or services in the same application. A basis under section 66(a) of the Act may not be combined with another basis.

■ 7. Revise § 2.41 to read as follows:

§ 2.41 Proof of distinctiveness under section 2(f).

(a) *For a trademark or service mark*—(1) *Ownership of prior registration(s).* In appropriate cases, ownership of one or more prior active registrations on the Principal Register or under the Trademark Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness if the goods or services are sufficiently similar to the goods or services in the application; however, further evidence may be required.

(2) *Five years substantially exclusive and continuous use in commerce.* In appropriate cases, if a trademark or service mark is said to have become distinctive of the applicant's goods or services by reason of the applicant's substantially exclusive and continuous use of the mark in commerce for the five years before the date on which the claim of distinctiveness is made, a showing by way of verified statements in the application may be accepted as prima facie evidence of distinctiveness; however, further evidence may be required.

(3) *Other evidence.* When registration is sought for a trademark or service mark that would be unregistrable by reason of section 2(e) of the Act, but which is said by the applicant to have become distinctive in commerce of the applicant's goods or services, the applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, verified statements, depositions, or other appropriate evidence showing duration, extent, and nature of the use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and verified statements, letters or statements from the trade or public, or both, or other appropriate evidence of distinctiveness.

(b) *For a collective trademark or collective service mark*—(1) *Ownership of prior registration(s).* See the requirements of paragraph (a)(1) of this section.

(2) *Five years substantially exclusive and continuous use in commerce.* In appropriate cases, if a collective trademark or collective service mark is said to have become distinctive of the members' goods or services by reason of the members' substantially exclusive and continuous use of the mark in commerce for the five years before the date on which the claim of distinctiveness is made, a showing by way of verified statements in the application may be accepted as prima facie evidence of distinctiveness; however, further evidence may be required.

(3) *Other evidence.* When registration is sought for a collective trademark or service mark that would be unregistrable by reason of section 2(e) of the Act, but which is said by the applicant to have become distinctive in commerce of the members' goods or services, the applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, verified statements, depositions, or other appropriate evidence showing duration, extent, and nature of the use in commerce, and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and verified statements, letters or statements from the trade or public, or both, or other appropriate evidence of distinctiveness.

(c) *For a collective membership mark*—(1) *Ownership of prior registration(s).* In appropriate cases, ownership of one or more prior active registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness if the goods, services, or nature of the collective membership organization are sufficiently similar to the collective membership organization in the application; however, further evidence may be required.

(2) *Five years substantially exclusive and continuous use in commerce.* In appropriate cases, if a collective membership mark is said to have become distinctive of indicating membership in the applicant's collective membership organization by reason of the members' substantially exclusive and continuous use of the mark in commerce for the five years before the date on which the claim of distinctiveness is made, a showing by way of verified statements in the application may be accepted as prima facie evidence of distinctiveness; however, further evidence may be required.

(3) *Other evidence.* When registration is sought for a collective membership mark that would be unregistrable by reason of section 2(e) of the Act, but which is said by the applicant to have become distinctive in commerce of indicating membership in the applicant's collective membership organization, the applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, verified statements, depositions, or other appropriate evidence showing duration, extent, and nature of the members' use in commerce, and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and verified statements, letters or statements from the trade or public, or both, or other appropriate evidence of distinctiveness.

(d) *For a certification mark*—(1) *Ownership of prior certification mark registration(s).* In appropriate cases, ownership of one or more prior active certification mark registrations on the Principal Register or under the Act of 1905 of the same mark may be accepted as prima facie evidence of distinctiveness if the authorized users' goods or services are sufficiently similar to the goods or services certified in the application, subject to the limitations of the statement set forth in § 2.45(a)(4)(i)(C); however, further evidence may be required.

(2) *Five years substantially exclusive and continuous use in commerce.* In appropriate cases, if a certification mark is said to have become distinctive of the certified goods or services by reason of the authorized users' substantially exclusive and continuous use of the mark in commerce for the five years before the date on which the claim of

distinctiveness is made, a showing by way of verified statements in the application may be accepted as prima facie evidence of distinctiveness; however, further evidence may be required.

(3) *Other evidence.* When registration is sought for a certification mark that would be unregistrable by reason of section 2(e) of the Act, but which is said by the applicant to have become distinctive of the certified goods or services program, the applicant may, in support of registrability, submit with the application, or in response to a request for evidence or to a refusal to register, verified statements, depositions, or other appropriate evidence showing duration, extent, and nature of the authorized users' use in commerce and advertising expenditures in connection therewith (identifying types of media and attaching typical advertisements), and verified statements, letters or statements from the trade or public, or both, or other appropriate evidence of distinctiveness.

(e) Paragraph (d) does not apply to geographical matter in a certification mark pursuant to section 2(e)(2) of the Act.

■ 8. Revise § 2.42 to read as follows:

§ 2.42 Concurrent use.

(a) Prior to seeking concurrent use, an application for registration on the Principal Register under the Act must assert use in commerce and include all the application elements required by the preceding sections, in addition to § 2.44 or § 2.45, if applicable.

(b) The applicant must also include a verified statement that indicates the following, to the extent of the applicant's knowledge:

(1) For a trademark or service mark, the geographic area in which the applicant is using the mark in commerce; for a collective mark or certification mark, the geographic area in which the applicant's members or authorized users are using the mark in commerce;

(2) For a trademark or service mark, the applicant's goods or services; for a collective trademark, collective service mark, or certification mark, the applicant's members' or authorized users' goods or services; for a collective membership mark, the nature of the applicant's collective membership organization;

(3) The mode of use for which the applicant seeks registration;

(4) The concurrent users' names and addresses;

(5) The registrations issued to or applications filed by such concurrent users, if any;

(6) For a trademark or service mark, the geographic areas in which the concurrent user is using the mark in commerce; for a collective mark or certification mark, the geographic areas in which the concurrent user's members or authorized users are using the mark in commerce;

(7) For a trademark or service mark, the concurrent user's goods or services; for a collective trademark, collective service mark, or certification mark, the concurrent user's members' or authorized users' goods or services; for a collective membership mark, the nature of the concurrent user's collective membership organization;

(8) The mode of use by the concurrent users or the concurrent users' members or authorized users; and

(9) The time periods of such use by the concurrent users or the concurrent users' members or authorized users.

(c) For the requirements to amend an application to concurrent use, see § 2.73.

(d) For the requirements of a concurrent use proceeding, see § 2.99.

■ 9. Revise § 2.44 to read as follows:

§ 2.44 Requirements for a complete collective mark application.

(a) A complete application to register a collective trademark, collective service mark, or collective membership mark must include the following:

(1) The requirements specified in § 2.32(a) introductory text–(a)(4), (a)(8)–(10), (c)–(d);

(2)(i) For a collective trademark or collective service mark, a list of the particular goods or services on or in connection with which the applicant's members use or intend to use the mark; or

(ii) For a collective membership mark, a description of the nature of the membership organization such as by type, purpose, or area of activity of the members; and

(iii) In a U.S. application filed under section 44 of the Act, the scope of the goods or services or the nature of the membership organization covered by the section 44 basis may not exceed the scope of the goods or services or nature of the membership organization in the foreign application or registration.

(3)(i) For a collective trademark or collective service mark application, the international class of goods or services, if known. See § 6.1 of this chapter for a list of the international classes of goods and services; or

(ii) For a collective membership mark application filed under sections 1 or 44 of the Act, classification in U.S. Class 200; and for a collective membership mark application filed under section 66(a) of the Act, the international class(es) assigned by the International Bureau in the corresponding international registration.

(4) One or more of the following five filing bases:

(i) *Use in commerce under section 1(a) of the Act.* The requirements for an application under section 1(a) of the Act are:

(A) A statement specifying the nature of the applicant's control over the use of the mark by the members;

(B) For a collective trademark or collective service mark, the date of the applicant's member's first use of the mark anywhere on or in connection with the goods or services and the date of the applicant's member's first use of the mark in commerce; or for a collective membership mark, the date of the applicant's member's first use anywhere to indicate membership in the collective organization and the date of the applicant's member's first use in commerce. If the application specifies more than one item of goods or services in a class, the dates of use are required for only one item of goods or services specified in that class;

(C) One specimen showing how a member uses the mark in commerce; and

(D) A verified statement alleging:

That the applicant believes the applicant is the owner of the mark; that the mark is in use in commerce; that the applicant is exercising legitimate control over the use of the mark in commerce by members on or in connection with the goods, services, or collective membership organization specified in the application; that to the best of the signatory's knowledge and belief, no other persons except members have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods, services, or collective membership organization of such other persons to cause confusion or mistake, or to deceive; that the specimen shows the mark as used in commerce by the applicant's members; and that the facts set forth in the application are true.

(ii) *Intent-to-use under section 1(b) of the Act.* The requirement for an application based on section 1(b) of the Act is a verified statement alleging:

That the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use in commerce of the mark; that to the best of the signatory's knowledge and belief, no other persons, except members, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when

used on or in connection with the goods, services, or collective membership organization of such other persons, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

(iii) *Registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act.* The requirements for an application under section 44(e) of the Act are:

(A) The requirements of § 2.34(a)(3)(ii)–(iii); and

(B) A verified statement in accordance with paragraph (a)(4)(ii) of this section.

(iv) *Claim of priority, based upon an earlier-filed foreign application, under section 44(d) of the Act.* The requirements for an application under section 44(d) of the Act are:

(A) The requirements of § 2.34(a)(4)(i), (iii); and

(B) A verified statement in accordance with paragraph (a)(4)(ii) of this section.

(v) *Extension of protection of an international registration under section 66(a) of the Act.* The requirement for an application under section 66(a) of the Act is a verified statement, which is part of the international registration on file with the International Bureau, alleging that:

(A) The applicant/holder has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce;

(B) The signatory is properly authorized to execute the declaration on behalf of the applicant/holder; and

(C) to the best of his/her knowledge and belief, no other person, firm, corporation, association, or other legal entity, except members, has the right to use the mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods, services, or collective membership organization of such other person, firm, corporation, association, or other legal entity, to cause confusion, or to cause mistake, or to deceive.

(b) *Verification not filed within reasonable time or omitted*—(1) If the verified statement in paragraph (a)(4)(i)(D), (a)(4)(ii), (a)(4)(iii)(B), or (a)(4)(iv)(B) of this section is not filed within a reasonable time after it is signed, the Office may require a substitute verified statement attesting, as of the application filing date, that the mark has been in use in commerce or the applicant has had a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce; or

(2) If the verified statement in paragraph (a)(4)(i)(D), (a)(4)(ii), (a)(4)(iii)(B), or (a)(4)(iv)(B) of this section is not filed with the initial application, the verified statement must also allege that, as of the application filing date, the mark has been in use in commerce, or the applicant has had a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce.

(c) *More than one basis.* In an application under section 1 or 44 of the Act, an applicant may claim more than one basis, provided the applicant satisfies all requirements for the bases claimed. In such case, the applicant must specify each basis, followed by the goods or services to which that basis applies. An applicant must specify the goods or services covered by more than one basis. Section 1(a) and 1(b) of the Act may not both be claimed for identical goods or services in the same application. A basis under section 66(a) of the Act may not be combined with another basis.

(d) *In an application for concurrent use under § 2.42,* the verified statement in paragraph (a)(4)(i)(D) of this section must be modified to indicate that no other persons except members and the concurrent users as specified in the application have the right to use the mark in commerce.

(e) *Multiple-class applications.* For the requirements of a multiple-class application, see § 2.86.

■ 10. Revise § 2.45 to read as follows:

§ 2.45 Requirements for a complete certification mark application; restriction on certification mark application.

(a) A complete application to register a certification mark must include the following:

(1) The requirements specified in § 2.32(a) introductory text—(a)(4), (a)(8)–(10), (c)–(d);

(2) A list of the particular goods or services on or in connection with which the applicant's authorized users use or intend to use the mark. In an application filed under section 44 of the Act, the scope of the goods or services covered by the section 44 basis may not exceed the scope of the goods or services in the foreign application or registration;

(3) For applications filed under section 1 or 44 of the Act, classification in U.S. Class A for an application certifying goods and U.S. Class B for an application certifying services. For applications filed under section 66(a) of the Act, the international class(es) of goods or services assigned by the International Bureau in the corresponding international registration;

(4) One or more of the following five filing bases:

(i) *Use in commerce under section 1(a) of the Act.* The requirements for an application under section 1(a) of the Act are:

(A) A statement specifying what the applicant is certifying about the goods or services in the application;

(B) A copy of the certification standards governing use of the certification mark on or in connection with the goods or services specified in the application;

(C) A statement that the applicant is not engaged in the production or marketing of the goods or services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods or services that meet the certification standards of the applicant;

(D) The date of the applicant's authorized user's first use of the mark anywhere on or in connection with the goods or services and the date of the applicant's authorized user's first use of the mark in commerce. If the application specifies more than one item of goods or services in a class, the dates of use are required for only one item of goods or services specified in that class;

(E) One specimen showing how an authorized user uses the mark in commerce; and

(F) A verified statement alleging:

That the applicant believes the applicant is the owner of the mark; that the mark is in use in commerce; that the applicant is exercising legitimate control over the use of the mark in commerce by authorized users on or in connection with the goods or services specified in the application; that to the best of the signatory's knowledge and belief, no other persons except authorized users have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods or services of such other persons, to cause confusion or mistake, or to deceive; that the specimen shows the mark as used in commerce by the applicant's authorized users; and that the facts set forth in the application are true.

(ii) *Intent-to-use under section 1(b) of the Act.* The requirements for an application based on section 1(b) of the Act are:

(A) A statement specifying what the applicant will be certifying about the goods or services;

(B) A statement that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied, except to advertise or promote recognition of the certification program or of the goods or

services that meet the certification standards of the applicant; and

(C) A verified statement alleging:

That the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce; that to the best of the signatory's knowledge and belief, no other persons, except authorized users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods or services of such other persons, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

(iii) *Registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act.* The requirements for an application under section 44(e) of the Act are:

(A) The requirements of § 2.34(a)(3)(ii)–(iii);

(B) The requirements of § 2.45(a)(4)(ii)(A), (B); and

(C) A verified statement in accordance with § 2.45(a)(4)(ii)(C).

(iv) *Claim of priority, based upon an earlier-filed foreign application, under section 44(d) of the Act.* The requirements for an application under section 44(d) of the Act are:

(A) The requirements of § 2.34(a)(4)(i), (iii);

(B) The requirements of § 2.45(a)(4)(ii)(A), (B); and

(C) A verified statement in accordance with § 2.45(a)(4)(ii)(C).

(v) *Extension of protection of an international registration under section 66(a) of the Act.* The requirements for an application under section 66(a) of the Act are:

(A) The requirements of § 2.45(a)(4)(ii)(A), (B); and

(B) A verified statement, which is part of the international registration on file with the International Bureau, alleging that:

(*1*) The applicant/holder has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce;

(*2*) The signatory is properly authorized to execute the declaration on behalf of the applicant/holder; and

(*3*) To the best of his/her knowledge and belief, no other person, firm, corporation, association, or other legal entity, except authorized users, has the right to use the mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods or services of such other person, firm, corporation, association, or other legal entity, to cause confusion, or to cause mistake, or to deceive.

(b) *Verification not filed within reasonable time or omitted*—(1) If the verified statement in paragraph (a)(4)(i)(F), (a)(4)(ii)(C), (a)(4)(iii)(C), or (a)(4)(iv)(C) of this section is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verified statement attesting that, as of the application filing date, the mark has been in use in commerce or the applicant has had a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce; or

(2) If the verified statement in paragraph (a)(4)(i)(F), (a)(4)(ii)(C), (a)(4)(iii)(C), or (a)(4)(iv)(C) of this section is not filed with the initial application, the verified statement must also allege that, as of the application filing date, the mark has been in use in commerce, or the applicant has had a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce.

(c) *More than one basis.* In an application under section 1 or 44 of the Act, an applicant may claim more than one basis, provided the applicant satisfies all requirements for the bases claimed. In such case, the applicant must specify each basis, followed by the goods or services to which that basis applies. An applicant must specify the goods or services covered by more than one basis. Section 1(a) and 1(b) of the Act may not both be claimed for identical goods or services in the same application. A basis under section 66(a) of the Act may not be combined with another basis.

(d) *Concurrent use.* In an application for concurrent use under § 2.42, the verified statement in paragraph (a)(4)(i)(F) of this section must be modified to indicate that no other persons except authorized users and concurrent users as specified in the application have the right to use the mark in commerce.

(e) *Multiple-class applications.* For the requirements of a multiple-class application, see § 2.86.

(f) *Restriction on certification mark application.* A single application may not include a certification mark and another type of mark. The same mark for the same goods or services is not registrable as both a certification mark and another type of mark. See sections 4 and 14(5)(B) of the Act.

■ 11. Amend § 2.56 by revising paragraphs (b)(2), (b)(5), (c), and (d)(3) to read as follows:

§ 2.56 Specimens.

* * * * *

(b) * * *

(2) A service mark specimen must show the mark as used in the sale or advertising of the services.

* * * * *

(5) A certification mark specimen must show how a person other than the owner uses the mark to reflect certification of regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of that person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services.

(c) A photocopy or other reproduction of a specimen of the mark as used on or in connection with the goods, or in the sale or advertising of the services, is acceptable. However, a photocopy of the drawing required by § 2.51 is not a proper specimen.

* * * * *

(d) * * *

(3) In the absence of non-bulky alternatives, the Office may accept a compact disc, digital video disc, or other appropriate medium.

* * * * *

■ 12. Amend § 2.59 by revising paragraphs (a), (b)(1), and (b)(2) to read as follows:

§ 2.59 Filing substitute specimen(s).

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods or in the sale or advertising of the services, or as used to indicate membership in the collective organization. The applicant must submit a verified statement that the substitute specimen was in use in commerce at least as early as the filing date of the application. The verified statement is not required if the specimen is a duplicate or facsimile of a specimen already of record in the application.

(b) * * *

(1) For an amendment to allege use under § 2.76, submit a verified statement that the applicant used the substitute specimen(s) in commerce prior to filing the amendment to allege use.

(2) For a statement of use under § 2.88, submit a verified statement that the applicant used the substitute specimen(s) in commerce either prior to filing the statement of use or prior to the expiration of the deadline for filing the statement of use.

■ 13. Amend § 2.71 as follows:

■ a. Revise paragraphs (a) through (b), the introductory text of paragraph (c), and paragraph (d).

■ b. Add paragraph (e).

§ 2.71 Amendments to correct informalities.

* * * * *

(a) The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services or the description of the nature of the collective membership organization.

(b)(1) If the verified statement in an application under § 2.33 is unsigned or signed by the wrong party, the applicant may submit a substitute verification.

(2) If the verified statement in a statement of use under § 2.88, or a request for extension of time to file a statement of use under § 2.89, is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use.

(c) The applicant may amend the dates of use, provided that the amendment is verified, except that the following amendments are *not* permitted:

* * * * *

(d) The applicant may amend the application to correct the name of the applicant, if there is a mistake in the manner in which the name of the applicant is set out in the application. The amendment must be verified. However, the application cannot be amended to set forth a different entity as the applicant. An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.

(e) An amendment that would materially alter the certification statement specified in § 2.45(a)(4)(i)(A) or § 2.45(a)(4)(ii)(A) will not be permitted.

■ 14. Revise § 2.74(b) to read as follows:

§ 2.74 Form and signature of amendment.

* * * * *

(b) *Signature.* A request for amendment of an application must be signed by the applicant, someone with legal authority to bind the applicant (*e.g.,* a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(2). If the amendment requires verification, see § 2.2(n).

■ 15. Revise § 2.76 to read as follows:

§ 2.76 Amendment to allege use.

(a) *When to file an amendment to allege use.* (1) An application under section 1(b) of the Act may be amended to allege use of the mark in commerce under section 1(c) of the Act at any time between the filing of the application and the date the examiner approves the mark for publication. Thereafter, an allegation of use may be submitted only as a statement of use under § 2.88 after the issuance of a notice of allowance under section 13(b)(2) of the Act. An amendment to allege use filed outside the time period specified in this paragraph will not be reviewed.

(2)(i) For a trademark, service mark, collective trademark, collective service mark, and certification mark, an amendment to allege use may be filed only when the mark has been in use in commerce on or in connection with all the goods or services specified in the application, for which the applicant will seek registration. For a collective membership mark, an amendment to allege use may be filed only when the mark has been in use in commerce to indicate membership in the collective organization specified in the application, for which the applicant will seek registration.

(ii) An amendment to allege use may be accompanied by a request in accordance with § 2.87 to divide out from the application the goods, services, or classes not yet in use in commerce.

(b) *A complete amendment to allege use.* A complete amendment to allege use must include the following:

(1) A verified statement alleging:

(i) The applicant believes the applicant is the owner of the mark;

(ii) The mark is in use in commerce;

(iii) The date of first use of the mark anywhere on or in connection with the goods or services, and/or to indicate membership in the collective organization specified in the application, and the date of first use of the mark in commerce. If the amendment to allege use specifies more than one item of goods or services in a class, the dates of use are required for only one item of goods or services specified in that class;

(iv) The goods, services, and/or nature of the collective membership organization specified in the application; and

(v) For a collective mark and certification mark, the applicant is exercising legitimate control over the use in commerce of the mark.

(2) One specimen showing how the applicant, member, or authorized user uses the mark in commerce. See § 2.56 of this chapter for the requirements for specimens;

(3) The fee per class required by § 2.6;

(4) For a collective mark, the requirements of § 2.44(a)(4)(i)(A);

(5) For a certification mark, the requirements of § 2.45(a)(4)(i)(A)–(C); and

(6) The title ''Amendment to Allege Use'' should appear at the top of the first page of the document, if not filed through TEAS.

(c) *Minimum filing requirements for a timely filed amendment to allege use.* The Office will review a timely filed amendment to allege use to determine whether it meets the following minimum requirements:

(1) The fee required by § 2.6 for at least one class;

(2) One specimen of the mark as used in commerce; and

(3) The verified statement in paragraph (b)(1)(ii) of this section.

(d) *Deficiency notification.* If the amendment to allege use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (c) of this section, the Office will notify the applicant of the deficiency. The deficiency may be corrected provided the mark has not been approved for publication. If an acceptable amendment to correct the deficiency is not filed prior to approval of the mark for publication, the amendment will not be examined, and the applicant must instead file a statement of use after the notice of allowance issues.

(e) *Notification of refusals and requirements.* A timely filed amendment to allege use that meets the minimum requirements specified in paragraph (c) of this section will be examined in accordance with § 2.61 through § 2.69. If, as a result of the examination of the amendment to allege use, the applicant is found not entitled to registration for any reason not previously stated, the applicant will be notified and advised of the reasons and of any formal requirements or refusals. The notification shall restate or incorporate by reference all unresolved refusals or requirements previously stated. The amendment to allege use may be amended in accordance with § 2.59 and § 2.71 through § 2.75.

(f) *Withdrawal.* An amendment to allege use may be withdrawn for any reason prior to approval of a mark for publication.

(g) *Verification not filed within reasonable time.* If the verified statement in paragraph (b)(1)(ii) of this section is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verified statement attesting that the mark is still in use in commerce.

(h) *An amendment to allege use is not a response but may include amendments.* The filing of an amendment to allege use does not constitute a response to any outstanding

action by the examiner. *See* § 2.62. The amendment to allege use may include amendments in accordance with § 2.59 and § 2.71 through § 2.75.

(i) *In an application for concurrent use under § 2.42,* the amendment to allege use must include a verified statement modified in accordance with § 2.33(f), § 2.44(d), or § 2.45(d).

(j) *Multiple-class application.* For the requirements of a multiple-class application, see § 2.86.

■ 16. Revise § 2.86 to read as follows:

§ 2.86 Multiple-class applications.

(a) *In a single application for a trademark, service mark, and/or collective mark,* an applicant may apply to register the same mark for goods, services, and/or a collective membership organization in multiple classes. In a multiple-class application, the applicant must satisfy the following, in addition to the application requirements of § 2.32 for a trademark or service mark, and § 2.44 for collective marks:

(1) For an application filed under section 1 or 44 of the Act, identify the goods or services in each international class and/or the nature of the collective membership organization in U.S. Class 200; for applications filed under section 66(a) of the Act, identify the goods, services, and/or the nature of the collective membership organization in each international class assigned by the International Bureau in the corresponding international registration;

(2) Submit the application filing fee required by § 2.6 for each class; and

(3) Include either dates of use and one specimen for each class based on section 1(a) of the Act; or a statement that the applicant has a bona fide intention to use the mark in commerce, for a trademark or service mark, or a statement that the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce, for collective marks, for each class based on section 1(b), 44, or 66(a) of the Act. When requested by the Office, additional specimens must be provided.

(b) *In a single application for a certification mark,* an applicant may apply to register the same mark for goods and services. In such case, the applicant must satisfy the following, in addition to the application requirements of § 2.45:

(1) For an application filed under section 1 or 44 of the Act, identify the goods in U.S. Class A and the services in U.S. Class B; for applications filed under section 66(a) of the Act, identify the goods and services in each international class assigned by the International Bureau in the corresponding international registration;

(2) Submit the application filing fee required by § 2.6 for both classes; and

(3) Include either dates of use and one specimen for each class based on section 1(a) of the Act; or a statement that the applicant has a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce for each class based on section 1(b), 44, or 66(a) of the Act. When requested by the Office, additional specimens must be provided.

(c) In a single application, both section 1(a) and 1(b) of the Act may not be claimed for identical goods or services.

(d) In a single application, goods or services in U.S. Classes A and/or B may not be combined with either goods or services in any international class or with a collective membership organization in U.S. Class 200. *See* § 2.45(f).

(e) An amendment to allege use under § 2.76 or a statement of use under § 2.88 for multiple classes must include, for each class, the required fee, dates of use, and one specimen. When requested by the Office, additional specimens must be provided. The applicant may not file an amendment to allege use or a statement of use until the applicant has used the mark on or in connection with all the goods, services, or classes, unless the applicant also files a request to divide under § 2.87.

(f) The Office will issue a single certificate of registration for the mark, unless the applicant files a request to divide under § 2.87.

■ 17. Revise § 2.88 to read as follows:

§ 2.88 Statement of use after notice of allowance.

(a) *When to file a statement of use.* (1) In an application under section 1(b) of the Act, a statement of use, required under section 1(d) of the Act, must be filed within six months after issuance of a notice of allowance under section 13(b)(2) of the Act, or within an extension of time granted under § 2.89. A statement of use filed prior to issuance of a notice of allowance is premature and will not be reviewed.

(2)(i) For a trademark, service mark, collective trademark, collective service mark, and certification mark, a statement of use may be filed only when the mark has been in use in commerce on or in connection with all the goods or services specified in the notice of allowance, for which the applicant will seek registration in that application. For a collective membership mark, a statement of use may be filed only when the mark has been in use in commerce to indicate membership in the collective membership organization specified in the notice of allowance, for which the applicant will seek registration in that application.

(ii) A statement of use may be accompanied by a request in accordance with § 2.87 to divide out from the application the goods, services, or classes not yet in use in commerce.

(b) *A complete statement of use.* A complete statement of use must include the following:

(1) A verified statement alleging:

(i) The applicant believes the applicant is the owner of the mark;

(ii) The mark is in use in commerce;

(iii) The date of first use of the mark anywhere on or in connection with the goods, services, and/or to indicate membership in the collective organization specified in the application, and the date of first use of the mark in commerce. If the statement of use specifies more than one item of goods or services in a class, the dates of use are required for only one item of goods or services specified in that class;

(iv) The goods, services, and/or nature of the collective membership organization specified in the notice of allowance. The goods or services specified in a statement of use must conform to those goods or services specified in the notice of allowance for trademark, service mark, collective trademark, collective service mark, or certification mark applications. Any goods or services specified in the notice of allowance that are omitted from the identification of goods or services in the statement of use will be presumed to be deleted and the deleted goods or services may not be reinserted in the application. For collective membership mark applications, the description of the nature of the collective membership organization in the statement of use must conform to that specified in the notice of allowance; and

(v) For a collective mark and certification mark, the applicant is exercising legitimate control over the use in commerce of the mark;

(2) One specimen showing how the applicant, member, or authorized user uses the mark in commerce. See § 2.56 for the requirements for specimens;

(3) *Fee(s).* The fee required by § 2.6 per class. The applicant must pay a filing fee sufficient to cover at least one class within the statutory time for filing the statement of use, or the application will be abandoned. If the applicant submits a fee insufficient to cover all the classes in a multiple-class application, the applicant should specify the classes to be abandoned. If the applicant timely submits a fee sufficient to pay for at

least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to be abandoned, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining class(es) or to specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees paid, beginning with the lowest numbered class(es), in ascending order. The Office will delete the goods or services not covered by the fees submitted;

(4) For a collective mark, the requirements of § 2.44(a)(4)(i)(A);

(5) For a certification mark, the requirements of § 2.45(a)(4)(i)(A)–(C); and

(6) The title ''Statement of Use'' should appear at the top of the first page of the document, if not filed through TEAS.

(c) *Minimum filing requirements for a timely filed statement of use.* The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee required by § 2.6 for at least one class;

(2) One specimen of the mark as used in commerce; and

(3) The verified statement in paragraph (b)(1) of this section. If this verified statement is unsigned or signed by the wrong party, the applicant must submit a substitute verified statement on or before the statutory deadline for filing the statement of use.

(d) *Deficiency notification.* If the statement of use is filed within the permitted time period but does not meet the minimum requirements specified in paragraph (c) of this section, the Office will notify the applicant of the deficiency. If the time permitted for the applicant to file a statement of use has not expired, the applicant may correct the deficiency.

(e) *Notification of refusals and requirements.* A timely filed statement of use that meets the minimum requirements specified in paragraph (c) of this section will be examined in accordance with § 2.61 through § 2.69. If, as a result of the examination of the statement of use, the applicant is found not entitled to registration, the applicant will be notified and advised of the reasons and of any formal requirements or refusals. The statement of use may be amended in accordance with § 2.59 and § 2.71 through § 2.75.

(f) *Statement of use may not be withdrawn.* The applicant may not withdraw a timely filed statement of use to return to the previous status of awaiting submission of a statement of use, regardless of whether it is in compliance with paragraph (c) of this section.

(g) *Verification not filed within reasonable time.* If the verified statement in paragraph (b)(1) of this section is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verified statement attesting that the mark is still in use in commerce.

(h) *Amending the application.* The statement of use may include amendments in accordance with § 2.51, § 2.59, and § 2.71 through § 2.75.

(i) *In an application for concurrent use under § 2.42,* the statement of use must include a verified statement modified in accordance with § 2.33(f), § 2.44(d), or § 2.45(d).

(j) *Multiple-class application.* For the requirements of a multiple-class application, see § 2.86.

(k) *Abandonment.* The failure to timely file a statement of use which meets the minimum requirements specified in paragraph (c) of this section shall result in the abandonment of the application.

■ 18. Revise § 2.89 to read as follows:

§ 2.89 Extensions of time for filing a statement of use.

(a) *First extension request after issuance of notice of allowance.* The applicant may request a six-month extension of time to file the statement of use required by § 2.88. The extension request must be filed within six months of the date of issuance of the notice of allowance under section 13(b)(2) of the Act and must include the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee required by § 2.6 per class. The applicant must pay a filing fee sufficient to cover at least one class within the statutory time for filing the extension request, or the request will be denied. If the applicant submits a fee insufficient to cover all the classes in a multiple-class application, the applicant should specify the classes to be abandoned. If the applicant timely submits a fee sufficient to pay for at least one class, but insufficient to cover all the classes, and the applicant has not specified the class(es) to be abandoned, the Office will issue a notice granting the applicant additional time to submit the fee(s) for the remaining classes, or specify the class(es) to be abandoned. If the applicant does not submit the required fee(s) or specify the class(es) to be abandoned within the set time period, the Office will apply the fees paid, beginning with the lowest numbered class(es), in ascending order. The Office will delete the goods or services not covered by the fees submitted; and

(3) A verified statement that the applicant continues to have a bona fide intention to use the mark in commerce, for trademarks or service marks, or that the applicant continues to have a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce, for collective marks or certification marks. If this verified statement is unsigned or signed by the wrong party, the applicant must submit a substitute verified statement within six months of the date of issuance of the notice of allowance.

(b) *Subsequent extension requests.* Before the expiration of the previously granted extension of time, the applicant may request further six-month extensions of time to file the statement of use by submitting the following:

(1) A written request for an extension of time to file the statement of use;

(2) The requirements of paragraph (a)(2) of this section for a fee;

(3) A verified statement that the applicant continues to have a bona fide intention to use the mark in commerce, for trademarks or service marks, or that the applicant continues to have a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce, for collective marks or certification marks. If this verified statement is unsigned or signed by the wrong party, the applicant must submit a substitute verified statement before the expiration of the previously granted extension; and

(4) A showing of good cause, as specified in paragraph (d) of this section.

(c) *Four subsequent extension requests permitted.* Extension requests specified in paragraph (b) of this section will be granted only in six-month increments and may not aggregate more than 24 months total.

(d) *Good cause.* A showing of good cause must include:

(1) For a trademark or service mark, a statement of the applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the relevant goods or services. Those efforts may include product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain governmental approval, or other similar activities. In the alternative, the applicant must submit a satisfactory explanation for the failure to make efforts to use the mark in commerce.

(2) For a collective mark, a statement of ongoing efforts to make use of the mark in commerce by members on or in connection with each of the relevant goods or services or in connection with the applicant's collective membership organization. Those efforts may include the development of standards, the steps taken to acquire members such as marketing and promotional activities targeted to potential members, training members regarding the standards, or other similar activities. In the alternative, the applicant must submit a satisfactory explanation for the failure to make efforts for applicant's members to use the mark in commerce.

(3) For a certification mark, a statement of ongoing efforts to make use of the mark in commerce by authorized users on or in connection with each of the relevant goods or services. Those efforts may include the development of certification standards, steps taken to obtain governmental approval or acquire authorized users, marketing and promoting the recognition of the certification program or of the goods or services that meet the certification standards of the applicant, training authorized users regarding the standards, or other similar activities. In the alternative, the applicant must submit a satisfactory explanation for the failure to make efforts for applicant's authorized users to use the mark in commerce.

(e) *Extension request filed in conjunction with or after a statement of use.* (1) An applicant may file one request for a six-month extension of time for filing a statement of use when filing a statement of use or after filing a statement of use if time remains in the existing six-month period in which the statement of use was filed, provided that the time requested would not extend beyond 36 months from the date of issuance of the notice of allowance. Thereafter, applicant may not request any further extensions of time.

(2) A request for an extension of time that is filed under paragraph (e)(1) of this section, must comply with all the requirements of paragraph (a) of this section, if it is an applicant's first extension request, or paragraph (b) of this section, if it is a second or subsequent extension request. However, in a request under paragraph (b) of this section, an applicant may satisfy the requirement for a showing of good cause by asserting the applicant believes the applicant has made valid use of the mark in commerce, as evidenced by the submitted statement of use, but that if the statement of use is found by the Office to be fatally defective, the applicant will need additional time in which to file a new statement of use.

(f) *Goods or services.* For trademark, service mark, collective trademark, collective service mark, or certification mark applications, the goods or services specified in a request for an extension of time for filing a statement of use must conform to those goods or services specified in the notice of allowance. Any goods or services specified in the notice of allowance that are omitted from the identification of goods or services in the request for extension of time will be presumed to be deleted and the deleted goods or services may not thereafter be reinserted in the application. For collective membership mark applications, the description of the nature of the collective membership organization in the request for extension of time must conform to that set forth in the notice of allowance.

(g) *Notice of grant or denial.* The applicant will be notified of the grant or denial of a request for an extension of time, and of the reasons for a denial. Failure to notify the applicant of the grant or denial of the request prior to the expiration of the existing period or requested extension does not relieve the applicant of the responsibility of timely filing a statement of use under § 2.88. If, after denial of an extension request, there is time remaining in the existing six-month period for filing a statement of use, applicant may submit a substitute request for extension of time to correct the defects of the prior request. Otherwise, the only recourse available after denial of a request for an extension of time is to file a petition to the Director in accordance with § 2.66 or § 2.146. A petition from the denial of an extension request must be filed within two months of the date of issuance of the denial of the request. If the petition is granted, the term of the requested six-month extension that was the subject of the petition will run from the date of expiration of the previously existing six-month period for filing a statement of use.

(h) *Verification not filed within reasonable time.* If the verified statement is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verified statement attesting that the applicant continues to have a bona fide intention to use the mark in commerce, or the applicant continues to have a bona fide intention, and is entitled, to exercise legitimate control over the use of the mark in commerce.

■ 19. Amend § 2.146 by revising paragraphs (c) and (d) to read as follows:

§ 2.146 Petitions to the Director.

* * * * *

(c) Every petition to the Director shall include a statement of the facts relevant to the petition, the points to be reviewed, the action or relief requested, and the fee required by § 2.6. Any brief in support of the petition shall be embodied in or accompany the petition. The petition must be signed by the petitioner, someone with legal authority to bind the petitioner (e.g., a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(5). When facts are to be proved on petition, the petitioner must submit proof in the form of verified statements signed by someone with firsthand knowledge of the facts to be proved, and any exhibits.

(d) A petition must be filed within two months of the date of issuance of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter, and no later than two months from the date when Office records are updated to show that the registration has been cancelled or has expired.

* * * * *

■ 20. Amend § 2.161 as follows:

■ a. Revise paragraphs (b), (c), (d)(1), (d)(3), and (e) through (g).

■ b. Add paragraphs (i) through (k).

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

* * * * *

(b) Include a verified statement attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 8 of the Act. This verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a);

(c) Include the U.S. registration number;

(d)(1) Include the fee required by § 2.6 for each class that the affidavit or declaration covers;

* * * * *

(3) If at least one fee is submitted for a multiple-class registration, but the fee is insufficient to cover all the classes, and the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either submission of the additional fee(s) or specification of the class(es) to which the initial fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.164 are met. If the additional fee(s) are not submitted within the time period set out in the Office action and the class(es) to which the original fee(s) should be

applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods, services, or nature of the collective membership organization for which the mark is in use in commerce, and/or the goods, services, or nature of the collective membership organization for which excusable nonuse is claimed under paragraph (f)(2) of this section; and

(2) Specify the goods, services, or classes being deleted from the registration, if the affidavit or declaration covers fewer than all the goods, services, or classes in the registration;

(f)(1) State that the registered mark is in use in commerce; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods, services, or classes specified in the registration, set forth the date when such use of the mark in commerce stopped and the approximate date when such use is expected to resume; and recite facts to show that nonuse as to those goods, services, or classes is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark; and

(g) Include one specimen showing how the mark is in use in commerce for each class in the registration, unless excusable nonuse is claimed under paragraph (f)(2) of this section. When requested by the Office, additional specimens must be provided. The specimen must meet the requirements of § 2.56 of this chapter.

* * * * *

(i) *Additional requirements for a collective mark.* In addition to the above requirements, a complete affidavit or declaration pertaining to a collective mark must:

(1) State that the owner is exercising legitimate control over the use of the mark in commerce; and

(2) State the nature of the owner's control over the use of the mark by the members in the first affidavit or declaration filed under paragraph (a) of this section for registrations which issued from an application based solely on section 44 of the Act.

(j) *Additional requirements for a certification mark.* In addition to the above requirements, a complete affidavit or declaration pertaining to a certification mark must:

(1) Include a copy of the certification standards specified in § 2.45(a)(4)(i)(B);

(i) *Submitting certification standards for the first time.* If the registration issued from an application based solely on section 44 of the Act, include a copy of the certification standards in the first affidavit or declaration filed under paragraph (a) of this section; or

(ii) *Certification standards submitted in prior filing.* If the certification standards in use at the time of filing the affidavit or declaration have not changed since the date they were previously submitted to the Office, include a statement to that effect; if the certification standards in use at the time of filing the affidavit or declaration have changed since the date they were previously submitted to the Office, include a copy of the revised certification standards;

(2) State that the owner is exercising legitimate control over the use of the mark in commerce; and

(3) Satisfy the requirements of § 2.45(a)(4)(i)(A), (C).

(k) For requirements of a complete affidavit or declaration of use in commerce or excusable nonuse for a registration that issued from a section 66(a) basis application, see § 7.37.

■ 21. Amend § 2.167 as follows:

■ a. Revise the introductory text and paragraphs (a), and (c) through (g).

■ b. Add paragraphs (h) through (k).

§ 2.167 Affidavit or declaration under section 15.

The affidavit or declaration in accordance with § 2.20 provided by section 15 of the Act for acquiring incontestability for a mark registered on the Principal Register or a mark registered under the Trademark Act of 1881 or 1905 and published under section 12(c) of the Act (see § 2.153 of this chapter) must:

(a) Be verified;

* * * * *

(c) For a trademark, service mark, collective trademark, collective service mark, and certification mark, recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce; for a collective membership mark, describe the nature of the owner's collective membership organization specified in the registration in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce;

(d) Specify that there has been no final decision adverse to the owner's claim of ownership of such mark for such goods, services, or collective membership organization, or to the owner's right to register the same or to keep the same on the register;

(e) Specify that there is no proceeding involving said rights pending in the Office or in a court and not finally disposed of;

(f) Be filed within one year after the expiration of any five-year period of continuous use following registration or publication under section 12(c) of the Act; and

(g) Include the fee required by § 2.6 for each class to which the affidavit or declaration pertains in the registration. If no fee, or a fee insufficient to cover at least one class, is filed at an appropriate time, the affidavit or declaration will not be refused if the required fee(s) (see § 2.6) is filed in the Office within the time limit set forth in the notification of this defect by the Office. If the submitted fees are insufficient to cover all classes in the registration, the particular class or classes to which the affidavit or declaration pertains should be specified.

(h) If the affidavit or declaration fails to satisfy any of the requirements in paragraphs (a) through (g) of this section, the owner will be notified in an Office action that the affidavit or declaration cannot be acknowledged. If a response is not received within the time period provided or does not satisfy the requirements of the Office action, the affidavit or declaration will be abandoned.

(i) If the affidavit or declaration satisfies paragraphs (a) through (g) of this section, the Office will issue a notice of acknowledgement.

(j) An affidavit or declaration may be abandoned by the owner upon petition to the Director under § 2.146 either before or after the notice of acknowledgement has issued.

(k) If an affidavit or declaration is abandoned, the owner may file a new affidavit or declaration with a new filing fee.

■ 22. Amend § 2.173 as follows:

■ a. Revise paragraphs (b), and (d) through (g).

■ b. Add paragraphs (h) and (i).

§ 2.173 Amendment of registration.

* * * * *

(b) *Requirements for request.* A request for amendment or disclaimer must:

(1) Include the fee required by § 2.6;

(2) Be verified and signed in accordance with § 2.193(e)(6); and

(3) If the amendment involves a change in the mark: a specimen showing the mark as used on or in connection with the goods, services, or collective membership organization; a verified

statement that the specimen was in use in commerce at least as early as the filing date of the amendment; and a new drawing of the amended mark. When requested by the Office, additional specimens must be provided.

(4) The Office may require the owner to furnish such specimens, information, exhibits, and affidavits or declarations as may be reasonably necessary to the proper examination of the amendment.

(c) *Registration must still contain registrable matter.* The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole.

(d) *Amendment may not materially alter the mark.* An amendment or disclaimer that materially alters the character of the mark will not be permitted, in accordance with section 7(e) of the Act.

(e) *Amendment of identification of goods, services, or collective membership organization.* No amendment in the identification of goods or services, or description of the nature of the collective membership organization, in a registration will be permitted except to restrict the identification or to change it in ways that would not require republication of the mark.

(f) *Amendment of certification statement for certification marks.* An amendment of the certification statement specified in § 2.45(a)(4)(i)(A) or (a)(4)(ii)(A) that would materially alter the certification statement will not be permitted, in accordance with section 7(e) of the Act.

(g) *Conforming amendments may be required.* If the registration includes a disclaimer, description of the mark, or other miscellaneous statement, any request to amend the registration must include a request to make any necessary conforming amendments to the disclaimer, description, or other statement.

(h) *Elimination of disclaimer.* No amendment seeking the elimination of a disclaimer will be permitted, unless deletion of the disclaimed portion of the mark is also sought.

(i) No amendment to add or delete *section 2(f) claim of acquired distinctiveness.* An amendment seeking the addition or elimination of a claim of acquired distinctiveness will not be permitted.

■ 23. Revise § 2.175(b)(2) as follows:

§ 2.175 Correction of mistake by owner.

* * * * *

(b) * * *

(2) Be verified; and

* * * * *

■ 24. Amend § 2.183 by revising paragraphs (d) and (e) to read as follows:

§ 2.183 Requirements for a complete renewal application.

* * * * *

(d) If the renewal application covers less than all the goods, services, or classes in the registration, then a list specifying the particular goods, services, or classes to be renewed.

(e) If at least one fee is submitted for a multiple-class registration, but the fee is insufficient to cover all the classes and the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.185 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

* * * * *

■ 25. Amend § 2.193 by revising paragraphs (c)(2), (e) introductory text, (e)(1), and (f) to read as follows:

§ 2.193 Trademark correspondence and signature requirements.

* * * * *

(c) * * *

(2) Sign the document using some other form of electronic signature specified by the Director.

* * * * *

(e) *Proper person to sign.* Documents filed in connection with a trademark application or registration must be signed by a proper person. Unless otherwise specified by law, the following requirements apply:

(1) *Verified statement of facts.* A verified statement in support of an application for registration, amendment to an application for registration, allegation of use under § 2.76 or § 2.88, request for extension of time to file a statement of use under § 2.89, or an affidavit under section 8, 12(c), 15, or 71 of the Act must satisfy the requirements of § 2.2(n), and be signed by the owner or a person properly authorized to sign on behalf of the owner. A person who is properly authorized to verify facts on behalf of an owner is:

* * * * *

(f) *Signature as certification.* The presentation to the Office (whether by signing, filing, submitting, or later advocating) of any document by any person, whether a practitioner or non-practitioner, constitutes a certification under § 11.18(b) of this chapter. Violations of § 11.18(b) of this chapter may jeopardize the validity of the application or registration, and may result in the imposition of sanctions under § 11.18(c) of this chapter. Any practitioner violating § 11.18(b) of this chapter may also be subject to disciplinary action. See § 11.18(d) and § 11.804 of this chapter.

* * * * *

PART 7—RULES OF PRACTICE IN FILINGS PURSUANT TO THE PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING THE INTERNATIONAL REGISTRATION OF MARKS

■ 26. The authority citation for 37 CFR Part 7 continues to read as follows:

Authority: 15 U.S.C. 1123, 35 U.S.C. 2, unless otherwise noted.

■ 27. Amend § 7.1 as follows:

■ a. Revise paragraph (c).

■ b. Add paragraph (f).

§ 7.1 Definitions of terms as used in this part.

* * * * *

(c) The acronym *TEAS* means the Trademark Electronic Application System, available at *http://www.uspto.gov.*

* * * * *

(f) The definitions specified in § 2.2(k) and (n) of this chapter are incorporated in this part.

■ 28. Amend § 7.37 as follows:

■ a. Revise paragraphs (b) introductory text, (b)(1), (d)(1), (d)(3), (e), (f)(1), and (g).

■ b. Add paragraphs (i) and (j).

§ 7.37 Requirements for a complete affidavit or declaration of use in commerce or excusable nonuse.

* * * * *

(b) Include a verified statement attesting to the use in commerce or excusable nonuse of the mark within the period set forth in section 71 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 7.36(b). A person who is properly authorized to sign on behalf of the holder is:

(1) A person with legal authority to bind the holder;

* * * * *

(d)(1) Include the fee required by § 7.6 for each class that the affidavit or declaration covers;

* * * * *

(3) If at least one fee is submitted for a multiple-class registration, but the fee is insufficient to cover all the classes and the class(es) to which the fee(s) should be applied are not specified, the

Office will issue a notice requiring either submission of the additional fee(s) or specification of the class(es) to which the initial fee(s) should be applied. Additional fees may be submitted if the requirements of § 7.39 are met. If the additional fee(s) are not submitted within the time period set out in the Office action and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods, services, or nature of the collective membership organization for which the mark is in use in commerce, and/or the goods, services, or nature of the collective membership organization for which excusable nonuse is claimed under paragraph (f)(2) of this section;

(2) Specify the goods, services, or classes being deleted from the registration, if the affidavit or declaration covers fewer than all the goods, services, or classes in the registration;

(f)(1) State that the registered mark is in use in commerce; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods, services, or classes specified in the registration, set forth the date when such use of the mark in commerce stopped and the approximate date when such use is expected to resume and recite facts to show that nonuse as to those goods, services, or classes is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark;

(g) Include one specimen showing how the mark is used in commerce for each class in the registration, unless excusable nonuse is claimed under paragraph (f)(2) of this section. When requested by the Office, additional specimens must be provided. The specimen must meet the requirements of § 2.56 of this chapter.

* * * * *

(i) *Additional requirements for a collective mark.* In addition to the above requirements, a complete affidavit or declaration pertaining to a collective mark must:

(1) State that the owner is exercising legitimate control over the use of the mark in commerce; and

(2) State the nature of the owner's control over the use of the mark by the members in the first affidavit or declaration filed under paragraph (a) of this section.

(j) *Additional requirements for a certification mark.* In addition to the above requirements, a complete affidavit or declaration pertaining to a certification mark must:

(1) Include a copy of the certification standards specified in § 2.45(a)(4)(i)(B) of this chapter;

(i) *Submitting certification standards for the first time.* In the first affidavit or declaration filed under paragraph (a) of this section, include a copy of the certification standards; or

(ii) *Certification standards submitted in prior filing.* If the certification standards in use at the time of filing the affidavit or declaration have not changed since the date they were previously submitted to the Office, include a statement to that effect; if the certification standards in use at the time of filing the affidavit or declaration have changed since the date they were previously submitted to the Office, include a copy of the revised certification standards;

(2) State that the owner is exercising legitimate control over the use of the mark in commerce; and

(3) Satisfy the requirements of § 2.45(a)(4)(i)(A) and (C) of this chapter.

Dated: February 10, 2014.

Michelle K. Lee,

Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director, United States Patent and Trademark Office.

[FR Doc. 2014–03256 Filed 2–19–14; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2013–0247; FRL–9906–87–Region 10]

Approval and Promulgation of Air Quality Implementation Plans: Idaho, Northern Ada County PM_{10} Second Ten-Year Maintenance Plan and Pinehurst PM_{10} Contingency Measures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 11, 2013 the Idaho Department of Environmental Quality (IDEQ) submitted a revised plan for particulate matter with an aerodynamic diameter less than or equal to ten micrometers (PM_{10}) for Northern Ada County for the PM_{10} National Ambient Air Quality Standard (NAAQS). This revised Maintenance Plan addresses maintenance of the PM_{10} standard for a second ten-year period beyond redesignation, extends the horizon years, and contains revised transportation conformity budgets. The Environmental Protection Agency (EPA) is proposing to approve this State Implementation Plan (SIP) revision. The EPA is also proposing to approve the February 15–16, 2011 high wind exceptional event at the Boise Fire Station monitor, as well as contingency measures for the Pinehurst PM_{10} Air Quality Improvement Plan. The EPA is proposing to approve the second ten-year PM_{10} Maintenance Plan for Northern Ada County and the Pinehurst PM_{10} contingency measures under section 110 of the Clean Air Act (CAA). The EPA is proposing to approve the February 2011 exceptional event pursuant to 40 CFR 50.14.

DATES: Written comments must be received by March 24, 2014.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R10–OAR–2013–0247, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: Edmondson.lucy@epa.gov*
- *Mail:* Lucy Edmondson, Air Quality Planner, Office of Air Waste and Toxics, EPA Region 10, Washington Operations Office, 300 Desmond Drive SE., Suite 102, Lacey, WA 98503.
- *Hand Delivery/Courier:* Such deliveries are accepted Monday through Friday, 8 a.m. to 4:55 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2013–0247. The EPA's policy is that all comments received will be included in the public docket without change and may be made available at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA, without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that

you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 6th Ave, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Lucy Edmondson at (360) 753–9082, *Edmondson.lucy@epa.gov*, or the above, EPA, Region 10 address.

SUPPLEMENTARY INFORMATION:

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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 ''the EPA,'' ''we,'' ''us'' or ''our'' mean or refer to the Environmental Protection Agency.

(iii) The initials ''NAAQS'' mean National Ambient Air Quality Standard.

(iv) The initials ''SIP'' mean or refer to State Implementation Plan.

(v) The word ''State'' means the State of Idaho, unless the context indicates otherwise.

(vi) ''PM_{10}'' means particulate matter with an aerodynamic diameter less than or equal to ten micrometers.

(vii) ''MOVES'' refers to Motor Vehicle Emissions Simulator, the EPA's modeling system for mobile sources.

I. Purpose

Section 175A of the CAA requires the submission of a second ten-year maintenance plan eight years after any nonattainment area is redesignated to attainment. This rulemaking proposes approval of the second ten-year maintenance plan submitted by IDEQ for the Northern Ada County PM_{10} attainment/maintenance area, which demonstrates continued maintenance of the PM_{10} NAAQS through 2023. In this revised maintenance plan, the State has updated mobile source PM_{10} emission levels using the Motor Vehicle Emissions Simulator model (MOVES), updated the transportation projections and stationary source inventories, and revised the motor vehicle emissions budgets (MVEBs). As described below, the EPA has determined that the revised maintenance plan demonstrates continued maintenance of the PM_{10} NAAQS and meets the requirements of sections 110 and 175A of the CAA. In addition, the EPA is approving the exclusion of data from the high wind event of February 15–16, 2011, and the Contingency Measures for the Pinehurst PM_{10} Air Quality Improvement Plan.

II. Background

Northern Ada County was identified as an area of concern for PM_{10} with the promulgation of the PM_{10} NAAQS in 1987, and was formally designated as a moderate PM_{10} nonattainment area upon passage of the 1990 CAA. Idaho developed a SIP and submitted it to the EPA in November 1991, later submitting revisions in December 1994 and July 1995. The EPA finalized approval of the Northern Ada County PM_{10} SIP on May 30, 1996 (61 FR 27019). Idaho submitted a maintenance plan and a request to redesignate the area to attainment on September 27, 2002, and provided supplemental information on July 10, 2003 and July 21, 2003. On October 27, 2003, the EPA approved the Northern Ada County PM_{10} Maintenance Plan and redesignated the area to attainment status for PM_{10} (68 FR 61106).

In actions dated August 25, 1994 (59 FR 43475) and May 26, 1995 (60 FR 27891), the EPA conditionally approved the SIP for the Pinehurst, Idaho PM_{10} nonattainment area. The conditional approval concluded that IDEQ had not satisfied the requirement for contingency measures for both the City of Pinehurst and the Pinehurst Expansion area. The EPA set a deadline of July 20, 1995 for IDEQ to submit the required contingency measures. IDEQ met the established deadline with its submission ''Contingency Measures for the Pinehurst PM_{10} Air Quality Improvement Plan,'' dated July 13, 1995.

On September 23, 2013, IDEQ submitted documentation in accordance with the Exceptional Events Rule (72 FR 13560) to show that the monitored PM_{10} values on February 15–16, 2011 at the Boise monitor were due to a high wind event and resulting dust storm that originated in Nevada.

III. Current PM_{10} levels in Ada County

The national primary and secondary 24-hour ambient air quality standards for PM_{10} are 150 micrograms per cubic meter ($\mu g/m^3$) based on a 24-hour average concentration. The standard is attained when the expected number of days per calendar year with a 24-hour concentration above 150 $\mu g/m^3$ is equal to or less than one per year over a three year period. The Northern Ada County PM_{10} Second Ten-Year Maintenance Plan, submitted by IDEQ on March 11, 2013, relies on ambient air quality data from 2007 through 2011. In addition, we have reviewed ambient air quality data from 2000 through 2011. With the EPA's December 2013 concurrence on the exclusion of data associated with the high wind event of February 15–16, 2011 at the Boise Fire Station Monitor, Northern Ada County shows continuous attainment of the PM_{10} NAAQS based on the most recent 2000–2012 data archived in the EPA's Air Quality System Database (*www.epa.gov/ttn/airs/airsaqs/detaildata/AQIindex.htm*).

IV. The EPA's Evaluation of the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan

The criteria EPA used to review and evaluate the maintenance plan are derived from the CAA, the General Preamble for State Implementation Plans (57 FR 13498), and the guidance memorandum from John Calcagni, *Procedures for Processing Requests to Redesignate Areas to Attainment,* September 4, 1992. The following are the key elements of a maintenance plan for PM_{10}: Emissions Inventory, Maintenance Demonstration, Monitoring Network/Verification of Continued Attainment, Control Strategies, Contingency Measures, and the Motor Vehicle Emissions Budget for PM_{10} as required for Transportation Conformity. Below, we describe our evaluation of these elements as they pertain to the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan.

A. Emissions Inventory: An emissions inventory was prepared for the entirety of Ada County for the base year of 2008. In addition to the base year 2008 inventory, emissions forecasts were

prepared for future year projections for 2015 and 2023. Using an emissions inventory prepared for the entire county enabled IDEQ to capture emissions both within and outside of the North Ada County PM_{10} Maintenance Area. The projections in Table 1 below show that direct primary emissions of PM_{10} increase 27% from 2008 to 2023, while the chemical precursors to secondarily formed PM_{10} significantly decrease. The largest source of primary PM_{10} is fugitive dust from on-road mobile sources and the projected PM_{10} increases are mostly from projected increases in on-road vehicle traffic. We find that IDEQ has prepared adequate recent and future year emission inventories for the area that meet Maintenance Plan requirements.

TABLE 1—ANNUAL EMISSIONS FOR ADA COUNTY

[Tons per year]

Year	PM_{10}	NO_x	SO_2
2008	20,395	14,149	250
2015	21,756	9,294	151
2023	25,875	7,207	172

B. Maintenance Demonstration: The EPA-approved Northern Ada County First Ten-Year PM_{10} Maintenance Plan used the CAMx photochemical transport model to demonstrate maintenance of the PM_{10} standard. IDEQ used a photochemical transport model for the North Ada County First PM_{10} Ten-Year Maintenance Plan because of concerns about secondary production of PM_{10} from the chemical precursors nitrogen oxides (NO_X) and sulfur dioxide (SO_2) and the potential growth in these precursor emissions. However, future year emissions projections for 2015 and 2023 now indicate significant reductions in NO_X and SO_2 from 2008 baseline values, and the PM_{10} design values in Northern Ada County have been well below the standard over the past decade. The EPA has approved a more simplified roll-forward modeling approach appropriate for evaluating the effects of primary PM_{10} emissions changes on ambient PM_{10} values in Northern Ada County. Use of this more simplified roll-forward modeling approach is also a conservative approach because it does not allow credit to be taken for emissions reductions in the secondary PM_{10} precursors NO_X and SO_2. For the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan, the roll-forward model can be used to conservatively estimate whether the PM_{10} concentrations can be maintained below the NAAQS in future years. With the exception of the high wind exceptional event on February 15–16, 2011 at the Boise Fire Station monitor, discussed in more detail below, a review of data from 2000–2011 shows that average PM_{10} concentrations remain below the 24-hour PM_{10} NAAQS.

C. Monitoring Network/Verification of Continued Attainment: PM_{10} ambient air monitoring in Northern Ada County consists of one monitor, operated by IDEQ, located at Fire Station #5 at 16th and Front Streets in downtown Boise. The monitor is a tapered element oscillating microbalance (TEOM) monitor, which provides continuous, real-time direct measurement of PM_{10} concentrations. The TEOM monitor is part of the approved IDEQ monitoring network and is operated in accordance with 40 CFR Part 58. In its submission, IDEQ commits that it will continue to operate an appropriate PM_{10} air quality monitor in accordance with 40 CFR Part 58 to verify continued attainment of the PM_{10} NAAQS. The EPA will continue its annual review of the monitoring network to ensure ongoing compliance with the EPA's air monitoring requirements and continued maintenance of the PM_{10} NAAQS.

D. Control Strategies: The Northern Ada County PM_{10} Second Ten-Year Maintenance Plan includes the following control strategies, which are the same as those used in the Northern Ada County PM_{10} First Ten-Year Maintenance Plan (61 FR 27019): 1) the air quality index program through which IDEQ provides information on the measured and predicted ambient air pollution levels along with information on mandatory and voluntary open burning bans and indoor burning bans; 2) a residential wood burning program; 3) an open burning ban; and 4) stationary source controls. The stationary source controls include conditions in Tier II permits for eight facilities in the maintenance area, as well as The Amalgamated Sugar Company (TASCO) factory in Nampa, Idaho that is outside the maintenance area but was included within the original modeling domain. The eight facilities are:

- LP Wood Polymers—(now Fiber Composites)
- Mike's Sand and Gravel—(now Clement's Concrete)
- Crookham Company
- Plum Creek Lumber Company
- C. Wright Construction
- Idaho Concrete (3 separate facilities)

The Tier II permits for the eight facilities in the maintenance area include limits on the potential to emit. The Tier II permit for the TASCO facility required reductions in PM_{10} emissions from the facility [1]. Retention of the Tier II permits maintains these control strategies in a manner that is consistent with applicable guidance. The EPA approved these control measures when approving the first Ten-Year Maintenance plan and they became federally enforceable at that time.

E. Contingency Measures: Section 175A(d) of the CAA requires that a maintenance plan include contingency measures to assure that any violation of the standard is promptly corrected. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in Section 8 of the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan, the contingency measures will be triggered by a violation of the PM_{10} NAAQS. Such a violation will prompt IDEQ to implement one or more contingency measures, as appropriate, to correct the violation. Potential contingency measures include: (1) adopt local ordinances that require covering all loads of material that have the potential to contribute to particulate matter pollution; (2) adopt local ordinances that require no track-out onto paved roads; (3) adopt local ordinances that prohibit burning of outdoor trash; (4) eliminate local permits that allow any kind of uncontrolled outdoor burning not specifically allowed under state rules; (5) expand mandatory burning

[1] On December 23, 2011, IDEQ finalized Tier II permit number T2–2009.0105 for certain TASCO emission units as part of its Regional Haze Plan. The conditions of this permit impose additional PM_{10} reductions from the facility that will benefit maintenance of the PM_{10} NAAQS in Ada County.

restrictions to include clean-burning woodstoves during air quality alerts; (6) adopt local ordinances that prohibit constructing any unpaved roads, driveways or parking lots; (7) revise street sweeping plans working with local highway districts and the Idaho Transportation Department, based on the latest traffic data so as to prioritize street sweeping efforts to reduce fugitive road dust; and (8) analyze the impacts from all industrial sources and develop potential emission reductions, if necessary to maintain attainment, in accordance with the rules. In addition, IDEQ indicates it may evaluate other strategies to address any future violations in the most appropriate and cost-effective manner possible. We find that the contingency measures contained in the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan are sufficient and meet the requirements of Section 175A(d) of the CAA. We note the contingency measures and methodology to implement the measures are the same as those we approved in the original SIP and the First Ten-Year Maintenance Plan.

F. Transportation Conformity Requirements: Motor Vehicle Emission Budget for PM_{10}: Under Section 176(c) of the CAA, transportation plans, programs, and projects in nonattainment or maintenance areas that are funded or approved under the Federal Transit Act must conform to the applicable SIP. In short, a transportation plan is deemed to conform to the applicable SIP if the emissions resulting from implementation of that transportation plan are less than or equal to the motor vehicle emission level established in the SIP for the maintenance year and other analysis years. In this maintenance plan, procedures for estimating motor vehicle emissions are well documented. On-road mobile source emissions were calculated using the MOVES model. The motor vehicle emission budgets for on-road motor vehicle PM_{10} emissions in Ada County for 2008, 2015, 2023 are shown in Table 2, below.

TABLE 2—MVEBS FOR NORTHERN ADA COUNTY PM_{10} MAINTENANCE AREA

[Tons per day]

Budget year	PM_{10}	NO_X	VOC
2008	31.0	29.5	12.6
2015	42.9	29.5	12.6
2023	60.1	34.2	17.2

On June 6, 2013, the EPA published a notice of our finding that the MVEBs for PM_{10}, NO_X, and volatile organic compounds (VOC) for the years 2008, 2015 and 2023 in the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan were adequate for transportation conformity purposes. This adequacy determination became effective on June 21, 2013 (78 FR 34095).

V. The EPA's Evaluation of the February 2011 Exceptional Events Request

The EPA is proposing to approve the State's request to exclude data from February 15–16, 2011 in determining PM_{10} attainment as a high wind exceptional event. The EPA evaluated IDEQ's exceptional event demonstration for the flagged values of the 24-hour PM_{10} NAAQS for February 15–16, 2011 at the monitor in Boise, Idaho, with respect to the requirements of the EPA's Exceptional Events Rule (40 CFR 50.14) and determined that IDEQ met each requirement. The EPA concurred on the exceptional event on December 13, 2013. For further information, refer to the State's Exceptional Event demonstration package and EPA's concurrence and analysis located in the docket.

VI. The EPA's Proposed Approval of Contingency Measures for the Pinehurst PM_{10} Air Quality Improvement Plan

As provided in section 172(c)(9) of the CAA, all nonattainment area SIPs that demonstrate attainment must include contingency measures. Contingency measures consist of other available measures that are not part of the area's control strategy but are included in the plan revision as measures to be undertaken if the area fails to make reasonable further progress or to attain by the applicable attainment date. These measures must take effect in any such case without further action by the state.

In response to the EPA's conditional approval of the Pinehurst PM_{10} nonattainment SIP, IDEQ submitted its ''Contingency Measures for the Pinehurst PM_{10} Air Quality Improvement Plan,'' specifying the contingency measures for the Pinehurst PM_{10} nonattainment area. These contingency measures require implementation of additional emission control actions in the Pinehurst residential wood burning program, including wood stove replacements, voluntary wood stove curtailment, public awareness and home weatherization. The EPA believes that the implementation of these measures, if necessary, would provide additional reductions of PM_{10} emissions and further attainment of the PM_{10} NAAQS. The Pinehurst PM_{10} nonattainment area has monitored attainment of the PM_{10} NAAQS since IDEQ submitted the contingency measures for EPA's approval in 1995. The EPA is proposing to approve these measures as satisfying the section 172(c)(9) contingency measure requirement for the Pinehurst PM_{10} attainment plan, finalizing our approval of the plan.

VII. Proposed Action

The EPA is proposing to approve the Northern Ada County PM_{10} Second Ten-Year Maintenance Plan adopted by IDEQ to ensure maintenance of the NAAQS for PM_{10} in Northern Ada County for a second ten-year maintenance period, to protect the health and welfare of the area citizens from adverse effects of degraded air quality levels. In addition, the EPA is proposing to approve the exclusion of data from the high wind event of February 15–16, 2011, and the Contingency Measures for the Pinehurst PM_{10} Air Quality Improvement Plan.

VIII. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under

Executive Order 12866 (58 FR 51735, October 4, 1993);

• does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and

• does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, and Reporting and recordkeeping requirements.

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

Dated: January 23, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2014–03639 Filed 2–19–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0241; FRL–9906–97–Region–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of Commercial Fuel Oil Sulfur Limits for Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision will implement low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units which will aid in reducing sulfates that cause decreased visibility. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 24, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0241 by one of the following methods:

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

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0241, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0241. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION: On February 25, 2013, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to the Pennsylvania SIP by adopting revisions to 25 *Pennsylvania Code* (*Pa. Code*) Chapters 121, 123 and 139. This revision implements low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units and amends associated definitions, sampling and test methods, and record keeping and recording provisions which will aid in reducing sulfates that cause decreased visibility.

I. Background

Sulfur dioxide (SO_2) is one of a group of highly reactive gasses known as ''oxides of sulfur.'' The largest sources of SO_2 emissions are from fossil fuel combustion at power plants (73 percent) and other industrial facilities (20 percent). Smaller sources of SO_2 emissions include industrial processes such as extracting metal from ore and the burning of high sulfur-containing fuels by locomotives, large ships, and non-road equipment. Combustion of sulfur-containing commercial fuel oils releases SO_2 emissions, which contribute to the formation of regional haze and fine particulate matter ($PM_{2.5}$), both of which impact the environment and human health. Regional haze is pollution produced by sources and activities that emit fine particles and their precursors which impairs visibility through scattering and absorption of light. Regional haze affects urban and rural areas, including national parks, forests, and wilderness areas.

Fine particles may be emitted directly or formed from emissions of precursors, the most important of which includes SO_2. SO_2 emissions oxidize in the atmosphere to form sulfate particles. Visibility impairment, including regional haze, is mostly due to an increase in sulfate particles in the atmosphere. SO_2 emissions also contribute to the formation of acid rain. Both acid rain and $PM_{2.5}$ contribute to agricultural crop and vegetation damage and degradation of the Chesapeake Bay. Combustion of low sulfur-content commercial fuel oil can contribute to a reduction in SO_2 emissions and in the incidences of adverse effects in the Commonwealth of Pennsylvania. The reduction of sulfur limits in commercial fuel oils used in residential and commercial combustion units is an appropriate measure for reducing regional haze and improving visibility.

II. Summary of SIP Revision

This SIP revision to implement low sulfur fuel oil provisions applies to the owner and/or operator of the following: (1) Refineries; (2) pipelines; (3) terminals; (4) retail outlet fuel storage facilities and ultimate consumers; (5) commercial and industrial facilities; and (6) facilities with a unit burning regulated fuel oil to produce electricity and domestic home heaters. The amendments to Chapter 121, section 121.1—Definitions, add a new term ''ultimate consumer'' and amend the definitions of the following terms to provide clarity and support the amendments to Chapter 123: (1) ''Commercial fuel oil;'' (2) ''Noncommercial fuel;'' (3) ''Carrier;'' (4) ''Distributor;'' (5) ''Retail outlet;'' (6) ''Terminal;'' (7) ''Transferee;'' and (8) ''Transferor.'' The definitions for ''Commercial fuel oil'' and ''Noncommercial fuel'' are amended in order to synchronize them. The definition for ''Carrier'' is amended in order to expand the definition to apply to commercial fuel oil that is carried. The definition for ''Distributor'' is amended in order to establish applicability to commercial fuel oil that is distributed and to broaden the list of transferees. The definitions for ''Retail outlet'' and ''Terminal'' are amended in order to expand the definitions. The definitions for ''Transferee'' and ''Transferor'' are amended in order to provide more specificity by listing examples of the persons and/or entities required to comply with the regulation.

This SIP revision to Chapter 123, section 123.22—Combustion units, implements low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils that are stored, offered for sale, delivered for use, sold or exchanged in trade for use in Pennsylvania. This SIP revision amends and adds two subsections to section 123.22. The following amendments are made to section 123.22(a), which applies to nonair basin areas: (1) Editorial revisions to express the new maximum allowable sulfur contents both in parts per million (ppm) by weight and percentage by weight; (2) amendments to the existing percent sulfur limits to be expressed as maximum allowable percentage sulfur by weight, through June 20, 2016; (3) reductions to the maximum allowable sulfur content for commercial fuel oil, expressed as ppm by weight or percentage by weight, for number 2 and lighter distillate oil to 0.05 percent sulfur content by weight (500 ppm), number 4 residual oil to 0.25 percent sulfur content by weight, and 0.5 percent sulfur content by weight for number 5 and number 6 and heavier commercial fuel oils by no later than July 1, 2016; (4) establish a provision that a person is not authorized to offer for sale, deliver for use, exchange in trade or permit the use of a noncomplying commercial fuel oil in a nonair basin on or after July 1, 2016; (5) establishment of two exceptions which allow commercial fuel oil stored by ultimate consumers prior to July 1, 2016 to be used after that date as long as the applicable maximum sulfur content identified through June 30, 2016 were met and allow for temporary suspension or increase in the applicable maximum allowable sulfur content limits; and (6) amendments to the equivalency provision to provide greater clarity.

Subsections (b), (c), (d), and (e) of section 123.22 are amended similarly to subsection (a); however, they establish applicability to specific areas. Section 123.22(b) establishes applicability to air basins in Erie, Harrisburg, York, Lancaster, Scranton, and Wilkes-Barre. Section 123.22(c) establishes applicability to air basins in Allentown, Bethlehem, Easton, Reading, Upper Beaver Valley, and Johnstown. Section 123.22(d) establishes applicability to air basins in Allegheny County, Lower Beaver Valley, and Monongahela Valley and adds maximum allowable sulfur content limits and the equivalency provision which never existed. Section 123.22(e) establishes applicability to air basins in Southeast Pennsylvania which are defined in section 121.1.

This SIP revision adds section 123.22(f) in order to establish sampling and testing requirements for refinery and terminal owners and operators to ensure compliance with the maximum allowable sulfur content for commercial fuel oil intended for use or used on or after July 1, 2016. This SIP revision also adds section 123.22(g) in order to establish recordkeeping and reporting requirements applicable to transferors and transferees in the manufacture and distribution chain for commercial fuel oil from the refinery owner or operator to the ultimate consumer.

This SIP revision amends Chapter 139 in order to update provisions in section 139.4 and section 139.16. The amendments to section 139.4—References update six of the applicable sulfur method references, add two new sulfur method references, and provide the address for requesting a temporary suspension or increase. Section 139.16—Sulfur in fuel oil, is amended in order to add cross references to the two new sulfur method references in section 139.4.

III. Proposed Action

EPA has determined that the revisions made to 25 *Pa. Code* Chapters 121, 123, and 139 meet the SIP revision requirements of the CAA and is proposing to approve the amendments to Pennsylvania's regulations for commercial fuel oil sulfur limits for combustion units. By reducing the sulfur in the fuel oils, sulfur oxide emissions and fine particulate emissions will be reduced which will improve visibility and help to attain the $PM_{2.5}$ national ambient air quality standard. EPA believes these regulations strengthen the Pennsylvania SIP. EPA notes that existing provisions and the adoption of a low sulfur fuel oil strategy

will lead to SO_2 emission reductions and provide additional emission reductions from Pennsylvania to achieve further reasonable progress towards reducing regional haze. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

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

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

In addition, this proposed rule to implement low sulfur fuel oil provisions that will reduce the amount of sulfur in fuel oils used in combustion units in Pennsylvania does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: February 7, 2014.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–03642 Filed 2–19–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 382

[Docket No. FMCSA–2010–0031]

RIN 2126–AB18

Commercial Driver's License Drug and Alcohol Clearinghouse

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: FMCSA proposes to establish the Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse), a database under the Agency's administration that will contain controlled substances (drug) and alcohol test result information for the holders of commercial driver's licenses (CDLs). The proposed rule would require FMCSA-regulated motor carrier employers, Medical Review Officers (MROs), Substance Abuse Professionals (SAPs), and consortia/third party administrators (C/TPAs) supporting U.S. Department of Transportation (DOT) testing programs to report verified positive, adulterated, and substituted drug test results, positive alcohol test results, test refusals, negative return-to-duty test results, and information on follow-up testing. The proposed rule would also require employers to report actual knowledge of traffic citations for driving a commercial motor vehicle (CMV) while under the influence (DUI) of alcohol or drugs. The proposed rule would establish the terms of access to the database, including the conditions under which information would be submitted, accessed, maintained, updated, removed, and released to prospective employers, current employers, and other authorized entities. Finally, it would require laboratories that provide FMCSA-regulated motor carrier employers with DOT drug testing services to report, annual, summary information about their testing activities. This rule is mandated by Section 32402 of the Moving Ahead for Progress in the 21st Century Act.

DATES: You must submit comments by April 21, 2014.

ADDRESSES: You may submit comments, identified by docket number FMCSA–2010–0031 or RIN 2126–AB18, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. *See* the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Juan Moya,, Office of Enforcement and Program Delivery, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202.366.4844, or via email at *fmcsadrugandalcohol@dot.gov.*. FMCSA office hours are from 9 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Barbara Hairston, Acting Program Manager, Docket Operations, telephone (202) 366–9826.

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I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments, data, and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal and/or copyrighted information you provide.

A. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2010–0031'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2010–0031'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking.

C. Privacy Act

Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the USDOT Privacy Act system of records notice for the DOT Federal Docket Management System (FDMS) in the **Federal Register** published on December 29, 2010 (75 FR 82132) at *http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf*.

II. Executive Summary

A. Purpose of the Clearinghouse

CDL drivers who use drugs or alcohol while operating a CMV pose a significant risk to public safety. Under the current drug and alcohol screening program, employers do not have the tools to identify CDL holders who have received positive drug or alcohol test results, have refused a drug or alcohol test, or have otherwise violated the drug and alcohol testing requirements and thus, are not qualified to operate a CMV. Employers must rely on information provided by the driver, who might not disclose prior positive drug or alcohol test results, or refusals to test. As a result, such drivers continue to operate CMVs after violating the drug and alcohol regulations without completing the required return-to-duty process.

This proposed rule would require employers and service agents to report information about current and prospective employees' drug and alcohol test results to a repository, the Drug and Alcohol Clearinghouse. It would also require employers and certain service agents to search the database for current and prospective employees' positive drug and alcohol test results, and refusals to test, as a condition of permitting those employees to perform safety-sensitive functions. This would provide FMCSA and employers the necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol program violations and ensure that such drivers receive the required evaluation and treatment before performing safety-sensitive functions.

The Moving Ahead for Progress in the 21st Century Act (MAP–21), enacted on July 6, 2012,[1] mandates that the Secretary of Transportation (Secretary) establish a national clearinghouse for controlled substance and alcohol test results of commercial motor vehicle operators. The FMCSA also has authority to promulgate safety standards under the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act), which provides authority to regulate drivers, motor carriers, and vehicle equipment and requires the Secretary to prescribe minimum safety standards for CMVs.

B. Summary of Major Provisions

The proposed rule would revise 49 CFR part 382, Controlled Substances and Alcohol Use and Testing to establish the Drug and Alcohol Clearinghouse. It would require employers and service agents to report information about current and prospective employees' positive drug and alcohol test results to the Clearinghouse. In addition, it would require employers to search the Clearinghouse for positive drug and alcohol test results, and refusals to test, on an annual basis for current employees and as a part of the pre-employment process for prospective employees. Finally, this proposal would require laboratories to provide FMCSA with annual summary reports on the testing activities of FMCSA-regulated motor carrier employers for whom they have provided testing services.

Reporting positive test results and refusals to test would create a database employers could check to determine whether current or prospective employees are prohibited from operating CMVs under the DOT drug and alcohol screening program. This would diminish or eliminate the problem of a currently-employed commercial-driver's-license (CDL) holder testing positive for illegal drug or alcohol use with a second employer or another potential employer while continuing to operate commercial motor vehicles (CMVs) under his or her current employment without the current employer knowing and acting on the positive test.

It would also diminish or eliminate the problem of a driver with previous positive tests seeking and obtaining work without prospective employers knowing and acting on that information. This could occur if a driver is fired for a positive test but does not inform prospective or future employers about the previous positive test result. This

[1] Public Law 112–141, 126 Stat. 405 (July 6, 2012).

could also occur if a new driver entering the workforce tests positive for drugs or alcohol during a pre-employment test, waits for the drugs to leave his/her system, then takes and passes another pre-employment test and gets hired without the employer having any knowledge of the previously failed pre-employment test.

Currently motor carrier employers are required to implement DOT drug and alcohol testing programs for CDL holders and they must provide FMCSA with a summary of their annual drug and alcohol testing results. To improve employers' compliance, the proposed rule would require all laboratories performing DOT drug and alcohol testing for FMCSA-regulated employers to file annual summary reports identifying the motor carrier employers for whom they performed testing services. The FMCSA would use the data provided by the laboratories to identify employers of CDL drivers that do not have an active drug and alcohol testing program.

C. Benefits and Costs

The Agency estimates about $187 million in annual benefits from increased crash reduction from the rule—$53 million from the annual queries and $134 million from the pre-employment queries. FMCSA also estimates that the rule would result in $186 million in total annual costs, which include costs for employers to complete the annual ($28 million) and pre-employment ($10 million) queries; employers to designate service agents and service agents to input information from drivers undergoing the return-to-duty process ($3 million); various entities to report positive tests and refusals ($1 million); various entities to register with the Clearinghouse, verify authorization, and become familiar with the rule ($5 million); for employers to obtain drivers' consent for release of their information ($35 million); for development of the Clearinghouse and management of records ($3 million); and the cost for drivers to go through the return-to-duty process ($101 million). The estimated costs are about equal to its benefits: Total net benefits of the rule are just $1 million annually. The ten-year projection of net benefits is $8 million when discounted at seven percent and $9 million when discounted at three percent. However, estimated benefits include only those associated with reductions in CMV crashes. FMCSA could not precisely quantify improved health, quality-of-life improvements, and increased life expectancy for CMV drivers. The Agency believes these non-quantified benefits are significant, and, if they were included in the benefits estimates, would clearly demonstrate the positive net benefits of this rule.

TOTAL NET BENEFIT PROJECTION OVER A TEN-YEAR PERIOD

Total	Annual	Ten-year	Ten-year
Discount rate		7%	3%
Total Benefits	$187,000,000	$1,406,000,000	$1,643,000,000
Total Costs	186,000,000	1,398,000,000	1,634,000,000
Total Net Benefits	1,000,000	8,000,000	9,000,000

III. Background

A. Legal Basis for the Rulemaking

The Agency proposes to revise 49 CFR part 382, Controlled Substances and Alcohol Use and Testing, to establish a database, identified as the ''Commercial Driver's License Drug and Alcohol Clearinghouse'' or ''Clearinghouse,'' for reporting of verified positive, adulterated, and substituted drug test results, positive alcohol test results, test refusals, negative return-to-duty test results, and information on follow-up testing. The proposed rule would also require employers to report actual knowledge of traffic citations for driving a CMV while under the influence of alcohol or drugs. Under the proposed rule, motor carrier employers would be required to query the Clearinghouse for drug and alcohol test result information on current and prospective employees subject to FMCSA drug and alcohol testing requirements. The proposed rule is intended to increase compliance with these testing requirements.

Section 32402 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405), codified at 49 U.S.C. 31306a, directs the Secretary of Transportation (Secretary) to establish a national clearinghouse for controlled substance and alcohol test results of commercial motor vehicle operators. This proposed rule would implement that mandate.

In addition, FMCSA has general authority to promulgate safety standards, including those governing drivers' use of drugs or alcohol while operating a CMV. The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act), as amended, provides authority to regulate drivers, motor carriers, and vehicle equipment and requires the Secretary to prescribe minimum safety standards for CMVs. At a minimum, the regulations shall ensure that— (1) CMVs are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on CMV operators do not impair their ability to operate the vehicles safely; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely; (4) CMV operation does not have a deleterious effect on the physical condition of the operators; and (5) CMV drivers are not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of regulations promulgated under 49 U.S.C. 31136 or under 49 U.S.C. chapters 51 or 313 (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power, in carrying out motor carrier safety statutes and regulations, to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10)).

The FMCSA Administrator has been delegated authority under 49 CFR 1.87(e), (f) to carry out the functions vested in the Secretary by 49 U.S.C. chapter 313 and 49 U.S.C. chapter 311, subchapters I and III, relating to CMV programs and safety regulation. This proposed rule would implement, in part, the Administrator's delegated authority under the 1984 Act to ensure that the physical condition of CMV operators is adequate to enable them to operate vehicles safely by increasing compliance with drug and alcohol testing requirements. FMCSA believes that this proposed rule would likely have the effect of preventing employers from exercising coercive influence over drivers. The proposed rule would also

exercise the broad recordkeeping and implementation authority under Section 211. The other subsections of Section 206(a) do not apply because this rulemaking would only address the physical condition of CMV drivers.

The Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, Title V, 105 Stat. 917, at 952, October 28, 1991, codified at 49 U.S.C. 31306) mandated the alcohol and controlled substances (drug) testing program for DOT. OTETA required the Secretary to promulgate regulations for alcohol and drug testing for persons in safety-sensitive positions in four modes of transportation—motor carrier, airline, railroad, and mass transit. Those regulations, including subsequent amendments, are codified at 49 CFR part 40, ''Procedures for Transportation Workplace Drug and Alcohol Testing Programs.'' Part 40 establishes requirements for all DOT-regulated parties, including employers of drivers with CDLs subject to FMCSA testing requirements, for conducting drug and alcohol tests. Part 40 also defines the roles and responsibilities of service agents, including MROs, SAPs, and C/TPAs, who perform critical functions under DOT-wide drug and alcohol testing program requirements.

In 1994, FMCSA's predecessor agency published a final rule addressing the OTETA and creating regulations, including penalties, codified in 49 CFR part 382, ''Controlled Substances and Alcohol Use and Testing.'' In 2001, FMCSA revised its regulations in 49 CFR part 382 to make FMCSA's drug and alcohol testing procedures consistent with and non-duplicative of the revised regulations at 49 CFR part 40.

This proposed rule would incorporate many of the findings and recommendations contained in FMCSA's March 2004 report to Congress, which was required under section 226 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748, December 9, 1999).

B. Current Regulations

Agency regulations at 49 CFR part 382 apply to persons and employers of such persons who operate CMVs in commerce in the United States and who are subject to the CDL requirements in 49 CFR part 383 or the equivalent CDL requirements for Canadian and Mexican drivers (49 CFR 382.103(a)). Part 382 requires that employers conduct pre-employment drug testing, post-accident testing, random drug and alcohol testing, and reasonable suspicion testing, as well as return-to-duty testing and follow-up testing for those drivers who test positive or otherwise violate DOT drug and alcohol program requirements.

Motor carrier employers are prohibited from allowing an employee to perform safety-sensitive functions, which include operating a CMV, if the employee tests positive on a DOT drug or alcohol test, refuses to take a required test, or otherwise violates the DOT drug and alcohol testing regulations. The prohibition on performing safety-sensitive functions continues until the employee satisfies all of the requirements of the return-to-duty process prescribed in 49 CFR part 40, subpart O. Additionally, part 382 provides that an employer may not allow a covered employee to perform safety-sensitive functions when the employer has actual knowledge concerning the driver's use of alcohol or drugs while performing safety-sensitive functions. An employer has ''actual knowledge'' of drug or alcohol use while performing safety-sensitive functions based upon the employer's direct observation of employee drug or alcohol use, an admission by the employee of drug or alcohol use, information provided by a previous employer, or if the employee receives a traffic citation for driving a CMV while under the influence of drugs or alcohol. An employer may not use a driver under these circumstances until the driver has completed the return-to-duty process prescribed in 49 CFR part 40, subpart O. Positive test results or instances of employers having actual knowledge can lead to termination of the driver's employment without the opportunity to complete the return-to-duty process.

The Federal Motor Carrier Safety Regulations (FMCSRs) require that a motor carrier employer obtain information from job applicants that includes the names and addresses of the applicant's employers for the past 3 years, and whether or not the applicant was subject to the FMCSRs and to the drug and alcohol testing requirements under 49 CFR part 40 (49 CFR 391.21(b)). Interstate motor carrier employers are then required to investigate the applicant's history under the DOT drug and alcohol testing program by contacting the named DOT-regulated employers to determine whether the applicant has, within the past 3 years, violated the drug and alcohol prohibitions under part 382 or the testing requirements under part 40 (49 CFR 391.23(e)). A similar background check requirement exists in part 40. *See* 49 CFR 40.25 (DOT-regulated employers must contact all of the applicant's employers for the 2 years prior to the employee application and obtain drug and alcohol test information, including information that these employers obtained from previous employers).

Part 40 defines an ''employee'' as ''any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing'' including ''applicants for employment subject to pre-employment testing'' (49 CFR 40.3). Pursuant to this definition, an individual is an employee of any DOT-regulated employer for whom the individual takes a pre-employment drug test, regardless of whether the individual is subsequently hired by the employer. As a result, an individual would be required to list such employer, when applying for a new covered position (*see* 49 CFR 40.25 and 391.21(b)).

In addition to pre-employment drug testing, the background check process detailed above is currently the primary means by which an employer determines whether a job applicant is qualified to perform a safety-sensitive function such as operating a CMV.

C. Discussion of the Proposed Rule

1. Clearinghouse for CDL Drivers' Drug and Alcohol Test Results

The current background check system does not provide employers with enough tools to accurately identify CDL holders who have received positive drug or alcohol test results or have otherwise violated the drug and alcohol testing requirements and who are, therefore, not qualified to operate a CMV prior to completing the return-to-duty process. Employers must rely on information provided by the driver, who might not list part-time driving jobs or a prior or prospective employer that has records of positive drug or alcohol tests or other related violations. Or, after testing positive with one prospective employer, the driver might wait until the substance is out of his or her system and apply with a different carrier. As a result, such drivers continue to operate CMVs after violating the drug and alcohol regulations without completing the required return-to-duty process.

CDL drivers who use drugs or alcohol while operating a CMV pose a significant risk to public safety. In 1999, a New Orleans bus crash resulted in 22 passenger fatalities. The motorcoach driver's post-accident drug test showed use of marijuana and a sedating anti-histamine prior to going on duty. The driver had also failed pre-employment drug testing when applying for previous positions, a fact not revealed or known to the current employer. The driver also failed to disclose on his employment

application a previous employer who fired him after a positive drug test. As a result of the investigations of the 1999 New Orleans bus crash, the National Transportation Safety Board (NTSB) recommended that FMCSA ''develop a system that records all positive drug and alcohol test results and refusal determinations resulting from the U.S. Department of Transportation (DOT) testing requirements, require prospective employers to query the system before making a hiring decision, and require certifying authorities to query the system before making a certification decision.'' (''Highway Accident Report: Motorcoach Run-Off-The-Road, New Orleans, Louisiana, May 9, 1999,'' NTSB Report Number: HAR–01–01, NTSB, Washington, DC, page 67 (*http://www.ntsb.gov/doclib/reports/2001/HAR0101.pdf.*)). This rulemaking addresses the NTSB's recommendations.

Two 2008 Government Accountability Office (GAO) reports [2] also analyzed the issue of CMV drivers who test positive or refuse to submit to drug or alcohol testing for one employer and then fail to disclose this information to a subsequent employer. GAO identified 43 instances in which a CMV driver tested positive for illegal drugs, such as cocaine, marijuana, and amphetamines, with one employer and subsequently tested negative with another employer who was unaware of the prior positive test. In its recommendations to Congress, GAO proposed establishing a national database, as outlined in this rulemaking, as a possible solution to these ''job hopping'' scenarios.

Through MAP–21, Congress directed FMCSA to establish this clearinghouse to improve compliance with DOT's drug and alcohol testing program, as well as enhance safety by reducing accidents and injuries resulting from the misuse of alcohol and drugs by CDL holders. MAP–21 directed a number of specific requirements that FMCSA has incorporated into this proposed rule. For example, in accordance with the requirements of MAP–21, this proposed rule would require employers and service agents to report information about current and prospective employees' drug and alcohol test results to the Clearinghouse and would require employers and certain service agents to check current and prospective employees against the database. In addition, employers would only access data in the clearinghouse to determine whether an employment prohibition exists (e.g., a positive test result or a refusal for which an individual has not completed the return-to-duty requirements).

The proposed rule would provide FMCSA and regulated employers the necessary tools to identify drivers who are prohibited from operating a CMV based on DOT drug and alcohol program violations and ensure that such drivers receive the required evaluation and treatment before continuing to perform safety-sensitive functions. It would apply to persons and employers of such persons who operate CMVs in commerce in the United States and are subject to the CDL requirements in 49 CFR part 383 or the equivalent CDL requirements for Canadian and Mexican drivers. The proposed rule would not supersede an employer's obligation to comply with the current requirements of parts 40 and 382.The rule would also affect service agents, including MROs, C/TPAs and SAPs. MROs are licensed physicians responsible for independently receiving and reviewing laboratory drug test results generated by an employer's testing program. Under the proposed rule, MROs would report to the Clearinghouse all positive, adulterated, or substituted drug test results and refusals to test that require an MRO determination.

C/TPAs are consortia and third party administrators who coordinate testing services for regulated motor carrier employers. FMCSA regulations require any employer who employs only himself/herself as a driver to join a random test selection pool. Consortia are the entities that manage these pools (49 CFR 382.103(b)). Third party administrators, which often include consortia, are entities that regulated motor carrier employers contract with to implement drug and alcohol testing programs. Under the proposed rule, C/TPAs would be subject to the same reporting requirements as employers when they assume a regulated employer's drug and alcohol testing functions. Specifically, C/TPAs that are required by regulation to perform employer functions (e.g., for self-employed drivers) would be required to report positive alcohol tests, drug or alcohol test refusals, negative return-to-duty tests, and successful completion of all follow-up tests. Employers may contract with C/TPAs to perform reporting functions, but employers, in addition to their C/TPAs, remain responsible for meeting the reporting requirements.

SAPs evaluate, assess and refer drivers for education and/or treatment after a positive test or refusal as a part of the return-to-duty process (49 CFR part 40, subpart O). Under the proposed rule, SAPs would be required to report to the Clearinghouse the date that a driver began and successfully completed the return to duty process specified in 49 CFR part 40, subpart O, indicating driver eligibility for return-to-duty testing. The SAP would also be required to report information on the follow-up testing plan.

The requirements of this rule would also affect motor carriers employing owner-operators. The drug and alcohol testing regulations in part 382 impose requirements upon employers and drivers; owner-operators can function as both. Currently, when an owner-operator acts as a driver for another employer, FMCSA requires that the employer treat the owner-operator as if he or she were an employee for the purposes of the employer's DOT drug and alcohol testing program. As a result, the proposed rule would require motor carriers employing owner-operators to treat those drivers as employees for purposes of querying and reporting to the database.

2. FMCSA Oversight of Motor Carrier Implementation of Drug and Alcohol Testing Programs

FMCSA primarily monitors motor carrier compliance with DOT drug and alcohol test program requirements through motor carrier compliance reviews and new entrant safety audits. In 2010, the Agency and its State partners conducted new entrant audits and compliance reviews on approximately 50,000 motor carriers. Although FMCSA and its State partners have significantly increased the number of carriers that it reviews through enhanced new entrant rules and improved compliance programs, the Agency captures only a small percentage of the more than 520,000 motor carrier employers subject to the DOT drug and alcohol testing requirements. As a result, many motor carrier employers that do not have a testing program may go undetected. Based on the Agency's oversight activities, some motor carrier employers are not in compliance with the drug and alcohol program requirements.[3]

Current regulations require motor carrier employers to implement DOT drug and alcohol testing programs for CDL holders and to provide FMCSA with a summary of their annual drug and alcohol testing results upon the

[2] See GAO–08–600 ''Improvements to Drug Testing Programs Could Better Identify Illegal Drug Users and Keep Them Off the Road,'' May 15, 2008, and GAO–08–829R, ''Examples of Job Hopping by Commercial Drivers After Failing Drug Tests,'' June 30, 2008.

[3] FMCSA has found that eighty-six percent of new entrant audit failures include either not having or not properly implementing a drug and alcohol program. (FMCSA, Office of Enforcement)

Agency's request (49 CFR 382.403). Every year, FMCSA randomly selects and requires approximately 3,000 employers to submit a summary of testing program results through FMCSA's Drug and Alcohol Testing Survey. *See* Drug and Alcohol Testing Survey: 2008 Results, *http://www.fmcsa.dot.gov/facts-research/research-technology/report/Drug_Alcohol_Survey_2008.pdf*. The survey has been largely used to determine appropriate random testing rates for carriers and has not generally been used to monitor employer compliance with testing requirements. To improve employers' compliance with the requirement to implement a drug and alcohol testing program, the proposed rule would require all laboratories performing DOT drug testing for FMCSA-regulated employers to file annual summary reports identifying the motor carrier employers for whom they performed testing services. The FMCSA would use the data provided by the laboratories to identify employers of CDL drivers that do not have an active drug and alcohol testing program.

IV. Section-by-Section Discussion of Regulatory Changes

FMCSA is proposing to amend 49 CFR part 382 in the following ways.

Section 382.103

Some of the proposed changes to 49 CFR part 382 in today's NPRM affect service agents. As a result, FMCSA proposes to amend existing § 382.103(a), ''Applicability,'' by adding an express statement that the rules codified in 49 CFR part 382 would apply to service agents.

Section 382.107

FMCSA proposes to add a new definition, ''Commercial Driver's License Drug and Alcohol Clearinghouse,'' to existing § 382.107. The definition would explain that the Clearinghouse is a drug and alcohol testing information database to which this rule would require employers and service agents to report drug and alcohol testing information and that the rule would require employers and certain service agents to query for information on current and prospective employees' drug and alcohol test results. FMCSA proposes to add a definition for ''positive alcohol test'' to eliminate any confusion as to the type of alcohol test that constitutes a violation of the Agency's drug and alcohol program. As such FMCSA proposes to add a definition for ''negative return to duty test result'' to clarify that it is a negative drug test and/or an alcohol test with an alcohol concentration of less than 0.02.

Section 382.123

FMCSA proposes to add a new § 382.123 that would require employers to provide specific information on the Alcohol Testing Form (ATF) and Federal Drug Testing Custody and Control Form (CCF) that identifies drivers by use of their CDL number and State of issuance. Recording CDL number and State of issuance as the primary method of identification serves a critical data quality function. Using CDLs along with State of issuance and their unique record numbers to identify drivers and their test information will prevent misidentification resulting from similar names or the use of nicknames or initials. This proposal would allow employers to shift from reliance on the use of Social Security numbers on the current ATF and CCF and to identify drivers by better utilizing other types of readily-available and reliable information. Paragraph (a) would require that the employer list the driver's CDL number and State of issuance in Step 1, section B of the ATF. Under this proposal, employers would not be permitted to record drivers' Social Security numbers, and the only permitted employee ID number would be the driver's CDL number and State of issuance. If the driver tests positive for alcohol in violation of 49 CFR parts 40 and 382, the employer or consortium responsible for reporting this information would use the driver's CDL number and State of issuance to report information to the Clearinghouse. Paragraph (a) would also require the employer to enter its USDOT or Internal Revenue Service (IRS)-issued Employer Identification Number (EIN) in Step 1, section C of the ATF, in addition to the information requested in that section of the ATF (i.e., employer name, street, city, State, and zip code). FMCSA would use the USDOT or EIN number as an employer identification to avoid confusion between similarly-named employers that enter information in the Clearinghouse. These numbers would be used to identify the employer for all aspects of the part 382 requirements, including reporting employers' drug and alcohol test results and the annual summary laboratory test reports that proposed § 382.404 would require.

Paragraph (b) would require the employer to record its USDOT number or EIN in Step 1, section A of the CCF. This provision would clarify that for FMCSA's purposes, the USDOT number or EIN fulfills the form's requirement for an employer ''I.D. No.'' Paragraph (b) would also require the employer to record the driver's CDL number and State of issuance in Step 1, section C of the CCF. This proposal would change the current requirement that permits employers to use Social Security numbers or employee ID numbers. Under this proposal, employers would not be permitted to record drivers' Social Security numbers, and the only permitted employee ID number would be the driver's CDL number and State of issuance. If the driver tests positive for drugs in violation of 49 CFR parts 40 and 382, the MRO responsible for reporting this information would use the driver's CDL number and State of issuance as employee identification to report information to the Clearinghouse.

FMCSA is aware that some self-employed drivers who are not required to have USDOT numbers use their Social Security numbers as their EINs for tax purposes. Any driver who is not comfortable using his or her Social Security number as an EIN could pursue one of two options. First, he or she could obtain a USDOT number. Drivers can get more information about obtaining USDOT numbers at *http://www.fmcsa.dot.gov/registration-licensing/registration-licensing.htm*. Second, he or she could change his or her EIN to a number that is different from his or her Social Security number. Drivers can get more information about changing their EINs by contacting the IRS.

Section 382.217

FMCSA proposes to add a new § 382.217 that would provide that an employer must not allow a driver to operate a CMV if the Clearinghouse has a record that shows that a driver has not successfully completed the return-to-duty process required by 49 CFR 40.305. This section would implement that portion of MAP–21, codified at 49 U.S.C. 31306a(f)(3), that requires employers to use the Clearinghouse to determine whether any employment prohibitions exist for prospective CMV drivers.

Section 382.401

FMCSA proposes to amend existing § 382.401(b)(1)(vi) to require employers to maintain records related to drivers' traffic citations that establish the employer's actual knowledge of an employee driving a CMV under the influence of drugs or alcohol in violation of §§ 382.205 and 382.213(b). This change clarifies that employers who have actual knowledge of these types of traffic citations must maintain a record of them, just as they must for other aspects of their drug and alcohol testing programs. As is currently

required of all records that must be retained under § 382.401(b)(1), these records must be maintained for a minimum of 5 years.

Section 382.404

FMCSA proposes to add a new § 382.404 to require each laboratory to submit to FMCSA an annual, aggregate statistical summary of test results for each motor carrier employer regulated under part 382 for which the laboratory performs DOT testing services. The reports would draw from the information laboratories are currently required to provide to employers under part 40, Appendix B, but would be limited to the annual number of drug tests conducted by type of test. This report would include all employers who are testing under the FMCSA and DOT requirements, and would be organized by employer's USDOT number or EIN. The filing date would coincide with the January filing date required under § 40.111(a). FMCSA proposes to require laboratories to file this information electronically. FMCSA envisions designating a specific format for filing, such as a commonly-available spreadsheet that the affected laboratories might already be using.

FMCSA would use this information to improve its enforcement efforts in identifying employers who are not in compliance with drug and alcohol testing requirements.

FMCSA seeks comments on what, if any, burden this reporting requirement would place on laboratories. Specifically, FMCSA would like comments on whether laboratories could use existing data collected as a part of existing business practices, or whether they would have to establish new processes and controls to collect and aggregate this information. In addition, FMCSA seeks comment on what type of electronic format would be the easiest and least burdensome method for reporting this information, or whether other less burdensome cost effective methods could be used to similarly identify employers who are not in compliance with drug and alcohol testing requirements.

Section 382.405

Section 382.405(d) currently requires employers to make copies of all DOT drug and alcohol test results available to the Secretary, any DOT agency, or any State or local officials with regulatory authority over the employer. FMCSA proposes to extend these requirements to service agents who maintain records for an employer. This change is designed to make sure that the appropriate officials have access to all test results when employers use service agents to manage their drug and alcohol testing programs.

Section 382.405(e) currently authorizes the NTSB to require employers of CDL drivers involved in crashes under investigation to produce information on an employer's administration of post-accident alcohol and drug tests. FMCSA proposes to amend § 382.405(e) by adding a new paragraph authorizing FMCSA to provide the NTSB access to a CDL driver's records in the Clearinghouse when that driver is involved in a crash under investigation. This change would implement the statutory requirement, codified at 49 U.S.C. 31306a(i), that the Agency establish a process for NTSB access and would provide the NTSB with additional tools to help it fulfill its safety mission.

Section 382.409

FMCSA proposes to amend § 382.409(c) by including the Clearinghouse in the list of entities to which an MRO or C/TPA is authorized to release a driver's drug test results. FMCSA also proposes to amend the title of § 382.409 to add the words ''or consortium/third party administrator'' so that it reads ''Medical review officer or consortium/third party administrator record retention for controlled substances'' to reflect more accurately the contents of the section.

Section 382.415

FMCSA proposes to add a new § 382.415 that would require a driver to notify, in writing, all of his or her employers if he or she violates the drug and alcohol testing regulations in parts 40 or 382. Current regulations do not require drivers who work for more than one employer to report this information to their other employers. This change would place an affirmative obligation on drivers to report drug and alcohol violations to all current employers. The penalties in current § 382.507, which include civil and criminal penalties, would apply to all drivers who do not comply with this section.

Employers are reminded that, once each employer is notified that an employee has violated the drug and alcohol regulations, each employer must separately follow the return-to-duty provisions of Parts 40 and 382 before allowing an employee to serve in a safety-sensitive position. This includes the requirement that each employer needs to implement a follow-up test plan on its own for each employee.

Section 382.601

Current § 382.601 requires employers to promulgate a policy on the misuse of drugs and alcohol and to provide educational materials on the subject to its new and current employees. FMCSA proposes to add a new § 382.601(b)(12), that would require employers to notify drivers that information about verified positive, adulterated, or substituted drug test results; positive alcohol test results; refusals to submit to any test required by subpart C of this part; employers' reports of actual knowledge that the driver received a traffic citation for driving a CMV while under the influence of alcohol or drugs; negative return-to-duty tests; employers' reports of completion of follow-up testing; and SAP reports will be reported to the Clearinghouse. Under this proposed requirement, employers must include all of this information in the educational materials they provide to their drivers, regardless of their internal employment policies regarding drivers violating drug and alcohol testing requirements. Employers may clarify internal employment policies pursuant to existing § 382.601(c).

Part 382, Subpart G (§ 382.701 to § 382.727)

FMCSA proposes adding a new subpart G, entitled ''Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse,'' to part 382. Subpart G would describe employers' and drivers' rights and responsibilities with respect to the Clearinghouse, including how employers and service agents become authorized to submit information to the Clearinghouse and to obtain information from the database. It also would establish procedures for correcting and/or updating information in the database. New subpart G would implement Congress's general mandate in MAP–21 that the Agency develop a Clearinghouse to track CDL holders' positive drug and alcohol test results, and refusals to submit to drug and alcohol tests.

Section 382.701

New § 382.701 establishes employers' obligations to conduct pre-employment and annual queries of the database and prohibits them from using drivers in safety-sensitive positions when the queries return results showing certain violations of FMCSA's drug and alcohol program. The scope of the queries is covered later under proposed section 382.719.

Paragraph (a) would establish an employer's obligation to conduct pre-

employment queries by prohibiting the employer from hiring drivers without first conducting a search of the Clearinghouse for drug and alcohol violations. Paragraph (a) would implement the requirement in MAP–21, codified at 49 U.S.C. 31306a(f)(3), that employers search the Clearinghouse for drug and alcohol violations prior to hiring an individual to drive a CMV. Paragraph (b) would establish an employer's obligation to conduct an annual query on all currently-employed drivers. Paragraph (b) would implement the requirement, codified at 49 U.S.C. 31306a(f)(4), that employers conduct annual searches of drivers' drug and alcohol test result histories using the Clearinghouse. These requirements, which would apply to all drivers subject to the drug and alcohol testing regulations at part 382, are designed to make all current and prospective employers aware of applicants' and employees' reported drug and alcohol violations. Paragraph (c) would implement the statutory provision, codified at 49 U.S.C. 31306a(b)(3)(A), that requires FMCSA to notify an employer if new information about a driver is entered into the Clearinghouse within seven days of an employer conducting a query under this section.

Paragraph (d) would allow employers to hire but would prohibit employers from allowing a driver to perform safety-sensitive functions if a query of the database shows any of the following violations of the drug and alcohol testing program: A verified positive, adulterated, or substituted drug test result; a positive alcohol test result; a refusal to submit to any test required by subpart C of this part; or an employer's report of actual knowledge that the driver received a traffic citation for driving a CMV while under the influence of alcohol or drugs. However, FMCSA does not propose to require employers and service agents to report all violations of subpart B.

Under current regulations, an employer may not allow a driver to perform safety-sensitive functions if the employer has actual knowledge that the driver has used drugs or alcohol. Actual knowledge is defined at § 382.107 to mean that an employer has actual knowledge of drug or alcohol use based on: Direct observation of an employee; information provided by the driver's previous employer(s); a traffic citation for driving a CMV while under the influence of drugs or alcohol; or an employee's admission of drug or alcohol use (except as provided in § 382.21). As a part of this proposed rule, employers would only be required to report to the Clearinghouse violations based on actual knowledge of employees receiving a citation for operating a CMV under the influence of drugs or alcohol. FMCSA proposes to require only this one category of actual knowledge violation because a traffic citation provides objective documentation on which to base a report to the Clearinghouse. In the case of direct observation or an employee's admission, the employer has the obligation to remove the employee from performing safety-sensitive functions until he or she completes the return-to-duty process, but there is no requirement to report the observation or admission to the Clearinghouse. In the case of information provided by a previous employer, current rules require the employer to report the information to prospective employers during the pre-employment background check required by §§ 40.25 and 391.23. If the background check reveals prior drug or alcohol violations for which the employee has not successfully completed the return-to-duty process, the employer is prohibited from hiring the employee to perform safety-sensitive functions, such as driving.

New § 382.701(d) would also provide that, if the database search revealed one of these violations, an employer could nonetheless allow a driver to perform safety-sensitive functions if the driver completed the return-to-duty process in subpart O of part 40. Under subpart O, a driver who has completed the return-to-duty process, but has not completed all follow-up tests, would also be able to perform safety-sensitive functions provided the current employer assumes responsibility for managing the follow-up testing process. Finally, an employer may allow a driver to perform safety-sensitive functions if, after the time for final adjudication has expired, a traffic citation for driving under the influence of drugs or alcohol does not result in a conviction (as defined at 49 CFR 383.5). This provision does not permit an employer to allow a driver to perform a safety-sensitive function after receiving a DUI traffic citation, prior to receiving a final adjudication. All of the above provisions of paragraph (d) would implement the employment prohibitions required by MAP–21, codified at 49 U.S.C. 31306a(f)(3) & (h)(1)(D).

In accordance with the statutory mandate codified at 49 U.S.C. 31306a(h)(1)(c), paragraph (e) would establish a record keeping requirement under which employers would be required to retain for three years a record of each query made under this section and the information received in response. However, FMCSA would also retain that information in the Clearinghouse for a minimum of three years for research and enforcement purposes. The Agency does not believe that it is necessary to burden employers with a redundant recordkeeping requirement. Accordingly, FMCSA will deem an employer to have satisfied this recordkeeping requirement if it conducts its query in accordance with a valid registration and the requirements of new subpart G.

Section 382.703

In accordance with the requirements of 49 U.S.C. 31306a(h)(1)(A), new § 382.703 would prohibit disclosure of information in the Clearinghouse without a driver's consent. Paragraph (a) would require an employer to obtain consent from drivers before querying the database to determine if there is any information in the database on that driver. Paragraph (b) would require the employer to obtain written consent from the driver for access to information in the Clearinghouse.

These consents apply to the proposed requirement (§ 382.701) that employers conduct two types of queries: Pre-employment and annual. To reduce the burden on employers who would be required to conduct annual queries on multiple drivers at the same time, FMCSA envisions establishing two levels of queries. The first level, or ''full query,'' would grant employers or prospective employers access to the reportable information in a driver's record and would require the employer to obtain written consent from the driver for access to Clearinghouse information. FMCSA envisions using technology similar to that it currently uses in its Pre-Employer Screening Program (PSP) to verify a driver's identity. FMCSA would then allow the driver to designate which employer(s) or prospective employer(s) may view his or her record. All employers would be required to conduct a full query to satisfy the pre-employment query requirement.

The second level, or ''limited query,'' would not grant access to information in the Clearinghouse but would only indicate whether information *exists* in the database about a particular driver. Prior to conducting a limited query, an employer would have to obtain written consent from a driver. Employers would be required to retain this consent for 3 years after conducting a query and would be subject to audit.

Employers would only be able to use the limited query in connection with annual searches on currently employed drivers. If the query indicates that information exists in the Clearinghouse

on a particular driver, then the employer would be required to conduct a full query, requiring the employer to obtain written consent from the driver to view the information in the Clearinghouse.

FMCSA envisions that employers would require drivers to give blanket consent to allow employers to conduct a limited query on an annual basis for the duration of their employment. However, no driver may give blanket consent for a full query of his or her information in the Clearinghouse. Drivers must give specific written consent each time they allow employers to view their personal information in the Clearinghouse.

Paragraph (c) would prohibit employers from using any driver who does not grant consent to search the Clearinghouse. If a driver refuses to grant consent for either the full or limited query, that driver could not perform any safety-sensitive function, including driving. Paragraph (d) would make clear that the consent granted under this proposed section would include consent for FMCSA to notify employers of information on a driver that was entered into the Clearinghouse within seven days of the employer conducting a query.

Section 382.705

In accordance with Congress's mandate that drug and alcohol refusals and positive test results be reported to the Clearinghouse (codified at 49 U.S.C. 31306a(g)), new § 382.705 would establish reporting requirements, assigning responsibility for inputting and updating information to individuals and entities. Paragraph (a) would require MROs to report to the Clearinghouse within 1 business day all verified positive, adulterated, or substituted drug test results and refusals to test that require a determination by the MRO as specified in 49 CFR 40.191. In the event an MRO changes the outcome of a test in accordance with 49 CFR part 40, he or she would be required to report this change within 1 business day. This paragraph would also require the MRO to provide the reason for the test; the Federal Drug Testing CCF specimen ID number; the collection site name and address; the driver's name, date of birth, and CDL number, and the State that issued the CDL; the employer's name, city/State, and USDOT or EIN; the date of the test; the date of the verified result; and the test result. The test result would either be (1) positive; (2) refusal to test: Adulterated; (3) refusal to test: Substituted; or (4) refusal to provide a specimen. This information will allow tracking and identification of specific test results. Information about the driver (i.e., name, date of birth, CDL number, and issuing State) and the employer (i.e., name, address, and USDOT or EIN number) is intended to assist in making a positive identification of the driver in the Clearinghouse, because information about more than one driver with the same name may be present in the database.

FMCSA proposes to have MROs, rather than employers, report this information to the Clearinghouse. A large number of small motor carrier employers (approximately 86%) are responsible for administering drug and alcohol programs. Based on the Agency's observation that smaller employers have lower compliance rates with FMCSA's drug and alcohol testing program, due in part to the inherent business interests small companies have in retaining employees, the Agency believes that requiring MROs to report verified drug results would produce more accurate and comprehensive reporting to the Clearinghouse.

The above notwithstanding, under DOT rules, MROs do not verify alcohol test results. As a result, paragraph (b) would require employers to report the following information to the Clearinghouse: Alcohol test results with an alcohol concentration of 0.04 or greater; negative return-to-duty tests; drug and alcohol test refusals; reports that drivers have successfully completed all follow-up tests; and reports of actual knowledge that a driver received a traffic citation for driving a CMV under the influence of drugs or alcohol. This section would also require that employers report the reason for the test; the driver's name, date of birth, CDL number and the State that issued the CDL; the employer's name, address, and USDOT number or EIN; date of the test; date the result was reported; and test result. The test result would be one of the following: Negative (for return-to-duty tests only), positive, or refusal. This information is required so that information about drivers with similar or identical names is not erroneously posted to the wrong driver's record.

Employers would also be required to report each instance in which they have actual knowledge that an employee-driver received a traffic citation for driving a CMV under the influence of drugs or alcohol. The report would include the following information: The driver's name, date of birth, CDL number and State that issued the CDL; employer's name, address, and USDOT number or EIN; the date of the traffic citation; the date the employer became aware of the traffic citation; the name and State of the law enforcement agency issuing the traffic citation; the ticket or docket number associated with the citation; and the specific charge alleged in the traffic citation. This information is designed to ensure that a driver can identify any traffic citation reported to the database and verify that the information is correctly reported with the law enforcement agency that issued it. If the citation does not result in a conviction, a driver may request that FMCSA remove the employer's report from the Clearinghouse (see proposed § 382.719). In that circumstance, the information FMCSA proposes to require in this paragraph will be important for tracking the citation and its subsequent adjudication. To the extent an employer uses a TPA to comply with his or her reporting duties, the employer remains responsible for ensuring that the TPA makes the required reports.

Similar to the requirements in paragraph (b) that apply to employers, paragraph (c) would require C/TPAs acting on behalf of an employer who employs himself/herself, as required by 49 CFR 382.103(b), to report the following information to the Clearinghouse: Alcohol test results with an alcohol concentration of 0.04 or greater; negative return-to-duty tests; drug and alcohol test refusals; and reports that drivers have successfully completed all follow-up tests. This section would also require that C/TPAs report the reason for the test; the driver's name, date of birth, CDL number and the State that issued the CDL; the employer's name, address, and USDOT number or EIN; date of the test; date the result was reported; and test result. The test result would be one of the following: Negative (for return-to-duty tests only), positive, or refusal.

Paragraph (d) would require SAPs to report information to the Clearinghouse about drivers who begin the return-to-duty process. That would include information identifying the SAP and the driver; the date of the initial SAP assessment. The SAP would also enter the date the SAP determined that the driver successfully completed the education and/or treatment process and was eligible for return-to-duty testing; and the frequency, number, and type of required follow-up tests; the duration of the follow-up testing plan; and any subsequent modifications to the plan. This information is important to potential future employers so that they may require a negative return-to-duty test and comply with the follow-up testing requirements. SAPs would be required to report this information within 1 business day of determining

that the driver has completed the return-to-duty requirements.

Paragraph (e) would require persons reporting information to the Clearinghouse to do so truthfully and accurately. FMCSA proposes to prohibit anyone from reporting false or inaccurate information. Anyone making an inadvertent error should make a correction immediately upon discovering the error. Anyone violating the provisions of this paragraph would be subject to the civil and criminal penalties set forth in current § 382.507, as well as any other applicable penalties.

Section 382.707

In accordance with the statutory requirement, codified at 49 U.S.C. 31306a(g)(4), that requires the Agency to notify individuals about changes to their records in the Clearinghouse, new § 382.707 would require FMCSA to notify a driver when information about that driver is entered in, revised, or removed from the Clearinghouse. It would also require FMSA to notify a driver when information from the Clearinghouse is released to an employer and to state the reason for the release. The default method of notification would be to send a letter by U.S. Mail to the address on record with the SDLA that issued the driver's CDL. However, drivers would be able to provide an alternate address or method of communications, such as electronic mail. This section would require FMCSA to alert a driver each time a change occurred to his or her record in the Clearinghouse. The driver would then be able to access the Clearinghouse to review the new or revised data and request changes, if appropriate.

Section 382.709

As mandated by MAP–21 and codified at 49 U.S.C. 31306a(j)(1), new § 382.709 would grant a driver the right to review information in the Clearinghouse about himself or herself, except as otherwise restricted by law, but reminds drivers that consistent with Part 40, drivers cannot obtain their follow-up testing plan.

Section 382.711

New § 382.711, implements the statutory requirement, codified at 49 U.S.C. 31306a(h)(1) that the Agency establish a process for employers and/or their agents to request information from the Clearinghouse. This section would establish strict registration procedures for employers and service agents. Only employers and designated service agents—MROs, C/TPAs, and SAPs—would be authorized to submit information on a driver to the Clearinghouse. All Clearinghouse registrants would be required to provide their names, addresses, and telephone numbers, as well as any other information necessary to validate identity. In addition, employers would be required to submit their USDOT numbers or EINs and the name of the person or persons authorized to access the Clearinghouse. C/TPAs would also be required to identify the person or persons authorized to access the Clearinghouse. Employers and C/TPAs would be required to update annually the names of the people they authorize to access the Clearinghouse. MROs and SAPs would be required to provide a certification and evidence that they meet the DOT's qualifications and training requirements under 49 CFR part 40 in order to register.

DOT recognizes the uniqueness of ''owner-operators'' in the motor carrier industry. 49 CFR 40.355(f)(h) & (j) provide specific exceptions to enable service agents (e.g., SAPs, C/TPAs, and MROs) to better manage this situation where the employee is also the employer. Under 49 CFR 382.305, FMCSA requires owner-operators to participate in a consortium for random testing. New § 382.711(b) would expressly require employers that are owner-operators to identify the C/TPA that it uses for testing purposes and authorize that C/TPA to submit information on a driver, including themselves, to the Clearinghouse. This section would be mandatory for owner-operator and self-employed individuals and permissive for other employers that may use C/TPAs to perform testing services.

Section 382.713

New § 382.713 would set forth the terms under which Clearinghouse registrations would remain active, or would be revoked or cancelled. The initial Clearinghouse registration term would be 5 years unless the Agency took action to revoke or cancel it. The Agency proposes to cancel any registrant that does not use the Clearinghouse to view or input information for 2 years. The Agency would also have the authority to revoke the Clearinghouse registration of entities who do not comply with Clearinghouse regulations.

If an entity's Clearinghouse privileges are revoked, they would still be obligated to perform all of the functions under this rule. If it was unable to do so because of revocation, then FMCSA staff would become involved and process the requests on behalf of the employers. There is no reason why an entity could not request reconsideration if its registration were revoked.

Section 382.715

New § 382.715 would require employers to designate C/TPAs before the C/TPA could enter information relating to them into the Clearinghouse.

Section 382.717

New § 382.717 would implement the statutory requirement, codified at 49 U.S.C. 31306a(j)(2), that the Agency provide a dispute resolution procedure to remedy administrative errors in an individual's Clearinghouse record. This section would establish procedures for drivers to petition FMCSA to correct inaccurate information in the Clearinghouse. Drivers would be required to submit a petition within 18 months of the date the information in question was reported to the Clearinghouse. Drivers would need to include information identifying themselves and the information they want to be corrected, the reasons they believe the information is inaccurate, and evidence supporting their challenge. Drivers would not be able to challenge the accuracy or validity of the alcohol or controlled substance test results under these new procedures. Nothing in this rule would change the limitation on a driver's ability to challenge the validity of a test result or a refusal.

The procedures that would be established under this section would be used to correct clerical errors, such as reporting results to the wrong driver's record; an incorrect name or CDL number; a misidentified test type, such as a pre-employment identified as a random test; or other inaccuracies in the reported data. These procedures could also be used to request that an employer's report of actual knowledge of a traffic citation for driving a CMV under the influence of drugs or alcohol be removed from the Clearinghouse if the citation did not result in a conviction. FMCSA would resolve petitions and notify the driver of its decision within 90 days of receiving a complete petition. The rule would also establish an expedited review to elevate those petitions seeking correction of critical information as opposed to those petitions addressing errors that do not impact an individual's ability to perform safety-sensitive functions. In this manner, the Agency will be able to provide the critical function served by this section and appropriately manage any number of petitions that seek less-critical, but nevertheless valid, requests for data correction. If resolution of the decision would affect the driver's ability

to perform safety-sensitive functions, he or she could request expedited review. If FMCSA granted expedited review, it would inform the driver of its decision within 30 days of receiving a complete petition.

This section would also give drivers the opportunity to request administrative review of FMCSA's disposition of a petition to correct information in the Clearinghouse. A driver challenging FMCSA's decision would be required to present his or her request in writing to the Associate Administrator for Enforcement and Program Delivery, along with an explanation of the error he or she asserts FMCSA made and documentation to support his or her position. The Associate Administrator would make a decision within 60 days, and this would constitute final Agency action.

With respect to the administrative review procedures for denials of requests for data correction in 382.717(f), we would note that this is not an appeal of a factual or evidentiary nature it is a second level of review of a data correction system. The Agency based the procedures for administrative review in the NPRM on existing procedures in FMCSA regulations where the administrative review is similarly based on ''agency error.'' *See* 49 CFR 385.15 (administrative review of safety ratings), 385.113 (administrative review of Mexican carrier safety ratings), 385.327 (administrative review of new entrant safety audits), 385.423 (administrative review of hazmat safety permit denials). None of these existing processes include an explicit standard for review, explanation of how decisions will be made by the identified deciding official, or evidentiary standards. None of these sections have been deemed inadequate. The standard, as here, is whether the Agency erred in making its initial decision. In addition, all petitioners will have the right to obtain counsel if they so choose.

Section 382.719

New § 382.719 would provide that an employer seeking to determine whether an employment prohibition exists would not have access to information about a particular violation once certain conditions are met. FMCSA proposes that once a driver successfully completes all aspects of the return-to-duty process, information about a positive test result or a refusal will remain accessible to employers for a period of either three or five years. FMCSA proposes both options based on two provisions in MAP–21 that can be interpreted to require employers to have access to this information for either a three or five-year period. *Compare* 49 U.S.C. 31306a(f) (requiring employers to determine whether a driver has had an employment prohibition for a three-year period prior to hiring), *with* 49 U.S.C. 31306(g)(6) (requiring the Secretary to retain records in the clearinghouse for five years, and remove records after five years, ''unless the individual fails to meet a return-to-duty or follow-up requirement under title 49, Code of Federal Regulations'').

Based on this analysis, FMCSA proposes the following requirements to determine when records will no longer be available for review by employers conducting queries of the database: (1) The SAP reports that the driver has successfully completed the prescribed education and/or treatment as required by 49 CFR 40.305 and is eligible for return-to-duty testing; (2) the employer or C/TPA reports that the driver has received negative return-to-duty test results; (3) the driver's present employer or employer's consortium (for owner/operators) reports that the driver has successfully completed all follow-up tests as prescribed in the SAP report in accordance with §§ 40.307, 40.309, and 40.311; and (4) 3 years have passed since the date of the violation determination. As an alternate to subparagraph (4), FMCSA proposes to limit the time period during which an employer could access information about a violation that the driver has addressed by successful completion of the return to duty process to a period of five years from the date of violation instead of three years. FMCSA seeks comment on whether three or five years from the date of the violation is the appropriate amount of time to make this test result information available after a driver has completed the return-to-duty process.

Regardless of whether three years or five years has passed since the date of the violation determination, this section would also provide that violation information would remain in the Clearinghouse indefinitely and be available to employers conducting a query if a driver failed to complete the return-to-duty process. The above notwithstanding, FMCSA will remove information about a traffic citation for driving a CMV under the influence of drugs or alcohol within 2 business days of making the determination that it did not result in a conviction. This section would also make clear that FMCSA could continue to use data removed from the Clearinghouse for research, auditing, and enforcement purposes.

Section 382.721

As authorized by 49 U.S.C. 31306a(e), new § 382.721 would establish the Agency's ability to collect reasonable fees from entities that are required to query the Clearinghouse. The Agency would be prohibited from collecting fees from drivers accessing their own records.

Section 382.723

New § 382.723 would prohibit anyone from accessing the Clearinghouse except as authorized by this proposed rule. It would also prohibit anyone from reporting inaccurate or misleading information to the Clearinghouse. No one would be permitted to disclose or disseminate any information obtained from the Clearinghouse, except as otherwise authorized by law. As required by statute, codified at 49 U.S.C. 31306a(h)(1)(D), employers would be specifically prohibited from using information from the Clearinghouse for any purpose other than to assess or evaluate whether a driver is prohibited from operating a CMV. Employers would be further prohibited from divulging any such information to anyone not directly involved in that assessment or evaluation, as required by 49 U.S.C. 31306a(h)(1)(E)(ii). Anyone who violates this rule would be subject to the civil and criminal penalties established by existing § 382.507. In addition, employers and service agents remain subject to the requirements concerning ''Confidentiality and Release of Information'' found in 49 CFR part 40, subpart P. These provisions are incorporated and made applicable to motor carrier employers in 49 CFR 382.105. This section would not, however, prohibit FMCSA from accessing the information in the Clearinghouse for research or enforcement purposes. For example, FMCSA could use the information in the database to identify trends in testing data that could help the Agency focus its oversight activities.

Section 382.725

In accordance with Congress's mandate in MAP–21 (codified at 49 U.S.C. 31306a(h)(2), new § 382.725 would grant each State chief commercial driver's license official the right to access information in the Clearinghouse about an applicant for a commercial driver's license for the purpose of determining whether that applicant is qualified to operate a CMV. The applicant is not required to grant prior consent; an applicant is deemed to have granted consent by virtue of applying for a commercial driver's

license. The chief commercial driver's license officials are required to protect the privacy and confidentiality of the information they receive under this proposed section. Failure to comply with the terms of this proposed section would result in the official losing his or her right of access.

Section 382.727

As directed by Congress in MAP–21 (codified at 49 U.S.C. 31306a(k), new § 382.727 would establish civil and criminal penalties for violations of the proposed Clearinghouse regulations. As stated above, 49 CFR 382.507 already establishes civil and criminal liability for employers and drivers that violate any provision of 49 CFR part 382. However, new § 382.727 would extend civil and criminal liability to all employees, medical review officers and service agents for violations of 49 CFR subpart G.

Summary of Responsibilities and Data Access

Table 1 summarizes the obligations of each entity responsible for reporting information to the Clearinghouse database.

TABLE 1—REPORTING ENTITIES AND CIRCUMSTANCES

Reporting entity	When information would be reported to clearinghouse
Prospective Employer of CDL Driver	—Positive pre-employment test result. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
Current Employer of CDL Driver	—Positive alcohol test result. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Citations (DUI in a CMV). —Negative return-to-duty test results. —Completion of follow-up testing.
MRO	—Verified positive, adulterated, or substituted drug test result. —Refusal to test (drug) requiring a determination by the MRO as specified in 49 CFR 40.191.
Third Party Administrator (if designated by employer to report on its behalf).	—Positive alcohol test result. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191. —Negative return-to-duty test results.
Consortium (reporting for owner/operators).	—Positive alcohol test result. —Refusal to test (alcohol) as specified in 49 CFR 40.261. —Refusal to test (drug) not requiring a determination by the MRO as specified in 49 CFR 40.191.
SAP	—Identification of driver and date the initial assessment was initiated. —Successful completion of treatment and/or education and the determination of eligibility for return-to-duty testing. —Follow-up testing requirements.

Table 2 summarizes the conditions under which entities would be able to view information in the Clearinghouse.

TABLE 2—QUERYING ENTITIES AND INFORMATION OBTAINED FROM THE CLEARINGHOUSE

Querying entity	Type of data obtained	Requirements to obtain data
Prospective Employer of CDL Driver (full query).	Records in the Clearinghouse pertaining to the applicant concerning: —positive alcohol test result; —verified positive, adulterated, or substituted drug test result; —refusal to test (alcohol or drug); —citations (actual knowledge); —return-to-duty negative test result; —follow-up testing program information.	Employer obtains written consent from driver.
Current Employer of CDL Driver (full query).	Records in the Clearinghouse pertaining to the CDL driver concerning: —positive alcohol test result; —verified positive, adulterated, or substituted drugs test result; —refusal to test (alcohol or drug); —citations (actual knowledge); —return-to-duty negative test result; —follow-up testing program information.	Employer obtains written consent from driver.
Current Employer of CDL Driver (limited query).	Notice of whether information for the driver exists in the Clearinghouse.	Employer obtains written consent for a limited query.
CDL Driver	Records in the Clearinghouse pertaining to the CDL driver.	Specific request of the CDL driver; FMCSA verifies driver identity.
MRO	No access.	
SAP	No access.	
Consortium (full query)	Records in the Clearinghouse pertaining to the CDL driver concerning:	Consortium obtains written consent for a full query.

TABLE 2—QUERYING ENTITIES AND INFORMATION OBTAINED FROM THE CLEARINGHOUSE—Continued

Querying entity	Type of data obtained	Requirements to obtain data
	—positive alcohol test result; —verified positive, adulterated, or substituted drugs test result; —refusal to test (alcohol or drug); —citations (actual knowledge); —return-to-duty negative test result; —follow-up testing program information.	
Consortium (limited query) ...	Notice of whether information for the driver exists in the Clearinghouse.	Consortium obtains written consent for a limited query.
Third Party Administrator	Access limited to authority delegated by employer to review data in Clearinghouse.	TPA obtains written consent for a limited or full query; TPA must have specific written consent from the employer of the CDL driver.
FMCSA	Full access	No consent required.
NTSB	Records of driver involved in accidents under investigation.	No consent required.

Table 3 summarizes the types of queries that an employer is required to conduct.

TABLE 3—TYPES OF QUERIES

Type of query	Type of consent	When required	Type of data obtained
Full query	Employer obtains written consent from driver.	Pre-employment screening	Information on driver's drug and alcohol test results.
Full query	Employer obtains written consent from driver.	Annual query results show that the driver has drug or alcohol testing information in the Clearinghouse.	Information on driver's drug and alcohol test results.
Limited query	Employer must obtain and maintain written consent for at least 3 years following the query.	Annually	Notice of whether information for the driver exists in the Clearinghouse.

V. Regulatory Analyses and Notices

Executive Order 12866

This proposed rule is a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. A draft Regulatory Impact Analysis (RIA) is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the RIA follows:

RIA Estimates of Benefits and Costs

All employers subject to the drug and alcohol testing regulations would be required to query the database (1) on an annual basis to examine each driver's positive test record and (2) as part of a prospective driver's pre-employment screening process.

Given the established, sizeable success of mandatory testing programs on crash reduction,[4] [5] concrete improvements in the process of disseminating positive-test results and making them accessible to employers are expected to bring substantial benefits.

The Agency estimates about $187 million in annual benefits from increased crash reduction from the rule—$53 million from the annual queries and $134 from the pre-employment queries. FMCSA estimates about $186 million in total annual costs, which include costs for: Employers to complete the annual ($28 million) and pre-employment ($10 million) queries; employers and drivers to designate service agents and report driver information ($3 million); various entities to report positive tests ($1 million) and to register, verify authorization, and become familiar with the rule ($5 million); consent to release driver information ($35 million); clearinghouse development and records management ($3 million); and the cost for drivers to go through the return-to-duty process ($101 million). The estimated costs are about equal to its benefits: Total net benefits of the rule are just $1 million annually. The ten-year projection of net benefits is $8 million when discounted at seven percent and $9 million when discounted at three percent. However, estimated benefits include only those associated with reductions in CMV crashes. FMCSA could not precisely quantify improved health, quality-of-life improvements, and increased life expectancy for CMV drivers. The Agency believes these non-quantified benefits are significant, and, if they were included in the benefits estimates, would clearly demonstrate the positive net benefits of this rule. The table below summarizes these net-benefit estimates.

[4] Jacobson, Mireille, ''Drug Testing in the Trucking Industry: The Effect on Highway Safety,'' The Journal of Law and Economics, April 2003, Vol. 46, pp. 130–156.

[5] Brady, Joanne E., Susan P. Baker, Charles DiMaggio, Melissa McCarthy, George W. Rebok, and Guohua Li, ''Effectiveness of Mandatory Alcohol Testing Programs in Reducing Alcohol Involvement in Fatal Motor Carrier Crashes,'' American Journal of Epidemiology, Vol. 170, No. 6, pp. 775–782 (Advance Access Publication 19–August–2009).

TOTAL AND ANNUAL NET BENEFIT PROJECTION OVER A TEN-YEAR PERIOD

Total	Annual	10-Year	10-Year
Discount Rate		7%	3%
Total Benefits	$187,000,000	$1,406,000,000	$1,643,000,000
Total Costs	186,000,000	1,398,000,000	1,634,000,000
Total Net Benefits	1,000,000	8,000,000	9,000,000

The RIA contains sections describing the benefits and costs associated with implementing the following provisions of the proposed rule:

• Mandatory Queries

a. Employers would be required to query the Clearinghouse annually for each of their drivers in order to ascertain if any of them failed drug or alcohol tests during the previous year.

b. Prospective employers would be required to query the Clearinghouse as part of their pre-employment screening process of potential hires in order to ascertain if a prospective employee failed a drug or alcohol test with a previous employer or prospective employer.

• Designating Service Agents

c. Employers would be required to designate (and submit authorization for) their C/TPAs and SAPs with the Clearinghouse.

• Reports and Notifications of Positive Tests

d. MROs would report verified positive controlled-substances test results for CDL drivers to the Clearinghouse. Each test would be identified as pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up. MROs would also be required to report certain drug test refusals to the Clearinghouse.

e. FMCSA would notify each driver testing positive that information about them has been reported to, revised or removed from the Clearinghouse. The drivers would also have the opportunity to review this information.

f. SAPs would report to the Clearinghouse information about the evaluation and treatment process as well as the number of required follow-up tests to be given after a return-to-duty test.

g. Employers or C/TPAs acting on the employer's behalf would report verified alcohol test results at or above 0.04 alcohol concentration for CDL drivers to the Clearinghouse, subsequent follow-up test results stemming from the initial test at or above 0.04 alcohol concentration, and refusals. Each test would be identified as pre-employment, post-accident, random, reasonable suspicion, return-to-duty, or follow-up. Employers or TPAs would also report negative return-to-duty test results.

h. All employers subject to 49 CFR part 382, or C/TPAs acting on the employer's behalf would report information on refusals to test.

i. Employers would be required to report actual knowledge of a driver's traffic citation for driving a CMV under the influence of drugs or alcohol).

• Clearinghouse Registration

j. Employers, C/TPAs, MROs, and SAPs would be required to register with the Clearinghouse.

k. Employers (and C/TPAs) would be required to verify, on an annual basis, the names of person(s) authorized to report and obtain information from the Clearinghouse.

• Driver Consent Verification

l. Written consent must be obtained from the driver prior to release of information from the Clearinghouse.

• Submission of Annual Reports

m. All drug-testing laboratories would submit employer specific summary reports of test results directly to FMCSA annually.

Benefit Analysis

The benefits to the rule derive from reductions in crashes due to the additional information on employee-failed and refused drug and alcohol tests disseminated to employers solely because of the annual and pre-employment queries. This represents information that employers would not otherwise know about and act on.

The current drug-testing program is estimated to generate $160 million in annual crash-reduction benefits from 35,145 annual positive tests, which averages to approximately $4,600 per positive drug test ($160 million/35,145, rounded to the nearest hundred). The *mandated annual query* in the proposed rule would result in 9,200 instances of employer alerts to positive drug tests of their drivers that current employers would not otherwise have known about. A requirement that disseminates additional information on 9,200 other positive testing drivers can be estimated to generate the same proportion of benefits that the 35,145 from the current program generates. If 35,145 positive tests and consequent alerts generate $160 million in benefits, then 9,200 additional alerts would generate *$42 million in benefits* (($160 million/35,145) = ($41.9 million/9,200), rounded to the nearest million).

The current alcohol testing program is estimated to generate $43 million in annual crash-reduction benefits from 3,465 annual positive alcohol tests, which averages to approximately $9,200 per positive alcohol test ($43 million/3,465, rounded to nearest hundred). The *mandated annual query* in the proposed rule would result in 900 instances of employer alerts to positive tests of their drivers that current employers would not otherwise have known about. A requirement that disseminates additional information on 900 other positive testing drivers can be estimated to generate the same proportion of benefits that the 3,465 from the current program generates. If 3,465 positive tests and consequent alerts generate $43 million in benefits, then 900 additional alerts would generate about *$11 million in benefits* (($43 million/3,465) = ($11.2 million/900), rounded to the nearest million).

With annual benefits to the drug-testing side of the annual queries estimated at $42 million and the alcohol-testing side at $11 million, total annual benefits to mandated annual queries are thus estimated at *$53 million* ($42 million + $11 million).

The *mandated pre-employment query* in the proposed rule would result in 23,100 instances of employer alerts to positive drug tests that prospective employers would not otherwise have known about. A requirement that disseminates additional information on 23,100 other positive drug testing drivers can be estimated to generate the same proportion of benefits that the 35,145 from the current program generates. If 35,145 positive tests and consequent alerts generate $160 million in benefits, then 23,100 additional alerts would generate *$105 million in benefits* (($160 million/35,145) = ($105.2

million/23,100), rounded to the nearest million).

The *mandated pre-employment query* in the proposed rule would result in 2,300 instances of employer alerts to positive alcohol tests of their drivers that prospective employers would not otherwise have known about. A requirement that disseminates additional information on 2,300 other positive testing drivers can be estimated to generate the same proportion of benefits that the 3,465 from the current program generates. If 3,465 positive tests and consequent alerts generate $43 million in benefits, then 2,300 additional alerts would generate *$29 million in benefits* (($43 million/3,465) = ($28.5 million/2,300), rounded to the nearest million).

With annual benefits to the drug-testing side of the pre-employment queries estimated at $105 million and the alcohol-testing side at $29 million, total annual benefits to mandated pre-employment queries are thus estimated at *$134 million* ($105 million + $29 million).

Given the $53 million in annual benefits from the information on positive tests disseminated because of the mandatory annual queries ($42 million drug and $11 million alcohol) and the $134 million in annual benefits from the information on positive tests disseminated because of the mandatory pre-employment queries ($105 million drug and $29 million alcohol), the total benefits to the proposed rule are *$187 million annually*. The table below presents these benefit totals.

TOTAL ANNUAL BENEFITS OF THE RULE

Queries	Drug	Alcohol	Total
Annual	$42,000,000	$11,000,000	$53,000,000
Pre-Employment	105,000,000	29,000,000	134,000,000
Total	147,000,000	40,000,000	187,000,000

Based on the annual benefits of $187 million, the *10-year benefit projection* is *$1.406 billion* when discounted at 7 percent and $1.643 billion when discounted at 3 percent

By reducing drug and alcohol abuse by drivers, this rule could also lead to improved health, quality-of-life improvements, and increased life expectancy for drivers beyond those associated with reductions in vehicle crashes.

Cost Analysis

FMCSA estimates that the costs of the proposed rule total $186 million annually, which can be separated into nine categories. From the above descriptions of the requirements of the rule (a though m above): (a) The cost to employers to complete the annual queries of their drivers is estimated at $28 million annually; (b) the cost to prospective employers to complete pre-employment queries as part of the pre-employment screening process is $10 million annually; (c) the cost to employers to designate their C/TPAs and SAPs to input driver information is $3 million annually; (d, e, f, g, h, and i) the cost to MROs, SAPs, C/TPAs, and employers to report positive tests to the Agency totals $1 million annually; (j and k) the cost for employers, C/TPAs, MROs, and SAPs to register with the Agency, verify persons authorized to access, and become familiar with the new processes (this familiarization is not, per se, ''required'' by the rulemaking, but is an obvious result of it) is $5 million annually: (l) The cost to process access requests is $35 million annually, (m) the cost to FMCSA to develop the clearinghouse and manage driver records is $3 million annually, the cost for drivers to undergo the return-to-duty process is $101 million annually, and the cost for laboratories to submit annual reports of test results to FMCSA is insignificant (less than $1,500). These components of the cost estimate are presented in the table below and FMCSA seeks comment on the estimates summarized here and discussed further in the RIA.

SUMMARY OF THE TOTAL ANNUAL COSTS OF THE RULE

Cost category	Entity	Annual cost
Annual Queries	Employers	$28,000,000
Pre-Employment Queries	Employers	10,000,000
Designate Service Agents/Input Driver Information	Employers	3,000,000
Report Positive Tests	Various	1,000,000
Register, Rule Familiarize, Verify Authorization	Various	5,000,000
Access	Drivers	35,000,000
Development and Records Management	FMCSA	3,000,000
Return-to-Duty Process	Drivers	101,000,000
Grand Total		186,000,000

Based on the annual cost of $186 million, the ten-year cost projection would be $1.398 billion when discounted at 7 percent and $1.634 billion when discounted at 3 percent.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), (5 U.S.C. 601–612), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.

Accordingly, DOT policy requires an analysis of the impact of all regulations (or proposals) on small entities, and mandates that agencies shall strive to lessen any adverse effects on these businesses. The initial Regulatory Flexibility Analysis (IRFA) must cover the following topics:

(1) A Description of the Reasons Why Action by the Agency Is Being Considered

A 1999 bus crash in New Orleans resulted in 22 passenger fatalities. The driver of the motor-coach had failed pre-employment drug testing when applying for previous positions. He had also failed to disclose on his employment application that a previous employer had fired him after he tested positive for a controlled substance. His employer at the time of the crash did not know about any of this.

As a result, the National Transportation Safety Board (NTSB) made recommendations to the Agency pertaining to the reporting of CMV driver drug and alcohol testing results. Specifically, the NTSB recommended that FMCSA ''develop a system that records all positive drug and alcohol test results and refusal determinations that are conducted under the U.S. Department of Transportation (USDOT) testing requirements, require prospective employers to query the system before making a hiring decision, and require certifying authorities to query the system before making a certification decision.'' This proposed rulemaking addresses the NTSB's recommendation.

Two recent Government Accountability Office (GAO) reports discuss ''job hopping'' by CMV drivers after failing, or refusing to submit to, drug or alcohol tests (see: GAO–08–600 and GAO–08–0829R). The GAO identified and verified 43 cases (based on insider information supplied by a third party to a Congressman) where CMV drivers had tested positive for illegal drugs (such as cocaine, marijuana, and amphetamines) with one employer and within 1 month tested negative with another employer. In its recommendations to Congress, the GAO advocated a national database and this rulemaking as possible methods to eliminate the job-hopping problems.

The purpose of this rule is to mandate that employers annually query the Clearinghouse to determine whether each of their drivers has tested positive for illegal drug or alcohol use in the previous year. Additionally, the rule mandates that employers query the Clearinghouse as part of their pre-employment screening process of prospective drivers.

The purpose of the annual query is to diminish or eliminate the problem of a currently-employed CDL holder testing positive for illegal drug or alcohol use with another or prospective employer, but then simply continuing to operate CMVs with his or her current employer without that employer knowing and acting on the positive test.

The purpose of the pre-employment query is to diminish or eliminate the problem of a driver with previous positive tests seeking and obtaining work without prospective employers knowing and acting on the information. This could occur if a driver is fired for a positive test—for example, failing a post-accident or reasonable-suspicion test—but does not inform future employers about the previous employer that fired her.

This could also occur if a new driver entering the workforce tests positive for drugs or alcohol during a pre-employment test, waits for the drugs to leave her system, then takes and passes another pre-employment test and gets hired without the employer having any knowledge of the previously failed pre-employment test.

(2) A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The Agency proposes to revise 49 CFR part 382, Controlled Substances and Alcohol Use and Testing, to establish a database, identified as the ''Commercial Driver's License Drug and Alcohol Clearinghouse,'' for reporting of verified positive, adulterated, or substituted drug test results; positive alcohol test results; refusals; and negative return-to-duty test results. Under the proposed rule, motor carrier would be required to query the Clearinghouse for drug and alcohol test result information on employees and prospective employees. The proposed rule is intended to increase compliance with drug and alcohol testing requirements.

FMCSA has general authority to promulgate safety standards, including those governing drivers' use of drugs or alcohol while operating a CMV. The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (the 1984 Act) provides authority to regulate drivers, motor carriers, and vehicle equipment and requires the Secretary to prescribe minimum safety standards for CMVs. The Omnibus Transportation Employee Testing Act of 1991 (OTETA) (Pub. L. 102–143, Title V, 105 Stat. 917, at 952, October 28, 1991, codified at 49 U.S.C. 31306) mandated the alcohol and controlled substances (drug) testing program for DOT. OTETA required the Secretary of Transportation to promulgate regulations for alcohol and drug testing for persons in safety-sensitive positions in four modes of transportation, motor carrier, airline, railroad, and mass transit.

(3) A Description—and, Where Feasible, an Estimate of the Number—of Small Entities to Which the Proposed Rule Will Apply

Carriers are not required to report revenue to the Agency, but are required to provide the Agency with the number of CMVs they operate, when they register with the Agency, and to update this figure biennially. Because FMCSA does not have direct revenue figures for all motor carriers, CMVs serve as a proxy to determine the carrier size that would qualify as a small business given the SBA's revenue threshold. In order to produce this estimate, it is necessary to determine the average revenue generated by a CMV.

With regard to truck CMVs, the Agency determined in the Hours-of-Service Supporting Documents Rulemaking RIA [6] that a CMV produces about $173,000 in revenue annually (adjusted for inflation to 2012 dollars).[7] According to the SBA, motor carriers with annual revenue of $25.5 million are considered small businesses.[8] This equates to about 147 CMVs (147.4 = $25,500,000/$173,000). Thus, FMCSA considers motor carriers of property with 147 CMVs or fewer to be small businesses for purposes of this analysis. The Agency then looked at the number and percentage of property carriers with recent activity that would fall under that definition (of having 147 CMVs or fewer). The results indicate that at least 99 percent of all interstate property carriers with recent activity have 147 CMVs or fewer.[9] This amounts to

[6] FMCSA Regulatory Analysis, ''Hours of Service of Drivers,'' Final Rule. **Federal Register**/Vol. 76, No. 248/Tuesday, December 27, 2011/Rules and Regulations, p. 81181. Using data from the 2007 Economic Census, FMCSA estimated that the average carrier earns roughly $160,000 in annual revenue per truck (in year 2007 dollars).

[7] GDP Deflator. Available from the Bureau of Economic Analysis online, NIPA tables, Section 1, Table 1.1.4, ''Price Indexes for Gross Domestic Product,'' years 2007–2012. Accessed on July 29, 2013 at *http://www.bea.gov/iTable/index_nipa.cfm.*

[8] U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification System (NAICS) codes, effective January 7, 2013. See NAIC subsector 484, Truck Transportation. Accessed on July 26, 2013 at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

[9] An August 24, 2012 MCMIS snapshot indicates that carriers possessing 100 CMVs or less comprise of 99.26 percent of all interstate motor carriers with recent activity.

515,000 carriers (99 percent of 520,000 active motor carriers = 514,800, rounded to the nearest thousand). Therefore, an overwhelming majority of interstate carriers of property would be considered small entities.

To provide a conservative estimate on the impact of small entities, the Agency assumes that every active motor carrier would be subject to this regulation because *under full participation* all carriers would complete annual and pre-employment queries. Hence the rule applies to all (estimated) 515,000 motor carriers considered small entities.

Assuming there are 1.05 drivers per CMV [10] and a maximum of 147 CMVs per small entity, FMCSA estimates that at most 154 drivers (154.35 = 147 × 1.05) would be annually queried by a small entity. With an annual average of 1,876,000 drug pre-employment tests conducted on 4 million CDL drivers, the estimated rate of pre-employment tests per population would be 47 percent (0.469 = 1,876,000/4,000,000). With the assumption that this rate is proportionate to a 154-driver entity, it would result in about 72 pre-employment tests (47 percent of 154 drivers) and consequently 72 pre-employment queries per year, on average. In total, the maximum number of annual and pre-employment queries that a small entity may encounter would be 226 per year (154 annual + 72 pre-employment).

At ten minutes per query, 38 hours would be required to complete 226 queries (37.67 = 226 queries × ⅙ queries per hour). About another half-hour would be necessary to designate and verify a C/TPA (10 minutes), register with the Clearinghouse (10 minutes) and become familiar with the rule (10 minutes). In total, then, a 154-driver small entity would need to spend 38.5 hours (38 + ½) to comply with the rule.

The occupational salary of a bookkeeping, accounting, or auditing clerk is taken as the median of $16.91 per hour (BLS, May 2012).[11] Two adjustments are made to this hourly compensation estimate. First, employee benefits are estimated at 50 percent of the employee wage.[12] Second, the employee wage and benefits are increased by 27 percent to include relevant firm overhead.[13] Applying the estimated 50 percent of wages for employee benefits and 27 percent for overhead results in $32.21 in hourly compensation for the clerk ($32.21 = $16.91 × (1 + 0.50) × (1 + 0.27). Given $32.21 per hour for 38.5 hours, the annual cost of the queries incurred by a bookkeeping clerk would be $1,240 ($1,240.22 = 38.5 × $32.21, rounded to the nearest dollar) for a 154-driver small entity.

In addition, a fee would be required to access the Clearinghouse during the query process. A full query would cost $5 and a limited query would cost $2.50. Full queries are required by all pre-employment screening. Given 72 pre-employment queries for a 154-driver small entity, fees for access would be $360 (72 × $5). If an annual query indicates that information exists on a particular driver in the Clearinghouse, then a limited query would lead to a full query. As explained in Section 7.6, there are an estimated 512,000 full queries, annually. Given 4,000,000 drivers in the industry, there would be a 12.8 percent chance (512,000/4,000,000 = 0.128) that a driver would require a full query during an annual screening. Therefore, a 154-driver small entity is estimated to perform about 20 full queries annually (154 × 0.128 = 19.7). The amount of limited queries to be performed would be 134 (154 total queries—20 full queries). Accordingly, the cost of access requests for annual queries is $335 (134 × $2.50) for limited queries and $100 (20 × $5) for full queries. In sum, the annual cost of fees for access for pre-employment and annual queries is $795 ($360 + $335 + $100) for a 154-driver small entity.

The maximum possible cost to a small entity thus totals $2,035 annually ($1,240 + $795). This sets the maximum cost for a small entity as defined by the SBA Most motor carriers, however, employ significantly fewer drivers than the estimated 154 SBA limit. The Agency estimates that nearly 75 percent of motor carriers employ three drivers or less.[14] Under this proposed rule, a motor carrier would incur approximately $13.22 per driver ($2,035/154 drivers) annually. Accordingly, a motor carrier that employs four drivers—a more typical carrier in the industry—would pay less than $40 annually for this testing.

The table below summarizes the cost analysis.

MAXIMUM POSSIBLE COST TO SMALL ENTITIES

Maximum number for a small entity	Annual	Fees for access		Notes
		Limited query	Full query	
CMVs	147			Small Entity Maximum.
Drivers Per CMV	1.05			MCMIS.
Drivers and Annual Queries	154	134	20	147 × 1.05. 154 − (0.128 × 154). 0.128 × 154.
Estimated Percentage of Pre-Employment Queries.	47%			1,876,000/4,000,000.
Pre-Employment Queries	72	0	72	47% of 154.
Total Queries	226	134	92	154 + 72.
Hours Per Query (10 minutes)	1/6			10 minutes.
Total Hours for Annual and Pre-Employment Queries.	38			226 × 1/6.
Hours for Designation and Verification of a C/TPA.	1/6			FMCSA Estimate.

[10] There was a total of 4,211,880 interstate drivers and 4,020,464 CMVs according to a MCMIS August 24, 2012 snapshot based on count of interstate drivers and CMVs (4,211,880/4,020,464 = 1.05). Further, the driver-to-CMV ratio remains at 1.05 when considering carriers that possess 200 CMVs or less.

[11] Occupational Employment Statistics, Occupational Employment and Wages, May 2012, 43–3031 Bookkeeping, Accounting, or Auditing Clerks. Accessed on July 29, 2013 at *http://www.bls.gov/oes/current/oes433031.htm.*

[12] See FMCSA's calculation of the employee benefit rate at Section 7.1, above.

[13] Berwick, Farooq. ''Truck Costing Model for Transportation Managers''. Upper Great Plains Transportation Institute, North Dakota State University (2003). Weighted average management and overhead costs total $10,721 annually for a truck travelling 100,000 miles (page 29), or $0.107 per mile ($10,721/100,000 on page 47). Labor costs total $0.39 per mile (pages 42–43). Management/overhead costs are thus 27% of labor costs (0.107/0.390). Accessed at *http://ntl.bts.gov/lib/24000/24200/24223/24223.pdf* on 8-March=2011.

[14] From an August 24, 2012 MCMIS snapshot, less than 74.5 percent of active interstate motor carriers employed 3 CMVs or less.

MAXIMUM POSSIBLE COST TO SMALL ENTITIES—Continued

Maximum number for a small entity	Annual	Fees for access		Notes
		Limited query	Full query	
Hours for Registration and Rule Familiarization.	1/3	.....	.....	FMCSA Estimate.
Total Hours	38.5	.....	.....	38 + 1/6 + 1/3
Wage ($) Per Hour	$16.91	.....	.....	BLS, General Office Clerk.
Fringe Benefits (as a % of Wage)	50%	.....	.....	BLS, Employee Compensation.
Overhead (as a % of Wage and Fringe Benefits).	27%	.....	.....	BLS, Employee Compensation.
Total Compensation Per Hour/Fee per Query	$32.21	$2.50	$5.00	$16.91 × (1 + 0.50) × (1 + 0.27).
Cost for Annual and Pre-Employment Queries.	$1,240	$335	$460	38.5 hrs × $32.21 per hr. 134 × $2.50. 92 × $5.
Total Cost (146 Drivers)	$2,035			$1,240 + $335 + $460.
Total Cost per Driver	$13.22			$2,035/154 drivers.

(4) Reporting, Recordkeeping, and Other Compliance Requirements (for Small Entities) of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

There are an estimated 82,900 annual positive drug (75,800) and alcohol (7,100) test-results at full participation (including refusals). Each positive drug test result would be reported by an MRO. Each positive alcohol test would be reported by an employer or a C/TPA. Each driver's subsequent return-to-duty process for positive test results and test refusals would be reported by an SAP. Ninety-nine percent of motor carriers, MROs, C/TPAs, and SAPs are most likely small entities. FMCSA estimates that bookkeeping clerks would perform this reporting.

(5) Duplicative, Overlapping, or Conflicting Federal Rules

FMCSA is not aware of any other rules which *conflict* with the proposed action. The proposed rule would require laboratories to report summary test information on each motor carrier covered by FMCSA's drug and alcohol rules for which they perform tests. The purpose of this requirement is to help FMCSA identify motor carriers that do not comply with mandatory drug and alcohol testing requirements. Currently, there exists a DOT-wide requirement for laboratories to report summary information on testing services provided to DOT-regulated entities, but does not require the information to be broken down on a carrier-by-carrier basis. The DOT-wide report overlaps with the proposed rule in the sense that it contains some of the same aggregate information that would be required under the proposed rule. However, since the reports do not contain summary information specific to each motor carrier for which the laboratory provide services, FMCSA cannot use this information to identify non-compliant motor-carriers. In addition the Agency requests drug and alcohol testing summary reports from approximately 3,000 employers per year through FMCSA's Drug and Alcohol Testing Survey. This information is not collected from every covered motor carrier. Instead, the purpose of the survey is to produce nationally representative estimates for drug and alcohol usage rates among CDL drivers, in order to determine whether to increase or decrease random testing rates in accordance with 49 CFR 382.305(c).

(6) A Description of Any Significant Alternatives to the Proposed Rule Which Minimize Any Significant Impacts on Small Entities

The Agency did not identify any significant alternatives to the rule that could lessen the burden on small entities without compromising its goals or the Agency's statutory mandate. Because small businesses are such a large part of the demographic the Agency regulates, providing alternatives to small business to permit noncompliance with FMCSA regulations is not feasible and not consistent with sound public policy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*) requires Agencies to evaluate whether an Agency action would result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $151 million or more (as adjusted for inflation) in any one year, and if so, to take steps to minimize these unfunded mandates. The proposed rulemaking would result in private sector expenditures of $186 million, which is in excess of the $151 million threshold. The estimated costs are about equal to its benefits: Total net benefits of the rule are just $1 million annually. The ten-year projection of net benefits is $8 million when discounted at seven percent and $9 million when discounted at three percent. However, estimated benefits include only those associated with reductions in CMV crashes. FMCSA could not precisely quantify improved health, quality-of-life improvements, and increased life expectancy for CMV drivers. The Agency believes these non-quantified benefits are significant, and, if they were included in the benefits estimates, would clearly demonstrate the positive net benefits of this rule.

Executive Order 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not create an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with

Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

A rule has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. FMCSA recognizes that, as a practical matter, this rule may have an impact on the States. Accordingly, by letters sent March 28, 2011, the Agency sought advice from the National Governors Association (NGA), National Conference of State Legislators (NCSL), and the American Association of Motor Vehicle Administrators (AAMVA) on the topic of developing a database that the Agency believes may increase the effectiveness of its drug and alcohol testing program. (Copies of the letters are available in the docket for this rulemaking.) FMCSA offered NGA, NCSL, and AAMVA officials the opportunity to meet and discuss issues of concern to the States. FMCSA did not receive a response to this letter. State and local governments will also be able to raise Federalism issues during the comment period for this NPRM.

In addition, § 32402 of MAP–21 preempts State and local laws inconsistent with the Clearinghouse. Preemption specifically applies to the reporting of drug and alcohol tests, refusals and any other violation of FMCSA's drug and alcohol testing program. MAP–21 does not preempt State laws related to a driver's CDL or driving record.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of information it conducts, sponsors, or requires through regulations. FMCSA analyzed this proposal and preliminarily determined that its implementation would create a new information collection burden on CDL holders, motor carriers, and entities that provide services as part of the FMCSA's mandatory alcohol and controlled substances testing process under 49 CFR part 382. FMCSA will seek approval of the information collection requirements in a new information collection to be entitled ''Commercial Driver's License Drug and Alcohol Clearinghouse.''

The collected information encompasses information that is generated, maintained, retained, disclosed, and provided to, or for, the Agency under a proposal for a database that will be entitled the ''Commercial Driver's License Drug and Alcohol Clearinghouse'' or Clearinghouse.

DOT currently has approval for two information collections for its alcohol and controlled substances testing programs: (1) The Federal Chain of Custody and Control Form, OMB control number 0930–0158, and (2) the U.S. Department of Transportation Alcohol and Controlled Substances Testing Program, OMB control number 2105–0529. Although the proposed Clearinghouse will obtain information from the forms covered by the two information collections, this proposal does not create any revisions or additional burden under those collections.

This proposal would create a new information collection to cover the requirements set forth in the proposed amendments to 49 CFR parts 382. These amendments would create new requirements for CDL drivers, carriers/employers of CDL drivers, MROs, SAPs, and C/TPAs to register with the new database, which would be created and administered by the FMCSA. Clearinghouse registration will be a prerequisite to both placing information in the database and obtaining information from the database. Access to information in the database will be strictly limited and controlled, and available only with the consent of the CDL holders about whom information is sought.

Prospective employers of CDL drivers would be required to query the Clearinghouse to determine if job applicants have controlled substance or alcohol testing violations that should preclude them, under existing FMCSA regulations in part 382, from carrying out safety-sensitive functions. Employers will also be required to query the database once annually for information about drivers whom they currently employ. Carriers, C/TPAs that perform testing and other services for carriers, MROs, and SAPs will place information into the database about alcohol and controlled substances testing violations. The proposed rule contains procedures for correcting information in the database and specifies that most interactions with the database will be carried out using electronic media.

The total burden to respondents for queries, designations, registration, familiarization, reporting, and recordkeeping to the Clearinghouse is estimated at about 1.86 million hours annually. The hours attributed to each activity are presented in the table below.

TOTAL ANNUAL NUMBER OF BURDEN HOURS

Submissions	Responsible	Performed by	Instances	Minutes	Total hours
Annual Queries	Carriers	Bookkeeping Clerk	5,200,000	10	866,667
Pre-Employment Queries	Carriers	Bookkeeping Clerk	1,876,000	10	312,667
Designate C/TPAs	Carriers	Bookkeeping Clerk	520,000	10	86,667
SAPs Inputting Driver Information	SAPs	SAPs	82,900	10	13,817
Report/Notify Positive Tests	Various	Bookkeeping Clerk	165,800	10	27,633
Register/Familiarize/Verify	Various	Bookkeeping Clerk	792,750	20. 10	155,083
Driver Consent Verifications	Drivers	Drivers	2,388,000	10	398,000
Annual Summaries	Laboratories	Bookkeeping Clerk	32	90	48
Total Instances/Hours			11,025,482		1,860,581

FMCSA has prepared an information collection request and supporting statement that is being submitted to the Office of Management and Budget and that will be made available for public comment pursuant to a notice to be published in the **Federal Register**.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this proposal for the purpose of the National Environmental

Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*). FMCSA conducted an environmental assessment (EA) of the proposed alternatives considered by FMCSA and determined that if the rule reduced CMV crashes as estimated, there would be a small net benefit to the environment. These benefits result from the reduction of CMV crashes and include: Lives saved and injuries prevented from reducing CMV crashes, the reduction of fuel consumed and prevention of air emissions from traffic congestion caused by a CMV crash, the reduction of solid waste generated in CMV crashes from damaged vehicles, infrastructure and goods, and hazardous materials spilled during a CMV crash. FMCSA does not, however, expect these environmental impacts to be considered significant under NEPA and do not require further analysis in an Environmental Impact Statement. FMCSA does not believe the EA results require any type of mitigation, as the impacts to the environment are beneficial in nature. The EA has been placed in the rulemaking docket. FMCSA requests comments on this EA.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 et seq.) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. The additional reductions to air emissions from either of the alternatives are expected to fall within the CAA *de minimis* standards and are not expected to be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. While FMCSA's analysis shows a small reduction in fuel used due to eliminating traffic idling caused by CMV crashes, we have determined preliminarily that it would not be a ''significant energy action'' under that Executive Order because it would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the final rule on the privacy of information in an identifiable form and related matters. FMCSA has determined that this NPRM would impact the handling of PII. FMCSA has also determined the risks and effects the rulemaking might have on collecting, storing, and sharing PII and has examined and evaluated protections and alternative information handling processes in developing the proposal in order to mitigate potential privacy risks. The PIA for this proposed rulemaking is available for review in the docket for this rulemaking.

List of Subjects in 49 CFR Part 382

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration proposes to amend 49 CFR part 382 as follows:

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 1. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 *et seq.,* 31502; and 49 CFR 1.73.

■ 2. Amend § 382.103 by revising the introductory text of paragraph(a) to read as follows:

§ 382.103 Applicability.

(a) This part applies to service agents and to every person and to all employers of such persons who operate a commercial motor vehicle in commerce in any State and is subject to:

* * * * *

■ 3. Amend § 382.107 to add the following definitions in alphabetical order:

§ 382.107 Definitions.

* * * * *

Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse) means the FMCSA database that subpart G of this part requires employers and service agents to report information to and to query regarding drivers who are subject to the DOT controlled substance and alcohol testing regulations.

* * * * *

Negative return-to-duty test result means a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02.

* * * * *

Positive alcohol test means a DOT alcohol confirmation test having an alcohol concentration of 0.04 or greater.

* * * * *

■ 4. Add new § 382.123 to read as follows:

§ 382.123 Driver identification.

(a) *Identification information on the Alcohol Testing Form (ATF).* For each alcohol test performed under this part, the employer shall provide the following information, which must be recorded as follows:

(1) The driver's commercial driver's license number and State of issuance in Step 1, section B of the ATF.

(2) The employer's USDOT number or Internal Revenue Service Employer Identification Number (EIN) and the employer's name and other identifying information required in Step 1, section C of the ATF.

(b) *Identification information on the Federal Drug Testing Custody and Control Form (CCF).* For each controlled substance test performed under this part, the employer shall provide the following information, which must be recorded as follows:

(1) The employer's USDOT number or Internal Revenue Service Employer Identification Number (EIN) in Step 1, section A of the CCF.

(2) The driver's commercial driver's license number and State of issuance in Step 1, section C of the CCF in place of the ''donor SSN or Employee I.D. No.''

■ 5. Add new § 382.217 to read as follows:

§ 382.217 Employer responsibilities.

No employer may allow, require, permit or authorize a driver to operate a commercial motor vehicle during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of any of the following events:

(a) The driver receives a positive, adulterated, or substituted drug test result conducted under part 40 of this title;

(b) The driver receives a positive alcohol test result of 0.04 or higher alcohol concentration conducted under part 40 of this title; or

(c) The driver refused to submit to a test for drugs or alcohol required under part 382 of this chapter.

(d) An employer has actual knowledge that a driver has used alcohol or controlled substances, as defined at § 382.107.

■ 6. Amend § 382.401 by revising paragraph (b)(1)(vi) to read as follows:

§ 382.401 Retention of records.

* * * * *

(b) * * *

(1) * * *

(vi) Records related to the administration of the controlled substances and alcohol testing programs, including records related to traffic citations establishing employer actual knowledge of driving under the influence of alcohol or controlled substances, and

* * * * *

■ 7. Add § 382.404 to read as follows:

§ 382.404 Laboratories' duty to report controlled substances test results.

(a) Annually, each laboratory performing controlled substances testing for an employer regulated by this part must submit an aggregate statistical summary of the number of drug tests, by drug test type, organized by employers' USDOT number or Internal Revenue Service issued Employer Identification Number (EIN).

(b) The summary must be sent by January 31 of each year for January 1 through December 31 of the previous year.

(c) The summary must be submitted in electronic format to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590.

■ 8. Amend § 382.405 by revising paragraphs (d) and (e) to read as follows:

§ 382.405 Access to facilities and records.

* * * * *

(d) Each employer, and each service agent who maintains records for an employer, must make available copies of all results for DOT alcohol and/or controlled substances testing conducted by the employer under this part and any other information pertaining to the employer's alcohol misuse and/or controlled substances use prevention program when requested by the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the employer or any of its drivers.

(e) When requested by the National Transportation Safety Board as a part of a crash investigation:

(1) Employers must disclose information related to the employer's administration of a post-accident alcohol and/or a controlled substances test administered following the crash under investigation; and

(2) FMCSA will provide access to information in the Clearinghouse concerning drivers that are involved with the crash under investigation.

* * * * *

■ 9. Amend § 382.409 by revising the section heading and paragraph (c) to read as follows:

§ 382.409 Medical review officer or consortium/third party administrator record retention for controlled substances.

* * * * *

(c) No person may obtain the individual controlled substances test results retained by a medical review officer or a consortium/third party administrator, and no medical review officer or consortium/third party administrator may release the individual controlled substances test results of any driver to any person, without first obtaining a specific, written authorization from the tested driver. Nothing in this paragraph (c) shall prohibit a medical review officer or a consortium/third party administrator from releasing to the employer, the Clearinghouse, or to officials of the Secretary of Transportation, any DOT agency, or any State or local officials with regulatory authority over the controlled substances and alcohol testing program under this part, the information delineated in part 40, subpart G, of this title.

■ 10. Add a new § 382.415 to read as follows:

§ 382.415 Notification to employers of a controlled substances or alcohol testing program violation.

Each person holding a commercial driver's license and subject to the DOT controlled substances and alcohol testing requirements in this part who has violated the alcohol and controlled substances prohibitions under parts 40 or 382 of this title, must notify in writing all current employers of such violation(s). The notification must be made before the end of the business day following the day the employee received notice of the violation, or prior to performing any safety-sensitive function, whichever comes first.

■ 11. Amend § 382.601 by adding a new paragraph (b)(12) to read as follows:

§ 382.601 Employer obligation to promulgate a policy on the misuse of alcohol and use of controlled substances.

* * * * *

(b) * * *

(12) The requirement that the following personal information collected and maintained under this part shall be reported to the Clearinghouse:

(i) A verified positive, adulterated, or substituted drug test result;

(ii) A positive alcohol test result;

(iii) A refusal to submit to any test required by subpart C of this part;

(iv) An employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances;

(v) A substance-abuse-professional report of the successful completion of the return-to-duty process, and the follow-up testing plan;

(vi) A negative return-to-duty test; and

(vii) An employer's report of completion of follow-up testing.

* * * * *

■ 12. Add a new Subpart G to part 382 to read as follows:

Subpart G—Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse

Sec.

382.701 Drug and Alcohol Clearinghouse.
382.703 Driver consent to permit access to information in the Clearinghouse.
382.705 Reporting to the Clearinghouse.
382.707 Notice to drivers and employers of placement, revision, removal, or release of information.
382.709 Drivers' access to information in the Clearinghouse.
382.711 Clearinghouse registration.
382.713 Duration, cancellation, and revocation of access.
382.715 Authorization to enter information into the Clearinghouse.
382.717 Procedures for correcting information in the database.
382.719 Availability and removal of information.
382.721 Fees.
382.723 Unauthorized access or use prohibited.
382.725 Access by State licensing authorities.
382.727 Penalties.

Subpart G—Requirements and Procedures for Implementation of the Commercial Driver's License Drug and Alcohol Clearinghouse

§ 382.701 Drug and Alcohol Clearinghouse.

(a) Employers may not employ a driver subject to controlled substances and alcohol testing under this part to perform a safety-sensitive function without first conducting a pre-employment query of the Clearinghouse to obtain information on whether the driver has a verified positive, adulterated, or substituted controlled substances test result; has a positive alcohol test result; has refused to submit to any test required by subpart C of this part; or that an employer has reported actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances.

(b) Employers must conduct annual queries of the Clearinghouse for information on all employees subject to controlled substance and alcohol testing under this part to determine whether information exists in the Clearinghouse about those employees. If an annual query indicates that information exists in the Clearinghouse, the employer must conduct the same query required in paragraph (a) of this section.

(c) If any information described in paragraph (a) of this section is entered into the Clearinghouse about a driver during the seven-day period immediately following an employer conducting a query of that driver's records, FMCSA will notify the employer of that additional information.

(d) No employer may allow a driver to perform any safety-sensitive function if the results of a database query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has a positive alcohol test result; has refused to submit to any test required by subpart C of this part; or that an employer has reported actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances, except where a query of the Clearinghouse demonstrates the following circumstances:

(1) The driver has successfully completed the substance-abuse-professional evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title; achieves a negative return-to-duty test result; and completes the follow-up testing process prescribed by the substance abuse professional.

(2) If the driver has not completed all follow-up tests as prescribed by the substance abuse professional in accordance with § 40.307 of this title and specified in the substance-abuse-professional report required by § 40.311 of this title, the employer may only use the driver in a safety-sensitive position if the driver has completed the substance-abuse-professional evaluation, referral, and education/treatment process set forth in part 40, subpart O, of this title and achieves a negative return-to-duty test result, and the employer assumes the responsibility for managing the follow-up testing process associated with the testing violation.

(e) Employers must retain for three years a record of each query and all information received in response to each query made under this section. *Exception:* An employer with valid registration that queries the Clearinghouse in accordance with the requirements of this subpart, will be deemed to have satisfied this requirement.

§ 382.703 Driver consent to permit access to information in the Clearinghouse.

(a) No employer may search the Clearinghouse to determine whether a record exists on any particular driver without first obtaining that driver's written consent. The employer conducting the search must retain the written consent for 3 years from the date of the last search.

(b) Before receiving access to information contained in the Clearinghouse record, the employer must obtain written consent from the driver for access to the following specific records:

(1) A verified positive, adulterated, or substituted controlled substances test result;

(2) A positive alcohol test result;

(3) A refusal to submit to any test required by subpart C of this part;

(4) An employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances;

(5) A substance-abuse-professional report of the successful completion of the return-to-duty process, and the follow-up testing plan;

(6) A negative return-to-duty test; and

(7) An employer's report of completion of follow-up testing.

(c) No employer may permit a driver to perform a safety-sensitive function if the driver refuses to grant the consent required by paragraphs (a) and (b) of this section.

(d) A driver granting consent under this section grants consent for FMCSA to release information to an employer in accordance with § 382.701(c).

§ 382.705 Reporting to the Clearinghouse.

(a) *Medical Review Officers (MROs).* (1) Within 1 business day of making a determination or verification, medical review officers must report the following information about a driver to the Clearinghouse:

(i) Verified positive, adulterated, or substituted controlled substances test results;

(ii) Refusal-to-test determination by the medical review officer as described in 49 CFR 40.191.

(2) Medical review officers must provide the following information for each controlled substances test result specified in paragraph (a)(1) of this section:

(i) Reason for the test;

(ii) Federal Drug Testing Custody and Control Form specimen ID number;

(iii) Driver's name, date of birth, and commercial driver's license number and commercial driver's license-issuing State's abbreviation (U.S. Postal Service abbreviation. See Publication 59, ''Abbreviations for Use with ZIP Code,'' U.S. Postal Service, October 1963);

(iv) Employer's name, address, and USDOT number or Internal Revenue Service issued Employer Identification Number (EIN);

(v) Date of the test;

(vi) Date of the verified result; and

(vii) Test result. The test result must be one of the following:

(A) Positive (including the controlled substance(s) identified);

(B) Refusal to test: Adulterated;

(C) Refusal to test: Substituted; or

(D) Refusal to provide a sufficient specimen after the MRO makes a determination, in accordance with § 40.193 of this title, that the employee does not have a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine.

(3) Within 1 business day of making any change to the results report in accordance with paragraph (a)(1) of this section, a medical review officer must report that changed result to the Clearinghouse.

(b) *Employers.* (1) Employers must report the following information about a driver to the Clearinghouse within 1 business day of obtaining that information:

(i) An alcohol test result with an alcohol concentration of 0.04 or greater;

(ii) A negative return-to-duty test result;

(iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;

(iv) A refusal pursuant to 49 CFR 40.191;

(v) A report that the driver has successfully completed all follow-up tests as prescribed in the substance-abuse-professional report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and

(vi) Actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances.

(2) Employers must report the following information concerning each positive alcohol test result, refusal to submit to alcohol testing pursuant to 49 CFR 40.261, and refusal to provide a specimen for controlled substances testing listed in 49 CFR 40.191:

(i) Reason for the test;

(ii) Driver's name, date of birth, and commercial driver's license number and the commercial driver's license-issuing State's abbreviation;

(iii) Employer name, address, and USDOT number or Internal Revenue Service-issued Employer Identification Number (EIN);

(iv) Date of the test;

(v) Date of result reported; and

(vi) Test result. The test result must be one of the following:

(A) Negative (only required for return-to-duty tests administered in accordance with § 382.309);

(B) Positive; or

(C) Refusal to take a test.

(3) Employers must report the following information concerning each instance in which the employer has actual knowledge that a driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances, as defined at § 383.5 of this chapter:

(i) Driver's name, date of birth, commercial driver's license number, and the commercial driver's license-issuing State abbreviation;

(ii) Employer name, address, and USDOT number or Employer Identification Number (EIN);

(iii) Date of the traffic citation;

(iv) Date the employer became aware of the traffic citation.

(v) The name and State of the law enforcement agency issuing the traffic citation;

(vi) The ticket or docket number associated with the citation; and

(vii) The specific charge alleged in the traffic citation.

(c) *C/TPAs.* (1) C/TPAs acting on behalf of an employer who employs himself/herself, as required by § 382.103(b) must immediately report the following information about a driver to the Clearinghouse within one business day of obtaining that information:

(i) An alcohol test result with an alcohol concentration of 0.04 or greater;

(ii) A negative return-to-duty test result;

(iii) A refusal to take an alcohol test pursuant to 49 CFR 40.261;

(iv) A refusal to provide a specimen for controlled substances testing pursuant to 49 CFR 40.191;

(v) A report that the driver has successfully completed all follow-up tests as prescribed in the substance-abuse-professional report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and

(2) C/TPAs acting on behalf of an employer who employs himself/herself, as required by 49 CFR 382.103(b) must report the following information concerning each positive alcohol test result, refusal to submit to alcohol testing pursuant to 49 CFR 40.261, and refusal to provide a specimen for controlled substances testing listed in 49 CFR 40.191:

(i) Reason for the test;

(ii) Driver's name, date of birth, and commercial driver's license number and the commercial driver's license-issuing State's abbreviation;

(iii) Employer name, address, and USDOT number or Internal Revenue Service-issued Employer Identification Number (EIN);

(iv) Date of the test;

(v) Date of result reported; and

(vi) Test result. The test result must be one of the following:

(A) Negative (only required for return-to-duty tests administered in accordance with § 382.309);

(B) Positive; or

(C) Refusal to provide a specimen or take a test.

(d) *Substance Abuse Professionals* (*SAPs*). (1) Substance abuse professionals must report to the Clearinghouse for each driver who has completed the return-to-duty process for a DOT verified positive, adulterated, or substituted controlled substances test result, a positive alcohol test result, a testing refusal, or actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances the following information:

(i) Substance abuse professional's name, address, and telephone number;

(ii) Driver's name, date of birth, and commercial driver's license number and the commercial driver's license-issuing State's abbreviation;

(iii) Date of the initial substance-abuse-professional assessment;

(iv) Date the substance abuse professional determined that the driver successfully completed the education and/or treatment process as defined in 49 CFR part 40, subpart O, and was eligible for return-to-duty testing under this part;

(v) Frequency, number, and type of required follow-up tests, the duration of the follow-up testing plan; and

(vi) Any modifications to the follow-up testing plan.

(2) Substance abuse professionals must report the information required by paragraphs (d)(1)(i)–(iii) of this section within 1 business day of the date of the initial substance abuse assessment, and must report the information required by paragraphs (d)(1)(iv)–(vi) of this section within 1 business day of determining that the driver has completed the return-to-duty process.

(e) *Reporting truthfully and accurately.* Every person or entity with access must report truthfully and accurately to the Clearinghouse and is expressly prohibited from knowingly reporting false or inaccurate information.

§ 382.707 Notice to drivers and employers of placement, revision, removal, or release of information.

(a) FMCSA must notify a driver when information concerning that driver has been added to, revised, or removed from the Clearinghouse.

(b) FMCSA must notify a driver when information concerning that driver has been released from the Clearinghouse to an employer and specify the reason for the release.

(c) Drivers will be notified by letter sent by U.S. Mail to the address on record with the State Driver Licensing Agency that issued the driver's commercial driver's license. *Exception:* A driver may provide the Clearinghouse with an alternative means or address for notification, including electronic mail.

§ 382.709 Drivers' access to information in the Clearinghouse.

A driver may review information in the Clearinghouse about himself or herself, except as otherwise restricted by law.

§ 382.711 Clearinghouse registration.

(a) *Clearinghouse registration required.* Each employer and designated service agent to an employer supporting its controlled substances and/or alcohol testing program must register with FMCSA before accessing or reporting information in the Clearinghouse.

(b) *Employers.* Employer Clearinghouse registration must include:

(1) Name, address, and telephone number;

(2) USDOT number or Internal Revenue Service-issued Employer Identification Number (EIN); and

(3) Name of the person(s) and their position(s) that the employer authorizes to report information to and obtain information from the Clearinghouse and any additional information FMCSA needs to validate the applicant's identity.

(4) Employers must verify the names of the person(s) authorized under paragraph (b)(3) of this section annually.

(5) Identification of the C/TPA used for testing purposes and authorization for the C/TPA to report information to the Clearinghouse for self-employed individuals or owner-operators that are required to use C/TPAs for testing purposes. Employers subject to this requirement must update any changes to this information.

(c) *Medical review officers and substance abuse professionals.* Each medical review officer or substance

abuse professional must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity;

(2) A certification that the applicant's access to the Clearinghouse is conditioned on his or her compliance with the applicable qualification and/or training requirements in 49 CFR part 40; and

(3) Evidence of required professional credentials to verify that the applicant currently meets the applicable qualification and/or training requirements in 49 CFR part 40.

(d) *Consortia/third party administrators.* Each consortium or third party administrator must provide the following to apply for Clearinghouse registration:

(1) Name, address, telephone number, and any additional information FMCSA needs to validate the applicant's identity; and

(2) Name, title, and telephone number of the person(s) authorized to report information to and obtain information from the Clearinghouse.

(3) Each consortium or third party administrator must verify the names of the person(s) authorized under paragraph (d)(2) of this section annually.

§ 382.713 Duration, cancellation, and revocation of access.

(a) *Term.* Clearinghouse registration is valid for 5 years, unless cancelled or revoked.

(b) *Cancellation.* FMCSA will cancel Clearinghouse registrations that are inactive for 2 years.

(c) *Revocation.* FMCSA has the right to revoke the Clearinghouse registration of anyone who fails to comply with any of the prescribed rights and restrictions on access to the Clearinghouse, including but not limited to, submission of inaccurate information and misuse or misappropriation of access rights or protected information from the Clearinghouse and failure to maintain the requisite qualifications, certifications and/or training requirements in part 40 of this title.

§ 382.715 Authorization to enter information into the Clearinghouse.

No consortium/third party administrator may enter information into the Clearinghouse on an employer's behalf unless the employer designates the consortium/third party administrator as its service agent.

§ 382.717 Procedures for correcting information in the database.

(a) *Petition.* Any driver or authorized representative of the driver may submit a petition to the FMCSA contesting the accuracy of information within 18 months of the date the information was reported to the Clearinghouse. The petition must include:

(1) The petitioner's name, address, telephone number and commercial driver's license number with State of issuance;

(2) Detailed description of the basis for the allegation that the information is not accurate;

(3) Evidence supporting the allegation that the information is not accurate. Failure to submit evidence is cause for dismissing the petition.

(b) *Address.* The petition must be submitted to: Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance, 1200 New Jersey Avenue SE., Washington, DC 20590.

(c) *Petitions limited to inaccurately reported information.* (1) Under this section, petitioners may challenge only the accuracy of information reporting, not the accuracy or validity of positive test results or refusals.

(2) *Exception.* Petitioners may request that FMCSA remove from the Clearinghouse an employer's report of actual knowledge that the driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances if the citation did not result in a conviction. For the purposes of this section, conviction has the same meaning as used in 49 CFR part 383.

(d) *Notice of decision.* FMCSA will inform the driver in writing within 90 days of receipt of a complete petition whether FMCSA will remove, retain, or correct the information in the database and provide the basis for the decision.

(e) *Request for expedited treatment.* A driver may request expedited treatment of his or her petition to correct inaccurate information if the inaccuracy is currently preventing him or her from performing safety-sensitive functions. If FMCSA grants expedited treatment, it will inform the driver of its decision in writing within 30 days of receipt of a complete petition. This request may be included in the original petition or as a separate document.

(f) *Administrative review.* (1) A driver may request FMCSA to conduct an administrative review if he or she believes that a decision made in accordance with paragraphs (d) or (e) of this section was in error.

(2) The driver must submit his/her request in writing to the Associate Administrator for Enforcement and Program Delivery (MC–E), Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590.

(3) The driver's request must explain the error it believes FMCSA committed and provide information and/or documents to support his or her argument.

(4) FMCSA will complete its administrative review no later than 60 days after receiving the driver's request for review. The Associate Administrator's decision will constitute the final Agency action.

§ 382.719 Availability and removal of information.

(a) Information about a driver's drug or alcohol violation will not be available to an employer conducting a query of the Clearinghouse after all of the following conditions relating to the violation are satisfied:

(1) The substance abuse professional reports to the Clearinghouse the information required in § 382.705(d);

(2) The employer or consortium/third party administrator reports to the Clearinghouse that the driver received negative return-to-duty test results;

(3) The driver's current employer or consortium reports that the driver has successfully completed all follow-up tests as prescribed in the substance-abuse-professional report in accordance with §§ 40.307, 40.309, and 40.311 of this title; and

(4) Three years have passed since the date of the violation determination.

Alternate: (4) Five years have passed since the date of the violation determination.

(b) Information about a particular driver's drug or alcohol violation will remain in the Clearinghouse record and be available to employers conducting a query until all requirements in paragraph (a) of this section have been met.

(c) *Exception.* Within 2 business days of granting a request pursuant to § 382.717(c)(2), FMCSA will remove information from the Clearinghouse about an employer's report of actual knowledge that a driver received a traffic citation for driving a commercial motor vehicle while under the influence of alcohol or controlled substances.

(d) Nothing in this part shall prevent FMCSA from using information removed under this section for research, auditing or enforcement purposes.

§ 382.721 Fees.

FMCSA may collect a reasonable fee from entities required to query the Clearinghouse. *Exception:* No driver

may be required to pay a fee to access his or her own information in the Clearinghouse.

§ 382.723 Unauthorized access or use prohibited.

(a) Except as expressly authorized in this subpart, no person or entity may access the Clearinghouse. No person or entity may share, distribute, publish, or otherwise release any information in the Clearinghouse except as specifically authorized by law. No person may report inaccurate or misleading information to the Clearinghouse.

(b) An employer's use of information received from the Clearinghouse is limited to assessing or evaluating whether a prohibition applies to a driver operating a commercial motor vehicle. No employer may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in assessing or evaluating whether a prohibition applies to a driver operating a commercial motor vehicle.

(c) Violations of this section are subject to civil and criminal penalties in accordance with applicable law, including those set forth at § 382.507.

(d) Nothing in this part shall prohibit FMCSA from accessing information about individual drivers in the Clearinghouse for research or enforcement purposes.

§ 382.725 Access by State licensing authorities.

(a) The chief commercial driver's licensing official of a State may request and receive a driver's record from the Clearinghouse if the driver has applied for a commercial driver's license from that State.

(b) By applying for a commercial driver's license, a driver is deemed to have consented to the release of information from the Clearinghouse in accordance with this section.

(c) The chief driver's licensing official's use of information received from the Clearinghouse is limited to assessing or evaluating an individual's qualifications to operate a commercial motor vehicle. No chief driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in assessing or evaluating an individual's qualifications to operate a commercial motor vehicle.

(d) A chief commercial driver's licensing official that does not take appropriate safeguards to protect the privacy and confidentiality of information obtained under this section is subject to revocation of his or her right of access under this section.

§ 382.727 Penalties.

An employer, employee, medical review officer, or service agent who violates any provision of this subpart shall be subject to the civil and/or criminal penalty provisions of 49 U.S.C. 521(b)(2)(C).

Issued under the authority delegated in 49 CFR 1.87 on: February 3, 2014.

Anne S. Ferro,

Administrator.

[FR Doc. 2014–03213 Filed 2–19–14; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register
Vol. 79, No. 34
Thursday, February 20, 2014

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

Food Safety and Inspection Service

[Docket No. FSIS–2013–0050]

Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Food

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services, are sponsoring a public meeting on February 27, 2014. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions that will be discussed at the 8th Session of the Codex Committee on Contaminants in Food (CCCF) of the Codex Alimentarius Commission (Codex), which will be held in The Hague, The Netherlands, March 31–April 4, 2014. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the 8th Session of the CCCF and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, February 27, 2014, from 10:00 a.m. to 12:00 p.m.

ADDRESSES: The public meeting will take place at The Food and Drug Administration (FDA), Harvey W. Wiley Federal Building, Room 1A–003, Center for Food Safety and Applied Nutrition (CFSAN), 5100 Paint Branch Parkway, College Park, MD 20740. Documents related to the 8th Session of the CCCF will be accessible via the World Wide Web at *http://www.codexalimentarius.org/meetings-reports/en/*. Nega Beru, U.S. Delegate to the 8th Session of the CCCF, invites interested U.S. parties to submit their comments electronically to the following email address *henry.kim@fda.hhs.gov.*

REGISTRATION: Attendees may register electronically at the same email address provided above by February 24, 2014. The meeting will be held in a Federal building; therefore, early registration is encouraged as it will expedite entry into the building and its parking area. You should also bring photo identification and plan for adequate time to pass through security screening systems. If you require parking, please include the vehicle make and tag number when you register. Attendees that are not able to attend the meeting in person but wish to participate may do so by phone.

CALL-IN NUMBER: If you wish to participate in the public meeting for the 8th Session of CCCF by conference call, please use the call-in number and participant code listed below.
Call-in Number: 1–866–707–4534
Participant Code: 8731753#

Contact for Further Information About the 8th Session of the CCCF and the Public Meeting: Henry Kim, Ph.D., Office of Food Safety, CFSAN/FDA, HFS–317, 5100 Paint Branch Parkway, College Park, MD 20740; Telephone: (240) 402–2023, Fax: (301) 436–2632, Email: *mailto:henry.kim@fda.hhs.gov* or Doreen Chen-Moulec, U.S. Codex Office, 1400 Independence Avenue SW., Washington, DC; Telephone (202) 205 7760, Email: *Doreen.Chen-Moulec@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in the food trade.

The CCCF is responsible for:

(a) Establishing or endorsing permitted maximum levels, and where necessary revising existing guideline levels, for contaminants and naturally occurring toxicants in food and feed;

(b) preparing priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives (JECFA);

(c) considering and elaborating methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed;

(d) considering and elaborating standards or codes of practice for related subjects; and

(e) considering other matters assigned to it by the Codex Alimentarius Commission in relation to contaminants and naturally occurring toxicants in food and feed.

The Committee is chaired by The Netherlands.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 8th Session of the CCCF will be discussed during the public meeting:

- Matters Referred to the CCCF by the Codex Alimentarius Commission and/or its subsidiary bodies.
- Matters of Interest Arising from FAO and WHO (including JECFA).
- Matters of Interest Arising from other International Organizations.
- Proposed Draft Revision of the Maximum Levels for Lead in Selected Commodities in the *General Standard for Contaminants and Toxins in Food and Feed.*
- Proposed Draft Maximum Levels for Arsenic in Rice (Raw Rice and Polished Rice).
- Draft Maximum Levels for Deoxynivalenol (DON) in Cereals and Cereal-based Products and Associated Sampling Plans.
- Proposed Draft Maximum Levels for Acetylated Derivatives in Cereals and Cereal-Based Products.
- Proposed Draft Maximum Levels for Fumonisins in Maize and Maize Products and Associated Sampling Plans.
- Proposed Draft Annex for the Prevention and Reduction of Aflatoxins and Ochratoxin A Contamination in Sorghum (*Code of Practice for the Prevention and Reduction of Mycotoxin Contamination in Cereals*).
- Proposed Draft Code of Practice for Weed Control to Prevent and Reduce Pyrrolizidine Alkaloid Contamination in Food and Feed.

• Editorial Amendments to the *General Standard for Contaminants and Toxins in Food and Feed.*

• Discussion Paper on the Development of a Code of Practice for the Prevention and Reduction of Arsenic Contamination in Rice.

• Discussion Paper on the Possible Revision of the *Code of Practice for Prevention and Reduction of Mycotoxin Contamination in Cereals.*

• Discussion Paper on Aflatoxins in Cereals.

• Discussion Paper on the Review of the Guideline Levels for Methylmercury in Fish and Predatory Fish.

• Discussion Paper on the Establishment of a Maximum Level for Total Aflatoxins in Ready-to-Eat Peanuts and Associated Sampling Plan.

• Discussion Paper on Halogenated Solvents.

• Priority List of Contaminants and Naturally Occurring Toxicants Proposed for Evaluation by JEFCA.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the February 27, 2014 public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Henry Kim for the 8th Session of the CCCF (see **ADDRESSES**). Written comments should state that they relate to activities of the 8th Session of the CCCF.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register.*

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on February 12, 2014.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2014–03715 Filed 2–19–14; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Idaho Resource Advisory Committee (RAC) will meet in Boise, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is review, approval, and presentation of project proposals, and is an open public forum.

DATES: The meeting will be held April 17, 2014 at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Idaho Water Center, Classroom 156, 322 E. Front Street, Boise, Idaho.

Written comments may be submitted as described under *Supplementary Information.* 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 the New Meadows Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kim Pierson, Designated Federal Officer, by phone at 208–347–0301 or via email at *kpierson@fs.fed.us.*

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. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.idahorac.org/category/southwestidaho/.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by April 3, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Attn: Kim Pierson, Designated Federal Officer, New Meadows Ranger District, P.O. Box J, New Meadows, Idaho 83654; or by email to *kpierson@fs.fed.us,* or via facsimile to 208–347–0309.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests

in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 11, 2014.

Keith B. Lannom,

Forest Supervisor, Payette National Forest.

[FR Doc. 2014–03620 Filed 2–19–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet in Weaverville, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the first meeting is to conduct a general session to exchange information to assist the committee with the 2014 Title proposal and funding process; the following meetings are to review and vote on proposals for project funding.

DATES: The meetings will be held from 6:30 p.m. to 8:30 p.m., on the following dates:

- March 17, 2014
- March 24, 2014
- March 31, 2014

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meetings will be held at the Trinity County Office of Education, Conference Room, 201 Memorial Drive, Weaverville, California. Memorial Drive is at the west end of Weaverville, just off Highway 299 on the road leading to the High School.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 the Shasta-Trinity National Forest Headquarters office in Redding, California. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Donna F. Harmon, Designated Federal Official, by phone at 530–226–2335 or via email at *dharmon@fs.fed.us.*

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. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing no less than one week before each meeting to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Donna Harmon, Designated Federal Official, 3644 Avtech Parkway, Redding, California 96002; or by email to *dharmon@fs.fed.us,* or via facsimile to 530–226–2486.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 10, 2014.

David R. Myers,

Forest Supervisor.

[FR Doc. 2014–03621 Filed 2–19–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Shasta County Resource Advisory Committee (RAC) will meet in Redding, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meetings are open to the public. The purpose of the meeting is a general session to exchange information to assist the committee with the 2014 title proposal and funding process; future meetings will be held to review and vote on proposals for project funding.

DATES: The meeting will be held on March 26, 2014, from 1:00 p.m. to 4:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Shasta-Trinity National Forest Headquarters Office, Shasta Conference Room, 3644 Avtech Parkway, Redding, California. The Headquarters Office is located on a short side street off of Airport Road on the east side of Redding, California.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 the Shasta-Trinity National Forest Headquarters office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Donna F. Harmon, District Ranger/Designated Federal Officer, by phone at 530–226–2335 or via email at *dharmon@fs.fed.us.*

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. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *www.fs.usda.gov/main/stnf/workingtogether/advisorycommittees.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 18, 2014 to be scheduled on the agenda of the meeting. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Donna Harmon, District Ranger/Designated Federal Officer, 3644 Avtech Parkway, Redding, California 96002; or by email to *dharmon@fs.fed.us,* or via facsimile to 530–226–2486.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 10, 2014.

David R. Myers,

Forest Supervisor.

[FR Doc. 2014–03630 Filed 2–19–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Idaho Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Idaho Resource Advisory Committee (RAC) will meet in Boise, Idaho. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is review and approval of project proposals, and is an open public forum.

DATES: The meeting will be held April 4, 2014 at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Jim Hall Foothills Learning Center, 3188 Sunset Peak Road, Boise, Idaho.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. 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 the New Meadows Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Kim Pierson, Designated Federal Officer, by phone at 208–347–0301 or via email at *kpierson@fs.fed.us.*

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. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accomodation for access to the facility or procedings by contacting the person listed above.

SUPPLEMENTARY INFORMATION: Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.idahorac.org/category/southwestidaho/.* The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by March 21, 2014 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Attn: Kim Pierson, Designated Federal Officer, New Meadows Ranger District, P.O. Box J, New Meadows, Idaho 83654; or by email to *kpierson@fs.fed.us,* or via facsimile to 208–347–0309.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: February 11, 2014.

Keith B. Lannom,

Forest Supervisor, Payette National Forest.

[FR Doc. 2014–03632 Filed 2–19–14; 8:45 am]

BILLING CODE 3410–11–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting Notice

DATE AND TIME: Tuesday, February 25, 2014, 9:30 a.m.–1:30 p.m. EST.

PLACE: Middle East Broadcasting Networks, Suite D, 7600 Boston Blvd., Springfield, VA 22153.

SUBJECT: Notice of Meeting of the Broadcasting Board of Governors.

SUMMARY: The Broadcasting Board of Governors (BBG) will be meeting at the time and location listed above. The Board will vote on a consent agenda consisting of the minutes of the December 18, 2013 meeting and a resolution honoring the 10th anniversary of Alhurra. The BBG will also convene a panel to discuss how the U.S. is viewed through Arabic eyes and receive a presentation providing an overview of the Middle East Broadcasting Networks.

This meeting will be available for public observation via streamed webcast, both live and on-demand, on the BBG's public Web site at *www.bbg.gov.* Information regarding this meeting, including any updates or adjustments to its starting time, can also be found on the Agency's public Web site.

The public may also attend this meeting in person at the address listed above as seating capacity permits. Member of the public seeking to attend the meeting in person must register at *https://bbgboardmeetingfeb2014.eventbrite.com* by 12:00 p.m. (EST) on February 24. For more information regarding viewing the meeting online or attending it in person, please contact BBG Public Affairs at

(202) 203–4400 or by email at *pubaff@bbg.gov.*

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Oanh Tran at (202) 203–4545.

Oanh Tran,

Director of Board Operations.

[FR Doc. 2014–03736 Filed 2–18–14; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD140

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: Notice of South Atlantic Wreckfish stock assessment peer review meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting via webinar to peer review an assessment of the South Atlantic Wreckfish stock.

DATES: The Wreckfish assessment peer review will be held via a series of webinars from 9 a.m. on Monday, March 17, 2014 through 5 p.m. on Wednesday, March 19, 2014.

ADDRESSES:

Meeting address: The meetings will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact John Carmichael at the Council (see **FOR FURTHER INFORMATION CONTACT** below) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of the webinar.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: John Carmichael; 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; telephone: (843) 571–4366 or toll free (866) SAFMC–10; fax: (843) 769–4520; email: *john.carmichael@safmc.net.*

SUPPLEMENTARY INFORMATION: This meetings are being held to provide a peer review of a stock assessment of Wreckfish in the South Atlantic. In accordance with the Peer Review Policy approved by the Council, the Scientific and Statistical Committee (SSC) reviewed a proposal to assess the Wreckfish resource and recommended process for peer review. The assessment is expected to be completed by mid-February, 2014. The peer review will be based on Terms of Reference approved by the Council.

The items in the agenda are as follows:

1. Receive a presentation of assessment findings.
2. Discuss the assessment.
3. Make peer review recommendations.

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 these meetings. 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 meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 14, 2014.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2014–03656 Filed 2–19–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13755–002]

FFP Missouri 12, LLC; Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Major License.

b. *Project No.:* 13755–002.

c. *Date Filed:* February 3, 2014.

d. *Applicant:* FFP Missouri 12, LLC.

e. *Name of Project:* Allegheny Lock and Dam No. 2.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineers' (Corps) Allegheny Lock and Dam No. 2 on the Allegheny River in Allegheny County, Pennsylvania. The project would occupy 3.23 acres of federal land managed by the Corps.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Thomas M. Feldman, 239 Causeway Street, Suite 300, Boston, Massachusetts 02114. Phone: (978) 252–7361.

i. *FERC Contact:* Allyson Conner, (202) 502–6082 or *allyson.conner@ferc.gov.*

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* April 4, 2014.

The Commission strongly encourages electronic filing. Please file additional study requests and requests for cooperating agency status using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–13577–002.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would utilize the existing U.S. Army Corps of Engineers' Allegheny Lock and Dam No. 2, and would consist of the following new facilities: (1) A 170-foot-wide, 120-foot-long, 70-foot-high intake structure with two 5-inch clear bar spacing trash racks; (2) two 45-foot-wide, 40-foot-high spillway bays; (3) an 1,100-foot-long, 2.5-foot-high adjustable crest gate on top of the existing dam crest; (4) a 170-foot-wide by 180-foot-long powerhouse along the east side of the river; (5) three Kaplan turbine-generator units with a combined installed capacity of 17,000 kilowatts; (6) a 50-foot-wide by 60-foot-long substation; (7) a 1,265-foot-long, single overhead, 69-kilovolt transmission line to connect the project substation to an existing distribution line owned by Duquesne Light Company; and (8) appurtenant facilities. The project is estimated to generate an average of 81,950 megawatt-hours annually.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Pennsylvania State Historic Preservation Officer (SHPO), as required by section 106 of the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule:* The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Notice of Acceptance—April 2014

Issue Scoping Document—May 2014

Issue Notice of Ready for Environmental Analysis—August 2014

Commission Issues EA—December 2014

Dated: February 7, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–03651 Filed 2–19–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2310–198]

Pacific Gas and Electric Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application for Temporary Variance of License Requirement.

b. *Project No.:* 2310–198.

c. *Date Filed:* February 7, 2014.

d. *Applicants:* Pacific Gas and Electric Company (licensee).

e. *Name of Project:* Drum-Spaulding Project.

f. *Location:* South Yuba River and Bear River in Placer and Nevada Counties, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Ezra Becker, License Coordinator, Pacific Gas and Electric Company, Mail Code: N11E, P.O. Box 770000, San Francisco, CA 94177. Phone (415) 973–3082.

i. *FERC Contact:* Mr. John Aedo, (415) 369–3335, or *john.aedo@ferc.gov*.

j. Deadline for filing comments, motions to intervene, protests, and recommendations is 15 days from the issuance date of this notice by the Commission (February 27, 2014). The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–2310–198) on any comments, motions to intervene, protests, or recommendations filed.

k. *Description of Request:* The licensee requests a temporary modification of the criteria for determining compliance with the minimum flow requirements of articles 39 and 63 of the project license. Specifically, the licensee requests that minimum flow compliance be based on 24-hour average flows, instead of instantaneous minimum flow at: The South Yuba River at Langs Crossing (gage YB–29); the Bear River below Drum Afterbay (gage YB–44); the Bear River at Highway 20 (gage YB–198); and at Mormon Ravine above Newcastle Powerhouse (gage YB–292). The licensee states that the temporary variance will conserve water during exceptionally dry conditions, by eliminating the need to release additional buffer flows of 2 to 3 cubic feet per second to ensure minimum flow compliance. The licensee requests the temporary variance until no longer operationally necessary.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208- 3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must

be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: February 12, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–03649 Filed 2–19–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1843–000; ER13–1844–000; ER10–2337–002; ER10–2338–002; ER10–2339–002; ER10–2340–002; ER10–2341–002; ER10–2342–002; ER10–2344–002; ER10–2355–002.

Applicants: Inland Empire Energy Center, LLC.

Description: Additional applicants to June 28, 2013 Triennial Market Power Analysis for the Southwest Region of the Edison Mission Energy subsidiaries.

Filed Date: 10/9/13.

Accession Number: 20131009–5164.

Comments Due: 5 p.m. ET 2/25/14.

Docket Numbers: ER10–3140–013.

Applicants: Inland Empire Energy Center, LLC.

Description: Supplement to June 13, 2013 Triennial Market Power Analysis of Inland Empire Energy Center, LLC.

Filed Date: 2/10/14.

Accession Number: 20140210–5172.

Comments Due: 5 p.m. ET 2/20/14.

Docket Numbers: ER14–41–001; ER14–42–001; ER12–1911–002; ER12–1912–002; ER12–1913–002; ER12–1915–002; ER12–1916–002; ER12–1917–002.

Applicants: RE Rosamond One LLC, RE Rosamond Two LLC, RE McKenzie 1 LLC, RE McKenzie 2 LLC, RE McKenzie 3 LLC, RE McKenzie 4 LLC, RE McKenzie 5 LLC, RE McKenzie 6 LLC.

Description: Supplement to January 13, 2014 Notice of Non-Material Change in Status of KKR MBR Sellers.

Filed Date: 2/11/14.

Accession Number: 20140211–5028.

Comments Due: 5 p.m. ET 3/4/14.

Docket Numbers: ER14–661–002.

Applicants: SG2 Imperial Valley LLC.

Description: Amendment to MBR Tariff Application to be effective 2/1/2014.

Filed Date: 2/11/14.

Accession Number: 20140211–5061.

Comments Due: 5 p.m. ET 3/4/14.

Docket Numbers: ER14–1301–000.

Applicants: Florida Power & Light Company.

Description: FPL and LCEC Rate Schedule FERC No. 326 to be effective 4/11/2014.

Filed Date: 2/10/14.

Accession Number: 20140210–5170.

Comments Due: 5 p.m. ET 3/3/14.

Docket Numbers: ER14–1302–000.

Applicants: Seminole Retail Energy Services, L.L.C.

Description: Initial Filing to be effective 3/10/2014.

Filed Date: 2/11/14.

Accession Number: 20140211–5032.

Comments Due: 5 p.m. ET 3/4/14.

Docket Numbers: ER14–1303–000.

Applicants: Southwest Power Pool, Inc.

Description: 2797 Prairie Wind Transmission & Westar Interconnection Agreement to be effective 12/31/9998.

Filed Date: 2/11/14.

Accession Number: 20140211–5034.

Comments Due: 5 p.m. ET 3/4/14.

Docket Numbers: ER14–1304–000.

Applicants: Southwest Power Pool, Inc.

Description: 2795 Prairie Wind Transmission & ITC Great Plains Inter. Agreement to be effective 12/31/9998.

Filed Date: 2/11/14.

Accession Number: 20140211–5037.

Comments Due: 5 p.m. ET 3/4/14.

Docket Numbers: ER14–1305–000.

Applicants: Southwest Power Pool, Inc.

Description: 2698 Exelon Generation Company Market Participant Agreement to be effective 3/1/2014.

Filed Date: 2/11/14.

Accession Number: 20140211–5062.

Comments Due: 5 p.m. ET 3/4/14.

Docket Numbers: ER14–1306–000.

Applicants: Northeast Utilities Service Company, The Connecticut Light and Power Company.

Description: Northeast Utilities Service Company submits Cancellation of Black Pond Junction Coke Works Agreement on behalf of its subsidiary.

Filed Date: 2/11/14.

Accession Number: 20140211–5064.

Comments Due: 5 p.m. ET 3/4/14.

Docket Numbers: ER14–1307–000.

Applicants: Southwestern Electric Power Company.

Description: SWEPCO-Minden PSA Amendment SPP Integrated Market to be effective 3/1/2014.

Filed Date: 2/11/14.

Accession Number: 20140211–5073.

Comments Due: 5 p.m. ET 3/4/14.

Docket Numbers: ER14–1308–000.

Applicants: Inland Empire Energy Center, LLC.

Description: Order No. 784 Compliance Filing to be effective 2/12/2014.

Filed Date: 2/11/14.

Accession Number: 20140211–5074.

Comments Due: 5 p.m. ET 3/4/14.

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: February 11, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–03636 Filed 2–19–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–499–000; Docket No. CP13–502–000]

Constitution Pipeline Company, LLC, Iroquois Gas Transmission System, LP; Notice of Availability of the Draft Environmental Impact Statement and Public Comment Meetings for the Proposed Constitution Pipeline and Wright Interconnect Projects

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft environmental impact statement (EIS) for the Constitution Pipeline and Wright Interconnect Projects (projects), proposed by Constitution Pipeline Company, LLC (Constitution) and Iroquois Gas Transmission System, L.P. (Iroquois), respectively, in the above-referenced dockets. Constitution and Iroquois request authorization to construct and operate certain interstate natural gas pipeline facilities in Pennsylvania and New York to deliver up to 650,000 dekatherms per day of natural gas supply to markets in New York and New England.

The draft EIS assesses the potential environmental effects of the construction and operation of the projects in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the projects would have some adverse environmental impacts; however, these impacts would be reduced to less-than-significant levels with the implementation of Constitution's and Iroquois' proposed mitigation and the additional measures recommended by staff in the draft EIS.

The U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers, the Federal Highway Administration, and the New York State Department of Agriculture and Markets participated as cooperating agencies in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis. The U.S. Army Corps of Engineers would adopt the final EIS if, after an independent review of the document, it concludes that its comments and suggestions have been satisfied.

The draft EIS addresses the potential environmental effects of the construction and operation of the facilities in Susquehanna County, Pennsylvania and Broome, Chenango, Otsego, Delaware, and Schoharie Counties, New York. Constitution's project would include 124.4 miles of new 30-inch-diameter natural gas pipeline and appurtenant facilities that include two new meter stations, two pipe interconnections, eleven mainline valves, and one pig launcher and receiver.[1] Iroquois' project facilities would include the addition of 22,000 horsepower of incremental compression and other miscellaneous modifications its existing Wright Compressor Station with.

The FERC staff mailed copies of the draft EIS and this Notice to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the area of the projects; and parties to this proceeding. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a CD version. In addition, the draft EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Any person wishing to comment on the draft EIS may do so. To ensure consideration of your comments on the proposal in the final EIS, it is important that the Commission receive your comments before April 7, 2014.

For your convenience, there are four methods you can use to submit your comments to the Commission. In all instances, please reference the project docket numbers (CP13–499–000 and CP13–502–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please carefully follow these instructions so that your comments are properly recorded.

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings*. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister*.'' If you are filing a comment on a particular project, please select ''Comment on a Filing'' as the filing type; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

(4) In lieu of sending written or electronic comments, the Commission invites you to attend one of the public comment meetings its staff will conduct in the project area to receive comments on the draft EIS. We encourage interested groups and individuals to attend these meetings and present oral comments on the draft EIS. Transcripts of the meetings will be available for review in eLibrary under the project docket numbers. All meetings will begin at 7:00 p.m. and are scheduled as follows:

Date	Location
Monday, March 31, 2014	Cobleskill-Richmondville High School, 1353 State Route 7, Richmondville, NY 12149, 518–234–3565.
Tuesday, April 1, 2014	Oneonta High School, 130 East Street, Oneonta, NY 13820 , 607–433–8243.
Wednesday, April 2, 2014	Afton High School, 29 Academy Street, Afton, New York 13730, 607–639–8200.

[1] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

Date	Location
Thursday, April 3, 2014	Blue Ridge High School, 5058 School Road, New Milford, Pennsylvania 18834, 570–465–3141.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR Part 385.214).[2] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Questions?

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP13–499 and CP13–502). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnline Support@ferc.gov or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Dated: February 12, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–03646 Filed 2–19–14; 8:45 am]

BILLING CODE 6717–01–P

[2] See the previous discussion on the methods for filing comments.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1309–000]

Singer Energy Group, 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 Singer Energy Group, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is March 4, 2014.

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 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 12, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–03648 Filed 2–19–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1302–000]

Seminole Retail Energy Services, 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 Seminole Retail Energy Services, L.L.C.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 4, 2014.

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 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 12, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–03647 Filed 2–19–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14564–000]

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications; FFP Project 1, LLC

On November 13, 2013, FFP Project 1, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of a hydropower project to be located at the U.S. Army Corps of Engineers' (Corps) Columbia Lock & Dam, on the Ouachita River near the town of Columbia in Caldwell County, Louisiana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of one of three alternatives:

Alternative One: (1) Integration of two to four modular generation units in each of the four existing gate bays for a total capacity of 12 megawatts (2) a 40-foot-long, 60-foot-wide control building located on the west side of the river (3) a 12,000-foot-long, 34kV transmission line.

Alternative Two: (1) An intake structure and associated tailrace opposite the lock structure on the west side of the river; (2) a 150-foot-long, 150-foot-wide, 55-foot-high concrete power house containing four generating units with a total capacity of 12 megawatts (3) a 12,000-foot-long, 34kV transmission line.

Alternative Three: (1) An intake structure, intake channel and associated tailrace at the existing closure dam to the south-east of the lock structure on the east side of the river; (2) a 150-foot-long, 150-foot-wide, 55-foot-high concrete power house containing four generating units with a total capacity of 12 megawatts, (3) a 12,000-foot-long, 34kV transmission line.

The project would have and average annual generation of 50,000 megawatt-hours and operate as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corporation, 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

FERC Contact: Christiane Casey, *christiane.casey@ferc.gov,* (202) 502–8577.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14564) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: February 12, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–03652 Filed 2–19–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10881–007]

Daniel Nelson Evans, Jr.; Notice of Termination of License (Minor Project) by Implied Surrender and Soliciting Comments and Protests

Take notice that the following hydroelectric proceeding has been initiated by the Commission:

a. *Type of Proceeding:* Termination of license by implied surrender.

b. *Project No.:* 10881–007.

c. *Date Initiated:* February 12, 2014.

d. *Licensee:* Daniel Nelson Evans, Jr.

e. *Name and Location of Project:* The Whitney Mills Hydroelectric Project is located on Lawsons Fork Creek, in Spartanburg County, South Carolina.

f. *Filed Pursuant to:* Standard Article 16.

g. *Licensee Contact Information:* Daniel N. Evans, 212 Range Road Kings Mountain, North Carolina 28086, (704) 739–9710.

h. *FERC Contact:* Krista Sakallaris, (202) 502–6302, *Krista.Sakallaris@ferc.gov.*

i. Deadline for filing comments and protests is 30 days from the issuance of this notice by the Commission. Please file your submittal electronically via the Internet (eFiling) in lieu of paper. Please refer to the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp* and filing instructions in the Commission's Regulations at 18 CFR 385.2001(a)(1)(iii). To assist you with eFilings you should refer to the submission guidelines document at *http://www.ferc.gov/help/submission-guide/user-guide.pdf.* In addition, certain filing requirements have

statutory or regulatory formatting and other instructions. You should refer to a list of these ''qualified documents'' at *http://www.ferc.gov/docs-filing/efiling/filing.pdf.* You must include your name and contact information at the end of your comments. Please include the project number (10881–007) on any documents or motions filed. The Commission strongly encourages electronic filings; otherwise, you should submit an original and seven copies of any submittal to the following address: The Secretary, Federal Energy Regulatory Commission, Mail Code: DHAC, PJ–12, 888 First Street NE., Washington, DC 20426.

j. *Description of Project Facilities:* (1) An existing 296-foot-long, 23-foot-high (including flashboards) stone masonry dam containing (a) a 221-foot-long uncontrolled overflow spillway with 3-foot-high flashboards mounted on its crest and (b) two low-level, 3- by 5-foot vertical slide gates near the right abutment; (2) a reservoir with a surface area of about 2 to 4 acres, a gross storage capacity of about 30 acre-feet (AF), and a normal water surface elevation of 703 feet mean sea level (m.s.l.); (3) two buried steel penstocks, each with a length of 60 feet and a diameter of 4 feet; (4) a concrete and brick powerhouse measuring 14.5 feet by 26.5 feet and containing a single generating unit rated at 225 kilowatts (kW); (5) a tailrace separated from the river by a 30-foot-long concrete tailrace wing wall; and (6) appurtenant equipment and facilities.

k. *Description of Proceeding:* The licensee is in violation of Article 16 of its license, which was granted June 8, 1993 (63 FERC ¶ 62,243). Article 16 states in part: If the Licensee shall abandon or discontinue good faith operation of the project or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission, the Commission will deem it to be the intent of the Licensee to surrender the license.

Commission records indicate that the project stopped operating in July 2005. Since that time, the licensee has attempted to sell the project and/or acquire a favorable rate contract to determine if it is economically feasible to generate power at the project. On December 5, 2013, staff sent the licensee a letter requiring either an application to surrender the project or a plan and schedule to restore operation. On February 6, 2014, the licensee filed a response indicating its desire to surrender the project. The filing did not meet the requirements of a surrender application.

l. This notice is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street NE., Washington, DC 20426. The filing may also be viewed on the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the Docket number (P–10881–007) excluding the last three digits in the docket number field to access the notice. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments and Protests*—Anyone may submit comments or protests in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210 and 385.211. In determining the appropriate action to take, the Commission will consider all protests filed. Any protests must be received on or before the specified deadline date for the particular proceeding.

o. *Filing and Service of Responsive Documents*—Any filing must (1) bear in all capital letters the title ''COMMENTS or ''PROTEST,'' as applicable; (2) set forth in the heading the project number of the proceeding to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting or protesting; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments or protests should relate to project works which are the subject of the termination of license. A copy of any protest must be served upon each representative of the licensee specified in item g above. A copy of all other filings in reference to this notice must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described proceeding. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

Dated: February 12, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–03650 Filed 2–19–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9906–94–OCFO]

Federal Advisory Committee; Request for Nominations of Candidates to the Environmental Financial Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Request for Nominations of Candidates to the Environmental Financial Advisory Board.

SUMMARY: The United States Environmental Protection Agency (EPA) invites nominations of qualified candidates to be considered for appointments to fill vacancies on the Environmental Financial Advisory Board (the Board or EFAB). The Board seeks to maintain diverse representation across all workforce sectors and geographic locations. Nominees should demonstrate experience in any of the following areas: Environmental technology investments; commercial banking, local utility management and finance, green infrastructure financing, sustainable community partnerships; water and wastewater infrastructure and program financing; and public-private partnerships. Nominees are encouraged who live and work in the southeastern, southwestern, western, and mid-western parts of the United States.

EPA values and welcomes diversity. In an effort to obtain a diverse pool of candidates, EPA encourages nominations of women and men of all racial and ethnic groups. In addition to this notice, other sources may be utilized in the solicitation of nominees. The deadline for receiving nominations is Friday, March 7, 2014. Appointments will be made by the Deputy Administrator of the Environmental Protection Agency and will be announced in April 2014. Nominee qualifications will be assessed under the mandates of the Federal Advisory Committee Act, which requires Committees to maintain diversity across a broad range of constituencies, sectors, and groups.

DATES: Nominations should be submitted in time to arrive no later than March 7, 2014.

Background Information: The Environmental Financial Advisory Board was chartered in 1989 under the Federal Advisory Committee Act to provide advice and recommendations to EPA on the following issues:

- Reducing the cost of financing environmental facilities and discouraging polluting behavior;
- Creating incentives to increase private investment in the provision of environmental services and removing or reducing constraints on private involvement imposed by current regulations;
- Developing new and innovative environmental financing approaches and supporting and encouraging the use of cost-effective existing approaches;
- Identifying approaches specifically targeted to small/disadvantaged community financing;
- Increasing the capacity of state and local governments to carry out their respective environmental programs under current Federal tax laws;
- Analyzing how new technologies can be brought to market expeditiously;
- Increasing the total investment in environmental protection of public, and private environmental resources to help ease the environmental financing challenge facing our nations.

The Board meets two times each calendar year (two days per meeting) at different locations within the continental United States. Board members typically contribute approximately 1–3 hours per month to the Board's work. The Board's membership services are voluntary and the Agency is unable to provide honoraria or compensation, according to FACA guidelines. However, Board members may receive travel and per diem allowances, where appropriate, and in accordance with Federal Travel Regulations for invitational travelers.

Evaluation Criteria: The following criteria will be used to evaluate nominees:

- Residence in the continental United States;
- Professional knowledge of, and experience with, environmental financing activities;
- Senior level-experience that fills a gap in Board representation, or brings a new and relevant dimension to its deliberations;
- Demonstrated ability to work in a consensus-building process with a wide range of representatives from diverse constituencies; and
- Willingness to serve a two-year term as an active and contributing member, with possible re-appointment to a second term.

Nominations for membership must include a resume describing the professional and educational qualifications of the nominee as well as expertise/experience. Contact details should include full name and title, business mailing address, telephone, fax, and email address. A supporting letter of endorsement is encouraged but not required.

ADDRESSES/FOR FURTHER INFORMATION CONTACT: Submit nomination materials by postal mail, electronic mail, or fax to: Pamela Scott, Membership Coordinator, Environmental Financial Advisory Board, EPA, Office of the Chief Financial Officer, 1200 Pennsylvania Avenue NW. (2731A), Washington, DC 20460; or email *scott.pamela@epa.gov;* phone 202–564–6368; or fax 202–565–2587.

Dated: February 10, 2014.

Joshua Baylson,

Associate Chief Financial Officer, Office of the Chief Financial Officer.

[FR Doc. 2014–03638 Filed 2–19–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collections Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 24, 2014. 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 contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <*http://www.reginfo.gov/public/do/PRAMain*>, (2) look for the section of the Web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0250.

Title: Sections 73.1207, 74.784 and 74.1284, Rebroadcasts.

Form Number: Not applicable.

Type of Review: Reinstatement without change a previously approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 6,462 respondents; 11,012 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; on

occasion reporting requirement; semi-annual reporting requirement; third party disclosure requirement.

Total Annual Burden: 5,506 hours.

Total Annual Costs: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Sections 154(i) and 325(a) of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1207 requires that licensees of broadcast stations obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. Section 73.1207 also specifies procedures that broadcast stations must follow when rebroadcasting time signals, weather bulletins, or other material from non-broadcast services.

47 CFR 74.784(b) states that a licensee of a low power television or TV translator station shall not rebroadcast the programs of any other TV broadcast station without obtaining prior consent of the station whose signals or programs are proposed to be retransmitted. Section 74.784(b) requires licensees of low power television and TV translator stations to notify the Commission when rebroadcasting programs or signals of another station. This notification shall include the call letters of each station rebroadcast. The licensee of the low power television or TV translator station shall certify that written consent has been obtained from the licensee of the station whose programs are retransmitted.

47 CFR 74.1284 requires that the licensee of a FM translator station obtain prior consent to rebroadcast programs of any broadcast station or other FM translator. The licensee of the FM translator station must notify the Commission of the call letters of each station rebroadcast and must certify that written consent has been received from the licensee of that station. Also, AM stations are allowed to use FM translator stations to rebroadcast the AM signal.

OMB Control Number: 3060–0967.

Title: Section 79.2, Accessibility of Programming Providing Emergency Information, and Emergency Information; Section 79.105, Video Description and Emergency Information Accessibility Requirements for All Apparatus; Section 79.106, Video Description and Emergency Information Accessibility Requirements for Recording Devices.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; individuals or households; not-for-profit institutions; and State, local, or tribal Governments.

Number of Respondents and Responses: 640 respondents; 642 responses.

Estimated Time per Response: 0.5 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Voluntary. The statutory authority for this information collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

Total Annual Burden: 735 hours.

Total Annual Costs: $24,150.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries,'' which became effective on January 25, 2010. The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints under 47 CFR 79.2(c).

Privacy Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints and Inquiries was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: On April 9, 2013, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, MB Docket Nos. 12–107, 11–43, FCC 13–45 (the Report and Order) adopting rules implementing portions of the Twenty-First Century Communications and Video Accessibility Act of 2010 (the CVAA) related to accessible emergency information, and apparatus requirements for emergency information and video description. These rules are codified at 47 CFR 79.2, 79.105, and 79.106. Pursuant to Section 202 of the CVAA, the Report and Order requires that video programming distributors and video programming providers (including program owners) make emergency information accessible to individuals who are blind or visually impaired by using a secondary audio stream to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts. Pursuant to Section 203 of the CVAA, the Report and Order requires certain apparatus that receive, play back, or record video programming to make available video description services and accessible emergency information.

The following rule sections and other requirements contain new and revised information collection requirements for which the Commission is seeking approval from the Office of Management and Budget (OMB):

(a) Complaints alleging violations of the emergency information rules.

Section 79.2(c) of the Commission's rules provides that a complaint alleging a violation of this section may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), Internet email, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability, and that each complaint should include: The name of the video programming distributor (VPD) or video programming provider (VPP) against whom the complaint is alleged; the date and time of the omission of the emergency information; and the type of emergency. After the Commission receives the complaint, the Commission notifies the VPD or VPP of the complaint, and the VPD or VPP has 30 days to reply.

(b) Complaints alleging violations of the apparatus emergency information and video description requirements.

The Report and Order adopts procedures for consumers to file complaints alleging violations of the rules containing apparatus emergency information and video description requirements, 47 CFR 79.105–79.106. A complaint filed with the Commission may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules

adopted will be blind or visually impaired, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer. Such complaints should include certain information about the complainant and the alleged violation, including:

- The name, postal address, and other contact information, such as telephone number or email address, of the complainant;
- The name and contact information, such as postal address, of the apparatus manufacturer or provider;
- Information sufficient to identify the software or device used to view or to attempt to view video programming with video description or emergency information;
- The date or dates on which the complainant purchased, acquired, or used, or tried to purchase, acquire, or use the apparatus to view video programming with video description or emergency information;
- A statement of facts sufficient to show that the manufacturer or provider has violated or is violating the Commission's rules;
- The specific relief or satisfaction sought by the complainant; and
- The complainant's preferred format or method of response to the complaint.

The Commission will forward such complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved, and may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules.

(c) Requests for Commission determination of technical feasibility of emergency information and video description apparatus requirements.

The requirements of Section 203 of the CVAA pertaining to apparatus designed to receive or play back video programming apply only to the extent they are ''technically feasible.'' Pursuant to 47 CFR 79.105(a), all apparatus that (i) is designed to receive or play back video programming transmitted simultaneously with sound that is provided by entities subject to 47 CFR 79.2 and 79.3, (ii) is manufactured in the United States or imported for use in the United States, and (iii) uses a picture screen of any size, must have the capability to decode and make available the secondary audio stream if technically feasible. Parties may raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements adopted in the Report and Order or, alternatively, may file a request for a ruling under § 1.41 of the Commission's rules as to technical infeasibility before manufacturing or importing the product.

(d) Requests for Commission determination of achievability of emergency information and video description apparatus requirements.

Section 203 provides that apparatus ''that use a picture screen that is less than 13 inches in size'' must meet the requirements of that section only if ''achievable,'' as that word is defined in Section 716 of the Communications Act, and also provides that ''apparatus designed to record video programming transmitted simultaneously with sound'' are only required to comply with the emergency information and video description requirements ''if achievable (as defined in section 716).'' Pursuant to 47 CFR 79.105(b)(3), apparatus that use a picture screen of less than 13 inches in size must comply with the provisions of this section only if doing so is achievable as defined in this section. Further, pursuant to 47 CFR 79.106(a), all apparatus that (i) is designed to record video programming transmitted simultaneously with sound that is provided by entities subject to 47 CFR 79.2 and 79.3, and (ii) is manufactured in the United States or imported for use in the United States, must comply with the provisions of this section except that apparatus must only do so if it is achievable as defined in § 79.105(b)(3).

Manufacturers of apparatus that use a picture screen of less than 13 inches in size and of recording devices may petition the Commission, pursuant to 47 CFR 1.41, for a full or partial exemption from the video description and emergency information requirements before manufacturing or importing the apparatus. Alternatively, manufacturers may assert that a particular apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable. Pursuant to 47 CFR 79.105(b)(3), such a petition for exemption or a response to a complaint must be supported with sufficient evidence to demonstrate that compliance with the requirements of this section is not achievable (meaning with reasonable effort or expense), and the Commission will consider four specific factors when making such a determination. In evaluating evidence offered to prove that compliance is not achievable, the Commission will be informed by the analysis in the ACS Order.

(e) Petitions for purpose-based waivers of emergency information and video description apparatus requirements.

Section 203 of the CVAA permits the Commission to waive emergency information and video description apparatus requirements for any apparatus or class of apparatus that is:

(a) Primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound, or

(b) Designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes.

Manufacturers of apparatus may petition the Commission for a full or partial purpose-based waiver of the apparatus requirements adopted in the Report and Order pursuant to 47 CFR 79.105(b)(4). The Commission will address any requests for purpose-based waiver on a case-by-case basis, and waivers will be available prospectively for manufacturers seeking certainty prior to the sale of a device.

(f) Submission and review of consumer eligibility information pertaining to DIRECTV, LLC's waiver for provision of aural emergency information during The Weather Channel's programming.

In the Report and Order, the Commission grants DIRECTV, LLC (DIRECTV) a waiver with respect to the set-top box models on which it is not able to implement audio functionality for emergency information, but conditions such relief by requiring DIRECTV to provide, upon request and at no additional cost to customers who are blind or visually impaired, a set-top box model that is capable of providing aural emergency information. DIRECTV may require reasonable documentation of disability as a condition to providing the box at no additional cost. Thus, DIRECTV customers who are blind or visually impaired may be required to submit reasonable documentation of disability to DIRECTV (e.g., documentation from any professional or service provider, such as a social worker, with direct knowledge of the individual's disability).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–03609 Filed 2–19–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:00 a.m. on Tuesday, February 18, 2014, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters related to the Corporation's supervision, corporate, and resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Thomas M. Hoenig, seconded by Director Jeremiah O. Norton (Appointive), concurred in by Director Richard Cordray (Director, Consumer Financial Protection Bureau), Director Thomas J. Curry (Comptroller of the Currency), and Chairman Martin J. Gruenberg, that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: February 18, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–03699 Filed 2–18–14; 4:15 pm]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday February 25, 2014 at 10:00 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and internal rules and practices.

Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley Garr,

Deputy Secretary of the Commission.

[FR Doc. 2014–03727 Filed 2–18–14; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS14–02]

Appraisal Subcommittee; Rules of Operation; Amendment

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of amendment to rules governing frequency of regular meetings of the Appraisal Subcommittee.

SUMMARY: The Appraisal Subcommittee (ASC) of the Federal Financial Institutions Examination Council is amending the following section:

Section 3.06(e) of the Rules of Operation, which addresses the scheduling of regular meetings of the ASC. As amended, the ASC will meet at least once every two months (bi-monthly) instead of monthly.

DATES: *Effective Date:* Immediately.

FOR FURTHER INFORMATION CONTACT: James R. Park, Executive Director, at (202) 595–7575, or Alice M. Ritter, General Counsel, at (202) 595–7577, via Internet email at *jim@asc.gov* and *alice@asc.gov,* respectively, or by U.S. Mail at Appraisal Subcommittee, 1401 H Street NW., Suite 760, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The ASC, on May 29, 1991, adopted Rules of Operation, which were published at 56 FR 28561 (June 21, 1991). The Rules of Operation describe, among other things, the organization of ASC Meetings, notice requirements for Meetings, quorum requirements and certain practices regarding the disclosure of information. The ASC, at its December 11, 2013 Meeting, voted to approve bi-monthly Meetings of the ASC beginning in February 2014 rather than monthly Meetings.

The ASC is publishing amended Section 3.06(e) to conform with 5 U.S.C. 552(a)(1)(C), which requires the publication of agency rules of operation in the **Federal Register**. The notice and publication requirements of 5 U.S.C. 553 do not apply to the adoption of Section 3.06(e) because it is a ''rule of agency organization, procedure, or practice'' exempt from the public notice and comment process under 5 U.S.C. 553(b)(3)(A).

Based on the foregoing, the ASC adopts amended Section 3.06(e) of the Rules of Operation, as follows, effective immediately:

Rules of Operation

* * *

Article III Organization and Operation of the ASC

* * *

Section 3.06. Organization of Subcommittee Meetings.

* * *

(e) Regular meetings of the ASC shall be held at least once every two months (bi-monthly), unless not practicable, at the call of the Chairperson. Special meetings shall be held as provided in section 3.07(b) below.

* * *

By the Appraisal Subcommittee.

Dated: February 12, 2014.

Arthur Lindo,

Chairman.

[FR Doc. 2014–03637 Filed 2–19–14; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: February 26, 2014; 10:00 a.m.

PLACE: 800 N. Capitol Street NW., First Floor Hearing Room, Washington, DC.

STATUS: The first portion of the meeting will be held in Open Session; the second in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Update on the China Value Added Tax Affecting Ocean Export Freight Shipments.

2. FMC Information Resources Management Strategic Plan.

3. Staff Recommendation Concerning Third Party Subpoena.

Closed Session

1. Staff Follow-up Briefing Concerning FMC Global Regulatory Summit.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523 5725.

Karen V. Gregory,

Secretary.

[FR Doc. 2014–03732 Filed 2–18–14; 4:15 pm]

BILLING CODE 6730–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10:00 a.m. (EST) Telephonic February 24, 2014.

PLACE: 10th Floor Board Meeting Room, 77 K Street NE.,Washington, DC 20002.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the January 27, 2014 Board Meeting
2. Monthly Reports
   Participant Activity Report
   Investment Report
   Legislative Report
3. Quarterly Metrics Report
4. Audit Reports
5. L Fund Naming Options

CONTACT PERSON FOR MORE INFORMATION: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

Dated: February 18, 2014.

Laurissa Stokes,

Acting Deputy General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2014–03713 Filed 2–18–14; 4:15 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Tribal Consultation Meeting

AGENCY: Office of Head Start (OHS), Administration for Children and Families, HHS.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Improving Head Start for School Readiness Act of 2007, Public Law 110–134, notice is hereby given of four 1-day Tribal Consultation Sessions to be held between the Department of Health and Human Services, Administration for Children and Families, Office of Head Start leadership and the leadership of Tribal Governments operating Head Start (including Early Head Start) programs. The purpose of these Consultation Sessions is to discuss ways to better meet the needs of American Indian and Alaska Native children and their families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations [42 U.S.C. 9835, Section 640(l)(4)].

DATES: March 10, 2014; June 9, 2014; July 31, 2014; and August 4, 2014.

Locations: 2014 Office of Head Start Tribal Consultation Sessions will be held at the following locations:

- Monday, March 10, 2014—Albuquerque, New Mexico—Albuquerque Marriott, 2101 Louisiana Boulevard NE., Albuquerque, New Mexico 87110;
- Monday, June 9, 2014—Bloomington, Minnesota—Minneapolis Airport Marriott, 2020 American Boulevard East, Bloomington, Minnesota 55425;
- Thursday, July 31, 2014—Tulsa, Oklahoma—6808 S. 107th East Avenue, Tulsa, Oklahoma 74133; and
- Monday, August 4, 2014—Airway Heights, Washington—Northern Quest Resort and Casino, 100 N. Hayford Road, Airway Heights, Washington 99001.

FOR FURTHER INFORMATION CONTACT: Robert Bialas, Regional Program Manager, Region XI, Office of Head Start, email *Robert.Bialas@acf.hhs.gov* or phone (202) 205–9497. Additional information and online meeting registration is available at *http://content.cleverex.com/hslc/hs/calendar/tc2014*.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) announces Office of Head Start (OHS) Tribal Consultations for leaders of Tribal Governments operating Head Start and Early Head Start programs. As much as possible, the OHS Tribal Consultations are being scheduled in conjunction with other tribal events. The Consultation in Albuquerque is being held in conjunction with the Southwest Consortium of Indian Head Start Programs' 33rd Native American Child and Family Conference. The Consultation in Bloomington is being held in conjunction with the National Head Start Directors Association's 24th Management Training Conference. The Consultation in Tulsa is being held in conjunction with the Oklahoma Indian Head Start Directors Conference. The Consultation in Airway Heights is being held in conjunction with the Northwest Indian Head Start Coalition Conference.

The agenda for the scheduled OHS Tribal Consultations will be organized around the statutory purposes of Head Start Tribal Consultations related to meeting the needs of American Indian/Alaska Native children and families, taking into consideration funding allocations, distribution formulas, and other issues affecting the delivery of Head Start services in their geographic locations. In addition, OHS will share actions taken and in progress to address the issues and concerns raised in 2013 OHS Tribal Consultations.

The Consultation Session will be conducted with elected or appointed leaders of Tribal Governments and their designated representatives [42 U.S.C. 9835, Section 640(l)(4)(A)]. Designees must have a letter from the Tribal Government authorizing them to represent the tribe. The letter should be submitted at least 3 days in advance of the Consultation Session to Robert Bialas at *Robert.Bialas@acf.hhs.gov.* Other representatives of tribal organizations and Native nonprofit organizations are welcome to attend as observers.

A detailed report of the Consultation Session will be prepared and made available within 45 days of the Consultation Session to all Tribal Governments receiving funds for Head Start and Early Head Start programs. Tribes wishing to submit written testimony for the report should send testimony to Robert Bialas at *Robert.Bialas@acf.hhs.gov* either prior to the Consultation Session or within 30 days after the meeting.

Oral testimony and comments from the Consultation Session will be summarized in each report without attribution, along with topics of concern and recommendations. Hotel and logistical information for each Consultation Session has been sent to tribal leaders via email and posted on the Early Childhood Learning and Knowledge Center Web site at *http://content.cleverex.com/hslc/hs/calendar/tc2014*.

Dated: February 11, 2014.

Ann Linehan,

Acting Director, Office of Head Start.

[FR Doc. 2014–03603 Filed 2–19–14; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2001–N–0274 (formerly 01N–0196)]

Phenylpropanolamine; Withdrawal of Approval of 13 New Drug Applications and 7 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 13 new drug applications (NDAs) and 7 abbreviated new drug applications (ANDAs) for products containing phenylpropanolamine. The basis for the withdrawals is that the products are no longer considered safe due to the association of phenylpropanolamine use with increased risk of hemorrhagic stroke. The holders of these NDAs and ANDAs have waived their opportunity for a hearing.

DATES: Effective February 20, 2014.

FOR FURTHER INFORMATION CONTACT: Emily Helms Williams, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6280, Silver Spring, MD 20993–0002, 301–796–3381.

SUPPLEMENTARY INFORMATION: On November 3, 2000, the Director of FDA's Center for Drug Evaluation and Research (the Director) sent a letter to holders of NDAs and ANDAs for drug products containing phenylpropanolamine requesting that they voluntarily discontinue marketing any such products due to developments indicating an association between phenylpropanolamine use and increased risk of hemorrhagic stroke. Subsequently, in a notice published in the **Federal Register** on August 14, 2001 (66 FR 42665), the Director offered an opportunity for a hearing on a proposal to issue an order, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(e)) and 21 CFR 314.150(a)(2), withdrawing approval of 13 NDAs and 8 ANDAs for products containing phenylpropanolamine. (Although the August 14, 2001, notice stated that FDA proposed to withdraw approval of 16 NDAs and 8 ANDAs, the notice listed only 13 NDAs and 8 ANDAs.) The following products, all of which have been discontinued, were listed in the notice:

TABLE 1—NDAS AND ANDAS FOR WHICH FDA HAS PROPOSED TO WITHDRAW APPROVAL OF THE APPLICATIONS

Application No.	Drug	Applicant
NDA 11–694	Dimetane-DC Syrup	A.H. Robins Co., P.O. Box 8299, Philadelphia, PA 19101.
NDA 12–152	Ornade Extended-Release Tablet	SmithKline-Beecham, 1250 South Collegeville Rd., P.O. Box 5089, Collegeville, PA 19426.
NDA 12–436	Dimetapp Extended-Release Tablet	Whitehall-Robins, 5 Giralda Farms, Madison, NJ 07940.
NDA 13–087	Dimetapp Elixir	Do.
NDA 18–050	Corsym Extended-Release Suspension	Medeva Americas, Inc., 755 Jefferson Rd., P.O. Box 1710, Rochester, NY 14603.
NDA 18–099	Contac Extended-Release Capsule	SmithKline Beecham Consumer Health, L.P., 1500 Littleton Rd., Parsippany, NJ 07054.
NDA 18–298	Tavist-D Extended-Release Tablet	Novartis Consumer Health, Inc., 560 Morris Ave., Summit, NJ 07901.
NDA 18–556	Demazin Extended-Release Tablet	Schering-Plough HealthCare Products, Three Oak Way, P.O. Box 603, Berkeley Heights, NJ 07922.
NDA 18–809	Phenylpropanolamine Hydrochloride (HCl) Chlorpheniramine Maleate Extended-Release Capsule.	Schwarz Pharma, 6140 West Executive Dr., Mequon, WI 53092.
NDA 19–410	Hycomine Syrup	Endo Pharmaceuticals, Inc., 500 Endo Blvd., Garden City, NY 11530.
NDA 19–411	Hycomine Pediatric Syrup	Do.
NDA 19–613	Contac Extended-Release Tablet	Novartis Consumer Health, Inc.
NDA 20–640	Tavist-D Extended-Release Tablet	Do.
ANDA 71–099	Bromatapp Extended-Release Tablet	Teva Pharmaceuticals, USA, 1090 Horsham Rd., P.O. Box 1090, North Wales, PA 19454.
ANDA 88–359	Drize Extended-Release Capsule	B. F. Ascher & Co., Inc., 15501 West 109th St., Lenexa, KS 66219.
ANDA 88–681	Chlorpheniramine Maleate and Phenylpropanolamine HCl Extended-Release Capsule.	Chelsea Laboratories, 896 Orlando Ave., West Hempstead, NY 11552.
ANDA 88–687	Biphetap Elixir	Morton Grove Pharmaceuticals, Inc., 6451 Main St., Morton Grove, IL 60053.
ANDA 88–688	Bromanate Elixir	Alpharma, U.S. Pharmaceuticals Division, 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
ANDA 88–723	Bromanate DC Syrup	Do.
ANDA 88–904	Myphetane DC Syrup	Morton Grove Pharmaceuticals, Inc.
ANDA 88–940	Chlorpheniramine Maleate and Phenylpropanolamine HCl Extended-Release Capsule.	Geneva Pharmaceuticals, Inc., 2555 West Midway Blvd., P.O. Box 446, Broomfield, CO 80038.

FDA issued the notice after an epidemiologic case-control study conducted by investigators at Yale University School of Medicine (Yale Hemorrhagic Stroke Project) demonstrated an association between phenylpropanolamine (an ingredient used in prescription and over-the-counter (OTC) drug products as a nasal decongestant to relieve stuffy nose or nasal congestion and in OTC weight control drug products to control appetite) and increased risk of hemorrhagic stroke. The notice included FDA's belief that the data from the Yale Hemorrhagic Stroke Project, taken together with spontaneous reports of hemorrhagic stroke and reports in the published medical literature, provided evidence that nasal decongestant and weight control drug products containing phenylpropanolamine are no longer safe. The Director proposed to withdraw approval of the NDA and ANDA products containing phenylpropanolamine based on her conclusion that they were no longer

shown to be safe for use under the conditions that formed the basis upon which the applications were approved.

In the August 14, 2001, notice, FDA provided the NDA and ANDA holders an opportunity to request a hearing to show why approval of the NDAs or ANDAs should not be withdrawn. One company, KV Pharmaceutical, requested a hearing by letter dated September 13, 2001, but that request was subsequently withdrawn by letter dated October 15, 2001. No other party requested a hearing on this matter following publication of the notice in the **Federal Register**. As stated above, all products listed in the notice were subsequently discontinued.

Subsequent to the August 14, 2001, notice, one of the ANDAs listed in that notice was withdrawn. In a notice published in the **Federal Register** of February 20, 2002 (67 FR 7702), FDA withdrew approval of ANDA 71–099 for BROMATAPP Extended-Release Tablets after the application holder informed FDA that the product was no longer being marketed and requested withdrawal.

In a letter to FDA dated February 25, 2013, Pfizer requested on behalf of its subsidiaries, Wyeth Pharmaceuticals, Inc. and A.H. Robins, that FDA withdraw approval of NDA 11–694 for DIMETANE–DC under § 314.150(d), noting that the product has been discontinued and is no longer marketed. In that letter, Pfizer and its named subsidiaries waived any opportunity for a hearing provided under the August 14, 2001, notice. In a response letter of March 28, 2013, the Agency acknowledged A.H. Robins' agreement to permit FDA to withdraw approval of DIMETANE–DC under § 314.150(d) and to waive its opportunity for a hearing.

For the reasons discussed in the August 14, 2001 notice, the Director, under section 505(e)(2) of the FD&C Act and under authority delegated to her by the Commissioner, finds that new evidence of clinical experience, not contained in the applications listed in table 1 and not available at the time the applications were approved, shows that phenylpropanolamine is not shown to be safe for use under the conditions of use that formed the basis upon which the applications were approved (21 U.S.C. 355(e)(2)). Therefore, approval of the NDAs listed in table 1 is hereby withdrawn. Furthermore, the Director finds that the ANDAs listed in table 1 refer to the drugs that are the subject of the NDAs listed above. Therefore, as required under section 505(j)(6) of the FD&C Act, approval of the ANDAs listed in table 1 is also withdrawn.

Under 21 CFR 314.161 and 314.162(a)(1), FDA will remove the products containing phenylpropanolamine named in table 1 from the list of drug products with effective approvals published in FDA's ''Approved Drug Products With Therapeutic Equivalence Evaluations.'' FDA will not approve or accept ANDAs that refer to these drug products.

Dated: February 14, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03596 Filed 2–19–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0200]

Standards for the Interoperable Exchange of Information for Tracing of Human, Finished, Prescription Drugs, in Paper or Electronic Format; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is establishing a public docket to receive information and comments on standards for the interoperable exchange of information associated with transactions involving human prescription drugs in a finished dosage form (prescription drugs) to comply with new requirements in the Drug Supply Chain Security Act (DSCSA). We are seeking information from drug manufacturers, repackagers, wholesale distributors, dispensers (primarily pharmacies) and other drug supply chain stakeholders and interested parties, including standards organizations, State and Federal Agencies, and solution providers. In particular, stakeholders and other interested parties are requested to comment about the interoperable exchange of transaction information, transaction history, and transaction statements, in paper or electronic format, for each transfer of product in which a change of ownership occurs. This action is related to FDA's implementation of the DSCSA.

DATES: Submit either electronic or written comments by April 21, 2014.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Connie T. Jung, Office of Compliance, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20933, 301–796–3130.

SUPPLEMENTARY INFORMATION:

I. Background

On November 27, 2013, the DSCSA (Title II, Pub. L. 113–54) was signed into law. The DSCSA outlines critical steps to build an electronic, interoperable system to identify and trace certain prescription drugs as they are distributed within the United States. Section 202 of the DSCSA, which adds section 582 to the Federal Food, Drug, and Cosmetic Act (FD&C Act), directs the Secretary of Health and Human Services (the Secretary) to establish standards for the interoperable exchange of transaction information, transaction history, and transaction statements, in paper or electronic format, in consultation with other appropriate Federal officials, manufacturers, repackagers, wholesale drug distributors, dispensers, and other pharmaceutical distribution supply chain stakeholders.

FDA has been engaged in efforts to improve the security of the drug supply chain for many years to protect U.S. patients from unsafe, ineffective, and poor quality drugs. Since the formation of the first FDA Counterfeit Drug Task Force in 2003, FDA has strongly advocated for a multilayered approach to securing the supply chain and protecting consumers from the threats posed by counterfeit and diverted drugs. The ability to track and trace finished prescription drugs plays a significant role in providing transparency and accountability in the drug supply chain. Under section 505D of the FD&C Act (21 U.S.C. 355e), FDA has been evaluating existing and emerging standards, system attributes and needs, and adoption of track and trace and authentication systems and technology. The system that will be established under DSCSA will enhance FDA's ability to help protect U.S. consumers from exposure to drugs that may be counterfeit, stolen, contaminated, or otherwise harmful by improving detection and removal of potentially dangerous drugs from the drug supply chain.

FDA is announcing the establishment of a public docket to provide an opportunity for interested persons to

share information, current practices, research, and ideas on the feasibility of establishing standardized documentation to be used by members of the pharmaceutical distribution supply chain to convey the transaction information, transaction history, and transaction statement to the subsequent purchaser of a product and to facilitate the exchange of lot level data.

II. Definitions

The following definitions for transaction information, transaction history, and transaction statement as defined under the DSCSA are provided to assist stakeholders in developing comments or responses. In addition, FDA is interested in learning about practices, processes, and systems that supply chain stakeholders currently use to exchange information, such as product information, information related to the sale or change of ownership of prescription drugs, or communications about drugs in distribution. For other definitions, please refer to section 202 of DSCSA.

Under DSCSA, ''transaction information'' means (A) The proprietary or established name or names of the product; (B) the strength and dosage form of the product; (C) the National Drug Code number of the product; (D) the container size; (E) the number of containers; (F) the lot number of the product; (G) the date of the transaction; (H) the date of shipment, if more than 24 hours after the date of transaction); (I) the business name and address of the person from whom ownership in being transferred; and (J) the business name and address of the person to whom ownership is being transferred. ''Transaction history'' means a statement in paper or electronic form, including the transaction information for each prior transaction going back to the manufacturer of the product. ''Transaction statement'' is a statement, in paper or electronic form, that the entity transferring ownership in a transaction—(A) is authorized as required under the DSCSA; (B) received the product from a person that is authorized as required under the DSCSA; (C) received transaction information and a transaction statement from the prior owner of the product, as required under section 582 [of the DSCSA]; (D) did not knowingly ship a suspect or illegitimate product; (E) had systems and processes in place to comply with verification requirements under section 582 [of the DSCSA]; (F) did not knowingly provide false transaction information; and (G) did not knowingly alter the transaction history.

III. Request for Comments and Information

FDA is requesting comments and supporting information on the following: (1) Current practices and ideas that may be used for the interoperable exchange of transaction information, transaction history, and transaction statements, in paper or electronic format, for each transfer of product in which a change of ownership occurs (i.e., transaction); (2) the feasibility of establishing standardized documentation to be used by members of the pharmaceutical distribution supply chain to convey the transaction information, transaction history, and transaction statement to the subsequent purchaser of a product and to facilitate the exchange of lot level data; and (3) current practices and ideas that may be used for the exchange of information between members of the pharmaceutical distribution supply chain and FDA to provide, receive, and terminate notifications, respond to requests for verification of product, and respond to requests for information from FDA or other appropriate Federal or State officials in the event of a recall or for the purpose of investigating a suspect or illegitimate product.

To facilitate this discussion, FDA has included several questions in the following paragraphs. These questions, which are not meant to be exhaustive, are provided to stimulate public comments that will help FDA establish initial standards for the interoperable exchange of information for tracing of prescription drugs in paper or electronic format. The public is encouraged to address these and/or other related issues.

Questions related to (1) current practices and suggestions for the interoperable exchange of transaction information, transaction history, and transaction statements and (2) the feasibility of establishing standardized documentation to be used by members of the pharmaceutical distribution supply chain to convey the transaction information, transaction history, and transaction statement to the subsequent purchaser of prescription drugs and to facilitate the exchange of lot level data:

1. What types of information about transactions do you exchange? What practices, processes, or systems, either paper-based or electronic, do supply chain stakeholders use to exchange this information? Are the practices, processes, or systems based on a standard? Are they interoperable with other systems that supply chain stakeholders may be using?

2. What practices, processes or systems, either paper-based or electronic, do supply chain stakeholders use to exchange information related to prior transactions? Are the practices, processes, or systems based on a standard? Are they interoperable with other systems that supply chain stakeholders may be using?

3. Do the practices, processes, or systems that supply chain stakeholders use to exchange transaction information or transaction histories include or have the ability to include lot level data?

4. If you are currently using paper means to exchange transaction information or history, when do you plan to move to an electronic format?

5. Are there challenges to adopting and using a system, in paper or electronic format, for the interoperable exchange of transaction information or history? How can these challenges be addressed?

6. Are there practices, processes, or systems that supply chain stakeholders can use now to exchange the information in the transaction statement required by the DSCSA?

7. Are there challenges to providing the transaction statement to supply chain stakeholders in either paper or electronic form? How can these challenges be addressed?

8. Are there standards or current practices that you would recommend for FDA to consider as a model for providing any or all of the transaction information, transaction history, or transaction statement to other supply chain stakeholders?

9. Are there other technologies, systems, or solutions available now that would enable the interoperable exchange of transaction information, transaction history, or transaction statements?

Questions related to (3) current practices and suggestions for the exchange of information between supply chain stakeholders or with FDA to provide, receive, and terminate notifications, respond to requests for verification of suspect product, and respond to requests for information from FDA or other appropriate Federal or State officials in the event of a recall or for the purpose of investigating a suspect or illegitimate product:

10. Are there current practices, processes, or systems that could be used to exchange information between supply chain stakeholders and FDA with respect to providing, receiving, and terminating a notification that an illegitimate product is found in distribution? Are these practices, processes, or systems effective? If not, please provide recommendations to

improve these practices, processes, or systems.

11. Are there current practices, processes, or systems that could be used to exchange information between supply chain stakeholders or with FDA to respond to requests to verify the lot number, expiration date, and other indices of identity assigned to a product by the manufacturer or repackager (i.e., requests for verification of suspect product)? Are these practices, processes, or systems effective? If not, please provide recommendations to improve these practices, processes, or systems.

12. Are there current practices, processes, or systems that could be used for providing information in response to requests from FDA or other appropriate Federal or State officials in the event of a recall or for the purpose of investigating a suspect or illegitimate product? Are these practices, processes, or systems effective? If not, please provide recommendations to improve these practices, processes, or systems.

Question related to capturing information that has not necessarily been addressed by the previous questions:

13. Are there other considerations related to standards for the interoperable exchange of information for tracing of human, finished, prescription drugs that have not been addressed by the previous questions? Please provide any additional information that you think could be helpful for the Agency to consider as it implements these provisions of the DSCSA.

III. Submission of Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). 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.*

Dated: February 13, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–03592 Filed 2–19–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Diabetes Mellitus Interagency Coordinating Committee Meeting

SUMMARY: The Diabetes Mellitus Interagency Coordinating Committee (DMICC) will hold a meeting on March 12, 2014 from 1:00 to 4:00 p.m. at the Natcher Conference Center (Building 45) Conference Room E1/E2, on the NIH Campus in Bethesda, MD. The topic for this meeting will be ''Future Needs and Direction of Surveillance of Diabetes in Youth and Young Adults.'' The meeting is open to the public.

DATES: The meeting will be held on March 12, 2014 from 1:00 to 4:00 p.m. Individuals wanting to present oral comments must notify the contact person at least 10 days before the meeting date.

ADDRESSES: The meeting will be held at the Natcher Conference Center (Building 45) Conference Room E1/E2, on the NIH Campus in Bethesda, MD.

FOR FURTHER INFORMATION CONTACT: For further information concerning this meeting, see the DMICC Web site, *www.diabetescommittee.gov,* or contact Dr. B. Tibor Roberts, Executive Secretary of the Diabetes Mellitus Interagency Coordinating Committee, National Institute of Diabetes and Digestive and Kidney Diseases, 31 Center Drive, Building 31A, Room 9A19, MSC 2560, Bethesda, MD 20892–2560, telephone: 301–496–6623; FAX: 301–480–6741; email: *dmicc@mail.nih.gov.*

SUPPLEMENTARY INFORMATION: The DMICC, chaired by the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK) comprising members of the Department of Health and Human Services and other federal agencies that support diabetes-related activities, facilitates cooperation, communication, and collaboration on diabetes among government entities. DMICC meetings, held several times a year, provide an opportunity for Committee members to learn about and discuss current and future diabetes programs in DMICC member organizations and to identify opportunities for collaboration. The March 12, 2014 DMICC meeting will focus on ''Future Needs and Direction of Surveillance of Diabetes in Youth and Young Adults.''

Any member of the public interested in presenting oral comments to the Committee should notify the contact person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives or organizations should submit a letter of intent, a brief description of the organization represented, and a written copy of their oral presentation in advance of the meeting. Only one representative of an organization will be allowed to present; oral comments and presentations will be limited to a maximum of 5 minutes. Printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the Committee by forwarding their statement to the contact person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person. Because of time constraints for the meeting, oral comments will be allowed on a first-come, first-serve basis.

Members of the public who would like to receive email notification about future DMICC meetings should register for the listserv available on the DMICC Web site, *www.diabetescommittee.gov.*

Dated: February 12, 2014.

B. Tibor Roberts,

Executive Secretary, DMICC, Office of Scientific Program and Policy Analysis, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health.

[FR Doc. 2014–03634 Filed 2–19–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[DR.5B211.IA000713]

List of Programs Eligible for Inclusion in Fiscal Year 2014 Funding Agreements To Be Negotiated With Self-Governance Tribes by Interior Bureaus Other Than the Bureau of Indian Affairs

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: This notice lists programs or portions of programs that are eligible for inclusion in Fiscal Year 2014 funding agreements with self-governance Indian tribes and lists programmatic targets for each of the non-Bureau of Indian Affairs (BIA) bureaus in the Department of the Interior, pursuant to the Tribal Self-Governance Act.

DATES: This notice expires on September 30, 2014.

ADDRESSES: Inquiries or comments regarding this notice may be directed to

Sharee M. Freeman, Director, Office of Self-Governance (MS 355H–SIB), 1849 C Street NW., Washington, DC 20240–0001, telephone: (202) 219–0240, fax: (202) 219–1404, or to the bureau-specific points of contact listed below.

SUPPLEMENTARY INFORMATION:

I. Background

Title II of the Indian Self-Determination Act Amendments of 1994 (Pub. L. 103–413, the ''Tribal Self-Governance Act'' or the ''Act'') instituted a permanent self-governance program at the Department of the Interior. Under the self-governance program, certain programs, services, functions, and activities, or portions thereof, in Interior bureaus other than BIA are eligible to be planned, conducted, consolidated, and administered by a self-governance tribe.

Under section 405(c) of the Tribal Self-Governance Act, the Secretary of the Interior is required to publish annually: (1) A list of non-BIA programs, services, functions, and activities, or portions thereof, that are eligible for inclusion in agreements negotiated under the self-governance program; and (2) programmatic targets for these bureaus.

Under the Tribal Self-Governance Act, two categories of non-BIA programs are eligible for self-governance funding agreements:

(1) Under section 403(b)(2) of the Act, any non-BIA program, service, function or activity that is administered by Interior that is ''otherwise available to Indian tribes or Indians,'' can be administered by a tribe through a self-governance funding agreement. The Department interprets this provision to authorize the inclusion of programs eligible for self-determination contracts under Title I of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638, as amended). Section 403(b)(2) also specifies, ''nothing in this subsection may be construed to provide any tribe with a preference with respect to the opportunity of the tribe to administer programs, services, functions and activities, or portions thereof, unless such preference is otherwise provided for by law.''

(2) Under section 403(c) of the Act, the Secretary may include other programs, services, functions, and activities or portions thereof that are of ''special geographic, historical, or cultural significance'' to a self-governance tribe.

Under section 403(k) of the Tribal Self-Governance Act, funding agreements cannot include programs, services, functions, or activities that are inherently Federal or where the statute establishing the existing program does not authorize the type of participation sought by the tribe. However, a tribe (or tribes) need not be identified in the authorizing statutes in order for a program or element to be included in a self-governance funding agreement. While general legal and policy guidance regarding what constitutes an inherently Federal function exists, the non-BIA Bureaus will determine whether a specific function is inherently Federal on a case-by-case basis considering the totality of circumstances. In those instances where the tribe disagrees with the Bureau's determination, the tribe may request reconsideration from the Secretary.

Subpart G of the self-governance regulations found at 25 CFR part 1000 provides the process and timelines for negotiating self-governance funding agreements with non-BIA bureaus.

Response to Comments

No comments were received.

II. Funding Agreements Between Self-Governance Tribes and Non-BIA Bureaus of the Department of the Interior for Fiscal Year 2014

A. Bureau of Land Management (1)
  Council of Athabascan Tribal Governments
B. Bureau of Reclamation (5)
  Gila River Indian Community
  Chippewa Cree Tribe of Rocky Boy's Reservation
  Hoopa Valley Tribe
  Karuk Tribe of California
  Yurok Tribe
C. Office of Natural Resources Revenue (none)
D. National Park Service (2)
  Grand Portage Band of Lake Superior Chippewa Indians
  Maniilaq
E. Fish and Wildlife Service (2)
  Council of Athabascan Tribal Governments
  Confederated Salish and Kootenai Tribes of the Flathead Reservation
F. U.S. Geological Survey (none)
G. Office of the Special Trustee for American Indians (1)
  Confederated Salish and Kootenai Tribes of the Flathead Reservation

III. Eligible Programs of the Department of the Interior Non-BIA Bureaus

Below is a listing by bureau of the types of non-BIA programs, or portions thereof, that may be eligible for self-governance funding agreements because they are either ''otherwise available to Indians'' under Title I and not precluded by any other law, or may have ''special geographic, historical, or cultural significance'' to a participating tribe. The list represents the most current information on programs potentially available to tribes under a self-governance funding agreement.

The Department will also consider for inclusion in funding agreements other programs or activities not listed below, but which, upon request of a self-governance tribe, the Department determines to be eligible under either sections 403(b)(2) or 403(c) of the Act. Tribes with an interest in such potential agreements are encouraged to begin discussions with the appropriate non-BIA bureau.

A. Eligible Bureau of Land Management (BLM) Programs

The BLM carries out some of its activities in the management of public lands through contracts and cooperative agreements. These and other activities, depending upon availability of funds, the need for specific services, and the self-governance tribe's demonstration of a special geographic, culture, or historical connection, may also be available for inclusion in self-governance funding agreements. Once a tribe has made initial contact with the BLM, more specific information will be provided by the respective BLM State office.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This listing is not all-inclusive, but is representative of the types of programs that may be eligible for tribal participation through a funding agreement.

Tribal Services

1. Minerals Management. Inspection and enforcement of Indian oil and gas operations: inspection, enforcement and production verification of Indian coal and sand and gravel operations are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

2. Cadastral Survey. Tribal and allottee cadastral survey services are already available for contracts under Title I of the Act and, therefore, may be available for inclusion in a funding agreement.

Other Activities

1. Cultural heritage. Cultural heritage activities, such as research and inventory, may be available in specific States.

2. Natural Resources Management. Activities such as silvicultural treatments, timber management, cultural resource management, watershed

restoration, environmental studies, tree planting, thinning, and similar work, may be available in specific States.

3. Range Management. Activities, such as revegetation, noxious weed control, fencing, construction and management of range improvements, grazing management experiments, range monitoring, and similar activities, may be available in specific States.

4. Riparian Management. Activities, such as facilities construction, erosion control, rehabilitation, and other similar activities, may be available in specific States.

5. Recreation Management. Activities, such as facilities construction and maintenance, interpretive design and construction, and similar activities may be available in specific States.

6. Wildlife and Fisheries Habitat Management. Activities, such as construction and maintenance, implementation of statutory, regulatory and policy or administrative plan-based species protection, interpretive design and construction, and similar activities may be available in specific States.

7. Wild Horse Management. Activities, such as wild horse round-ups, adoption and disposition, including operation and maintenance of wild horse facilities may be available in specific States.

For questions regarding self-governance, contact Jerry Cordova, Bureau of Land Management (MS L St-204), 1849 C Street NW., Washington, DC 20240, telephone: (202) 912–7245, fax: (202) 452–7701.

B. Eligible Bureau of Reclamation Programs

The mission of the Bureau of Reclamation (Reclamation) is to manage, develop, and protect water and related resources in an environmentally and economically sound manner in the interest of the American public. To this end, most of Reclamation's activities involve the construction, operation and maintenance, and management of water resources projects and associated facilities, as well as research and development related to its responsibilities. Reclamation water resources projects provide water for agricultural, municipal and industrial water supplies; hydroelectric power generation; flood control, enhancement of fish and wildlife habitats; and outdoor recreation.

Components of the following water resource projects listed below may be eligible for inclusion in a self-governance annual funding agreement. This list was developed with consideration of the proximity of identified self-governance tribes to Reclamation projects.

1. Klamath Project, California and Oregon

2. Trinity River Fishery, California

3. Central Arizona Project, Arizona

4. Rocky Boy's/North Central Montana Regional Water System, Montana

5. Indian Water Rights Settlement Projects, as authorized by Congress.

Upon the request of a self-governance tribe, Reclamation will also consider for inclusion in funding agreements, other programs or activities which Reclamation determines to be eligible under Section 403(b)(2) or 403(c) of the Act.

For questions regarding self-governance, contact Mr. Kelly Titensor, Policy Analyst, Native American and International Affairs Office, Bureau of Reclamation (96–43000) (MS 7069–MIB); 1849 C Street NW., Washington, DC 20240, telephone: (202) 513–0558, fax: (202) 513–0311.

C. Eligible Office of Natural Resources Revenue (ONRR) Programs

Effective October 1, 2010, the Office of Natural Resources Revenue (ONNR) moved from the Bureau of Ocean Energy Management (formerly MMS) to the Office of the Assistant Secretary for Policy, Management and Budget (PMB). The ONRR collects, accounts for, and distributes mineral revenues from both Federal and Indian mineral leases.

The ONRR also evaluates industry compliance with laws, regulations, and lease terms, and offers mineral-owning tribes opportunities to become involved in its programs that address the intent of tribal self-governance. These programs are available to self-governance tribes and are a good prerequisite for assuming other technical functions. Generally, ONRR program functions are available to tribes because of the Federal Oil and Gas Royalty Management Act of 1983 (FOGRMA) at 30 U.S.C. 1701. The ONRR program functions that may be available to self-governance tribes include:

1. Audit of Tribal Royalty Payments. Audit activities for tribal leases, except for the issuance of orders, final valuation decisions, and other enforcement activities. (For tribes already participating in ONRR cooperative audits, this program is offered as an option.)

2. Verification of Tribal Royalty Payments. Financial compliance verification, monitoring activities, and production verification.

3. Tribal Royalty Reporting, Accounting, and Data Management. Establishment and management of royalty reporting and accounting systems including document processing, production reporting, reference data (lease, payor, agreement) management, billing and general ledger.

4. Tribal Royalty Valuation. Preliminary analysis and recommendations for valuation, and allowance determinations and approvals.

5. Royalty Internship Program. An orientation and training program for auditors and accountants from mineral-producing tribes to acquaint tribal staff with royalty laws, procedures, and techniques. This program is recommended for tribes that are considering a self-governance funding agreement, but have not yet acquired mineral revenue expertise via a FOGRMA section 202 cooperative agreement, as this term is defined in FOGRMA and implementing regulations at 30 CFR 228.4.

For questions regarding self-governance, contact Shirley M. Conway, Special Assistant to the Director, Office of Natural Resources Revenue, Office of the Assistant Secretary—Policy, Management and Budget, 1801 Pennsylvania Avenue NW., 4th Floor, Washington, DC 20006, telephone: (202) 254–5554, fax: (202) 254–5589.

D. Eligible National Park Service (NPS) Programs

The National Park Service administers the National Park System, which is made up of national parks, monuments, historic sites, battlefields, seashores, lake shores and recreation areas. The National Park Service maintains the park units, protects the natural and cultural resources, and conducts a range of visitor services such as law enforcement, park maintenance, and interpretation of geology, history, and natural and cultural resources.

Some elements of the following programs may be eligible for inclusion in a self-governance funding agreement. This list below was developed considering the proximity of an identified self-governance tribe to a national park, monument, preserve, or recreation area and the types of programs that have components that may be suitable for contracting through a self-governance funding agreement. This list is not all-inclusive, but is representative of the types of programs which may be eligible for tribal participation through funding agreements.

Elements of Programs That May Be Eligible for Inclusion in a Self-Governance Funding Agreement

1. Archaeological Surveys
2. Comprehensive Management Planning
3. Cultural Resource Management Projects
4. Ethnographic Studies
5. Erosion Control
6. Fire Protection
7. Gathering Baseline Subsistence Data—Alaska
8. Hazardous Fuel Reduction
9. Housing Construction and Rehabilitation
10. Interpretation
11. Janitorial Services
12. Maintenance
13. Natural Resource Management Projects
14. Operation of Campgrounds
15. Range Assessment—Alaska
16. Reindeer Grazing—Alaska
17. Road Repair
18. Solid Waste Collection and Disposal
19. Trail Rehabilitation
20. Watershed Restoration and Maintenance
21. Beringia Research
22. Elwha River Restoration
23. Recycling Programs

Locations of National Park Service Units With Close Proximity to Self-Governance Tribes

1. Aniakchack National Monument & Preserve—Alaska
2. Bering Land Bridge National Preserve—Alaska
3. Cape Krusenstern National Monument—Alaska
4. Denali National Park & Preserve—Alaska
5. Gates of the Arctic National Park & Preserve—Alaska
6. Glacier Bay National Park and Preserve—Alaska
7. Katmai National Park and Preserve—Alaska
8. Kenai Fjords National Park—Alaska
9. Klondike Gold Rush National Historical Park—Alaska
10. Kobuk Valley National Park—Alaska
11. Lake Clark National Park and Preserve—Alaska
12. Noatak National Preserve—Alaska
13. Sitka National Historical Park—Alaska
14. Wrangell-St. Elias National Park and Preserve—Alaska
15. Yukon-Charley Rivers National Preserve—Alaska
16. Casa Grande Ruins National Monument—Arizona
17. Hohokam Pima National Monument—Arizona
18. Montezuma Castle National Monument—Arizona
19. Organ Pipe Cactus National Monument—Arizona
20. Saguaro National Park—Arizona
21. Tonto National Monument—Arizona
22. Tumacacori National Historical Park—Arizona
23. Tuzigoot National Monument—Arizona
24. Arkansas Post National Memorial—Arkansas
25. Joshua Tree National Park—California
26. Lassen Volcanic National Park—California
27. Redwood National Park—California
28. Whiskeytown National Recreation Area—California
29. Yosemite National Park—California
30. Hagerman Fossil Beds National Monument—Idaho
31. Effigy Mounds National Monument—Iowa
32. Fort Scott National Historic Site—Kansas
33. Tallgrass Prairie National Preserve—Kansas
34. Boston Harbor Islands National Recreation Area—Massachusetts
35. Cape Cod National Seashore—Massachusetts
36. New Bedford Whaling National Historical Park—Massachusetts
37. Isle Royale National Park—Michigan
38. Sleeping Bear Dunes National Lakeshore—Michigan
39. Grand Portage National Monument—Minnesota
40. Voyageurs National Park—Minnesota
41. Bear Paw Battlefield, Nez Perce National Historical Park—Montana
42. Glacier National Park—Montana
43. Great Basin National Park—Nevada
44. Aztec Ruins National Monument—New Mexico
45. Bandelier National Monument—New Mexico
46. Carlsbad Caverns National Park—New Mexico
47. Chaco Culture National Historic Park—New Mexico
48. Pecos National Historic Park—New Mexico
49. White Sands National Monument—New Mexico
50. Fort Stanwix National Monument—New York
51. Great Smoky Mountains National Park—North Carolina/Tennessee
52. Cuyahoga Valley National Park—Ohio
53. Hopewell Culture National Historical Park—Ohio
54. Chickasaw National Recreation Area—Oklahoma
55. John Day Fossil Beds National Monument—Oregon
56. Alibates Flint Quarries National Monument—Texas
57. Guadalupe Mountains National Park—Texas
58. Lake Meredith National Recreation Area—Texas
59. Ebey's Landing National Recreation Area—Washington
60. Mt. Rainier National Park—Washington
61. Olympic National Park—Washington
62. San Juan Islands National Historic Park—Washington
63. Whitman Mission National Historic Site—Washington

For questions regarding self-governance, contact Dr. Patricia Parker, Chief, American Indian Liaison Office, National Park Service (Org. 2560, 9th Floor), 1201 Eye Street NW., Washington, DC 20005–5905, telephone: (202) 354–6962, fax: (202) 371–6609, email: *pat_parker@nps.gov.*

E. Eligible Fish and Wildlife Service (Service) Programs

The mission of the Service is to conserve, protect, and enhance fish, wildlife, and their habitats for the continuing benefit of the American people. Primary responsibilities are for migratory birds, endangered species, freshwater and anadromous fisheries, and certain marine mammals. The Service also has a continuing cooperative relationship with a number of Indian tribes throughout the National Wildlife Refuge System and the Service's fish hatcheries. Any self-governance tribe may contact a National Wildlife Refuge or National Fish Hatchery directly concerning participation in Service programs under the Tribal Self-Governance Act. This list is not all-inclusive, but is representative of the types of Service programs that may be eligible for tribal participation through an annual funding agreement.

1. Subsistence Programs within the State of Alaska. Evaluate and analyze data for annual subsistence regulatory cycles and other data trends related to subsistence harvest needs, and facilitate Tribal Consultation to ensure ANILCA Title VII terms are being met as well as activities fulfilling the terms of Title VIII of ANILCA.

2. Technical Assistance, Restoration and Conservation. Conduct planning and implementation of population surveys, habitat surveys, restoration of sport fish, capture of depredating migratory birds, and habitat restoration activities.

3. Endangered Species Programs. Conduct activities associated with the conservation and recovery of threatened or endangered species protected under the Endangered Species Act (ESA); candidate species under the ESA may be

eligible for self-governance funding agreements. These activities may include, but are not limited to, cooperative conservation programs, development of recovery plans and implementation of recovery actions for threatened and endangered species, and implementation of status surveys for high priority candidate species.

4. Education Programs. Provide services in interpretation, outdoor classroom instruction, visitor center operations, and volunteer coordination both on and off national Wildlife Refuge lands in a variety of communities, and assist with environmental education and outreach efforts in local villages.

5. Environmental Contaminants Program. Conduct activities associated with identifying and removing toxic chemicals, to help prevent harm to fish, wildlife and their habitats. The activities required for environmental contaminant management may include, but are not limited to, analysis of pollution data, removal of underground storage tanks, specific cleanup activities, and field data gathering efforts.

6. Wetland and Habitat Conservation Restoration. Provide services for construction, planning, and habitat monitoring and activities associated with conservation and restoration of wetland habitat.

7. Fish Hatchery Operations. Conduct activities to recover aquatic species listed under the Endangered Species Act, restore native aquatic populations, and provide fish to benefit Tribes and National Wildlife Refuges that may be eligible for a self-governance funding agreement. Such activities may include, but are not limited to: Tagging, rearing and feeding of fish, disease treatment, tagging, and clerical or facility maintenance at a fish hatchery.

8. National Wildlife Refuge Operations and Maintenance. Conduct activities to assist the National Wildlife Refuge System, a national network of lands and waters for conservation, management and restoration of fish, wildlife and plant resources and their habitats within the United States. Activities that may be eligible for a self-governance funding agreement may include, but are not limited to: Construction, farming, concessions, maintenance, biological program efforts, habitat management, fire management, and implementation of comprehensive conservation planning.

Locations of Refuges and Hatcheries With Close Proximity to Self-Governance Tribes

The Service developed the list below based on the proximity of identified self-governance tribes to Service facilities that have components that may be suitable for contracting through a self-governance funding agreement.

1. Alaska National Wildlife Refuges—Alaska
2. Alchesay National Fish Hatchery—Arizona
3. Humboldt Bay National Wildlife Refuge—California
4. Kootenai National Wildlife Refuge—Idaho
5. Agassiz National Wildlife Refuge—Minnesota
6. Mille Lacs National Wildlife Refuge—Minnesota
7. Rice Lake National Wildlife Refuge—Minnesota
8. National Bison Range—Montana
9. Ninepipe National Wildlife Refuge—Montana
10. Pablo National Wildlife Refuge—Montana
11. Sequoyah National Wildlife Refuge—Oklahoma
12. Tishomingo National Wildlife Refuge—Oklahoma
13. Bandon Marsh National Wildlife Refuge—Washington
14. Dungeness National Wildlife Refuge—Washington
15. Makah National Fish Hatchery—Washington
16. Nisqually National Wildlife Refuge—Washington
17. Quinault National Fish Hatchery—Washington
18. San Juan Islands National Wildlife Refuge—Washington
19. Tamarac National Wildlife Refuge—Wisconsin

For questions regarding self-governance, contact Patrick Durham, Fish and Wildlife Service (MS–330), 4401 N. Fairfax Drive, Arlington, VA 22203, telephone: (703) 358–1728, fax: (703) 358–1930.

F. Eligible U.S. Geological Survey (USGS) Programs

The mission of the USGS is to collect, analyze, and provide information on biology, geology, hydrology, and geography that contributes to the wise management of the Nation's natural resources and to the health, safety, and well-being of the American people. This information is usually publicly available and includes maps, data bases, and descriptions and analyses of the water, plants, animals, energy, and mineral resources, land surface, underlying geologic structure, and dynamic processes of the earth. The USGS does not manage lands or resources. Self-governance tribes may potentially assist the USGS in the data acquisition and analysis components of its activities.

For questions regarding self-governance, contact Monique Fordham, Esq., National Tribal Liaison, U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, VA 20192, telephone 703–648–4437, fax 703–648–6683.

G. Eligible Office of the Special Trustee for American Indians (OST) Programs

The Department of the Interior has responsibility for what may be the largest land trust in the world, approximately 56 million acres. OST oversees the management of Indian trust assets, including income generated from leasing and other commercial activities on Indian trust lands, by maintaining, investing and disbursing Indian trust financial assets, and reporting on these transactions. The mission of the OST is to serve Indian communities by fulfilling Indian fiduciary trust responsibilities. This is to be accomplished through the implementation of a Comprehensive Trust Management Plan (CTM) that is designed to improve trust beneficiary services, ownership information, management of trust fund assets, and self-governance activities.

A tribe operating under self-governance may include the following programs, services, functions, and activities or portions thereof in a funding agreement:

1. Beneficiary Processes Program (Individual Indian Money Accounting Technical Functions).

2. Appraisal Services Program. Tribes/consortia that currently perform these programs under a self-governance funding agreement with the Office of Self-Governance may negotiate a separate memorandum of understanding (MOU) with OST that outlines the roles and responsibilities for management of these programs.

The MOU between the tribe/consortium and OST outlines the roles and responsibilities for the performance of the OST program by the tribe/consortium. If those roles and responsibilities are already fully articulated in the existing funding agreement with the BIA, an MOU is not necessary. To the extent that the parties desire specific program standards, an MOU will be negotiated between the tribe/consortium and OST, which will be binding on both parties and attached and incorporated into the BIA funding agreement.

If a tribe/consortium decides to assume the operation of an OST program, the new funding for performing that program will come from OST program dollars. A tribe's newly-assumed operation of the OST

program(s) will be reflected in the tribe's funding agreement.

For questions regarding self-governance, contact Lee Frazier, Program Analyst, Office of External Affairs, Office of the Special Trustee for American Indians (MS 5140– MIB), 1849 C Street NW., Washington, DC 20240–0001, phone: (202) 208–7587, fax: (202) 208–7545.

IV. Programmatic Targets

During Fiscal Year 2014, upon request of a self-governance tribe, each non-BIA bureau will negotiate funding agreements for its eligible programs beyond those already negotiated.

Dated: February 4, 2014.

Sally Jewell,

Secretary.

[FR Doc. 2014–03611 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement (BSEE)

[Docket ID BSEE–2013–0010; OMB Number 1014–0012; 134E1700D2 EEEE500000 ET1SF0000.DAQ000]

Information Collection Activities: Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act; Submitted for Office of Management and Budget (OMB) Review; Comment Request

ACTION: 30-day Notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act*. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: You must submit comments by March 24, 2014.

ADDRESSES: Submit comments by either fax (202) 395–5806 or email (*OIRA_Submission@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1014–0012). Please provide a copy of your comments to BSEE by any of the means below.

- *Electronically:* go to *http://www.regulations.gov*. In the Search box, enter BSEE–2013–0010 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nicole.mason@bsee.gov* mail to: *cheryl.blundon@mms.gov,* fax (703) 787–1546, or mail or hand-carry comments to: Department of the Interior; BSEE; Regulations and Standards Branch; ATTN: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference 1014–0012 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch, (703) 787–1605, to request additional information about this ICR. To see a copy of the entire ICR submitted to OMB, go to *http://www.reginfo.gov* (select Information Collection Review, Currently Under Review).

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

OMB Control Number: 1014–0012.

Abstract: The Outer Continental Shelf (OCS) Lands Act (OCSLA), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of that Act related to mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCSLA requires open and nondiscriminatory access to oil and gas pipelines. The OCSLA provides the Secretary of the Interior the authority to issue and enforce rules to assure open and nondiscriminatory access to pipelines. These regulations provide a mechanism for entities who believe they have been denied open and nondiscriminatory access to pipelines on the OCS. The BSEE established a process, via the subject regulations, to submit complaints alleging denial of access or discriminatory access for a shipper transporting oil or gas production from Federal leases on the OCS. The complaint should include certain minimal data in order for BSEE to begin an investigation. Upon completion of an investigation, BSEE will propose a remedial action.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Regulations at §§ 291.106(b) and 291.108 require a nonrefundable processing fee of $7,500 that a shipper must pay when filing a complaint to BSEE.

Regulations implementing these responsibilities are among those delegated to BSEE. Responses are voluntary but are required to obtain or retain a benefit. No questions of a sensitive nature are asked. The BSEE protects information considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and DOI's implementing regulations (43 CFR 2), and under regulations at 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* 30 CFR Part 252, *OCS Oil and Gas Information Program.*

The BSEE uses the submitted information to initiate a more detailed investigation into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the OCS. The complaint information will be provided to the alleged offending party. The BSEE may request additional information upon completion of the initial investigation.

Frequency: On occasion.

Description of Respondents: Potential respondents include OCS Federal oil, gas, or sulphur lessees and/or operators.

Estimated Reporting and Recordkeeping Hour Burden: The estimated annual hour burden for this information collection is a total of 51 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 291	Reporting and recordkeeping requirements	Non-hour cost burden		
		Hour burden	Average number of annual responses	Annual burden hours
105, 106, 108, 109, 111	Submit complaint (with fee) to BSEE and affected parties. Request confidential treatment and respond to BSEE decision.	50	1	50
		$7,500 fee x 1 = $7,500		
106(b), 109	Request waiver or reduction of fee	1	1	1
104(b), 107, 111	Submit response to a complaint. Request confidential treatment and respond to BSEE decision.	Information required after an investigation is opened against a specific entity is exempt under the PRA (5 CFR 1320.4(a)(2), (c)).		0
110	Submit required information for BSEE to make a decision.			
114, 115(a)	Submit appeal on BSEE final decision			
TOTAL BURDEN			2 Responses	51
			$7,500 Non-hour cost burden	

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden of $7,500. The BSEE requires that shippers pay a nonrefundable fee of $7,500 for a complaint submitted to BSEE (30 CFR 291.106). The fee is required to recover the Federal Government's processing costs.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.,*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.,*) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .'' Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

To comply with the public consultation process, on November 18, 2013, we published a **Federal Register** notice (78 FR 69121) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 291.1 provides the OMB Control Number for the information collection requirements imposed by the 30 CFR Part 291 regulations. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We received no comments in response to the **Federal Register** notice or any unsolicited comments.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Cheryl Blundon, 703–787–1607.

Dated: February 11, 2014.

Robert W. Middleton,

Deputy Chief, Office of Offshore Regulatory Programs.

[FR Doc. 2014–03627 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N293; FXES11130800000–145–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

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 (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before March 24, 2014.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicant

Permit No. TE–20915B

Applicant: Craig A. Swolgaard, Georgetown, California

The applicant requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (Santa Barbara County Distinct Population Segment (DPS) and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–43597A

Applicant: Dana H. McLaughlin, Chula Vista, California

The applicant requests an amendment to a permit to take (survey, capture, handle, mark, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–21700B

Applicant: Diana J. Grosso, Bakersfield, California

The applicant requests a permit to take (survey, capture, handle, measure, and release) the giant kangaroo rat (*Dipodomys ingens*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–795930

Applicant: Tansley Team Incorporated, Sheridan, California

The applicant requests an amendment to a permit to take (capture, collect, transport, hatch and rear) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with fairy shrimp cyst identification activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–97717A

Applicant: Melissa Blundell, Oxnard, California

The applicant requests an amendment to a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–799564

Applicant: Sycamore Environmental Consultants, Inc., Sheridan, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–217119

Applicant: Carie M. Wingert, Fresno, California

The applicant requests a permit to take (survey, capture, handle, measure, and release) the giant kangaroo rat (*Dipodomys ingens*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and take (harass by survey and nest monitor) the California least tern (*Sternula antillarum browni*) (*Sterna a. b.*) and western snowy plover (Pacific Coast population DPS) (*Charadrius nivosus nivosus*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–213308

Applicant: Joseph E. DiDonato, Alameda, California

The applicant requests a permit renewal to take (harass by survey) the California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–062907–8

Applicant: Andrew M. Forde, Camarillo, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, trap using mist nets, handle, color band, and collect blood and feathers) the southwestern willow flycatcher (*Empidonax traillii extimus*), take (harass by survey and locate and monitor nests) the coastal California gnatcatcher (*Polioptila californica californica*), take (locate and monitor nests and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys, population monitoring, and research activities throughout the range of each species in California, Nevada, Arizona, New Mexico, Texas, and Colorado, for the purpose of enhancing the species' survival.

Permit No. TE–22780B

Applicant: Florence Chan, Irvine, California

The applicant requests a permit to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and nest monitoring activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–22798B

Applicant: North Star Engineering, Chico, California

The applicant requests a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with surveys and soil inoculum collection activities in Butte, Glenn, Tehama, Shasta, Sacramento, Placer, and Sutter Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–769304

Applicant: Jeffrey A. Halstead, Clovis, California

The applicant requests a permit renewal to take (survey, capture, handle, and release) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) and Fresno kangaroo rat (*Dipodomys nitratoides exilis*) and take (harass by survey) the California tiger salamander (Santa Barbara County DPS and Sonoma

County DPS) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–005956

Applicant: U.S. Geological Survey, Reno, Nevada

The applicant requests a permit renewal to take (capture, measure, weigh, mark, release, and collect) the cui-ui (*Chasmistes jujus*), take (capture, measure, mark, tag, release, collect, and harass by observation) the Ash Meadows speckled dace (*Rhinichthys osculus nevadensis*), Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*), and Moapa dace (*Moapa coriacea*); take (capture, measure, mark, tag, release, and harass by observation) the Warm Springs Amargosa pupfish (*Cyprinodon nevadensis pectoralis*); take (capture, mark, observe, and release) the White River springfish (*Crenichthys baileyi baileyi*) and Hiko White River springfish (*Crenichthys baileyi grandis*); take (capture, release, translocate, and harass by observation) the White River spinedace (*Lepidomeda albivalis*); take (harass by observation) the Pahranagat roundtail chub (*Gila robusta jordani*); and take (capture, mark, and release) the Clover Valley speckled dace (*Rhinichthys osculus oligoporus*) and Independence Valley speckled dace (*Rhinichthys osculus lethoporus*) in conjunction with surveys and scientific research activities throughout the range of each species in Nevada for the purpose of enhancing the species' survival.

Permit No. TE–031848

Applicant: Ryan N. Henry, Dana Point, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–22802B

Applicant: John C. Sterling, Woodland, California

The applicant requests a permit to take (band, locate, and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), take (harass by survey, band, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (survey and nest monitor) the California clapper rail (*Rallus longirostris obsoletus*) in conjunction with surveys, nest monitoring, and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–787716

Applicant: Scott B. Tremor, San Diego, California

The applicant requests a permit renewal to take (capture, handle, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*), San Bernardino Merriam's kangaroo rat (*Dipodomys merriami parvus*), and Stephens' kangaroo rat (*Dipodomys stephensi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–037806

Applicant: Bureau of Land Management, Bakersfield, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), and vernal pool tadpole shrimp (*Lepidurus packardi*), and take (harass by survey, capture, handle, mark, and release) the giant kangaroo rat (*Dipodomys ingens*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) in conjunction with survey and research activities throughout the range of each species in Ventura, Santa Barbara, San Luis Obispo, Tulare, Kings, Madera, Fresno, Kern, Monterey, and San Benito Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–95006A

Applicant: Steven Chung-Li Chen, San Luis Obispo, California

The applicant requests an amendment to a permit to take (survey, capture, handle, measure, and release) the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), Fresno kangaroo rat (*Dipodomys nitratoides exilis*), Stephens' kangaroo rat (*Dipodomys stephensi*) and Morro Bay kangaroo rat (*Dipodomys heermanni morroensis*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–785148

Applicant: AMEC Environmental & Infrastructure, Inc., Riverside, California

The applicant requests an amendment to a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–086593

Applicant: University of Arizona, Tucson, Arizona

The applicant requests an amendment to a permit to take (survey, capture, handle, release, remove from the wild, transport, captive breed, and hold in captivity) the Moapa dace (*Moapa coriacea*) in conjunction with surveys and scientific research activities throughout the range of each species in Lincoln County, Nevada, and research facility at the University of Arizona, Tucson, Arizona, for the purpose of enhancing the species' survival.

Permit No. TE–192702

Applicant: Jamie M. Kneitel, Sacramento, California

The applicant requests an amendment to a permit to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with genetic analysis and vernal pool diversity studies throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–217401

Applicant: Cristina V. Slaughter, Santa Barbara, California

The applicant requests a permit renewal to take (harass by survey, capture, and release) the tidewater goby (*Eucyclogobius newberryi*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–045994

Applicant: U.S. Geological Survey, Biological Resources Division, Western Ecological Research Center, San Diego, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, and collect specimens for vouchers, parasite analysis, and genetic and morphological assessments) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) and Santa Ana sucker (*Catostomus santaanae*), take (harass by survey, capture, handle, collect tail tissue, and release) the desert slender salamander (*Batrachoseps major aridus*), take (harass by survey, capture, handle, mark, tag, and release; collect voucher specimens and take tissue samples; transport, captive rear, and release; and excavate ponds) the California red-legged frog (*Rana draytonii*) (*R. aurora d.*), take (harass by survey, capture, handle, mark, tag, and release; collect voucher specimens and take tissue samples; transport, captive breed and rear; collect sperm for cryopreservation efforts; conduct hormone treatments in captive breeding; remove infertile eggs from egg masses released from captivity; release to the wild (translocate); and euthanize) the mountain yellow-legged frog (southern California DPS) (*Rana muscosa*), take (harass by survey, capture, handle, mark, tag, take tissue samples, and release) the arroyo toad (=arroyo southwestern) (*Anaxyrus californicus (Bufo microscaphus c.)*), take (harass by survey, capture, handle, measure, release, and collect for voucher specimens and parasite research) the tidewater goby (*Eucyclogobius newberryi*), take (harass by survey, capture, handle, tag, clip fur, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*), and take (harass by survey, capture, handle, collect biological tissue, utilize tracking tubes, photograph and record, mark, and release) the Pacific pocket mouse (*Perognathus longimembris pacificus*) in conjunction with surveys, population monitoring, captive breeding, and research activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–217401

Applicant: Jepson Prairie Reserve, Davis, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*) and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities in Solano County, California, for the purpose of enhancing the species' survival.

Permit No. TE–24256B

Applicant: Brett Daniels, Indio, California

The applicant requests a permit to take (capture, handle, collect, transport, captive rear) the desert pupfish (*Cyprinodon macularius*) in conjunction with research activities in Riverside County, California, for the purpose of enhancing the species' survival.

Permit No. TE–778195

Applicant: Helix Environmental Planning, LaMesa, California

The applicant requests an amendment to a permit to take (capture, collect, transport, hatch, and rear) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with fairy shrimp cyst identification activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–837574

Applicant: Denise L. LaBerteaux, Weldon, California

The applicant requests a permit renewal to take (harass by survey, capture, band, and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–811615

Applicant: Cynthia J. Daverin, San Diego, California

The applicant requests a permit renewal to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*), take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*), and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–108683

Applicant: Austin J. Pearson, Coarsgold, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–25226B

Applicant: Rebecca E. Crowe, San Francisco, California

The applicant requests a permit to take (capture and collect) branchiopod eggs/cysts of the Conservancy fairy shrimp (*Branchinecta conservatio*) and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with soil collection and research activities in Sonoma County, California, for the purpose of enhancing the species' survival.

Permit No. TE–24603A

Applicant: Karen J. Carter, Running Springs, California

The applicant requests a permit to take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*) in conjunction with survey activities in San Bernardino, Imperial, and Riverside Counties, California, and Clark County, Nevada, for the purpose of enhancing the species' survival.

Permit No. TE–817397

Applicant: John R. Storrer, Santa Barbara, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, release, collect tail tissue, and collect voucher specimens) the California tiger salamander (Santa Barbara County DPS) (*Ambystoma californiense*) in conjunction with survey and research activities in Santa Barbara County, California, for the purpose of enhancing the species' survival.

Permit No. TE–25257B

Applicant: Joseph A.E. Stewart, Santa Cruz, California

The applicant requests a permit to take (survey, capture, handle, mark/recapture, and release) the blunt-nosed leopard lizard (*Gambelia silus*) in conjunction with surveys, population studies, and research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–233367

Applicant: Laura E. Gorman, San Diego, California

The applicant requests a permit renewal and amendment to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and take (harass by survey, locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey and population monitoring activities throughout the range of each species in California, Nevada, Arizona, New Mexico, Texas, Utah, and Colorado for the purpose of enhancing the species' survival.

Permit No. TE–020548

Applicant: U.S. Geological Survey, Vallejo, California

The applicant requests a permit renewal and amendment to take (survey, capture, handle, mark, collect genetic material, and release) the salt marsh harvest mouse (*Reithrodontomys raviventris*) and take (harass by survey, capture, handle, band, color-mark, radio-tag, collect genetic material, candle eggs, salvage eggs and carcasses, and release) the Yuma clapper rail (*Rallus longirostris yumanensis*) and California clapper rail (*Rallus longirostris obsoletus*) in conjunction with survey activities, population monitoring, and research activities throughout the range of each species in California and Arizona for the purpose of enhancing the species' survival.

Permit No. TE–041668

Applicant: Cleveland National Forest, San Diego, California

The applicant requests a permit renewal and amendment to take (harass by survey, capture, handle, and release) the arroyo toad (=arroyo southwestern) (*Anaxyrus californicus (Bufo microscaphus c.)*), take (harass by survey, locate and monitor nests, and remove brown-headed cowbird (*Molothrus ater*) eggs and chicks from parasitized nests) the southwestern willow flycatcher (*Empidonax traillii extimus*), take (locate and monitor nests, and remove brown-headed cowbird eggs and chicks from parasitized nests) the least Bell's vireo (*Vireo bellii pusillus*), and reduce and remove to possession (collect) the *Dodecahema leptoceras* (slender-horned spineflower), *Allium munzii* (Munz's onion), *Astragalus brauntonii* (Braunton's milk-vetch), *Berberis nevinii* (Nevin's barberry), and *Poa atropurpurea* (San Bernardino bluegrass) in conjunction with surveys and life history studies throughout the range of each species on Cleveland National Forest lands within San Diego, Orange, and Riverside Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–837439

Applicant: Guy P. Bruyea, Hemet, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) and Delhi Sands flower-loving fly (*Rhaphiomidas terminates abdominalis*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–03602 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2013–N247; FXES11130800000–145–FF08E00000]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

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 (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before March 24, 2014.

ADDRESSES: Written data or comments should be submitted to the Endangered Species Program Manager, U.S. Fish and Wildlife Service, Region 8, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825 (telephone: 916–414–6464; fax: 916–414–6486). Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; see **ADDRESSES** (telephone: 760–431–9440; fax: 760–431–9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests.

Applicant

Permit No. TE–157216

Applicant: United States Geological Survey, Dixon, California

The applicant requests an amendment to a permit to take (harass by palpation of captured individuals for stomach contents) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) in conjunction with scientific research activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–207867

Applicant: Michael A. Richard, Orange, California

The applicant requests a permit renewal to take (survey, capture, handle, and release) the San Bernardino kangaroo rat (*Dipodomys merriami parvus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–095860

Applicant: Veronica A. Wunderlich, Pleasant Hill, California

The applicant requests a permit renewal to take (harass by survey, capture, handle, and release) the California tiger salamander (Sonoma County Distinct Population Segment (DPS)) (*Ambystoma californiense*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–095858

Applicant: Arianne B. Preite, Orange, California

The applicant requests a permit renewal to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); take (survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (harass by survey) the light-footed clapper rail (*Rallus longirostris levipes*) and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–217663

Applicant: Ann M. Dalkey, Redondo Beach, California

The applicant requests a permit renewal to take (survey by pursuit) the Palos Verdes blue butterfly (*Glaucopsyche lygdamus palosverdesensis*) and El Segundo blue butterfly (*Euphilotes battoides allyni*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–31406A

Applicant: California State Parks, Ventura, California

The applicant requests a permit renewal to take (harass by survey, locate and monitor nests, and install symbolic fencing) the California least tern (*Sternula antillarum browni*) (*Sterna a. b.*) in conjunction with survey and nest monitoring activities in Ventura County, California, for the purpose of enhancing the species' survival.

Permit No. TE–844030

Applicant: Arthur E. Davenport, Barstow, California

The applicant requests a permit renewal to take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*); take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*) and light-footed clapper rail (*Rallus longirostris levipes*); take (capture, handle, and release) the Stephens' kangaroo rat (*Dipodomys stephensi*), San Bernardino kangaroo rat (*Dipodomys merriami parvus*), Pacific pocket mouse (*Perognathus longimembris pacificus*), arroyo toad (arroyo southwestern) (*Anaxyrus californicus (Bufo microscaphus c.*), and desert pupfish (*Cyprinodon macularius*); and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys, research, and population monitoring activities within the range of each species as specified in the permit, in Los Angeles, Imperial, San Bernardino, Riverside, Orange, San Diego, Santa Barbara, Ventura, Kern, Inyo, Monterey, San Benito, and Santa Clara Counties, California, and in Clark, Lincoln, and Nye Counties, Nevada, for the purpose of enhancing the species' survival.

Permit No. TE–781084

Applicant: Anita M. Hayworth, Encinitas, California

The applicant requests a permit renewal to take (harass by survey and locate and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (locate and monitor nests) the least Bell's vireo (*Vireo bellii pusillus*); take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey and population monitoring activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–844030

Applicant: Eda C. Eggeman, Redding, California

The applicant requests a permit renewal to take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*) and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in Shasta and Tehama Counties, California, for the purpose of enhancing the species' survival.

Permit No. TE–051248

Applicant: Paul M. Lemons, San Diego, California

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species as specified in the permit in California, Nevada, Arizona, New Mexico, and Utah for the purpose of enhancing the species' survival.

Permit No. TE–72045A

Applicant: Alisa C. Zych, Cardiff by the Sea, California

The applicant requests a permit amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with survey activities throughout the range of the species in California for the purpose of enhancing the species' survival.

Permit No. TE–045153

Applicant: Dustin S. Janeke, San Diego, California

The applicant requests a permit renewal to take (survey by pursuit) the

Quino checkerspot butterfly (*Euphydryas editha quino*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species in California for the purpose of enhancing the species' survival.

Permit No. TE–795934

Applicant: ICF Jones and Stokes, Incorporated, Sacramento, California

The applicant requests a permit renewal to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*), delta smelt (*Hypomesus transpacificus*), and California tiger salamander (Santa Barbara County DPS and Sonoma County DPS) (*Ambystoma californiense*); and take (capture, collect, and collect vouchers) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), Riverside fairy shrimp (*Streptocephalus woottoni*), San Diego fairy shrimp (*Branchinecta sandiegonensis*), and vernal pool tadpole shrimp (*Lepidurus packardi*) in conjunction with survey activities throughout the range of each species as specified in the permit in California and Oregon for the purpose of enhancing the species' survival.

Public Comments

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

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.

Michael Long,

Acting Regional Director, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2014–03601 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–R–2013–N070; FXRS12650700000–145–FF07R05000]

Record of Decision for Final Environmental Impact Statement; Izembek National Wildlife Refuge Proposed Land Exchange/Road Corridor, Cold Bay, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: record of decision.

SUMMARY: We, the Department of the Interior (Department) and the U.S. Fish and Wildlife Service (Service), announce the availability of the record of decision (ROD) for the final environmental impact statement (EIS) for a proposed land exchange/road corridor on the Izembek National Wildlife Refuge (Refuge), Alaska. We prepared this ROD pursuant to the National Environmental Policy Act of 1969 (NEPA) and its implementing regulations. We provide this notice to advise the public and other agencies of our decision and of availability of the ROD.

DATES: Both the Director of the U.S. Fish and Wildlife Service and the Secretary of the Interior signed the ROD on December 23, 2013.

ADDRESSES: You may view or obtain copies of the ROD by any of the following methods:

Web site: Download a copy of the document(s) at *http://izembek.fws.gov/eis.htm.*

Email: izembek_eis@fws.gov; include ''Izembek National Wildlife Refuge ROD'' in the subject line of the message.

Fax: Attn: Stephanie Brady, Project Team Leader, 907–786–3901.

U.S. Mail: Stephanie Brady, Project Team Leader, U.S. Fish and Wildlife Service, 1011 East Tudor Rd., MS–231, Anchorage, AK 99503.

In-Person Viewing or Pickup: You may view or pick up a copy of the ROD during regular business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Stephanie Brady, 907–306–7448, or by one of the addresses above.

SUPPLEMENTARY INFORMATION: With this notice, we finalize the EIS process for the Proposed Land Exchange/Road Corridor in the Izembek Refuge, Alaska. In accordance with National Environmental Policy Act (NEPA) (40 CFR 1506.6(b)) requirements, this notice announces the availability of the ROD for the final EIS for a Proposed Land Exchange/Road Corridor in the Izembek Refuge. We completed a thorough analysis of the effects on the human environment of each alternative considered, including environmental, social, and economic considerations, which were included in the final EIS. The ROD documents our selection of Alternative 1, the No Land Exchange Alternative (No Action Alternative), which was the Service's preferred alternative in the final EIS. Under this decision, the Service will not exchange land with the State of Alaska and the King Cove Corporation for the purpose of constructing a road between the communities of King Cove and Cold Bay, Alaska. Under this decision, we will continue to manage lands within the Refuge consistent with and following the Izembek Refuge Comprehensive Conservation Plan. For more background on the Refuge, and the public involvement process to date, please see our notice published Wednesday, February 6, 2013 (78 FR 8577).

Background

The Omnibus Public Land Management Act of 2009 (Pub. L. 111–11, Title VI, Subtitle E) (OPLMA) directed the Secretary of the Interior to analyze the land exchange, alternatives for road construction and operation, and a specific road corridor through the Izembek Refuge and the Izembek Wilderness. The proposed land exchange would transfer to the State of Alaska all right, title, and interest to a road corridor for the construction, operation, and maintenance of a single-lane gravel road between the communities of King Cove and Cold Bay, Alaska. As provided by OPLMA, the road ''shall be used primarily for health and safety purposes (including access to and from the Cold Bay Airport) and only for noncommercial purposes.'' The OPLMA requires the Secretary to make this decision in compliance with NEPA, which requires analysis of the effects of alternatives, including a ''no action'' alternative, and any other applicable law.

Alternatives Considered

The Final EIS evaluated in detail five alternatives, including a No Action Alternative and four action alternatives:

Alternative 1—No Action and Preferred Alternative

Under Alternative 1, the Service would not exchange lands with the King Cove Corporation and the State of Alaska for the purpose of constructing a road between King Cove and Cold Bay, Alaska. Current modes of transportation

between the cities of King Cove and Cold Bay, including air and marine routes, would continue to operate and be developed.

Alternative 2—Land Exchange and Southern Road Alignment

Alternative 2 proposed a land exchange between the Federal Government, the State of Alaska, and the King Cove Corporation that would result in a road/road corridor through Izembek Refuge and Izembek Wilderness. Under the proposed land exchange, approximately 201 acres of federal land (surface and subsurface estate) of the Izembek Refuge and Izembek Wilderness as well as 1,600 acres (surface and subsurface estate) within the Alaska Maritime National Wildlife Refuge on Sitkinak Island would be conveyed to the State of Alaska. In exchange, the Service would receive approximately 43,093 acres of land owned by the State of Alaska (to be designated wilderness), as well as approximately 13,300 acres of land owned by King Cove Corporation. In addition, the King Cove Corporation would relinquish 5,430 acres of selected lands within the Izembek Refuge and Izembek Wilderness boundary. The proposed road/road corridor would be located approximately ½ mile to 1 mile north of Kinzarof Lagoon.

Alternative 3—Land Exchange and Central Road Alignment

Alternative 3 proposed a land exchange between the Federal Government, the State of Alaska, and the King Cove Corporation that would result in a road/road corridor through Izembek Refuge and Izembek Wilderness. Under the proposed land exchange, approximately 227 acres of federal land (surface and subsurface estate) of the Izembek Refuge and Izembek Wilderness as well as 1,600 acres (surface and subsurface estate) within the Alaska Maritime National Wildlife Refuge on Sitkinak Island would be conveyed to the State of Alaska. In exchange, the Service would receive approximately 43,093 acres of land owned by the State of Alaska (to be designated wilderness), as well as approximately 13,300 acres of land owned by King Cove Corporation. In addition, the King Cove Corporation would relinquish 5,430 acres of selected lands within the Izembek Refuge and Izembek Wilderness boundary. The proposed road/road corridor would be located more centrally within the Izembek isthmus approximately 1 to 1½ mile north of Kinzarof lagoon and ½ to 1 mile south of Izembek Lagoon.

Alternative 4—Hovercraft Operations From the Northeast Terminal to Cross Wind Cove

Alternative 4 proposed operation of a hovercraft service 6 days per week to provide access between the communities of King Cove and Cold Bay, running between the Northeast Terminal and Cross Wind Cove. A land exchange was not considered under this alternative.

Alternative 5—Lenard Harbor Ferry With Cold Bay Dock Improvements

Alternative 5 proposed use of a ferry to provide access between King Cove and Cold Bay that would travel 14 miles between a terminal in Lenard Harbor to a substantially modified Cold Bay dock. Under this alternative, ferry service would be provided 6 days per week and a land exchange would not occur.

Factors We Considered in Decisionmaking

We based our decision on a thorough analysis of the effects to the human environment, including environmental, social, and economic considerations found in the Final EIS. We have evaluated the effects of proposed roads through Izembek Refuge and Izembek Wilderness in numerous analyses since 1960, including the 1985 Comprehensive Conservation Plan and through the completion of the current EIS. We have consistently found that the impacts of building a proposed road on the wildlife resources, habitats, and designated Wilderness would create irreversible change and damage to a unique and ecologically important area, and especially to designated Wilderness. The no action alternative selected in the ROD supports the continued management of the Izembek Refuge consistent with the purposes for which it was established.

Decision: After a thorough review of the potential environmental, social, and economic consequences of all alternatives evaluated in the Final EIS, we selected Alternative 1, the No Action Alternative. Selecting Alternative 1 preserves the integrity of the Izembek National Wildlife Refuge and Izembek Wilderness, ensures the continued protection of unique and internationally recognized habitats, and maintains the integrity of designated Wilderness.

Dated: February 13, 2014.

Geoffrey L. Haskett,

Regional Director, U.S. Fish and Wildlife Service, Anchorage, Alaska.

[FR Doc. 2014–03605 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–FHC–2014–N024; FXFR1334088TWG0W4–123–FF08EACT00]

Trinity Adaptive Management Working Group; Public Meeting and Teleconference

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a public meeting and teleconference of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG is a Federal advisory committee that affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends policy, coordinates and reviews management actions, and provides organizational budget oversight.

DATES: *Public meeting, and Teleconference:* TAMWG will meet from 10 a.m. to 4:30 p.m. Pacific Time on Monday, March 17, 2014, and from 9:30 a.m. to 4:00 p.m. Pacific Time on Tuesday, March 18, 2014.
Deadlines: For deadlines and directions on registering to listen to the meeting by phone, and submitting written material, please see ''Public Input'' under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The in-person meeting will be held at the Weaverville Fire District, 125 Bremer Street, Weaverville, CA 96093. You may participate in person or by teleconference.

FOR FURTHER INFORMATION CONTACT: Elizabeth W. Hadley, Redding Electric Utility, 777 Cypress Avenue, Redding, CA 96001; telephone: 530–339–7327; email: *ehadley@reupower.com.* Individuals with a disability may request an accommodation by sending an email to the point of contact, and those accommodations will be provided.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., we announce that the Trinity Adaptive Management Working Group (TAMWG) will hold a meeting.

Background

The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River (California) restoration efforts to the Trinity Management Council (TMC). The TMC interprets and recommends

policy, coordinates and reviews management actions, and provides organizational budget oversight.

Meeting Agenda

- Designated Federal Officer (DFO) updates,
- Election of Chair and Vice-chair,
- TMC Chair report,
- Executive Director's report,
- TRRP workgroups update,
- BLM Land Acquisition on the Trinity River,
- Decision Support System demo,
- Design update,
- Flow recommendations,
- Trinity River Hatchery update,
- Klamath Fall Flows,
- Reservoir Operations and Temperature Control,
- Panel discussion of 2014 projects,
- Program outreach, and
- Public Comment.

The final agenda will be posted on the Internet at *http://www.fws.gov/arcata.*

PUBLIC INPUT

If you wish to	You must contact Elizabeth Hadley (**FOR FURTHER INFORMATION CONTACT**) no later than
Listen to the teleconference meeting via telephone or Internet.	March 10, 2014.
Submit written information or questions for the TAMWG to consider during the teleconference.	March 10, 2014.

Submitting Written Information or Questions

Interested members of the public may submit relevant information or questions for the TAMWG to consider during the meeting. Written statements must be received by the date listed in ''Public Input,'' so that the information may be available to the TAMWG for their consideration prior to this teleconference. Written statements must be supplied to Elizabeth Hadley in one of the following formats: One hard copy with original signature, one electronic copy with original signature, and one electronic copy via email (acceptable file formats are Adobe Acrobat PDF, MS Word, PowerPoint, or rich text file).

Registered speakers who wish to expand on their oral statements, or those who wished to speak but could not be accommodated on the agenda, may submit written statements to Elizabeth Hadley up to 7 days after the meeting.

Meeting Minutes

Summary minutes of the meeting will be maintained by Elizabeth Hadley (see **FOR FURTHER INFORMATION CONTACT**). The minutes will be available for public inspection within 90 days after the meeting, and will be posted on the TAMWG Web site at *http://www.fws.gov/arcata.*

Dated: February 12, 2014.

Joseph C. Polos,

Supervisory Fish Biologist, Arcata Fish and Wildlife Office, Arcata, California.

[FR Doc. 2014–03617 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[145A2100DD/AAK3000000/A0H501010/241A00]

Renewal of Agency Information Collection for Financial Assistance and Social Services

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Assistant Secretary—Indian Affairs is seeking comments on the renewal of Office of Management and Budget (OMB) approval for the collection of information for the ''Financial Assistance and Social Services'' authorized by OMB Control Number 1076–0017. This information collection expires May 31, 2014.

DATES: Submit comments on or before April 21, 2014.

ADDRESSES: You may submit comments on the information collection to Evangeline Campbell, Chief, Division of Human Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240; facsimile: (202) 208–2648; email: *Evangline.Campbell@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Evangeline Campbell, 202–513–7621.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA is seeking to renew the information collection it conducts to provide assistance under 25 CFR part 20 to eligible Indians when comparable financial assistance or social services either are not available or not provided by State, tribal, county, local, or other Federal agencies. Approval for this collection expires May 31, 2014. The information collection allows BIA to determine whether an individual is eligible for assistance and services. No third party notification or public disclosure burden is associated with this collection.

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 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.

III. Data

OMB Control Number: 1076–0017.

Title: Financial Assistance and Social Services, 25 CFR 20.

Brief Description of Collection: Submission of this information is required of Indian applicants of BIA financial assistance and social services. BIA uses the information to determine if an individual is eligible for services and, where appropriate, to conduct and employability assessment and jointly develop with the individual an Individual Self-Sufficiency Plan outlining how the individual can attain self-sufficiency. A response is required to obtain or retain a benefit.

Type of Review: Extension without change of currently approved collection.

Respondents: Individual Indians seeking financial assistance or social services from BIA.

Number of Respondents: 240,000 provide information on the application,

of those, 95,000 contribute information to an employability assessment and ISP.

Number of Responses: Once, on occasion.

Estimated Time per Response: 1.5 (0.5 hours for the application + 1 hour for the employability assessment and ISP).

Estimated Total Annual Hour Burden: 215,000 hours ((240,000 × .05 hours for applications) + (95,000 × 1 hour for employability assessment and ISP)).

Estimated Total Annual Non-Hour Dollar Cost: $0.

Dated: February 12, 2014.

John Ashley,

Acting Assistant Director for Information Resources.

[FR Doc. 2014–03616 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00621 1314 R3B30]

Notice of Cancellation of the Environmental Impact Statement for the Proposed Shu'luuk Wind Project on the Campo Indian Reservation, San Diego County, CA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Bureau of Indian Affairs (BIA) as lead agency, in cooperation with the Campo Band of Mission Indians (Campo Band), Campo Environmental Protection Agency (CEPA) and the U.S. Environmental Protection Agency (EPA), intends to cancel all work on the environmental impact statement (EIS) for the Proposed Shu'luuk Wind Project on the Campo Indian Reservation, San Diego County, CA.

FOR FURTHER INFORMATION CONTACT: Lenore Lamb, (951) 276–6624, extension 254.

SUPPLEMENTARY INFORMATION: The BIA is canceling work on the EIS because the Campo Band of Mission Indians, by tribal letter, informed the BIA that the Tribe terminated the lease with Invenergy Wind California, LLC and San Diego Gas & Electric Company to develop the Shu'luuk Wind Project. There is no Federal action of lease approval for BIA consideration.

The Notice of Intent to prepare the EIS, which included a description of the proposed action, was published in the **Federal Register** on May 20, 2011 (76 FR 29261). The Notice of Availability of the Draft EIS was published in the **Federal Register** on January 11, 2013 (78 FR 2423).

Authority

This notice is published pursuant to the Council of Environmental Quality Regulations (40 CFR part 1500) 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: February 4, 2014.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2014–03615 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORC01000.L63340000.JP0000. 14XL1116AF.241A.00.HAG14–0061]

Notice of Public Meeting for the Coos Bay Resource Advisory Council: Cancellation

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; cancellation.

SUMMARY: The Bureau of Land Management, Oregon/Washington, published a document in the **Federal Register** on February 6, 2014, regarding a public meeting of the Coos Bay Resource Advisory Council which was scheduled for March 13, 2014. The meeting has been cancelled.

FOR FURTHER INFORMATION CONTACT: Stephen Baker, Bureau of Land Management, Oregon/Washington, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (503) 808–6306; *sabaker@blm.gov.*

Jody L. Weil,

Deputy State Director, Office of Communications, Oregon/Washington.

[FR Doc. 2014–03613 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORC01000. L63340000. JP0000. 14XL1116AF.241A.00; HAG14–0062]

Notice of Public Meetings, Coos Bay Resource Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coos Bay District Resource Advisory Committee will meet as indicated below.

DATES: March 7, 2014, 9 a.m.–4 p.m. with public comments at 11 a.m.

ADDRESSES: The meetings will be held at the Coos Bay District Office, 1300 Airport Lane, North Bend, Oregon 97459. The point of contact is Megan Harper, 541–751–4353.

FOR FURTHER INFORMATION CONTACT: Stephen Baker, Bureau of Land Management, Oregon/Washington, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (503) 808–6306; *sabaker@blm.gov.*

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Secure Rural Schools and Community Self Determination Act was extended to provide stability for local counties by compensating them, in part, for the decrease in funds formerly derived from the harvest of timber on Federal lands. Pursuant to the Act, the five Committees serve western Oregon BLM districts that contain Oregon and California grant lands and Coos Bay Wagon Road grant lands. Committees consist of 15 local citizens representing a wide array of interests. The RACs provide a mechanism for local community collaboration with Federal land managers as they select projects to be conducted on Federal lands or that will benefit resources on Federal lands using funds under Title II of the Act. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided above. The Resource Advisory Committees will be based on the following BLM District boundaries:

Coos Bay District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Coos Bay District which includes lands in Coos, Curry, Douglas, and Lane Counties.

Eugene District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Eugene District boundary which includes lands in Benton, Douglas, Lane, and Linn Counties.

Medford District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Medford District and Klamath Falls Resource Area in the Lakeview District which includes lands in Coos, Curry, Douglas, Jackson, and Josephine Counties and small portions of west Klamath County.

Roseburg District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Roseburg District boundary which includes lands in Douglas, Lane, and Jackson Counties.

Salem District Resource Advisory Committee advises Federal officials on projects associated with Federal lands within the Salem District boundary which includes lands in Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties.

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: Title VI, Section 205 of Pub. L. 110–343);

Jody L. Weil,

Deputy State Director, Office of Communications, Oregon/Washington.

[FR Doc. 2014–03612 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000–L63100000–HD0000–14XL1116AF: HAG14–0058]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon, 30 days from the date of this publication.

Willamette Meridian

Oregon

T. 16 S., R. 2 W., accepted January 28, 2014
T. 29 S., R. 10 W., accepted January 28, 2014
T. 27 S., R. 12 W., accepted January 28, 2014
T. 8 S., R. 4 E., accepted January 28, 2014
T. 9 S., R. 2 E., accepted January 28, 2014

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW. 3rd Avenue, Portland, Oregon 97204, upon required payment.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6132, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW. 3rd Avenue, Portland, Oregon 97204. 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: A person or party who wishes to protest against this survey must file a written notice with the Oregon State Director, Bureau of Land Management, stating that they wish to protest. A statement of reasons for a protest may be filed with the notice of protest and must be filed with the Oregon State Director within thirty days after the protest is filed. If a protest against the survey 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 or otherwise resolved.

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.

Timothy J. Moore,

Acting, Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2014–03607 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA942000 L57000000.BX0000 XXX]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, thirty (30) calendar days from the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

Protest: A person or party who wishes to protest a survey must file a notice that they wish to protest with the California State Director, Bureau of Land Management, 2800 Cottage Way, Sacramento, California, 95825.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys were executed to meet the administrative needs of various federal agencies; the Bureau of Land Management, Bureau of Indian Affairs or Bureau of Reclamation. The lands surveyed are:

Mount Diablo Meridian, California

T. 14 S., R. 28 E., dependent resurvey and metes-and-bounds survey accepted December 10, 2013.
T. 6 N., R. 22 E., amended plat of the dependent resurvey, subdivision of section 23 and survey of tracts 37 and 38 accepted December 19, 2013.
T. 5 N., R. 11 E., dependent resurvey and subdivision of section 1 accepted January 21, 2014.
T. 5 N., R. 12 E., dependent resurvey and subdivision of sections 5 and 6 accepted January 21, 2014.
T. 6 N., R. 12 E., dependent resurvey and subdivision of section 32 accepted

January 21, 2014.
T. 3 S., R. 32 E., dependent resurvey, subdivision and metes-and-bounds survey accepted February 5, 2014.
T. 32 S., R. 24 E., dependent resurvey and subdivision of sections accepted February 5, 2014.
T. 32 S., R. 25 E., dependent resurvey and subdivision of section 18 accepted February 5, 2014.
T. 2 N., R. 14 E., supplemental plat of the S ½ of section 24 accepted February 6, 2014.

San Bernardino Meridian, California

T. 1 N., R. 20 W., metes-and-bounds survey accepted January 28, 2014.
T. 9 S., R. 12 E., supplemental plat of section 1 accepted February 5, 2014.

Authority: 43 U.S.C., Chapter 3.

Dated: February 6, 2014.

Lance J. Bishop,

Chief Cadastral Surveyor, California.

[FR Doc. 2014–03599 Filed 2–19–14; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–860]

Commission Determination To Review in Part a Final Initial Determination and Set a Schedule for Filing Written Submissions on the Issues Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''the Commission'') has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on December 13, 2013.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on October 30, 2012, based upon a complaint filed by Avago Technologies Fiber IP (Singapore) Pte. Ltd. of Singapore; Avago Technologies General IP (Singapore) Pte. Ltd. of Singapore; and Avago Technologies U.S. Inc. of San Jose, California (collectively, ''Complainants''), alleging a violation of section 337 of the Tariff Act of 1930, as amended, (19 U.S.C. 1337) in the importation, sale for importation, or sale within the United States after importation of certain optoelectronic devices for fiber optic communications, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 6,947,456 (''the '456 patent'') and 5,596,595 (''the '595 patent''). 77 FR 65713 (October 30, 2012). The Commission named IPtronics A/S of Roskilde, Denmark; IPtronics Inc. of Menlo Park, California; FCI USA, LLC, of Etters, Pennsylvania; FCI Deutschland GmbH of Berlin, Germany; FCI SA of Guyancourt, France; Mellanox Technologies, Inc. of Sunnyvale, California; and Mellanox Technologies Ltd. of Yokneam, Israel (collectively, ''Respondents'') as respondents. The Commission also named the Office of Unfair Import Investigations as a party in this investigation.

The final ID on violation was issued on December 13, 2013. The ALJ issued his recommended determination on remedy, the public interest and bonding on the same day. The ALJ found that a violation of section 337 has occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain optoelectronic devices for fiber optic communications, components thereof, and products containing the same by reason of infringement of certain claims of the '595 patent. All the parties to this investigation filed timely petitions for review of various portions of the final ID, as well as timely responses to the petitions. The ALJ recommended that the Commission issue a limited exclusion order directed to Respondents' accused products that infringe the '595 patent. The ALJ also recommended that the Commission issue a cease and desist order against the Mellanox and FCI respondents.

On January 15, 2014, Complainants filed a post-RD statement on the public interest pursuant to Commission Rule 201.50(a)(4). On the same day, respondents Mellanox Technologies, Inc. and Mellanox Technologies, Ltd. also filed a submission pursuant to the rule. No responses from the public were received in response to the post-RD Commission Notice issued on December 16, 2013. *See* Notice of Request for Statements on the Public Interest (Dec. 16, 2013).

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the ID in part. In particular, the Commission has determined as follows:

(I) With respect to the '595 patent:

(a) To review the ALJ's claim construction of the limitation ''current-spreading layer'' and infringement and domestic industry (technical prong) determinations relating to that limitation;

(b) to review the ALJ's determinations with respect to whether Complainants met the economic prong of the domestic industry requirement under subsections 337(a)(3)(A), 337(a)(3)(B), or 337(a)(3)(C).

(II) With respect to the '456 patent:

(a) To review the ALJ's claim construction, infringement, and domestic industry (technical prong) determinations;

(b) to review the ALJ's determinations with respect to whether Complainants met the economic prong of the domestic industry requirement under subsections 337(a)(3)(A), 337(a)(3)(B), or 337(a)(3)(C).

The parties are requested to brief their positions on only the following issues, with reference to the applicable law and the evidentiary record:

(1) With respect to the ID's determination regarding the economic prong of the domestic industry requirement with respect to both asserted patents in this investigation, discuss whether Complainants are permitted to rely upon their research and development investments to satisfy the requirements under section 337(a)(3)(A) and (B) or whether such investments are only applicable to establishing a domestic industry under section 337(a)(3)(C). Explain all relevant statutory provisions, case law, and Commission precedent pertaining to this issue. *See* ID at 201.

(2) With respect to the '595 patent, discuss Complainants' investments in research and development attributed to their products relied upon for satisfying the economic prong of the domestic industry requirements as compared to their complete QSFP product line.

Provide citations to the record and a response to the argument raised by Respondents as to ''inherently discordant'' in the evidence relied upon by Complainants and the ALJ (see Respondents' Petition at 74).

(3) Please provide evidentiary support in the record regarding whether the U.S. investments alleged by Complainants are significant or substantial in the context of the Complainants' business, the relevant industry, and market realities.

(4) With respect to the '456 patent:

(a) Discuss whether there is an ''intent requirement'' in the context of claim construction of the claim limitation ''parameter for affecting.'' Also, please address any discussion of an ''intent requirement'' in the ID's infringement analysis with respect to that claim limitation. ID at 104–108.

(b) The ALJ stated that:

> Moreover, the ALJ finds that Respondents also presented evidence that [[****]] Thus, the ALJ finds that this suggests the purpose of that value is [[****]]
>
> ID at 106–107.
>
> Complainants argue, *inter alia,* that there is no intrinsic or extrinsic evidence to support the ALJ's construction of this parameter such that it must affect only the negative peak portion, and no other portion of the waveform, that these are open-ended ''comprising'' claims, and it is undisputed that the inclusion of additional features is insufficient to avoid infringement. *See* Complainants' Petition at 35 (citations omitted).

(i) Please comment on the merits of Complainants' argument.

(ii) Does the ALJ's analysis and finding, quoted above, preclude his determinations that neither the accused products nor the alleged domestic industry products meet the claim limitation ''parameter for affecting''?

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the Respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation. The Commission also specifically requests briefing from the parties concerning the following:

Please provide evidentiary support in the record regarding whether and to what extent Respondents' customers that ''operate in extremely important and sensitive areas'' would be adversely impacted by the requested remedial orders. Please explain your position as to the appropriate scope of the remedies that should issue in the event a violation is found in view of the public interest considerations of the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers with specific reference to the evidentiary record.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest and bonding. Such submissions should address the recommended determination on remedy, the public interest and bonding issued on December 13, 2013, by the ALJ. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are further requested to provide the expiration date of the '595 and '456 patents and state the HTSUS numbers under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on February 28, 2014. Reply submissions must be filed no later than the close of business on March 7, 2014. No further submissions on these issues will be permitted unless otherwise ordered by the Commission. Party submissions should not exceed 50 pages for the main submissions and 25 pages for the reply submissions.

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 investigation number (''Inv. No. 337–TA–860'') 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. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: February 12, 2014.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2014–03550 Filed 2–19–14; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Telemanagement Forum

Notice is hereby given that, on January 8, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), (''The Forum'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Gilgamesh OSS Services, Weybridge, UNITED KINGDOM; Plug and Play Tech Center, Sunnyvale, CA; Sigma Software Solutions Inc, Toronto, CANADA; Bromium, Cupertino, CA; Kreare Assessoria Empresarial, São Paulo, BRAZIL; DAX Technologies, Matawan, NJ; metaWEAVE, Centurion CBD, SOUTH AFRICA; Transtelecom JSC, Astana, KAZAKHSTAN; Inetra, Novosibirsk, RUSSIA; Entel Chile PCS Telecomunicaciones SA, Santiago,CHILE; TeleMedia Strategy Group, LLC, Pembroke Pines, FL; Oger Telecom Management Services Company Ltd., Istanbul, TURKEY; Detica Ltd., London, UNITED KINGDOM; iiNet Ltd., Subiaco, AUSTRALIA; Saudi Business Machines, Riyadh, SAUDI ARABIA; Swiss Mobility Solutions, Alicante, SPAIN; Telekom Networks Malawi Ltd., Blantyre, MALAWI; Timir LTD, Almaty, KAZAKHSTAN; GAPASK Inc., Brossard, CANADA; Janus Consulting Partners, Addison, TX; NTS New Technology Systems GmbH, Wilhering, AUSTRIA; Fachhochschule der Technik (FHDW), Paderborn, GERMANY; Celfocus, London, UNITED KINGDOM; Ekinno Lab Sp. Z o.o., Gliwice, POLAND; Neurocom SA, Athens, GREECE; Century Telecom Lebanon, Beirut, LEBANON; EnterpriseWeb, Glen Falls, NY; Dayan Tech, Conakry, GUINEA; Zain Kuwait, Safat, KUWAIT; Calix, Inc., Petaluma, CA; TIERONE OSS Technologies USA, Inc., Reston, VA; and Instituto Costarricense de Electricidad ICE, San Jose, COSTA RICA, have been added as a parties to this venture.

The following members have changed their names: SYMBIOSS to ARTIN Solutions, Senec, SLOVAK REPUBLIC; Delta Partners to Delta Partners FZ LLC, Dubai, UNITED ARAB EMIRATES; DGiT Consultants Pty Ltd. to DGIT, South Yarra, AUSTRALIA; i2Cat to Fundació Privada i2cat, Barcelona, SPAIN; Guavus, Inc. to Guavus, San Mateo, CA; Nokia Siemens Networks to Nokia Solutions and Networks, Munich, GERMANY; Trilogy Software Bolivia to Salamanca Solutions International, Cochabamba, BOLIVIA; and Siemens AG Oesterreich to Siemens Convergence Creators GmbH, Vienna, AUSTRIA.

The following members have withdrawn as parties to this venture: Agile Birds sprl, Jalhay, BELGIUM; Attensity Group, Palo Alto, CA; BillingPlatform, Denver, CO; Boliviatel S.A., Cochabamba, BOLIVIA; Eurex Frankfurt AG, Eschborn, GERMANY; Incoma, Moscow, RUSSIA; Intune Networks, Dublin, IRELAND; IWF Consultoria e Treinamento, São Paulo, BRAZIL; Kapsch CarrierCom AG, Vienna, AUSTRIA; MACH Sarl, Contern, LUXEMBOURG; MicroStrategy South Africa (Pty) Ltd., Bryanston, SOUTH AFRICA; Nipsoft Business System AB, Solleftea, SWEDEN; Northrop Grumman Systems Corporation, acting through its Northrop Grumman Information Systems Sector, Cyber Solutions Division, McLean, VA; OJSC ''Rostelecom'', Moscow, RUSSIA; RPG Grupo Consultores C.A., Miranda, VENEZUELA; Sandvine, Inc., Ontario, CANADA; Software AG, Saarbrucken, GERMANY; STC KOMSET, Moscow, RUSSIA; Terminus Technologies Pvt. Ltd., Ras Al Khaimah, UNITED ARAB EMIRATES; The Rural Link, Calgary, CANADA; Ultrapower Software Co., Ltd., Beijing, PEOPLE'S REPUBLIC Of CHINA; VIA FERRATA, Hasselt, BELGIUM; and Volubill, Montbonnot Saint Martin, FRANCE.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and The Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, The Forum filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on October 7, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 12, 2013 (78 FR 67400).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–03626 Filed 2–19–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Odva, Inc.

Notice is hereby given that, on January 17, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), ODVA, Inc. (''ODVA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, SABO Elektronik GmbH, Schwerte, GERMANY; Hein Lanz Industrial Tech., Xiqing District, PEOPLE'S REPUBLIC OF CHINA; Quest Technical Solutions, LLC, Melbourne, FL; New Age Micro, LLC, Mansfield, MA; and Osaka Vacuum, Ltd., Osaka, JAPAN, have been added as parties to this venture.

Also, Nor-Cal Products, Inc., Yreka, CA; and Global Engineering Solutions Co., Ltd., Hwaseong-City, Gyeonggi-do, REPUBLIC OF KOREA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and ODVA intends to file additional written notifications disclosing all changes in membership.

On June 21, 1995, ODVA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on February 15, 1996 (61 FR 6039).

The last notification was filed with the Department on September 25, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on November 12, 2013 (78 FR 67399).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–03625 Filed 2–19–14; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project 2011–06

Notice is hereby given that, on December 19, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum Project 2011–06 (''Project 2011–06'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are Chevron U.S.A. Inc., San Ramon, CA; Phillips 66 Company, Houston, TX; Total SA, Paris La Defense, FRANCE; ExxonMobil Research and Engineering Company, Fairfax, VA; and BP Products North America, Inc., Naperville, IL. The general area of Project 2011–06's planned activity is that Chevron, Phillips 66, Total, ExxonMobil, and BP are jointly undertaking Project 2011–06 to realize efficiencies in understanding and improving cooling tower PM emission measurement and estimation methods.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–03614 Filed 2–19–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on January 2, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Petroleum Environmental Research Forum (''PERF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, The Questor Centre, Belfast, Northern Ireland, UNITED KINGDOM, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on September 10, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 11, 2012 (77 FR 61786).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–03628 Filed 2–19–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research And Production Act of 1993—American Society of Mechanical Engineers

Notice is hereby given that, on January 10, 2014, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the American Society of Mechanical Engineers (''ASME'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, since August 16, 2013 ASME has published two new standards and initiated one new standard activity within the general nature and scope of ASME's standards development activities, as specified in its original notification. More detail regarding these changes can be found at *www.asme.org.*

On September 15, 2004, ASME filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 13, 2004 (69 FR 60895).

The last notification was filed with the Department on August 20, 2013. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 24, 2013 (78 FR 58558).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–03622 Filed 2–19–14; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on Numerical Propulsion System Simulation

Notice is hereby given that, on December 11, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on Numerical Propulsion System Simulation (''NPSS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are The Boeing Company, Seattle, WA; General Electric Company,

Cincinnati, OH; Honeywell International Inc., Tucson, AZ; Lockheed Martin Corporation, Fort Worth, TX; Ohio Aerospace Institute, Brook Park, OH; Rolls-Royce Corporation, Indianapolis, IN; Teledyne Technologies Inc. d/b/a Teledyne Turbine Engines, Toledo, OH; United Technologies Corporation, East Hartford, CT; and Williams International Co., LLC, Commerce Township, MI. NPSS was originally developed by engineers at NASA Glenn Research Center in 1995. The NPSS code is used for the development of engine performance models that can be integrated into vehicle system models allowing engine manufactures to easily share critical performance information. The code maintenance and development of NPSS was assigned by NASA to an industrial consortium operated by the NPSS Consortium Members. The Consortium Members transferred management responsibility of this consortium to Southwest Research Institute.

The general area of NPSS's planned activity is to maintenance of the core program, and major improvement projects. For example, the development of a graphical user interface to improve user interaction with the NPSS code and the addition of the capability to handle multiple unit systems beside the English system which is currently the default in NPSS.

Membership in this group research project remains open, and NPSS intends to file additional written notification disclosing all changes in membership of planned activities.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2014–03619 Filed 2–19–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0055]

Recordkeeping and Reporting Occupational Injuries and Illnesses; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the regulation on Recordkeeping and Reporting Occupational Injuries and Illnesses (29 CFR part 1904).

DATES: Comments must be submitted (postmarked, sent, or received) by April 21, 2014.

ADDRESSES:

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

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0055, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number for the Information Collection Request (ICR) (OSHA–2010–0055). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Rex Tingle at the Office of Statistical Analysis, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3507, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 693–1926 or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Occupational Safety and Health Act (OSH Act) and 29 CFR part 1904 require that certain employers maintain records of job-related injuries and illnesses. The injury and illness records are intended to have multiple purposes. One purpose is to provide data needed by OSHA to carry out enforcement and intervention activities to secure for workers a safe and healthful work environment. The data also provides the Bureau of Labor Statistics information to report on the number and rate of occupational injuries and illnesses in the country. In addition, the data informs employers and workers on the kinds of injuries and illnesses occurring in the workplace and their related hazards. Increased employer awareness should result in the identification and voluntary correction of hazardous workplace conditions. Likewise, workers who are provided information on injuries and illnesses will be more likely to follow safe work practices and report workplace hazards. This would generally raise the overall level of safety and health in the workplace. OSHA currently has approval from the Office of Management and Budget (OMB) for the information collection requirements contained in 29 CFR part 1904. That approval will expire on May 31, 2014, unless OSHA applies for an extension of the OMB approval. This notice initiates the process for OSHA to request an extension of the current OMB approval. This notice also solicits public comment on OSHA's existing paperwork burden estimates from interested parties and seeks public responses to several questions related to the development of OSHA's estimates. Interested parties are requested to review OSHA's estimates, which are based upon the most current data available, and to comment on their accuracy or appropriateness for today's workplaces.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary

for the proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Action

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the regulation at 29 CFR Part 1904, Recording and Reporting Occupational Injuries and Illnesses. The Agency is requesting to reduce its current burden hour estimate associated with this Standard from 2,967,237 to 2,714,085 hours for a total reduction of 253,152 hours. The Agency will summarize any comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Recording and Reporting Occupational Injuries and Illnesses 29 CFR part 1904.

OMB Control Number: 1218–0176.

Affected Public: Business or other for-profits; farms; not-for-profit institutions; state and local government.

Number of Respondents: 1,533,830.

Frequency of Responses: On occasion.

Average Time per Response: 2 hours to complete forms based on the information required.

Estimated Total Burden Hours: 2,714,085.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0055). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Dated: Signed at Washington, DC on February 12, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–03595 Filed 2–19–14; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting Notice

DATE AND TIME: The Legal Services Corporation's Operations and Regulations Committee will meet telephonically on March 3, 2014. The meeting will commence at 2:45 p.m., EST, and will continue until the conclusion of the Committee's agenda.

LOCATION: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

CALL-IN DIRECTIONS FOR OPEN SESSIONS:

• Call toll-free number: 1–866–451–4981.

• When prompted, enter the following numeric pass code: 4226175074.

• When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the presiding Chair may solicit comments from the public.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.

2. Approval of minutes of the Committee's meeting on January 23 & 24, 2014.

3. Consider and act on potential rulemaking on Private Attorney Involvement.

(a) Draft text for consideration:

• Ron Flagg, General Counsel.

• Stefanie K. Davis, Assistant General Counsel.

• Mark Freedman, Senior Assistant General Counsel.

(b) Public comment.

4. Consider and act on other business.

5. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least

2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: February 18, 2014.

Stefanie K. Davis,

Assistant General Counsel.

[FR Doc. 2014–03724 Filed 2–18–14; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL SCIENCE FOUNDATION (NSF)

Sunshine Act Meetings; National Science Board

The National Science Board, pursuant to NSF regulations (45 CFR Part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice of the scheduling of meetings for the transaction of National Science Board business, as follows:

DATE AND TIME: February 25, 2014 from 9:00 a.m. to 4:30 p.m., and February 26 from 7:30 a.m. to 2:45 p.m.

PLACE: These meetings will be held at the National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the meeting and provide name and organizational affiliation. Visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

WEBCAST INFORMATION: Public meetings and public portions of meetings will be webcast. To view the meetings, go to *www.tvworldwide.com/events/nsf/140225http://www.tvworldwide.com/events/nsf/130509/* and follow the instructions.

UPDATES: Please refer to the National Science Board Web site for additional information. Meeting information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

STATUS: Portions open; portions closed.

OPEN SESSIONS:

February 25, 2014

9:00–9:05 a.m. (Chairman's introduction)
9:05–10:30 a.m. (Joint CPP/CSB)
10:45–11:30 a.m. (SCF)
11:30–11:45 a.m. (CSB)
12:45–3:15 p.m. (CPP)

February 26, 2014

7:30–9:30 a.m. (AB)
9:30–10:15 a.m. (A&O)
10:30–11:00 a.m. (SEI)
1:30–2:45 p.m. (Plenary)

CLOSED SESSIONS:

February 25, 2014

3:00–4:15 p.m. (CPP)
4:00–4:30 p.m. (CSB)

February 26, 2014

11:00–11:30 a.m. (Plenary executive closed)
11:30 a.m.–12:15 p.m. (Plenary closed)

MATTERS TO BE DISCUSSED:

Tuesday, February 25, 2014

Joint Meeting: Committee on Programs and Plans/Committee on Strategy and Budget (CPP/CSB)

Open Session: 9:05–10:30 a.m.

- Committee Chairmen's remarks
- Discussion item: NSF Annual Facility Plan

CSB Subcommittee on Facilities (SCF)

Open Session: 10:45–11:30 a.m.

- Chairman's remarks
- FY 2013 Annual Portfolio Review (APR) of Facilities
- FY 2013 APR Draft Recommendations
- Chairman's closing remarks, including FY 2014 APR of Facilities

Committee on Strategy and Budget (CSB)

Open Session: 11:30–11:45 a.m.

- Committee Chairman's remarks
- Approval of CSB open minutes for August 2013 meeting
- NSF FY 2014 budget update
- SCF update

Committee on Programs and Plans (CPP)

Open Session: 12:45–3:15 p.m.

- Approval of open CPP minutes for November 2013
- Committee Chairman's remarks—including annual CY 2014 schedule of action and written information items for NSB review
- NSB Information Item: The iPlant Collaborative
- NSB Information Item: Large Synoptic Survey Telescope (LSST)
- NSB Information Item: Atacama Large Millimeter Array (ALMA)
- CPP Program Portfolio Planning—Transformative Research to Innovating for Society through Talented People

Committee on Programs and Plans (CPP)

Closed Session: 3:15–4:00 p.m.

- Committee Chairman's remarks
- Approval of closed CPP minutes for November 2013
- NSB Information Item: Astronomy Portfolio
- NSB Information Item: Polar Issues/Antarctic Update

Committee on Strategy and Budget (CSB)

Closed Session: 4:00–4:30 p.m.

- Committee Chairman's remarks
- Approval of CSB closed minutes for August 2013 meeting
- FY 2015 and future budget development

Wednesday, February 26, 2014

Task Force on Administrative Burdens (AB)

Open Session: 7:30–9:30 a.m.

- Approval of the February 4, 2014 teleconference minutes
- Chairman's remarks
- Discussion Item: OMB's New *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*
- Discussion Item: Draft Report

Audit and Oversight Committee (A&O)

Open Session: 9:30–10:15 a.m.

- Approval of August 2013 open and closed meeting minutes
- Committee Chairman's opening remarks
- Inspector General's update, including
  - FY 2013 Financial Statement Audit
  - Annual Office of Audit Work Plan FY 2014
- Chief Financial Officer's update
- Committee Chairman's closing remarks

Committee on Science & Engineering Indicators (SEI)

Open Session: 10:30–11:00 a.m.

- Approval of August 15, 2013 minutes
- Committee Chairman's remarks
- Update on *Indicators 2014* release
- Update on the ''Digital Indicators'' project
- Update on the companion report to *Science and Engineering Indicators 2014* on STEM workforce
- Chairman's summary

Plenary Board Meeting

Executive Closed Session: 11:00–11:30 a.m.

- Approval of executive closed session minutes, November 2013 meeting
- Election of *ad hoc* Committee on Nominating for NSB Elections
- Approval of Honorary Award Recommendation
- Board member proposals
- Chairman's remarks

Plenary Board Meeting

Closed Session: 11:30 a.m.–12:15 p.m.

- Approval of closed session minutes, November 2013
- Discussion on risks to NSF
- Closed committee reports
- Chairman's remarks

Plenary Board Meeting

Open Session: 1:30–2:45 p.m.

- Approval of open session minutes, November 2013
- Chairman's report
- Director's report
- Open committee reports
- Chairman's remarks

Meeting Adjourns: 2:45 p.m.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2014–03665 Filed 2–18–14; 11:15 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

Change in Rates and Classes of General Applicability for Competitive Products

AGENCY: Postal Service.

ACTION: Notice of a change in rates of general applicability for a competitive product.

SUMMARY: This notice sets forth changes in rates of general applicability for a competitive product.

DATES: *Effective date:* March 20, 2014.

FOR FURTHER INFORMATION CONTACT: Daniel J. Foucheaux, Jr., 202–268–2989.

SUPPLEMENTARY INFORMATION: On February 12, 2014, pursuant to their authority under 39 U.S.C. 3632, the Governors of the Postal Service established prices and classification changes for a competitive product. The Governors' Decision and the record of proceedings in connection with such decision are reprinted below in accordance with section 3632(b)(2).

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

BILLING CODE P

DECISION OF THE GOVERNORS OF THE UNITED STATES POSTAL SERVICE ON CHANGES IN RATE AND CLASS OF GENERAL APPLICABILITY FOR STANDARD POST (GOVERNORS' DECISION NO. 14-01)

February 14, 2014

STATEMENT OF EXPLANATION AND JUSTIFICATION

The Postal Service intends to introduce a new price category within Standard Post on the competitive product list for Limited Overland Routes, and clarify existing classification language for the Standard Post product. Pursuant to our authority under section 404(b) and Chapter 36 of title 39, United States Code, the Governors establish these price and classification changes for the Standard Post product.

Management has determined that the recent Standard Post classification and price changes implemented on January 26, 2014, have had a disproportionate impact on certain intra-Alaska Standard Post users. Intra-Alaska shippers typically send heavier than average Standard Post pieces, within Zones 1-5, which were the price cells most affected by the January 2014 price change. Eligibility for Standard Post within Zones 1-4 was limited to hazardous materials, live animals, and other items requiring ground transportation. Thus, areas with limited overland routes were disproportionately affected by these changes.

Therefore, postal management has determined to introduce a new Limited Overland Routes price category under the Standard Post product. This price category will apply to pieces delivered to or from designated ZIP Codes within Alaska not connected by overland routes. Management also seeks to clarify the classification language applicable to Standard Post pieces in Zones 1-4 not permitted to travel by air transportation.

We have reviewed management's analysis of this proposal, which is attached. We have evaluated the new price and classification changes in this context in accordance with 39 U.S.C. §§ 3632-3633 and 39 C.F.R. §§ 3015.5 and 3015.7. We approve the changes, finding that they are appropriate, and are consistent with the provisions and policies of the statute, and regulatory criteria, as indicated by management. We believe that the

limited pricing category we are adopting is reasonably justified by the circumstances described above.

ORDER

We direct management to file with the Postal Regulatory Commission appropriate notice of these classification and rate changes. The changes in price and class set forth herein shall be effective as soon as legally practicable. We further direct management to conduct a review of Standard Post prices, and the effects that these price and classification changes may have among all users of the Standard Post product.

By The Governors:

/s/
Mickey D. Barnett
Chairman

CERTIFICATION OF GOVERNORS' VOTE
IN THE
GOVERNORS' DECISION NO. 14-01

Consistent with 39 USC 3632(a), I hereby certify that the following Governors voted via notational voting in favor of Governors' Decision No. 14-01:

/s/
_____ Date: February 14, 2014
Julie S. Moore
Secretary of the Board of Governors

2135 Standard Post

* * *

2135.4 Price Categories

- Standard Post
  - Zones 1-8
  - Limited Overland Routes
  - Balloon Price
  - Oversized

2135.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Pickup On Demand Service

- Ancillary Services (1505)
  - Address Correction Service (1505.1)
  - Certificate of Mailing (1505.6)
  - Collect on Delivery (1505.7)
  - USPS Tracking (1505.8)
  - Insurance (1505.9)
  - Merchandise Return Service (1505.10)
  - Return Receipt (1505.13)
  - Return Receipt for Merchandise (1505.14)
  - Restricted Delivery (1505.15)
  - Signature Confirmation (1505.17)
  - Special Handling (1505.18)

- Competitive Ancillary Services (2645)
  - Package Intercept Service (2645.2)

2135.6 Prices

Standard Post[1]

Maximum Weight (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
1	5.60	5.70	5.85	5.87	6.16	6.45	6.73
2	5.80	6.15	6.85	6.99	7.87	8.76	9.64
3	6.50	7.50	8.60	8.62	10.01	11.39	12.78
4	7.35	8.75	9.90	9.92	11.07	12.23	13.38
5	8.70	10.05	11.35	11.37	12.36	13.34	14.33
6	9.60	11.10	12.70	12.72	13.84	14.96	16.08
7	10.20	12.00	13.70	13.72	15.07	16.41	17.76
8	10.95	13.10	15.30	15.32	17.02	18.72	20.43
9	11.65	14.15	16.60	16.62	18.67	20.71	22.76
10	12.45	15.15	18.05	18.07	20.30	22.53	24.77
11	13.30	16.20	19.50	19.52	22.08	24.64	27.20
12	14.25	17.40	20.90	20.92	23.71	26.49	29.28
13	15.10	18.45	22.05	22.07	24.82	27.57	30.32
14	16.00	19.60	23.40	23.42	26.20	28.98	31.77
15	16.70	20.70	24.65	24.67	27.29	29.92	32.54
16	17.20	21.80	26.05	26.07	28.85	31.62	34.40
17	17.95	22.95	27.55	27.57	30.09	32.61	35.13
18	18.30	23.80	28.90	28.92	31.56	34.20	36.83
19	18.80	24.30	29.45	29.47	32.15	34.84	37.52
20	19.60	24.60	30.00	30.02	32.75	35.48	38.21
21	20.25	24.95	30.45	30.47	33.24	36.00	38.77
22	20.75	25.55	31.00	31.02	33.83	36.64	39.45
23	21.20	26.00	31.85	31.87	34.75	37.64	40.52
24	21.70	26.55	32.85	32.87	35.83	38.80	41.76
25	22.20	27.00	33.80	33.82	36.87	39.91	42.96

Standard Post (Continued)

Maximum Weight (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
26	22.60	27.25	34.95	34.97	38.11	41.26	44.40
27	23.25	27.65	36.00	36.02	39.25	42.49	45.72
28	24.00	28.05	37.05	37.07	40.40	43.72	47.05
29	24.70	28.30	38.00	38.02	41.42	44.82	48.22
30	25.45	28.70	38.90	38.92	42.40	45.87	49.35
31	26.20	29.00	39.50	39.52	43.04	46.57	50.09
32	26.50	29.60	40.20	40.22	44.16	48.11	52.05
33	26.90	30.45	41.20	41.22	45.61	50.01	54.40
34	27.15	31.25	42.20	42.22	47.08	51.94	56.80
35	27.45	32.00	42.80	42.82	48.11	53.40	58.70
36	27.75	32.90	43.35	43.37	49.09	54.81	60.52
37	28.05	33.50	44.00	44.02	50.18	56.34	62.50
38	28.30	34.35	44.55	44.57	51.18	57.79	64.41
39	28.60	35.10	45.10	45.12	52.18	59.23	66.29
40	28.95	35.85	45.70	45.72	53.23	60.75	68.26
41	29.25	36.55	46.20	46.22	54.19	62.15	70.12
42	29.45	37.20	46.75	46.77	55.19	63.62	72.04
43	29.80	37.80	47.15	47.17	56.03	64.89	73.75
44	30.00	38.40	47.75	47.77	57.12	66.47	75.83
45	30.20	38.85	48.10	48.12	57.91	67.70	77.48
46	30.45	39.15	48.60	48.62	58.87	69.13	79.38
47	30.70	39.45	49.05	49.07	59.79	70.50	81.22
48	30.95	39.80	49.50	49.52	60.70	71.88	83.06
49	31.15	40.10	49.90	49.92	61.25	72.59	83.92
50	31.30	40.35	50.25	50.27	61.75	73.23	84.70

Standard Post (Continued)

Maximum Weight (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)	Zone 6 ($)	Zone 7 ($)	Zone 8 ($)
51	31.45	40.70	50.70	50.72	62.36	74.00	85.65
52	31.85	40.95	51.05	51.07	62.83	74.58	86.34
53	32.35	41.25	51.40	51.42	63.30	75.18	87.05
54	32.80	41.45	51.75	51.77	63.78	75.80	87.81
55	33.35	41.75	52.00	52.02	64.12	76.22	88.31
56	33.80	41.95	52.30	52.32	64.54	76.75	88.97
57	34.30	42.10	52.65	52.67	65.02	77.37	89.72
58	34.85	42.30	52.95	52.97	65.40	77.83	90.26
59	35.40	42.50	53.20	53.22	65.75	78.29	90.82
60	35.85	42.70	53.75	53.77	66.49	79.21	91.92
61	36.40	42.90	54.70	54.72	67.68	80.65	93.61
62	36.80	43.00	55.40	55.42	68.58	81.73	94.89
63	37.50	43.20	56.30	56.32	69.73	83.14	96.55
64	37.85	43.30	57.10	57.12	70.76	84.39	98.03
65	38.35	43.40	57.90	57.92	71.78	85.65	99.51
66	38.85	43.60	58.80	58.82	72.91	86.99	101.08
67	39.45	43.70	59.80	59.82	74.18	88.54	102.89
68	39.95	43.80	60.60	60.62	75.20	89.78	104.36
69	40.50	43.85	61.30	61.32	75.83	90.34	104.84
70	40.90	43.95	62.30	62.32	76.82	91.33	105.83
Oversized	63.04	67.99	72.94	77.90	96.03	114.16	132.29

Notes

1. Except for oversized pieces, t~~T~~he Zone 1-4 prices ~~for parcels weighing up to 70 pounds~~ are applicable only to parcels containing hazardous or other material not permitted to travel by air transportation.

Limited Overland Routes

Pieces delivered to or from designated intra-Alaska ZIP Codes not connected by overland routes are eligible for the following prices.

Maximum Weight (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)
1	5.60	5.70	5.85	5.95
2	5.80	6.15	6.85	7.53
3	6.60	7.60	8.75	8.91
4	7.45	8.90	10.05	10.40
5	8.85	10.20	11.50	11.64
6	9.75	11.25	12.90	13.12
7	10.35	12.20	13.90	14.39
8	11.10	13.30	15.55	15.66
9	11.85	14.35	16.85	16.97
10	12.65	15.40	18.35	18.45
11	13.50	16.45	19.80	19.94
12	14.45	17.65	21.20	21.31
13	15.35	18.75	22.40	22.49
14	16.25	19.90	23.75	23.91
15	16.95	21.00	25.05	25.29
16	17.01	21.60	25.79	26.68
17	17.11	21.70	25.89	26.80
18	17.20	21.80	25.99	26.92
19	17.30	21.91	26.08	27.04
20	17.39	22.01	26.18	27.15
21	17.49	22.11	26.28	27.27
22	17.58	22.22	26.38	27.39
23	17.68	22.32	26.48	27.51
24	17.78	22.43	26.58	27.64
25	17.87	22.54	26.68	27.76
26	17.97	22.64	26.79	27.88
27	18.07	22.75	26.89	28.00
28	18.17	22.86	26.99	28.12
29	18.27	22.97	27.09	28.25
30	18.37	23.08	27.20	28.37
31	18.47	23.19	27.30	28.50
32	18.57	23.30	27.40	28.62
33	18.68	23.41	27.51	28.75
34	18.78	23.52	27.61	28.88
35	18.88	23.63	27.72	29.00

Limited Overland Routes (Continued)

Maximum Weight (pounds)	Zones 1 & 2 ($)	Zone 3 ($)	Zone 4 ($)	Zone 5 ($)
36	18.99	23.74	27.82	29.13
37	19.09	23.86	27.93	29.26
38	19.20	23.97	28.03	29.39
39	19.30	24.08	28.14	29.52
40	19.41	24.20	28.25	29.65
41	19.51	24.31	28.35	29.78
42	19.62	24.43	28.46	29.91
43	19.73	24.54	28.57	30.04
44	19.84	24.66	28.68	30.17
45	19.95	24.78	28.79	30.30
46	20.06	24.90	28.90	30.44
47	20.17	25.01	29.01	30.57
48	20.28	25.13	29.12	30.71
49	20.39	25.25	29.23	31.18
50	20.50	25.37	29.34	31.65
51	20.61	25.49	29.45	32.12
52	20.73	25.61	29.56	32.62
53	20.84	25.74	29.67	33.10
54	20.96	25.86	29.79	33.58
55	21.07	25.98	29.90	34.08
56	21.19	26.10	30.01	34.56
57	21.30	26.23	30.13	35.04
58	21.42	26.35	30.24	35.55
59	21.54	26.48	30.36	36.03
60	21.66	26.60	30.47	36.51
61	21.78	26.73	30.59	37.00
62	21.90	26.86	30.70	37.50
63	22.02	26.98	30.93	37.99
64	22.14	27.11	31.30	38.46
65	22.26	27.24	31.64	38.95
66	22.48	27.37	32.02	39.47
67	22.71	27.50	32.36	39.95
68	22.93	27.63	32.74	40.44
69	23.34	27.76	33.51	41.36
70	24.04	27.89	34.28	42.29
Oversized	62.42	65.30	66.60	68.57

Balloon Price

Pieces exceeding 84 inches in length and girth combined (but not more than 108 inches) and weighing less than 20 pounds are subject to a price equal to that for a 20-pound parcel for the zone to which the parcel is addressed.

Oversized Pieces

Regardless of weight, any piece that measures more than 108 inches (but not more than 130 inches) in length plus girth must pay the oversized price.

Pickup On Demand Service

Add $20.00 for each Pickup On Demand stop.

IMpb Noncompliance Fee

Add $0.20 for each IMpb-noncompliant parcel paying commercial prices.

[FR Doc. 2014–03664 Filed 2–18–14; 11:15 am]
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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71553; File No. SR–NASDAQ–2014–016]

Self-Regulatory Organizations; the NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to NASDAQ Options NOM Market Maker Rebates

February 14, 2014.

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 February 3, 2014, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options.[3]

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2014. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013); 69787 (June 18, 2013), 78 FR 37858 (June 24, 2013) (SR–NASDAQ–2013–082); 71105 (December 17, 2013), 78 FR 77530 (December 23, 2013) (SR–NASDAQ–2013–154). *See also* NOM Rules, Chapter VI, Section 5.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at

Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. Specifically, the Exchange proposes to amend the NOM Market Maker Penny Pilot Options Rebate to Add Liquidity tiers. Today, the Exchange offers a five-tiered Rebate to Add Liquidity in Penny Pilot Options as noted below:

Monthly volume		Rebate to add liquidity
Tier 1	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of up to 29,999 contracts per day in a month.	$0.25.
Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 30,000 to 59,999 contracts per day in a month.	$0.30.
Tier 3	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 60,000 to 79,999 contracts per day in a month.	$0.32.
Tier 4	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 80,000 or more contracts per day in a month.	$0.32 or $0.38 in the following symbols BAC, GLD, IWM, QQQ and VXX or $0.40 in SPY.
Tier 5	Participant adds NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 40,000 or more contracts per day in a month and qualifies for the Tier 7 or Tier 8 Customer and/or Professional Rebate to Add Liquidity in Penny Pilot Options.	$0.40.

The Exchange is proposing to amend the qualifications for NOM Market Maker Penny Pilot rebate Tiers 3 and 4 by lowering the quantity of contracts per day in a month that Participants must add to obtain the rebate. Specifically, the Tier 3 rebate tier would be lowered from adding NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 60,000 to 79,999 contracts per day in month to adding 60,000 to 69,999 contracts per day in a month. The Tier 4 rebate tier would be lowered from adding NOM Market Maker liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 80,000 or more contracts per day in a month to adding 70,000 or more contracts per day in a month. The Exchange anticipates that this amendment would provide an opportunity for Participants to qualify for higher rebate tiers for their NOM Market Maker liquidity.

2. Statutory Basis

NASDAQ believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act [4] in general, and furthers the objectives of Section 6(b)(4) and (b)(5) 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 NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposal to amend NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options Tiers 3 and 4 volume requirements is reasonable because the Exchange is providing Participants with an opportunity to earn higher rebates in certain symbols. Today, a Participant that transacts 70,000 contracts per day in a month of NOM Market Maker liquidity in either Penny Pilot Options or Non-Penny Pilot Options would qualify for a Tier 3 rebate of $0.32 per contract. With this proposal, a Participant that transacts 70,000 contracts per day in a month of NOM Market Maker liquidity in either Penny Pilot Options or Non-Penny Pilot Options would qualify for a Tier 4 rebate of $0.32 per contractor $0.38 per contract in certain symbols.[6] With this proposal, a Participant that transacts 70,000 contracts per day in a month of NOM Market Maker liquidity in either Penny Pilot Options or Non-Penny Pilot Options would earn a Tier 3 rebate. Incentivizing Participants to select the Exchange as a venue to post NOM Market Maker liquidity will benefit market participants through increased order interaction and additional liquidity.

The Exchange's proposal to amend NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options Tiers 3 and 4 volume requirements is equitable and not unfairly discriminatory because this amendment will be applied to all Participants in a uniform manner. In addition, Participants should continue to qualify for the rebates that they currently receive and may earn increased rebates by qualifying for a higher volume tier and transacting certain symbols,[7] as a result of lowering the volume requirements in Tiers 3 and 4.

The proposal does not misalign the current rebate structure. NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. The Exchange believes that NOM Market Makers should be offered the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers because NOM Market Makers add value through continuous quoting [8] and the commitment of capital. NOM Market Makers provide a critical liquidity function across thousands of individual option puts and option calls, a function no other market participants are obligated to perform. The Exchange believes that encouraging NOM Market Makers to be more aggressive when posting liquidity benefits all market participants through increased liquidity and execution quality. The Exchange believes that continuing to offer NOM Market Makers the opportunity to receive higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers is equitable and not unfairly discriminatory because all Participants may qualify for the NOM Market Maker rebate tiers and every Participant is entitled to a rebate solely by adding one contract of NOM Market Maker liquidity on NOM. Also, NOM

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4), (5).

[6] Participants that qualify for a Tier 4 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options earn a rebate of $0.38 in the following symbols: BAC, GLD, IWM, QQQ and VXX and $0.40 for transacting SPY options. All other symbols qualify for a $0.32 rebate.

[7] *See* note 6.

[8] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

Market Makers would receive the same rebate in Tier 1 as compared to Customers and Professionals and a higher rebate in all other tiers as compared to a Firm, Non-NOM Market Maker or Broker-Dealer because of the obligations [9] borne by NOM Market Makers as compared to other market participants. Encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction and enhanced execution quality.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that incentivizing NOM Market Makers to post liquidity on NOM benefits market participants through increased order interaction. Also, NOM Market Makers have obligations [10] to the market which are not borne by other market participants and therefore the Exchange believes that NOM Market Makers are entitled to such higher rebates.

The proposed amendments do not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will earn the same or lower rebates as compared to Customers and Professionals. The Exchange believes the differing outcomes, rebates and fees created by the Exchange's proposed pricing incentives contributes to the overall health of the market place for the benefit of all Participants that willingly choose to transact options on NOM. In addition, NOM Market Makers will have the opportunity to earn even higher rebates. For the reasons specified herein, the Exchange does not believe this proposal creates an undue burden on competition.

The Exchange operates in a highly competitive market comprised of twelve U.S. options exchanges in which many sophisticated and knowledgeable market participants can readily and do send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. These market forces support the Exchange's belief that the proposed rebate structure and tiers proposed herein are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace continues to impact the rebates present on the Exchange today and substantially influences the proposals set forth above.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2014–016 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2014–016. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2014–016, and should be submitted on or before March 13, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03667 Filed 2–19–14; 8:45 am]

BILLING CODE 8011–01–P

[9] *See* note 8.

[10] *See* note 8.

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71554; File No. SR–ISE–2014–08]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

February 14, 2014.

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 February 4, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend the Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule of Fees to (1) decrease the Credit for Responses to Flash Orders for trading against Priority Customer orders in Select Symbols,[3] and (2) to remove obsolete references to Primary Market Maker (''PMM'') linkage handling. Each of these changes is explained below. The fee changes discussed apply to both Standard Options and Mini Options traded on ISE. The Exchange's Schedule of Fees has separate tables for fees applicable to Standard Options and Mini Options. The Exchange notes that while the discussion below relates to fees for Standard Options, the fees for Mini Options, which are not discussed below, are and shall continue to be 1/10th of the fees for Standard Options.

Credit for Responses to Flash Orders

Currently, when the ISE is not at the National Best Bid or Offer (''NBBO''), Public Customer and Non-Customer orders are exposed to all ISE members to give them an opportunity to match the NBBO (''Flash Orders'') before the order is routed to another exchange for execution or cancelled. As an incentive to attract Public Customer orders to the ISE, the Exchange offers a Credit for Responses to Flash Orders when trading against Priority and Professional Customer orders.[4] In Select Symbols, this credit is $0.15 per contract when trading against Priority Customer orders (or $0.17 per contract when trading against Preferenced Priority Customer orders),[5] and $0.10 per contract when trading against Professional Customer orders. In non-Select Symbols the credit is $0.20 per contract when trading against Professional Customer orders only. These fees reflect a recent fee change filed by the ISE on November 1, 2013 which, among other things, increased the Credit for Responses to Flash Orders in Select Symbols by $0.05 per contract when trading against Priority Customer orders.[6] The Exchange now proposes to return these credits to their previous levels. In particular, the Exchange proposes to decrease the Credit for Responses to Flash Orders in Select Symbols from $0.15 per contract to $0.10 per contract when trading against Priority Customer orders, and from $0.17 per contract to $0.12 per contract when trading against Preferenced Priority Customer orders.[7] The respective credits for trading against Professional Customer orders will remain at their current rates.

PMM Linkage Handling

On April 18, 2013 the Commission approved a proposed rule change that modified the ISE's linkage handling procedures under the Options Order Protection and Locked/Crossed Market Plan.[8] Prior to this rule change Primary Market Makers (''PMMs'') were responsible for routing orders to away markets when necessary to comply with the linkage handling rules, and would receive credits for performing this function. Under the newly approved rules, however, the ISE has contracted with unaffiliated broker dealers to route orders to other exchanges when necessary to comply with the linkage rules (''Linkage Handlers''). Since PMMs no longer perform linkage handling, which is now performed by the Linkage Handlers, the Exchange proposes to remove obsolete text in its Schedule of Fees related to PMM credits for providing that service. In particular, the Exchange proposes to remove the Subsection E of Section VI titled ''PMM Linkage Credit,'' which details the credits that were previously provided to PMMs in their assigned classes for orders routed to one or more exchanges in connection with their linkage handling function. The Exchange also proposes to remove related footnotes that indicate that PMMs do not receive a maker rebate nor pay a taker fee when trade reporting a Priority Customer or Professional Customer order in accordance with their obligation to provide away market price protection pursuant to ISE Rule 803(c)(2).[9] As stated above, PMMs no longer perform this function.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

As explained above, the proposed credits to be provided to Members who respond to Flash Orders are set at the same level as was applicable on the ISE prior to November 1, 2013. The Exchange believes that it is reasonable and equitable to return these credits to their previous levels as the increased credit was unsuccessful in encouraging market participants to respond to Flash Orders. Furthermore, the Exchange notes that the proposed credits for responding to Priority Customer orders are in line with the credits currently provided by the ISE for responding to Professional Customer orders. The Exchange does not believe that the proposed change is unfairly discriminatory as the credit provided for responses to Priority Customer orders will once again be consistent with the credit provided for responses to Professional Customer orders. In addition, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to remove obsolete text related to PMM linkage handling credits and away market price protection as PMMs are no longer responsible for performing this function.

[3] ''Select Symbols'' are options overlying all symbols listed on the ISE that are in the Penny Pilot Program.

[4] No fee is charged or credit provided when trading against a non-Customer.

[5] The credit for responses to Preferenced Priority Customer orders applies to an ISE Market Maker when trading against a Priority Customer order that is preferenced to that Market Maker.

[6] *See* Securities Exchange Act Release No. 70873 (November 14, 2013), 78 FR 69714 (November 20, 2013) (SR–ISE–2013–56).

[7] The Exchange does not offer a higher Credit for Responses to Flash Orders that trade against Preferenced Priority Customer orders in Mini Options. In Mini Options the credit will be $0.010 per contract when trading against Priority Customer orders in Select Symbols regardless of whether the order has been preferenced to a Market Maker.

[8] *See* Securities Exchange Act Release No. 69396 (April 18, 2013), 78 FR 24273 (April 24, 2013) (SR–ISE–2013–18).

[9] ISE Rule 803(c)(2) was removed in connection with the introduction of Linkage Handlers. *See id.*

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

The Exchange notes that it has determined to charge fees and provide rebates in Mini Options at a rate that is 1/10th the rate of fees and rebates the Exchange provides for trading in Standard Options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees and rebates to provide market participants an incentive to trade Mini Options on the Exchange. The Exchange believes the proposed credits are reasonable and equitable in light of the fact that Mini Options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, is providing credits for Mini Options that are 1/10th of those applicable to Standard Options.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[12] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change to Credits for Responses to Flash Orders will not have any significant impact on competition as the credit for trading against Priority Customer orders will once again be on par with the credit for trading against Professional Customer orders. In addition, removing obsolete text related to PMM linkage handling credits and away market price protection will have no competitive impact as PMMs no longer perform this function since the ISE now utilizes Linkage Handlers to route orders to other exchanges as required.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f)(2) of Rule 19b–4 thereunder,[14] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–ISE–2014–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2014–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2014–08 and should be submitted on or before March 13, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–03668 Filed 2–19–14; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(8).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

AGENCY: Selective Service System.

ACTION: Notice.

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35):

SSS FORM—404

Title: Potential Board Member Information

Purpose: Is used to identify individuals willing to serve as members of local, appeal or review boards in the Selective Service System.

Respondents: Potential Board Members.

Burden: A burden of 15 minutes or less on the individual respondent.

Copies of the above identified form can be obtained upon written request to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the form should be sent within 60 days of the publication of this notice to the Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: February 12, 2014.

Lawrence Romo,

Director.

[FR Doc. 2014–03635 Filed 2–19–14; 8:45 am]

BILLING CODE 8015–01–P

DEPARTMENT OF STATE

[Public Notice 8640]

Notice of Receipt of an Application by Plains Pipeline, L.P. for Issuance of a Presidential Permit To Operate and Maintain Existing Pipeline Facilities on the Border of the United States and Canada

AGENCY: Department of State.

ACTION: Notice of Receipt of an Application by Plains Pipeline, L.P. for Issuance of a Presidential Permit to Operate and Maintain Existing Pipeline Facilities on the Border of the United States and Canada.

SUMMARY: Notice is hereby given that on December 20, 2013, the Department of State (DOS) received from Plains Pipeline, L.P. (''Plains Pipeline'') notice that it has acquired the rights to operate and maintain a portion of the Poplar Pipeline (formerly the Wascana Pipeline) in Sheridan County, Montana that is currently permitted under a 2007 Presidential Permit issued in the name of two Plains Pipeline affiliates: PMC (Nova Scotia) Company and Plains Marketing Canada L.P., collectively (''PMC''). Plains Pipeline requests that a Presidential Permit be issued in its name with respect to the pipeline facilities. END SUMMARY

Plains Pipeline is a subsidiary of Plains All American Pipeline, L.P. (Plains), a publically traded master limited partnership with headquarters in Houston, Texas. Plains is engaged in the transportation, storage, and marketing of crude oil, refined products, and natural gas-related petroleum products.

The current Permit, issued in 2007 to PMC (Nova Scotia) Company and Plains Marketing Canada L.P., covers the 56.8-mile long Poplar Pipeline, previously called the Wascana Pipeline, which extends from the Murphy Oil terminal northeast of Poplar, Montana, to the international border near Raymond, Montana, and which was constructed pursuant to authorization in a 1972 Permit issued to Wascana Pipeline Corp. Plains Pipeline has acquired an approximately 6.4-mile segment of the Poplar Pipeline extending from Raymond Station to the international border, repaired and replaced portions of the pipeline in that area, and installed two block valves. Plains Pipeline has submitted an application for a new Presidential Permit in its name and requests that the new Permit cover approximately 85 feet of pipeline facilities extending from a new block valve to the international border. Plains Pipeline has reported that it has separately constructed the Bakken North pipeline that extends from Trenton, North Dakota to Raymond Station, and that it intends to interconnect the Bakken North with the Poplar Pipeline in order to use the Poplar Pipeline border crossing to transport the Bakken North crude into Canada.

Plains Pipeline has stated that, upon returning the upgraded pipeline facilities to service under the 2007 Presidential Permit, Plains Pipeline will continue to operate the acquired facilities for the same purpose of transporting crude oil between the United States and Canada. It has further stated that the acquired pipeline facilities and the operation and maintenance thereof authorized by the 2007 Permit will remain substantially the same as before the transfer of the facilities to Plains Pipeline. Plains Pipeline is not seeking authorization for new construction or a change in operations.

Under E.O. 13337, the Secretary of State is designated and empowered to receive all applications for Presidential Permits for the construction, connection, operation, or maintenance at the borders of the United States of facilities for the exportation or importation of liquid petroleum, petroleum products, or other fuels (except natural gas) to or from a foreign country. The Department of State is circulating this application to concerned federal agencies for comment. The Department of State has the responsibility to determine whether issuance of a new Presidential Permit in light of Plains' acquisition and continued operation of the pipeline facilities would serve the U.S. national interest.

Plains Pipeline's application is available at *http://www.state.gov/e/enr/applicant.*

DATES: Interested parties are invited to submit comments within 30 days of the publication date of this notice with regard to whether issuing a new Presidential Permit to Plains Pipeline would serve the national interest. Comments may be submitted through the regulations.gov comment portal. Comments are not private. They will be posted on the site *http://www.regulations.gov.* The comments will not be edited to remove identifying or contact information, and the State Department cautions against including any information that one does not want publicly disclosed. The State Department requests that any party soliciting or aggregating comments received from other persons for submission to the State Department inform those persons that the State Department will not edit their comments to remove identifying or contact information, and that they should not include any information in their comments that they do not want publicly disclosed.

ADDRESSES: To submit comments, go to the Federal eRulemaking Portal (*http://www.regulations.gov*), enter the Docket No. DOS–2014–000, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Office of Energy Diplomacy, Energy Resources Bureau (ENR/EDP/EWA) Department of State, 2201 C St. NW., Ste. 4843, Washington, DC 20520, Attn: Michael Brennan Tel: 202–647–7553.

Dated: February 12, 2014.

Michael Brennan,

Energy Officer, Office of Europe, Western Hemisphere and Africa, Bureau of Energy Resources, U.S. Department of State.

[FR Doc. 2014–03644 Filed 2–19–14; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 8641]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State's Advisory Committee on International Communications and Information Policy (ACICIP) will hold a public meeting on March 18, 2014 from 2:00 p.m. to 5:00 p.m. in Room 1107 of the Harry S Truman (HST) Building of the U.S. Department of State. The Truman Building is located at 2201 C Street NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by Ambassador Daniel A. Sepulveda, U.S. Coordinator for International Communications and Information Policy. The meeting's agenda will include discussions pertaining to various upcoming international telecommunications meetings and conferences.

Members of the public may submit suggestions and comments to the ACICIP. Comments concerning topics to be addressed in the agenda should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of the meeting. All comments must be submitted in written form and should not exceed one page. Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5:00 p.m. on Friday, March 14, 2014. (Please note that this information is required by Diplomatic Security for each entrance into HST and must therefore be re-submitted for each ACICIP meeting):

I. State That You Are Requesting Pre-Clearance to a Meeting

II. Provide the Following Information

1. Name of meeting and its date and time
2. Visitor's full name
3. Visitor's organization/company affiliation
4. Acceptable forms of identification for entry into the building include:
   - U.S. driver's license with photo
   - Passport
   - U.S. government agency ID
5. Whether the visitor has a need for reasonable accommodation. Such requests received after March 11, 2014, might not be possible to fulfill.

Send the above information to Joseph Burton by fax (202) 647–5957 or email *BurtonKJ@state.gov.*

Please note that registrations will be accepted to the capacity of the meeting room. All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

Personal data is requested pursuant to Public Law 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Public Law 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

For further information, please contact Joseph Burton, Executive Secretary of the Committee, at (202) 647–5231 or *BurtonKJ@state.gov.*

General information about ACICIP and the mission of International Communications and Information Policy is available at: *http://www.state.gov/e/eb/adcom/acicip/index.htm.*

Dated: February 12, 2014.

Joseph Burton,

ACICIP Executive Secretary, Department of State.

[FR Doc. 2014–03643 Filed 2–19–14; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 8642]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting from 10:00 a.m. til 11:30 a.m., Wednesday, March 5, 2014 in Room SVC203–02 of the Capitol Visitor's Center at First St. SE., Washington, DC 20515.

The meeting's topic will be the President's Young African Leaders Initiative. It will feature Brett Bruen, Director of Global Engagement at the National Security Council at The White House; and Elizabeth Berry Gips, Coordinator of the Young African Leaders Initiative at the U.S. Agency for International Development; and Macon Phillips, Coordinator of the International Information Programs Bureau at the U.S. Department of State. Other government official representatives involved in this initiative will also be in attendance.

This meeting is open to the public, Members and staff of Congress, the State Department, Defense Department, the media, and other governmental and non-governmental organizations. To attend and make any requests for reasonable accommodation, email *pdcommission@state.gov* by 5 p.m. on Monday, March 3, 2014. Please arrive for the meeting by 9:45 a.m. to allow for a prompt meeting start.

The United States Advisory Commission on Public Diplomacy apprises U.S. Government activities intended to understand, inform, and influence foreign publics. The Advisory Commission may conduct studies, inquiries, and meetings, as it deems necessary. It may assemble and disseminate information and issue reports and other publications, subject to the approval of the Chairperson, in consultation with the Executive Director. The Advisory Commission may undertake foreign travel in pursuit of its studies and coordinate, sponsor, or oversee projects, studies, events, or other activities that it deems desirable and necessary in fulfilling its functions.

The Commission consists of seven members appointed by the President, by and with the advice and consent of the Senate. The members of the Commission shall represent the public interest and shall be selected from a cross section of educational, communications, cultural, scientific, technical, public service, labor, business, and professional backgrounds. Not more than four members shall be from any one political party. The President designates a member to chair the Commission.

The current members of the Commission are: Mr. William Hybl of Colorado, Chairman; Ambassador Lyndon Olson of Texas, Vice Chairman; Mr. Sim Farar of California, Vice Chairman; Ambassador Penne Korth-Peacock of Texas; Ms. Lezlee Westine of Virginia; and Anne Terman Wedner of Illinois. One seat on the Commission is currently vacant.

The following individual has been nominated to the Commission but awaits Senate confirmation as of this writing: Alfredo Balsera of Florida.

To request further information about the meeting or the U.S. Advisory Commission on Public Diplomacy, you may contact its Executive Director, Katherine Brown, at *BrownKA4@state.gov*.

Dated: February 12, 2014.

Katherine Brown,

Executive Director, Department of State.

[FR Doc. 2014–03654 Filed 2–19–14; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Re-evaluation With Respect to the Willits Bypass Project, Willits, CA, and the Use of City Streets During Project Construction

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that Federal actions taken by the California Department of Transportation (Caltrans) pursuant to its assigned responsibilities under 23 U.S.C. 327 are final within the meaning of 23 U.S.C. 139 (*l*)(1). FHWA, on behalf of Caltrans, is issuing this notice to announce that, with respect to the State Route 101 Willits Bypass Project in Willits (Mendocino County), California, a Re-evaluation was prepared in order to determine whether the existing Final Environmental Impact Statement (FEIS) is still valid. Based upon the analyses contained in the Re-evaluation, Caltrans has made the determination that the existing FEIS is still valid and the preparation of a SEIS is not warranted and will therefore not be undertaken.

SUPPLEMENTARY INFORMATION: Caltrans conducted a Re-evaluation of the Final Environmental Impact Statement (FEIS) issued by FHWA in October 2006 (a Record of Decision for which was posted in the **Federal Register** in January 2007). The Re-evaluation was completed in January 2014 in response to new information and changes that were made to the project, including allowing the construction contractor to use city streets during construction of the project.

The purpose of the Re-evaluation was to examine potential environmental impacts resulting from the new information and proposed changes to the Willits Bypass Project and in order to determine whether the FEIS was still valid or whether a SEIS should be prepared in accordance with 40 CFR 1502.9(c). Based upon the Re-evaluation, Caltrans made the determination that preparation of a SEIS was not warranted and would not be undertaken (Caltrans made the determination in January 2014).

A claim seeking judicial review of the January 2014 Federal agency determination to not undertake a SEIS will be barred if the claim is not filed within 180 days of the initial publication of this notice in the **Federal Register**.

Copies of the Re-evaluation are available for review by appointment only at the following locations. Please call to make arrangements for viewing:

Caltrans, District 3 Office, 703 B Street, Marysville, CA 95901, 530–741–4393, and Caltrans, District 3 Office, 2379 Gateway Oaks Drive, #150, Sacramento, CA 916–274–0586.

FOR FURTHER INFORMATION CONTACT: John Webb, Supervisory Environmental Planner, California Department of Transportation, 703 B Street, Marysville, CA 95901, 530–741–4393, *John_Webb@dot.ca.gov.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Dated: Issued in Sacramento, California, February 5, 2014.

Gary Sweeten,

Team Leader North, Federal Highway Administration, Sacramento, California.

[FR Doc. 2014–03021 Filed 2–19–14; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Limitation on Claims Against a Proposed Public Transportation Project

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for a project in Bucks County, PA, and Mercer County, NJ. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject project 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 July 21, 2014.

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 project listed below. The actions on the project, 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 project. 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 Federal agency decisions on the listed project 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 project and actions that are the subject of this notice are:

Project name and location: SEPTA–CSX Separation Project on the West Trenton Regional Rail Line, Bucks County, PA, and Mercer County, NJ. *Project sponsor:* Southeastern Pennsylvania Transportation Authority (SEPTA). *Project description:* The proposed project will separate SEPTA commuter rail operations and CSX freight operations on a six-mile segment of railroad where the northern end of SEPTA's West Trenton Regional Rail Line operates over CSX's Trenton Subdivision or Line, a main north-south freight corridor. In addition, the project includes the reinstallation of a track and interlocking removed decades ago within the existing railroad right-of-way. *Final agency actions:* Section 106 finding of no adverse effect and determination of categorical exclusion. *Supporting documentation:* Categorical exclusion pursuant to 23 CFR 771.118(c)(8), dated January 13, 2014.

Issued On: February 12, 2014.

Elizabeth S. Riklin,

Acting Associate Administrator Planning and Environment.

[FR Doc. 2014–03597 Filed 2–19–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 43 (Sub-No. 187X)]

Illinois Central Railroad Company—Discontinuance of Trackage Rights Exemption—in Madison, Yazoo, Holmes, Carroll, Montgomery, Grenada, Yalobusha, Tallahatchie, Panola, Tate, and Desoto Counties, Miss.

Illinois Central Railroad Company (IC) [1] has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue its limited overhead trackage rights over approximately 175.4 miles of rail line known as the Grenada Line, owned by Grenada Railway LLC (GRYR),[2] extending between milepost 403.0 at Southaven and milepost 703.8 near Canton, in Madison, Yazoo, Holmes, Carroll, Montgomery, Grenada, Yalobusha, Tallahatchie, Panola, Tate, and Desoto Counties, Miss.[3] The line traverses United States Postal Service Zip Codes 39046, 39179, 39146, 39079, 39063, 39192, 39176, 38967, 38925, 38926, 38960, 38901, 38953, 38961, 38948, 38927, 38658, 38620, 38606, 38666, 38619, 38668, 38618, 38632, 38651, 38637, and 38671.

IC has certified that: (1) No local traffic has moved via its trackage rights over the line for at least two years; (2) any overhead traffic that could be handled via those trackage rights over the line can be rerouted over other lines; (3) no formal complaint filed by a user of IC's trackage rights over the line (or by a state or local government entity acting on behalf of such user) regarding cessation of IC service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 20, 2014, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[4] must be filed by March 3, 2014.[5] Petitions to reopen must be filed by March 23, 2014, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to IC's representative: Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL, 60606–2832.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 14, 2014.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2014–03641 Filed 2–14–14; 8:45 am]

BILLING CODE 4915–01–P

[1] IC is a wholly owned, indirect subsidiary of Canadian National Railway Company and is a Class I rail carrier.

[2] On December 17, 2013, GRYR filed a petition for exemption in *Grenada Railway, LLC—Abandonment Exemption—in Montgomery, Carroll, Holmes, Yazoo, & Madison Counties, Miss.,* Docket No. AB 1087 (Sub-No. 1X), to abandon the southern segment of its Grenada Line between milepost 626.1 near Elliott and milepost 703.8 near Canton, Miss., a distance of 77.7 miles. Notice instituting that proceeding was served and published in the **Federal Register** on January 6, 2014 (79 FR 702), and a decision modifying the procedural schedule was served on January 24, 2014. That matter is pending before the Board.

[3] IC previously filed a verified notice of exemption in Docket No. AB 43 (Sub-No. 185X) for discontinuance of IC's same limited overhead trackage rights over the Grenada line but indicated that, pursuant to the trackage rights agreement between the parties, the discontinuance was contingent upon approval of GRYR's abandonment of a portion of the Grenada line in *Grenada Railway, LLC–Abandonment Exemption—in Grenada, Montgomery, Carroll, Holmes, Yazoo, & Madison Counties, Miss.,* Docket No. AB 1087X. At GRYR's request, the petition for exemption was withdrawn and the proceeding was discontinued in a decision served on November 10, 2011, which rendered IC's request to discontinue its trackage rights moot under the parties' agreement. In a notice served on November 16, 2011, IC's notice of exemption was withdrawn and the proceeding was discontinued. Here, IC states that its filing in this docket is contingent upon approval of GRYR's petition for exemption filed in Docket No. AB 1087 (Sub-No. 1X). If the petition is denied, IC indicates it would withdraw its notice of exemption in this proceeding. IC notes that it acquired these trackage rights from GRYR by virtue of IC's retention of the trackage rights upon its sale of the Grenada Line to GRYR. *See Grenada Ry.—Acquis. & Operation Exemption—Ill. Cent. R.R. & Waterloo Ry.,* FD 35247 (STB served May 29, 2009).

[4] Because this is a discontinuance and not an abandonment, only OFAs to subsidize continued rail service are permitted. Each OFA must be accompanied by the filing fee, which currently is set at $1,600. *See* 49 CFR 1002.2(f)(25).

[5] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historic documentation is required here under 49 CFR 1105.6(c) and 49 CFR 1105.8(b), respectively.

FEDERAL REGISTER

Vol. 79 Thursday,

No. 34 February 20, 2014

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 575

Alternative Fuel Vehicle Badging, Fuel Compartment Labels and Consumer Information on Alternative Fuel Usage; Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

[NHTSA–2010–0134]

RIN 2127–AK75

Alternative Fuel Vehicle Badging, Fuel Compartment Labels and Consumer Information on Alternative Fuel Usage

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: NHTSA is proposing to require badges, labels and owner's manual information for new passenger cars, low speed vehicles (LSVs) and light-duty trucks rated at not more than 8,500 pounds gross vehicle weight in order to increase consumer awareness regarding the use and benefits of alternative fuels. In the Energy Independence and Security Act of 2007 (EISA), Congress directed the Secretary of Transportation to develop and implement varied and wide-ranging consumer information and education initiatives related to fuel economy, greenhouse gas, alternative fuels and thermal management technologies. NHTSA is implementing these new information and education initiatives through several different rulemakings.

This proposed rule would implement specific statutory mandates that manufacturers be required to: Identify each vehicle capable of running on an alternative fuel by means of a permanent and prominent display affixed to the exterior of the vehicle; add proposed text describing the capabilities and benefits of using alternative fuels to the owners' manuals provided for alternative fuel vehicles; and identify each vehicle that is capable of running on an alternative fuel by means of a label in the fuel filler compartment.

DATES: Comments must be received on or before April 21, 2014. See the **SUPPLEMENTARY INFORMATION** section on ''Public Participation'' for more information about written comments.

ADDRESSES: You may submit your comments, identified by Docket ID No. NHTSA–2010–0134, by any of the following methods:

http://www.regulations.gov: Follow the online instructions for submitting comments.

Fax: NHTSA: (202) 493–2251.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Rm. W12–140, Washington, DC 20590, Attention Docket ID No. NHTSA–2010–0134.

Hand Delivery: Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Rm. W12–140, Washington, DC 20590, Attention Docket ID No. NHTSA–2010–0134 between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Instructions: Regardless of how you submit comments, you should mention Docket ID No. NHTSA–2010–0134 or the Regulatory Identification Number (RIN) 2127–AK75 for this rulemaking. You may call the Docket Management Facility at 202–366–9826. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted, except as noted below, without change to *http://www.regulations.gov,* including any personal information provided.

Docket: All documents in the dockets are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Rm. W12–140, Washington, DC 20590. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.dot.gov/privacy.html.*

FOR FURTHER INFORMATION CONTACT:

For technical issues: Gregory Powell, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–5206.

For legal issues: Lily Smith, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION:

List of Acronyms and Abbreviations

AFDC Alternative Fuels and Advanced Vehicles Data Center
Alternative Fuel Motor vehicle fuel defined by 49 CFR 32901(a)(1)
B20 Biomass-based diesel blend or biodiesel blend that contains a mixture of not more than 20% biodiesel in volume and 80% petroleum-based diesel
B100 100% biodiesel
Biodiesel A fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats and which meets the specifications of ASTM D 6751
BEV Battery electric vehicle
CAFE Corporate average fuel economy
CBI Confidential business information
CFR Code of Federal Regulations
CNG Compressed natural gas
DOE Department of Energy
DOT Department of Transportation
DVD Digital video disc
E85 A mixture of 85% ethanol and 15% gasoline
EISA Energy Independence and Security Act of 2007
EO Executive order
EPA Environmental Protection Agency
EREV Extended range electric vehicle
EV Electric vehicle
FCV Fuel cell vehicle
FE Fuel economy
FFV Flexible fuel vehicle
FHWA Federal Highway Administration
FTC Federal Trade Commission
GHG Greenhouse gas
GVWR Gross vehicle weight rating
HEV Hybrid electric vehicle
ISO International Organization for Standardization
LPG Liquefied petroleum gas
LSV Low speed vehicle
MPG Miles per gallon
MY Model year
NAICS North American Industry Classification System
NFPA National Fire Prevention Association
NHTSA National Highway Traffic Safety Administration
NPRM Notice of proposed rulemaking
NTTAA National Technology Transfer and Advancement Act of 1995
OCR Optical character recognition
OMB Office of Management and Budget
PHEV Plug-in hybrid electric vehicle
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
SAE Society of Automotive Engineers

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I. Executive Summary

In this notice, NHTSA is proposing to require badges, labels and owner's manual information for new passenger cars, low speed vehicles, and light-duty trucks rated at not more than 8,500 pounds gross vehicle weight in order to increase consumer awareness regarding the use and benefits of alternative fuels, as required by the Energy Independence and Security Act of 2007 (EISA).[1] The overarching goal of EISA is to move the United States toward greater energy independence and security, given that the United States imports a substantial amount of its petroleum, two-thirds of which is used to fuel vehicles in the form of gasoline and diesel, which can be vulnerable to supply disruptions and price volatility. Renewable alternative fuels produced in the United States are less vulnerable to the supply disruptions and price variability associated with imported fuels. Helping the public to better understand the benefits of these alternative fuels and to better recognize the vehicles that use them should increase their use, thereby replacing petroleum use and increasing national and energy security. Thus, in EISA, Congress directed the Secretary of Transportation, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency (EPA), to develop and implement consumer information and education initiatives related to fuel economy, greenhouse gas (GHG), alternative fuels and thermal management technologies, all aimed at reducing our nation's dependence on imported petroleum. This requirement has been codified at 49 U.S.C. 32908(g), hereafter referred to as simply ''32908(g).'' The Secretary's authority to develop and implement these programs is delegated to the Administrator of NHTSA.[2]

32908(g) requires the agency to undertake rulemaking to address consumer information on automobile fuel economy and the use of alternative fuels in three different ways, which the agency is implementing in three distinct phases.

In the recently-completed first phase, NHTSA established requirements for automobile manufacturers to label new automobiles sold in the United States with information about their performance in terms of fuel economy, greenhouse gas emissions, and smog-forming emissions, with rating systems to help consumers compare automobiles in terms of this performance at the point of purchase. NHTSA established these requirements in a joint rulemaking with the EPA,[3] which also has authority (under 49 U.S.C. 32908(b)) to regulate new automobile fuel economy labels. The agencies sought in that joint rulemaking both (1) to implement NHTSA's 32908(g) authority by providing the new rating system to help consumers compare vehicles' fuel economy, GHG, and other emissions performance at the point of sale, and (2) to implement revisions sought by EPA and NHTSA to update the existing labels and help them better convey information for advanced technology vehicles entering the marketplace, such as compressed natural gas vehicles (CNG), plug-in hybrid electric vehicles (PHEV), battery electric vehicles (BEV), and fuel cell vehicles. The final rule establishing the new labeling requirements was published on July 6, 2011,[4] and can be found on NHTSA's Web site at *http://www.nhtsa.gov/fuel-economy.*

This notice initiates the second phase of rulemaking to implement the EISA requirements for consumer information and education about alternative fuels. 32908(g) requires NHTSA to develop regulations to require new automobiles to display certain information about their capability to operate on alternative fuels. First, NHTSA must require vehicle manufacturers to affix new automobiles sold in the United States with a ''permanent and prominent display'' that indicates the vehicle is capable of operating on an alternative fuel;[5] second, NHTSA must require manufacturers to attach a label to the fuel tank filler compartment of vehicles capable of operating on alternative fuels that indicates the form of alternative fuel that the vehicle is capable of operating on; and third, NHTSA must require manufacturers to include in the owner's manual, of vehicles that are capable of operating on alternative fuels, information which describes that capability and the benefits of using alternative fuels, including their renewable nature and environmental benefits.[6]

NHTSA is therefore proposing the following specific requirements in this rulemaking, as directed by EISA. To implement the permanent and prominent display mandate, the rule proposes to require a badge specifying in natural language which alternative fuel the vehicle is capable of operating on. The badge would be positioned on the rear of the vehicle, either directly below or to the right of the vehicle model name. To implement the fuel compartment label mandate, the rule proposes to require a label on the exterior of the fuel cap or fuel compartment access door that clearly states the alternative fuel type, and depending on the type, the proper/safe capacities for replenishing the fuel supply. To implement the owner's manual mandate, the rule proposes to require manufacturers to include standardized text that describes the capabilities and benefits of using alternative fuels. Sections II and III of this proposal provide more detailed information about each of these requirements.

The agency has estimated the total costs of the proposal in Table I–1 and Table I–2 below.

TABLE I–1—ESTIMATED INDUSTRY COSTS FOR PROPOSAL IN FIRST MODEL YEAR (2012$)

	Low	High
Permanent and Prominent Display Badge	$6,713,112	$13,292,937
Tooling (all fuel types)	41,064	284,287
Fuel Compartment Label	.....	827,436
Owner's Information	.....	348,352
Total	7,929,963	14,753,011

* Values derived from Projected MY2017 Industry Volume of Alternative Fuel Vehicles (Including LSVs)

[1] 49 U.S.C. 32902(g), Public Law 110–140.

[2] 49 CFR 1.95; CFR 501.2(a)(8).

[3] 79 FR 39478, July 6, 2011

[4] 76 FR 39478. The NPRM for this rulemaking was published at 75 FR 58708 and the rulemaking docket number is NHTSA–2010–0087, which can be accessed at regulations.gov.

[5] As defined by 49 U.S.C. 32901(a)(1).

[6] 49 U.S.C. 32908(g)(1).

TABLE I–2—ESTIMATED ANNUAL INDUSTRY COSTS FOR PROPOSAL AFTER THE FIRST MODEL YEAR (2012$)

	Low	High
Permanent and Prominent Display Badge	$6,713,112	$13,292,937
Fuel Compartment Label	.....	827,436
Owner's Information	.....	328,081
Total	7,868,629	14,448,453

* Values derived from Projected MY2017 Industry Volume of Alternative Fuel Vehicles (Including LSVs)

The agency believes that the benefits of this proposal will be higher than the costs, as the national and energy security benefits gained from even a modest increase in consumer purchases of alternative fueled vehicles would likely outweigh the relatively low anticipated cost of the proposed requirements. As information on the effects of these badges on consumer purchases is not available, a quantitative assessment of the benefits was not possible at this stage. Further discussion of the anticipated costs and benefits of the proposal can be found in Section IV.

In the subsequent third phase of implementing the 32908(g) requirements, NHTSA will develop a consumer information campaign to improve understanding of automobile performance in terms of fuel economy, GHG and other pollutant emissions, as well as to inform consumers of the benefits of using alternative fuels and where fueling stations are located. Given the complexity of the consumer research needed to implement this provision, the agency anticipates that this rulemaking will be proposed in 2015, after NHTSA completes research about appropriate and effective consumer messaging.

II. What research did the Agency conduct regarding possible options for this proposal?

As part of the development of this NPRM, NHTSA sought and considered available existing information and research from federal agencies, automotive manufacturers and suppliers. NHTSA made several visits to passenger car and light truck retailers and public auto shows to learn more about how individual manufacturers already use badges and labels to identify alternative fuel vehicles. In addition, NHTSA conducted online research of currently available manufacturer production labels, badges, consumer education materials and information provided to owners. NHTSA staff also held discussions with manufacturers, trade groups and suppliers to increase agency awareness and understanding of existing materials.[7] Some manufacturers also directed the agency to industry label and badge suppliers for additional information.

Additionally, in order to benefit from the expertise of other federal agencies active in alternative fuel vehicle issues, NHTSA consulted with the Federal Highway Administration (FHWA), the Federal Trade Commission (FTC), and the Department of Energy (DOE). The agency discussed potential content of proposed owner's manual information with the FTC to understand further the requirements and content of the FTC (until recently) required [8] alternative fuel point of sale label found on all new alternative fuel vehicles sold in the U.S. The agency believes it may be helpful to consumers to provide consistency with information contained on the FTC Alternative Fuel label. The agency discussed the required content of the FTC label, including what points of the label were important for the consumer, with the intent of including similar information where possible. Consultation with the FHWA focused on current symbols used for alternative fuels.

Finally, the agency also consulted with DOE regarding content of the DOE/EPA fueleconomy.gov [9] Web site and the DOE alternative fuels and advanced vehicles data center [10] Web site. While most of the experience that these agencies have accumulated does not relate directly to the issues in this NPRM, NHTSA has done its best to extrapolate from the experience of these agencies to our current rulemaking. The interactions with FHWA gave NHTSA an improved understanding of approved symbols as described in greater detail in Section II.A. Regarding consultation with DOE, the agency was informed of many useful tools and information that were determined to be more applicable to the consumer education campaign, which will constitute the third phase of implementing the 32908(g) requirements.

The agency notes that it did not conduct original research on consumer messaging in developing the proposal for this phase of the EISA consumer information requirements. The EISA requirements for badging, fuel tank compartment labeling, and owner's manual information are fairly straightforward. Unlike the fuel economy labeling requirements, the requirements being proposed in this rulemaking are not intended to facilitate direct consumer comparison of multiple vehicles or pieces of vehicle equipment; instead, they are simply intended to inform consumers about the alternative fuel capabilities of the vehicles already in front of them. Because the agency is trying to provide clear, basic information through this rulemaking and not trying to aid or influence consumer choice, the agency concluded that original research would not contribute sufficiently to improving the usefulness of the required information in order to justify the expenditure of resources.

NHTSA has identified several states at the time of this proposal [11] that promote the use of alternative fuel vehicles. Some have implemented programs, such as California's Clean Air Vehicle program, that provide High Occupancy Vehicle (HOV) lane access for labeled or specially plated alternative fuel vehicles. These programs often require the vehicle owner to apply a badge, sticker, or special license plate that identifies the vehicle as an alternative fuel, low emission, or ''clean-'' vehicle, but do not regulate the manufacturers of alternative fuel vehicles or provide consumer information on specific types

[7] NHTSA's records of these meeting are available in the docket for this rulemaking.

[8] In April of 2013, the Federal Trade Commission issued final amendments to the Alternative Fuels Rule, eliminating the point of sale labels that were previously required by the FTC on alternative fuel vehicles (AFVs), citing that similar information is incorporated on recently revised fuel economy and emissions point of sale labels required by the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Transportation. (''FTC Amends Alternative Fuels Rule to Make Compliance Easier'' last accessed: January 2, 2014)

[9] *www.fueleconomy.gov* (last accessed January 27, 2014).

[10] *www.afdc.energy.gov/afdc/* (last accessed January 27, 2014).

[11] The states include Arizona, California, Colorado, Florida, Georgia, Hawaii, Maryland, New Jersey, New York, North Carolina, Tennessee, Utah and Virginia.

and benefits of alternative fuel vehicles. However, states may have an interest in this proposal, and we welcome comment from state and local officials and other interested persons.

Further, several there are several Federal requirements regarding the acquisition of alternative fuel vehicles for Federal vehicle fleets. Specifically, Energy Policy Act (EPAct) 1992 sets statutory requirements for the acquisition of AFVs by Federal agencies. Executive Order 13423 directs Federal agencies to use PHEVs when commercially available at a cost reasonably comparable to non-PHEVs, while Executive Order 13514 establishes vehicle sustainability goals that encourage the purchase of AFVs. As with the state programs noted above, these and similar programs may benefit from vehicle badging, and we welcome comment from relevant officials and other interested persons.

The sections below describe in more detail how NHTSA developed this proposal. The agency seeks comments on the information presented in this proposal and whether other relevant information should be considered for the final rule. We encourage the submission of comments to the docket. For comments that recommend additional information be considered, it is requested the commenter include an explanation of how the agency should incorporate that information into the final rule.

A. Alternative Fuel ''Permanent and Prominent Display''

Based on the information gathered by the agency, manufacturer-specific alternative fuel vehicle badges vary widely in design from manufacturer to manufacturer, sometimes as a result of the efforts to link the badging with overarching corporate goals regarding advanced technologies and alternative fuel usage.

After identifying that some manufacturers have already invested substantially in developing badges to help establish and promote a positive image for their companies and to promote the use of alternative fuels, the agency next assessed whether standardization of existing labels or badging for alternative fuel vehicles would in fact be beneficial, and if so, what form that standardization should take.

As one example, Ford uses a ''Road and Leaf'' symbol that depicts, as the title implies, a road leading to a green leaf. The symbol may appear on their vehicle's lift-gates, front doors and engine appearance covers, or on other areas of the vehicle. Ford then incorporates this symbol into many other badges on vehicles across its model line-up that are equipped with different ''environmentally-conscious'' technologies. Some examples of this include: The ''Road and Leaf'' incorporated into a ''Flex-Fuel'' badge to indicate ethanol-operating capability; a ''B20'' badge to indicate that a diesel vehicle is capable of operating on a small percentage of biodiesel; and an ''Ecoboost'' badge to indicate that a vehicle uses direct-injection, turbocharging and downsizing engine technologies to deliver performance similar to a larger displacement engine with the higher fuel efficiency of a smaller displacement engine. In addition, the symbol is applied to its hybrid and battery electric vehicles. (See Figures II.A–1 through II.A–6 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134).

Another example of a corporate-wide program is the ''Flex Fuel'' badge used by GM. In 2006, GM conducted an extensive E85 awareness campaign promoting the ethanol capabilities of its vehicles under the banner of ''Live Green, Go Yellow.'' The ''Live Green, Go Yellow'' campaign kicked off during Super Bowl XL in television ads promoting the use of the clean, alternative fuel in GM's flexible fuel vehicles. In conjunction with this campaign, GM began applying ''Flex Fuel'' badges to vehicles capable of ethanol operation and using yellow-colored fuel filler caps for those vehicles as a tie-in to the larger campaign.[12] (See Figures II.A–7 through II.A–8 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134).

Ford and GM explained to NHTSA in meetings with the agency that they undertake these cross-product campaigns to promote their investment in environmentally friendly and alternative fuel technologies, which they believe will help foster consumer enthusiasm for their vehicles with these technologies. If consumers are more likely to purchase these vehicles as a result of this marketing investment, then manufacturers will be more likely to recoup their investment in technologies that reduce petroleum consumption (and increase their perception as a socially-responsible corporation), potentially leading to more investment in technologies that reduce petroleum consumption and benefiting the U.S. through reduced petroleum consumption.

In addition to the examples from Ford and General Motors, the agency also learned of campaign-derived, exterior badges used by manufacturers such as Hyundai and Nissan. The ''Blue drive'' exterior badge was developed in support of Hyundai's corporate branding campaign to represent ''Hyundai's comprehensive overhaul of thinking green.''[13] (See Figure II.A–9 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' Docket NHTSA–2010–0134). At its April 2011 introduction, the redesigned MY 2012 Versa was ''the first Nissan model in the U.S. to use the new Nissan ''Puredrive'' designation. The automaker will put that label onto models that use Nissan's most advanced technologies to promote eco-friendly driving and to cut CO2 emissions.''[14] (See Figure II.A–10 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134).

Other alternative fuel vehicle manufacturers appear to take a less comprehensive approach or may do very little in regard to badges. For example, Honda currently applies labeling in response to the requirements of some states for manufacturers of gaseous fueled vehicles, which are based on recommendations developed by the National Fire Protection Association (NFPA).[15] (See Figure II.A–11 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134).

Some manufacturers do not produce any alternative fuel vehicles for sale in the United States. These manufacturers do not have any current campaigns to promote alternative fuels technologies.

The agency also conducted additional research regarding vehicle badge text sizing and coloring. The agency took a closer look at these two design aspects to obtain a better understanding of how they may factor into this proposal. The agency surveyed a collection of twenty vehicles with unique vehicle model and technology-related badges. This collection included badges dedicated to differing technologies such as stability control, engine size or type, driveline or

[12] ''GM: ''Live Green Go Yellow''; *http://www.greencarcongress.com/2006/01/gm_live_green_g.html* (last accessed January 27, 2014).

[13] Hyundai Bluedrive campaign information *http://www.hyundaiusa.com/about-hyundai/environment/* (last accessed January 27, 2014)

[14] ''Nissan Versa gets radical new look, better gas mileage'' USA Today. *http://content.usatoday.com/communities/driveon/post/2011/04/nissan-versa-radical-new-style-11000-july-sale-new-platform/1* (last accessed: January 27, 2014).

[15] NFPA 52: Vehicular Gaseous Fuel Systems Code. *http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=52* (last accessed January 27, 2014).

alternative fuel capability. In all, 34 badges were evaluated representing 19 different vehicle models and nine different vehicle brands.

Overall, the agency learned the average size of text found on vehicle badges across both model and technology specific badges was approximately 18.4 millimeters. The text sizes ranged from approximately 4.75 millimeters to 31 millimeters for technology-specific badges with an average of approximately 16.4 millimeters. Model name badges were slightly more consistent with a range of 15 millimeters to 42 millimeters and an average of approximately 20.3 millimeters. Please see Table II–1 for badge and measurement details.

TABLE II–1—VEHICLE BADGE TEXT APPROXIMATE SIZES

Make	Model	Model name		Technology badge		Comment
		High (mm)	Low (mm)	High (mm)	Low (mm)	
Audi	Q7	35	27	23	23	TDI (Diesel) Badge.
BMW	530i	22	22	(*)	(*)	No Technology Badge.
Chevrolet	Malibu	17	17	31	17	Hybrid badge.
Chevrolet	Express (Van)	26	26	13	13	Stabilitrak—Foil with Overlay.
Chevrolet	Uplander	20	20	17	4.75	Flex Fuel (yellow).
Chevrolet	Express (Van)	** 26	** 26	27	27	Standard CNG Diamond Symbol.
Chevrolet	Suburban	20	20	(*)	(*)	Flex Fuel (green).
Chevrolet	Impala	20	20	** 17	** 4.75	Flex Fuel (yellow) overall badge height is approximately 21 mm.
Dodge	Caravan	20	20	11	5	Flex Fuel with E85 Ethanol.
Dodge	Avenger	15	15	** 11	** 5	Flex Fuel—same as Caravan. Badge height is 15 mm.
Ford	Fusion	15	15	15	15	Hybrid badge letters. Road and Leaf symbol is approximately 50 mm.
Ford	Focus	15	15	(*)	(*)	Height is based on sub-model ''SE'' designation.
Ford	Explorer	22	22	14	14	Size is for roll stability control (RSC) designation—Advance Trac text above RSC is 10 mm.
Ford	F–150	18	18	10	10	Flex Fuel—Two Rows of 10 mm text.
Honda	Accord	22	15	25	25	V6 Badge.
Honda	Insight	15	15	14	14	Hybrid badge—overall height is ~20 mm.
Jeep	Liberty	42	32	21	21	Height is based on ''3.7L'' engine designation—4x4 badge same.
Toyota	Camry Hybrid	15	15	5	5	Three rows of 5 mm text—Hybrid Synergy Drive.
Toyota	Highlander	23	23	20	19	4WD Badge.
Volkswagen	Jetta	17	17	17	17	2.5L Engine designation.

* Indicates no badge.
** Duplicate measurement not included in calculations.

Average Text Height (mm)				
Ranges Model and Technology Badges—High to Low	21.0	19.7	17.5	15.3
Averages Model and Technology Badges	20.3		16.4	
Overall	18.4			

With respect to badge color, the agency found that most badges surveyed had a chrome or silver finish. Most of the badges surveyed had letters (particularly the vehicle model names) finished in chrome. The majority of the technology badges consisted of chrome letters; however, in some cases the text was displayed in a dark color, usually black, recessed into a chrome background.

Based on information obtained from manufacturers and through research as part of the development of this proposal, NHTSA learned that some vehicle manufacturers have made significant investments in promoting alternative fuel and other advanced technologies that reduce petroleum consumption. These manufacturers view their efforts as contributing positively to their brand image, through both traditional campaigns and, in some cases, tying-in those campaigns by applying badges to their vehicles. The agency believes that, based on manufacturers' experience with how badging designs deliver alternative fuel information to consumers, it is important to carefully consider the views of the manufacturers, as well as their investments developing and promoting alternative fuel usage.

NHTSA also conducted research on whether widely-accepted symbols exist for alternative fuels that the agency might consider for use in alternative fuel vehicle badging. This included investigation of symbols used by the FHWA and those defined jointly by the International Organization for Standardization (ISO) and the Society of Automotive Engineers (SAE).

The FHWA currently specifies symbols associated with alternative fuels as part of their ''General Service Signs'' included in the Manual on Uniform Traffic Control Devices.[16]

[16] The National Manual on Uniform Traffic Control Devices (MUTCD) defines the standards used by road managers nationwide to install and maintain traffic control devices on all public streets, highways, bikeways, and private roads open to public traffic. *See* 23 CFR Part 655, Subpart F. The MUTCD is also available at *http://mutcd.fhwa.dot.gov/index.htm* (last accessed January 27, 2014). Within the MUTCD, FHWA prescribes a number of standardized symbols for

These symbols are intended for application to official interstate signage typically found in advance of interstate highway exit ramps, and include symbols (and sometimes supporting language) for vehicle electricity charging stations, and ethanol (E–85 in particular) and propane fueling stations, among others. However, the FHWA's General Service Signs symbols do not cover all alternative fuels. (See Figure II.A–12 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134).

ISO and SAE have developed a fuel symbol for use on vehicle controls, indicators, and warning lamps in passenger cars, light and heavy commercial vehicles, and buses, to help standardize fuel identification and increase consumer understanding. The symbols depict a typical fuel station pump and guidelines for specifying the fuel type that should be represented at the base of the symbol. There are SAE/ISO symbols for multiple fuel types, including some, but not all, of the alternative fuels covered by this proposal (e.g., liquefied petroleum gas (LPG), CNG, diesel, hydrogen, etc.).[17] (See Figure II.A–13 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134).

NHTSA and the EPA jointly required symbols designating vehicle fuel type on the new fuel economy and environment labels discussed above. These symbols identify seven different vehicle technologies: gasoline, diesel, ethanol flexible fuel vehicles, compressed natural gas, battery electric, fuel cell, and plug-in hybrid vehicles, and theoretically could be used as a starting point for badging purposes. However, as with the FHWA symbols, some potential alternative fuels are not currently addressed.

The National Fire Protection Association (NFPA) currently provides guidance on labeling of compressed natural gas vehicles that has been incorporated into some state laws, as noted in the Honda labeling discussed previously. (See Figure II.A–11 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134). The NFPA-recommended label has the letters ''CNG,'' in white or silver, centered in a diamond shape with blue background. The NFPA label is intended to inform first responders (and others that may come in contact with or attempt to repair a damaged vehicle) that a vehicle may carry different fire risks than that of a conventional-fuel vehicle, and should be handled with those different risks in mind. Some states mandate the use of the ''blue diamond,'' presumably to maximize the safety of crash response by assisting first responders, who have been trained to recognize the meaning of the symbol. It would presumably also assist first responders if manufacturers added the label to their vehicles voluntarily. NHTSA recognizes that there may be safety benefits associated with standardizing the use of such symbols.

However, NHTSA believes the purpose of the EISA requirement is to inform the general public of the type of alternative fuel the vehicle uses regardless of their level of familiarity with alternative fuels. While the use of an acronym in the NFPA labels is sufficient for first responders because they are already familiar with this fuel type and its shorthand, we are not convinced that it would effectuate EISA's goal of consumer education better than the natural language ''natural gas'' badge proposed here. NHTSA therefore believes the ''natural gas'' badge proposed in this rule will provide consumer education benefits not currently provided by the NFPA label. NHTSA also believes the standardization provided by the proposed ''natural gas'' badge is an additional benefit not served by the NFPA label, which is not mandatory in most states.

NHTSA seeks comment on any potential overlap or conflicts between the proposed badge for natural gas and the existing NFPA ''CNG'' label. Specifically, NHTSA seeks comment on whether the existing NFPA label already serves the consumer education purpose of this proposal due to a high level of consumer familiarity with the ''CNG'' acronym. If commenters support NHTSA considering the existing NFPA label for consumer education purposes, NHTSA requests that commenters provide data that shows existing consumer familiarity with the NFPA label and the CNG acronym.

In summary, the agency found that, while there appear to be consensus standards for symbols for some alternative fuels, those standards do not cover the range of fuels that NHTSA believes it needs to address in this proposed rulemaking. Moreover, the agency is not persuaded at this time that the symbols required by those standards, even if they did cover the full range of alternative fuels, would necessarily be complementary to the exterior vehicle appearance. The FHWA General Service Signs symbols are used for fuel and charging stations and might not integrate well with existing exterior badges if placed on a vehicle. Further, both the FHWA symbols and the SAE/ISO fuel symbols may not clearly communicate the differences between alternative fuels beyond the short and standardized acronyms located on the fuel pump symbol. As a result, the agency does not believe that the symbols established by the consensus standards are particularly useful for adoption as permanently affixed vehicle badges in this proposed rulemaking, as these symbols were not developed for use on vehicle exteriors and/or as a component of larger campaigns. After assessing whether standardization of existing manufacturer labels or badging would best serve the informative purpose of this proposal, the agency concluded that the existing market examples do not lead to a clear conclusion that one approach is superior to another.

B. ''Owner's Manual Information'' for Alternative Fuel Capable Vehicles

While reviewing information currently provided to owners, the agency learned that vehicle manufacturers producing vehicles capable of operating on alternative fuels provide owners with information regarding the alternative fuel capability, typically in the owner's manual. Manufacturers generally provide information that they believe is important for owners to understand regarding safe operation and maintenance of their alternative fuel vehicles. However, the agency found that manufacturers currently provide very little to no substantive information regarding the energy security and environmental benefits of alternative fuels.

In looking for information that could be required for inclusion in owner's manuals, NHTSA also considered alternative fuel information developed by other federal government agencies. The agency found various forms and depths of alternative fuel information from federal agencies. Federally-developed alternative fuel information is disseminated through agency Web sites and printed materials. This information can be highly scientific or very cursory depending on the target audience or the message conveyed.

The DOE's Alternative Fuels and Advanced Vehicles Data Center

highway signs referring to alternative fuel availability, as discussed above. *See http://mutcd.fhwa.dot.gov/htm/2009/part2/part2i.htm* (last accessed January 27, 2014).

[17] See SAE J2402: ''Road Vehicles—Symbols for Controls, Indicators, and Tell-tales'', published January 2010, symbols number(s) G.09, Z.03. SAE J2402 is available on file with the agency and can be purchased at *http://standards.sae.org/j2402_201001/* (last accessed January 2, 2014).

(AFDC),[18] for example, describes itself as ''a comprehensive clearinghouse of information related to advanced transportation technologies'' and states that it ''offers transportation decision makers a collection of unbiased alternative fuel information, publications, data, and tools.'' NHTSA believes this could be a useful source for information to describe a vehicle's capability to operate on alternative fuels and the benefits of using alternative fuels, including their renewable nature and environmental benefits, given that agency's expertise in these issues.

Until April 2013, the FTC required vehicle manufacturers to affix a label to new alternative fuel vehicles offered to consumers for sale or lease. This label contained a series of key points to inform consumers about alternative fuels either prior to or at the point of vehicle purchase or lease. Vehicle dealers were required to keep the label on the vehicle until it was either sold or leased.

Some vehicle manufacturers provide training information to dealer sales personnel regarding alternative fuels. For example, Chrysler produces information intended as an aid in answering questions consumers may have regarding alternative fuel vehicles, in order to ease pre-purchase concerns or correct possible misinformation.

C. Fuel Compartment Label for Alternative Fuel Vehicles

The agency gathered and identified many examples of fuel compartment labeling including labels for ethanol, hydrogen, compressed natural gas and electricity. The labeling ranged from an adhesive label with text, an adhesive label containing text and a graphic symbol, to a fuel tank ''cap'' which is labeled with text indicating the appropriate fuel type, and sometimes combinations of those elements. (See Figures II.C–1 through II.C–2 in ''Examples of Existing Fuel Compartment Labels,'' in Docket NHTSA–2010–0134).

In addition to the adhesive label examples and text on the fuel cap, the agency found that in some cases, if a vehicle is alternative fuel capable, a specific, colored fuel tank cap is used. For the most part, these caps were colored yellow to indicate ethanol capability.[19] (See Figures II.C–3 through II.C–4 in ''Examples of Existing Fuel Compartment Labels,'' in Docket NHTSA–2010–0134).

In discussions with manufacturers,[20] the agency learned that, at the time this proposal was developed, some do not provide any labeling information at the fuel compartment filler (i.e., charge port) for electric vehicles. One manufacturer of electric vehicles indicated that, while not currently present, labeling at the charge port may be necessary to assist consumer understanding of connection type and ratings.

Fuel compartment labels for compressed natural gas and hydrogen vehicles in production today, or planned for near-term introduction, were similar in nature to the NFPA-recommended labels found on the exterior of the vehicles that were described in Section II.A. Manufacturers using labels for these gaseous fuels derived the labels from standards to promote safety in fuel handling for owners and, potentially, emergency responders.

For more traditional liquid fuel types like gasoline and diesel, manufacturers provided labels and colored fuel caps, with the intention to reduce the likelihood of a vehicle being fueled with an incorrect or incompatible fuel type, which could lead to possible severe damage to a fuel or exhaust system, or engine.

III. What is the Agency proposing?

A. Who would be affected by this Proposal?

This proposal would affect companies that manufacture in the U.S. market automobiles rated at not more than 8,500 pounds gross vehicle weight [21] which are capable of operating on the following alternative fuels: [22]

- Methanol [23]
- Denatured ethanol [23]
- Other alcohols [23]
- Natural gas
- Liquefied petroleum gas
- Hydrogen
- Coal-derived liquid fuels
- Fuels (except alcohol) derived from biological materials
- Electricity (including electricity from solar energy)

This proposal would apply to manufacturers of new vehicles (passenger cars, low speed vehicles, and light-duty trucks). As the purpose of these provisions arguably is to provide information on all alternative fuel capable vehicles on the road, regardless of their origin, NHTSA believes that it may also be appropriate to apply these requirements to vehicle alterers.[24] However, the agency has limited information on the universe of alterers that could be subject to this rule, including how the inclusion of alterers might affect the cost-benefit and small business impact analyses. The agency therefore seeks comment on the all aspects of the appropriateness, potential benefits, and practicability of extending these requirements to alterers.

B. Alternative Fuel ''Permanent and Prominent Display''

EISA states that the Department of Transportation (by delegation, NHTSA) shall develop requirements for vehicle manufacturers to label vehicles with a ''permanent and prominent display that an automobile is capable of operating on an alternative fuel.'' To meet this statutory requirement, NHTSA considered how manufacturers will meet the requirement that the display be ''permanent and prominent,'' and also the content of the display. According to Merriam-Webster Online dictionary,[25] ''permanent'' means ''continuing or enduring without fundamental or marked change,'' while ''prominent'' means ''standing out or projecting beyond a surface or line,'' and ''display'' means ''to put or spread before the view'' or ''to make evident.'' For purposes of this proposal, the agency is interpreting ''permanent and prominent display'' as a display that is intended to be affixed to a vehicle for the vehicle's entire useful life while providing clear, visible information that the vehicle is capable of operating on an alternative fuel.

NHTSA seeks comment on the assumptions, reasoning, and conclusions described in this section as underlying this proposal.

In terms of ''permanence,'' manufacturers currently develop badges for vehicle model names, manufacturer brand logos and other vehicle information to specifications intended to allow the badge to remain attached to the vehicle over its useful life. NHTSA would expect that any badges developed

[18] *http://www.afdc.energy.gov/afdc/about.html* (last accessed: January 2, 2014).

[19] While not an alternative fuel, the agency also received examples showing the color green used to indicate a vehicle operates on diesel fuel. Fieldwork performed by the agency confirmed inconsistent use of color for fuel filler caps for diesel fuel across various vehicle manufacturers. In some cases, the cap was colored green, but in most cases the cap color was black.

[20] NHTSA's records of these meetings are available in the docket for this rulemaking.

[21] 49 U.S.C. 32908 (a)(1).

[22] As defined by 49 U.S.C. 32901 (a)(1).

[23] Note: To be considered an alternative fuel, alcohol derived fuels need to be blended at levels of at least 85 percent of the total mixture when blended with gasoline or other fuels.

[24] An alterer in this context would be someone that converts for sale or re-sale a conventional-fueled vehicle to one capable of operating on an alternative fuel.

[25] *http://www.merriam-webster.com/* (last accessed January 27, 2014).

for this proposal, or that already meet this proposal, would be of similar specifications and able to last for the vehicle's useful life without specifying actual test procedures to measure this requirement.

In terms of ''prominence,'' NHTSA is proposing to require the alternative fuel badge to be on the vehicle exterior, at the rear of the vehicle and in proximity to the vehicle model name or model designation. In terms of proximity, NHTSA proposes the badge be positioned either directly below or to the right of the vehicle model name or model designation found on the rear of the vehicle. In the case where no model name or designation is intended for the rear of the vehicle, NHTSA proposes the badge be placed at the lower right corner of the vertical trunk lid, closeout panel, rear hatch or rear fender,[26] depending on the vehicle type and configuration. NHTSA does not intend to require that the proposed badges take visual or physical precedence over existing vehicle manufacturer brand logos, model names, or designations. Vehicle manufacturers have demonstrated expertise in the design of badges and the placement of badges such that they provide clear and visible identification of the company logo. NHTSA considered whether to propose less obtrusive displays, such as clear-background adhesive window labels, but has tentatively concluded that such displays would be insufficiently ''prominent'' to fulfill EISA's intent. If commenters suggest that an approach other than exterior vehicle badging should be used, NHTSA requests that they provide specific detail on what their preferred approach would entail and why exterior vehicle badging would be less permanent than the commenter's preferred approach, less informative for consumers than the commenter's preferred approach, or more burdensome for manufacturers than the commenter's preferred approach.

The next question that NHTSA considered was the content of the display—whether NHTSA should require vehicles to be labeled generally as simply ''alternative fuel'' or ''alternative fuel capable,'' whether vehicle labels should reference the specific alternative fuel, and whether the display should consist of a symbol (or symbols) or in the form of natural language.[27] These are not questions answered directly by Congress in EISA.

NHTSA does not believe that Congress intended for vehicles to be labeled generally as ''alternative fuel'' or ''alternative fuel capable.'' 49 U.S.C. 32901(a)(1) has long enumerated specific alternative fuels, which were already defined when Congress created the ''permanent and prominent display'' requirement. Thus, NHTSA believes that, rather than repeating the existing enumerated list of alternative fuels in 32908(g), Congress intended for that list to be referenced by 32908(g). Additionally, if the purpose of EISA is to promote energy conservation and the use of non-petroleum fuels, NHTSA does not believe that a generic alternative fuel vehicle label would promote the same level of consumer understanding about the variety of alternative fuel options available to consumers. NHTSA believes that more specific labels would clearly differentiate among technologies and specifically identify advanced technologies, such as BEVs, PHEVs, and FCVs, for which manufacturers generally have made significant investments in research development, capital equipment and facilities. While some manufacturers do currently incorporate similar label elements in a variety of alternative fuel or advanced technology vehicles, they also typically include distinctive elements for each technology to identify and promote those technologies. Because of these considerations, NHTSA tentatively concludes that vehicle labels should specify which alternative fuel a vehicle is capable of, rather than simply identifying it as ''alternative fuel.''

The agency has developed a lead proposal and one alternative proposal that use natural language. The agency considered an alternative that used symbols, but is not proposing that option. The agency assessed the natural language approach and approaches using symbols and recognizes there are advantages to both approaches.

Existing symbols, for the most part and regardless of source, having already endured development and approval processes, are generally accepted in certain contexts to represent alternative fuels. They are relatively design-neutral, which should help them to harmonize better with manufacturer-developed designs that manufacturers may wish to continue applying. They also may help consumers' recognition of alternative fuel symbols insofar as they may already be used at fueling stations, in roadside signage, and at other locations on an alternative fuel capable vehicle.

Based on the finding that there is not a single source for widely-recognized alternative fuel symbols for vehicles, NHTSA considered whether to try to develop a set of symbols for badging purposes. If the agency attempted to specify a set of symbols for the variety of alternative fuels, we believe that it would need to be accompanied either by evidence that the symbols were intuitively comprehended by most people, or by a significant education effort to inform consumers of their meaning. The variety of fuels covered by the term ''alternative fuel'' imposes educational challenges, and the agency believes that the fact that Congress mandated educational efforts in EISA regarding the use and benefits of alternative fuels points to a general lack of public knowledge about alternative fuels.

Even if the symbols were developed and consumer research indicated there was general comprehension of the symbols, the agency is concerned that there is a risk that a significant number of consumers will not interpret the symbols consistently if they were eventually implemented. At this time, the agency believes a considerable amount of research would be required to develop symbols representing alternative fuels that are easily comprehended by most people. The agency believes that even if considerable research was conducted to develop the symbols, consumers still would not interpret them consistently, and therefore the agency does not believe that symbols for alternative fuel vehicle badging are the best solution for meeting the EISA requirement. Additionally, as discussed above, many manufacturers have already invested considerable resources in developing their own symbols, and the agency does not wish to impact that investment unnecessarily by requiring manufacturers to replace their symbols with standardized ones if the agency is not confident that consumers will be able to determine what standardized symbols mean.

Natural language, on the other hand, should be more readily understandable for consumers (even if some of the alternative fuels remain somewhat limited in vehicle use and not commonly seen on the roads), and less subject to inaccurate interpretation. Manufacturers already employ natural language in many cases to identify vehicle model names, vehicle manufacturer names, and unique vehicle model designations. In addition, because natural language is straightforward, research would not be required. Natural language would meet EISA statutory requirements. However, the agency seeks comment on this

[26] Specifically in the case of LSVs where there may be no trunk, closeout panel or rear hatch as part of the vehicle design.

[27] Webster's Third New International Dictionary: Natural language: A language that is the native speech of a people.

assessment and the proposal to require natural language descriptions.

With these tentative conclusions in mind, NHTSA's proposal for a ''permanent and prominent display'' is as follows:

1. ''Permanent and Prominent Display'' Content Proposal

Based on the available badging and consumer information reviewed by the agency, there appear to be virtually no standardized practices associated with displaying a vehicle's alternative fuel capability. Some vehicle manufacturers have developed unique badges, and in some cases consumer campaigns, to promote alternative fuel capability for their specific, advanced technologies that decrease petroleum consumption. Through this proposal NHTSA remains committed to promoting manufacturer investment in alternative fuel vehicles and to avoid the redundancy of both manufacturers and NHTSA investing time and effort in developing alternative fuel-specific symbols for each vehicle. Based on the agency findings, all fuel types may not be represented in a symbolic form and, over time, new alternative fuel types may be introduced to the market. Adding new fuel types may involve revisiting and republishing standards, a time consuming process. In addition, the symbols identified while researching this proposal were fundamentally developed for use on controls, the vehicle instrument cluster, and road signs, versus the vehicle exterior. The agency believes the symbols may have taken a different form if designed from the outset as an exterior badge, where aesthetics and complementing an overall theme may take a higher priority than they would for controls, warning lamps or road signs. Overall, this proposal is intended to provide a degree of standardization across the industry without encroaching on manufacturer investment, creativity and resources utilization in promoting alternative fuels.

In order to accomplish these goals, NHTSA is proposing as follows: The agency has tentatively concluded that the regulation should specify that manufacturers must provide a ''permanent and prominent display,'' as discussed above, which includes in some form the alternative fuel type in natural language. The required natural language terms for alternative fuels are defined in the following table. NHTSA believes that this requirement to standardize terminology for alternative fuel vehicles (and to label all alternative fuel vehicles) could be easily implemented by manufacturers, and would foster consumer recognition of alternative fuel vehicles on the roads without encroaching on existing programs that promote vehicles capable of operating on alternative fuels or established brand equity, since manufacturers will still be able to incorporate the natural language into their own preferred designs/branding. This approach is also consistent with the agency's interpretation of EISA that, at minimum, the type(s) of alternative fuel on which a vehicle is capable of operating should be identified. Table III–1 provides detail of the proposed natural language text associated with the alternative fuels covered by this proposal.

TABLE III–1—PROPOSED ''PERMANENT AND PROMINENT DISPLAY'' LANGUAGE

Alternative fuel[28]	Proposed badge natural language minimum description
Methanol[29]	Methanol.
Denatured Ethanol[29]	Ethanol.
Other Alcohols[29]	Name of other alcohol derived fuel.
Natural Gas	Natural Gas.
Liquefied Petroleum Gas	Propane.
Coal Derived Liquid Fuels	Coal to Liquid.
Hydrogen	Hydrogen.
Fuels (except alcohol) derived from biological materials	Biodiesel[30] or name of other fuel derived from biological materials.
Electricity (Battery Electric Vehicle)	Electric.
Electricity (Plug-In Hybrid Electric Vehicle)	Plug-In Hybrid Electric.

As identified, the proposed badge natural language description is the minimum language to be included and does not preclude the inclusion of other information related to the alternative fuel capable vehicle such as dual-fuel capability or acceptable blend level such as E85, if applicable.

In surveying current production vehicle badge designs, the agency does see the need to propose a minimum letter height measurement and to have the alternative fuel name presented in a manner providing clear contrast between the letters and their background color in order to ensure readability.

Based on the survey of current production vehicle model and technology badges, the agency proposes a minimum for the defined ''natural language minimum description'' be no less than 15 millimeters. This fundamentally aligns with the minimum average text size found on technology related badges currently in production and is intended as a minimum size when the ''natural language minimum description'' is presented as a standalone badge containing no other text. In cases where the ''natural language minimum description'' is accompanied by other language, as one badge, the agency proposes a minimum text size of 5 millimeters for the ''natural language minimum description'' and the accompanying text with an overall minimum badge height of 15 millimeters. The agency proposes these minimum sizes to help ensure readability, based on the precedents set by the survey of current production vehicle badges (which are assumed, for the most part, to include readability from a reasonable distance as design criteria), while still providing ample latitude in the overall badge design.

In addition, the agency proposes the defined ''natural language minimum description'' is presented with a clear difference, or the use of differences, between the lightest and the darkest parts of the fuel name. While conducting research for this proposal, the agency observed that current production vehicle model names and manufacturer brand logos are predominantly finished in chrome or, in some cases, shades of silver; a trend that applies historically as well. The agency presumes these finishes and colors provide maximum flexibility for application to the wide array of vehicle

[28] As defined by 49 U.S.C. 32901(a)(1).

[29] Note: To be considered an alternative fuel, alcohol derived fuels need to be blended at levels of at least 85 percent of the total mixture when blended with gasoline or other fuels.

[30] The agency notes that it recognizes only 'neat' biodiesel (B100) as an alternative fuel. 63 FR 15322 (Mar. 31, 1998).

colors available to consumers without hindering readability or attractiveness. With this in mind and to align with vehicle badging trends, the agency proposes the letters of the alternative fuel name to be finished in chrome or a silver color. If the alternative fuel name in the badge contains a background color independent of the vehicle color, the agency proposes this background color should provide clear contrast to the alternative fuel name.

As proposed, the minimum size and letter finish are applicable to only the alternative fuel badge ''natural language minimum description'' and not applicable to any other text that may be included on the badge.

As an example of what this might look like, during research for this proposal, the agency identified a current production flex-fuel badge at a retailer location where, along with the prominent ''flex-fuel'' designation, the badge included the word ''ethanol'' in the overall badge design. The agency would consider that badge to meet the minimum requirements of the proposed regulation. (See Figure III.B–1 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134).

The agency believes that this approach would both permit and promote manufacturer investment in their own badging and brand equity for alternative fuel vehicles, and would not interfere with broader manufacturer campaigns to promote both alternative fuel vehicles and vehicle petroleum consumption-reducing technologies. Any activity, whether required by the government or undertaken voluntarily by the industry, which promotes the benefits and availability of these vehicles, could help to drive sales and reduce the overall consumption of petroleum-based fuels.

However, there is still some risk that despite standardization of the natural language designation for the alternative fuel type, other inconsistencies across manufacturers' representations could slow consumer understanding about different alternative fuel vehicles. In addition, NHTSA has evaluated all the existing or planned vehicle manufacturer badges and is aware that some of these badges may still require some re-tooling to incorporate the specific fuel type in natural language. Despite these issues, the agency has tentatively decided that this approach is preferable to a more prescriptive approach, some of which are discussed below as regulatory alternatives.

2. Alternative Display Content Considered by the Agency

NHTSA also considered whether to specify a standardized word or symbol design for each type of alternative fuel and require that the applicable design be used on all alternative fuel capable vehicles sold in the United States, supplanting any existing manufacturer-applied badging for alternative fuel capability. NHTSA considered three different ways to develop the standard design for each alternative fuel, as discussed below.

For the first alternative, NHTSA considered using and/or adapting the FHWA or SAE/ISO symbols discussed above in a way that could make them more applicable for automobile badging. These symbols, having already been through development and approval processes, are generally accepted in certain contexts to represent alternative fuels. They have the benefit of being relatively design-neutral, which could help them harmonize better with manufacturer-developed designs, and they could also help consumers' recognition of alternative fuel symbols, insofar as they may already be used at fueling stations, in roadside signage, and at other locations on an alternative fuel capable vehicle (See Figures II.A–9 & 10 in ''Examples of Existing Alternative Fuel Badges and Symbols,'' in Docket NHTSA–2010–0134).

However, because symbols do not exist for some of the fuel types in either the FHWA or the SAE/ISO set of symbols, the agency would still need to develop symbols for those other fuel types, similar to the other alternatives discussed below. In addition, because the symbols were developed for use on controls, the vehicle instrument cluster and road signs, rather than for use as a vehicle badge, the agency remains concerned that the symbols may have taken a different form if designed from the outset as an exterior badge, where aesthetics and complementing an overall vehicle theme may take a higher priority, and specified guidelines for application to controls, warning lamps and road signs are not applicable.

For the second alternative, NHTSA considered developing new symbol designs to represent each of the alternative fuel vehicle types covered by this proposal. This approach could be used to fill in the gaps in the approach above, or to start from scratch developing designs specific to this application. However, NHTSA is concerned that significant new research would be necessary for such an approach, which could lead to additional delay in the development of this regulation. In addition, the approach would need to be coupled with a customer education program in order for it to be effective, creating further delay, and without the guarantee that the symbols developed would ever be immediately recognizable by consumers.

For the third alternative, NHTSA considered soliciting proposed designs for each alternative type from interested parties, and choosing one of those particular designs as the standard design for each type of alternative fuel vehicle. This approach could significantly benefit a manufacturer whose existing design was chosen, as they would have already invested in tooling and would have significant lead time and cost advantage over other manufacturers. This approach would also eliminate the effort, and associated cost, for any other manufacturers who do not currently have such a program, as they would not have to invest in development of their own design. However, NHTSA is concerned that a design-mandated approach may not be compatible with future ideas that manufacturers may develop regarding exterior design and may limit creativity in their advertising approaches for alternative designs.

All of these alternatives could potentially create burden for manufacturers who have made efforts to develop brand equity for their own alternative fuel strategies including the use of symbols to provide a representative meaning or to represent something abstract through their vehicle badges. In addition, some manufacturers have even obtained trademark rights to these symbols and names, so selecting a single manufacturer design as the standard could introduce the need for potential trademark and copyright arrangements among manufacturers, which could be exceedingly burdensome for other manufacturers whose design was not chosen. It may be inappropriate for NHTSA to give manufacturers the advantage of being ''ahead'' of other manufacturers if their symbol is the one chosen. NHTSA does not wish to discourage vehicle manufacturers from investing in promoting alternative fuel vehicle technologies and other petroleum-fuel consumption reduction technologies; doing so would not be consistent with the agency's and EISA's goals.

The agency seeks comment generally on this aspect of the proposal and these alternatives, and specifically on the following questions:

- Do commenters believe that the proposed natural language descriptions for the alternative fuels covered by this

proposal are appropriate and recognizable? If not, what do commenters suggest, and why?

• Do commenters believe the agency should conduct research regarding the potential advantages of using symbols instead of natural language (after finalization of natural language badging in the current rulemaking) to develop a new series of symbols for alternative fuel vehicles, that might be included in a later rulemaking? If so, why? What research should the agency undertake? How far in the future should the agency be aiming to develop and promulgate such a series of symbols for this requirement, if the agency chose to pursue this path?

• Do commenters believe the agency should require additional labels/badges and/or other locations to enhance the information being presented for the use and safety of first responders. In particular, to address potential badge illegibility in the event of rear impact crash.

C. ''Owner's Manual Information'' on Alternative Fuel Capability and Benefits

EISA requires DOT (by delegation, NHTSA) to develop regulations to require vehicle manufacturers producing vehicles capable of operating on alternative fuels to include text in the vehicle owner's manual information describing the capability and benefits of using alternative fuels, such as their renewable nature and environmental benefits. According to Merriam-Webster Online dictionary,[31] ''capability'' means ''the facility or potential for an indicated use or deployment,'' ''benefits'' means ''something that promotes well-being'' and ''renewable nature'' suggests ''capable of being replaced by natural ecological cycles or sound management practices.'' In the context of owner's manual information regarding alternative fuel vehicles and alternative fuels generally, manufacturers currently appear to locate most of the information that they provide in the owner's manual in text format, but the information provided on alternative fuels generally does not address the topics enumerated by EISA. For purposes of this proposal, the agency is interpreting ''owner's manual . . . information that describes [the] capability and the benefits of using alternative fuels, including the renewable nature and environmental benefits of using alternative fuels,'' as requiring more owner's manual text than what is currently provided by the majority of manufacturers who produce alternative fuel vehicles.

As for the ''permanent and prominent display'' of alternative fuel capability, NHTSA considered whether it should simply create general guidelines for these topics and allow manufacturers to develop their own text, or whether the agency should specify the text that manufacturers would be required to use. NHTSA has tentatively concluded that specifying required text rather than simply providing guidelines for manufacturers to develop their own text would be the best approach. Manufacturers would be required to include the NHTSA-specified text with the owner's manual information of every alternative fuel vehicle that they produce for sale in the United States, but would also be permitted to develop additional text to describe their own vehicles if they choose. NHTSA believes that this approach will help to ensure that the owner's manual information for all alternative fuel vehicles covers the required topics as thoroughly and accurately as NHTSA believes is necessary to implement EISA's intent, and will also avoid the potential for gaps in information that might occur if the agency simply prescribed guidelines. NHTSA recognizes that this approach may reduce some amount of flexibility for manufacturers, but we believe that the benefits of standardization, in this case, likely outweigh the drawbacks.

Thus, assuming that NHTSA will specify required owner's manual text, the second question that NHTSA considered was whether the required text should be general enough to cover all alternative fuel vehicles, or whether it should be specific to each individual type of alternative fuel vehicle. NHTSA has tentatively concluded that requiring generic text to cover all alternative fuel vehicles rather than specifying individualized text for each type of alternative fuel vehicle would be the best approach. Again, manufacturers would be permitted to develop additional text to describe their own vehicles if they choose.

NHTSA believes that this approach should benefit both consumers and vehicle manufacturers by maintaining consistent owner's manual information across all alternative fuel types in print form and reducing complexities associated with specific text for an individual fuel type, while still allowing alternative fuel information to evolve as new fuels become more prominent in the marketplace, production processes change or alternative fuel generation methods transform technologically and/or regionally. Using standardized, somewhat generic text with references to additional, more dynamic sources like internet Web pages avoids published information becoming obsolete and less useful to consumers. And again, we anticipate that standardized generic text describing the benefits of alternative fuels will reduce the burden on manufacturers, who would not be required to develop, or seek approval for, their own alternative fuel owner's manual information.

Additionally, in order to benefit from the expertise of other federal agencies active in alternative fuel vehicle issues, NHTSA consulted with the FTC to discuss potential alignment of content for proposed owner's manual information with the (until-recently) required [32] FTC-alternative fuel label found on all new alternative fuel vehicles sold in the U.S. The agency believes it may be helpful to consumers to provide information that is consistent with the FTC label which was in the marketplace between 1995 [33] and April 2013.

The agency recognizes that there are many details and unique characteristics associated with each of the alternative fuels covered by this proposal, and that some consumers may prefer additional information specific to their type of alternative fuel vehicle. However, we believe that requiring all of that information to be provided in the owner's manual may not be necessary, as the extent and depth of this information for each of these fuels is vast, and can change over time. Therefore, the agency believes that giving a foundation of more generic alternative fuel vehicle information to consumers, while providing a reference to government-funded and supported sources of additional information, is a better approach to implementing this statutory obligation.

Therefore, the agency is proposing to require the following standardized text, largely derived from the FTC developed alternative fuel label,[34] to be included in the owner's manual information of all vehicles which are capable of operating

[31] *http://www.merriam-webster.com/* (last accessed January 2, 2014).

[32] In April of 2013, the Federal Trade Commission issued final amendments to the Alternative Fuels Rule, consolidating the point of sale labels required on alternative fuel vehicles (AFVs) with those required by the U.S. Environmental Protection Agency (EPA), eliminating the need for two different labels and reducing the burden of complying with the Rule. (''FTC Amends Alternative Fuels Rule to Make Compliance Easier'' last accessed: January 2, 2014).

[33] *http://www.ftc.gov/news-events/press-releases/1995/05/alternative-fuels-final-rule-issued* (last accessed: January 2, 2014).

[34] 16 CFR 309.20.

on any of the alternative fuels covered by this proposal:

''{Section Heading:} Capabilities and Benefits of Using Alternative Fuels

This vehicle is recognized by the U.S. Department of Transportation as an alternative fuel vehicle, because it is capable of operating on a biofuel, electricity, hydrogen, natural gas, propane or other fuel that is not derived primarily from petroleum. Alternative fuel vehicles may provide benefits both to their users and to the nation as a whole over their useful lifetime by operating on non-petroleum-based alternative fuels. Some of the benefits of alternative fuel usage in this vehicle may include:

Energy and National Security: Driving this vehicle on alternative fuels may help to reduce our country's dependence on foreign oil. The United States imports a substantial amount of its petroleum, the majority of which is used to fuel vehicles in the form of gasoline and diesel. Petroleum imports can be vulnerable to supply disruptions and price shocks depending on conditions in the countries that supply us with oil. By using alternative fuels, you may be helping the country be less vulnerable to the supply disruptions and price variability associated with imported oil, and supporting U.S. alternative fuel producers.

Environmental Benefits—Renewability and Emissions: Many alternative fuels are renewable, which means that their sources can be replenished—like plant-based ethanol, or solar-powered electricity. Renewable fuels may have less environmental impact than conventional fuels. Additionally, compared with vehicles fueled by conventional, petroleum-derived diesel and gasoline, many alternative fuel vehicles are estimated to reduce the life cycle greenhouse gas emissions of carbon dioxide.

Fuel Type and Availability: Alternative fuels are increasing in availability. To learn more about the availability of alternative fuel that can power this vehicle, please visit the Department of Energy's Alternative Fueling Station Locator at *http://www.afdc.energy.gov/afdc/locator/stations/* to determine the location of refueling and/or recharging facilities that meet your driving needs.

Additional Information Resources

For more information about alternative fuels and alternative fuel vehicles, please visit the Department of Energy's Alternative Fuels & Advanced Vehicles Data Center at *http://www.afdc.energy.gov.*

For information about vehicle safety, please visit *www.safercar.gov.*

The agency proposes that this text follow the same font and type size specification as other standard ''body'' text found throughout the owner's manual. In addition, the agency proposes that the text be located inside a text box, bordered with a 1-pt. solid black line, with no other text in box. We believe that this will help the text stand out to consumers and encourage them to review it.

The agency seeks comment on this proposed text with regard to whether it meets the EISA statutory requirements, whether the depth of the information is sufficient, whether the fuel type should be specified, and whether the references to other government Web sites for the most up-to-date information regarding alternative fuels are helpful. Should the agency require the inclusion of more or less information on alternative fuel capability and benefits in the standardized text? Are there additional benefits that should be added directly in the text? Should the text vary (in part or in its entirety) depending on the type of alternative fuel? If so, how should the text vary? Should the agency include different or additional references to Web sites or link technology such as the QR™ code found on the recently revised fuel economy label? If so, what type of technology and to what Web sites? Commenters should include specific suggested changes (and their reasons for the suggested changes) for the agency's consideration.

D. Fuel Compartment Alternative Fuel Identification

EISA requires DOT (by delegation, NHTSA) to develop regulations to require a label to be attached to the fuel compartment of vehicles capable of operating on alternative fuels, with the form of alternative fuel stated on the label. EISA adds that a label attached in compliance with the requirements of 49 U.S.C. 32905(h) would be deemed to meet the requirements. According to Merriam-Webster Online dictionary,[35] ''attached'' means ''permanently fixed,'' while ''compartment'' suggests ''a separate division or section.'' In the context of this requirement, most manufacturers offering alternative fuel vehicles either already have or intend to have, in the near future, some form of labeling plan in place for the fuel compartment of those vehicles. These labeling plans may be driven by one or multiple reasons. In some cases, vehicle manufacturers are labeling the fuel filler compartment in order to obtain dual-fuel vehicle credits under 49 U.S.C. 32905(h).[36] In other cases, the labeling may be to provide key safety information to consumers or first responders. And in yet other cases, fuel cap coloring may be employed to indicate the vehicle's fuel-type compatibility to avoid miss-fueling. However, not all alternative fuel vehicles currently have such labeling, and not all manufacturers have plans to add such labeling. Of the manufacturers who do provide labels, the labeling is not consistent in either content or location. For purposes of this proposal, the agency is interpreting ''a label . . . attached to the fuel compartment of vehicles capable of operating on alternative fuels, with the form of alternative fuel stated on the label,'' as requiring greater consistency than what the majority of manufacturers are currently providing for their alternative fuel vehicles.

The agency considered whether it should develop specific labels for manufacturers to employ, or simply provide general guidelines like those of 32905(h) and 32908(g)(3) that direct manufacturers to attach labels indicating which alternative fuel a vehicle can operate on, but do not otherwise specify the content or form of the label. NHTSA has tentatively concluded that the label can take the form of an adhesive-type label or language ''screen-printed'' directly on the exterior of the fuel cap or the fuel compartment access door, in a similar style to those found in production today to meet the 32905(h) requirement, that is specified and designed to remain affixed to the inside of the fuel compartment access door or fuel cap over the entire useful life of the vehicle. NHTSA believes this will best fulfill EISA's intent to provide consumers with clear, consistent and useful information. The labeling should clearly state the specific alternative fuel type(s) and, for gaseous or electrically fueled vehicles, the proper/safe capacities for replenishing the fuel supply.

If a manufacturer is already applying labeling pursuant to 32905(h), NHTSA would not require an additional separate label for compliance, but existing labels may require modification to comply with the proposed label content.

The agency is proposing a list of content requirements for the label. Table

[35] *http://www.merriam-webster.com/* (last accessed January 2, 2014).

[36] We note that because the 32905(h) requirement does not apply to dedicated alternative fuel vehicles (such as, *e.g.,* pure NGVs or BEVs), manufacturers have no specific incentive to ensure fuel compartment labeling for these vehicles under the current requirements.

III–2 represents the proposed label content requirements that must be included for each alternative fuel type:

TABLE III–2—PROPOSED FUEL FILLER COMPARTMENT ALTERNATIVE FUEL LABELING CONTENT

Defined alternative fuel [37]	Alternative fuel name for use in labeling	Maximum blend level (liquid)	Charging voltage level(s)
Methanol [38]	Methanol	X	
Denatured Ethanol [38]	Ethanol	X	
Other Alcohols [38]	[Name of Alcohol Derived Fuel]	X	
Natural Gas	CNG		
Liquefied Petroleum Gas	LPG		
Coal Derived Liquid Fuels	Coal Derived Liquid Fuels	X	
Hydrogen	Hydrogen		
Fuels (except alcohol) derived from biological materials.	Biodiesel or [Name of other Biologically derived fuel]	X	
Electricity (Battery Electric Vehicle)	Electricity		X
Electricity (Plug-In Hybrid Electric Vehicle)	Electricity/[Other Fuel Type(s)]	X*	X

* For dual fuel capable non-electric power source.

The agency is providing the following discussion points regarding Table III D–1 in an effort to provide clarity of the proposed label content.

The ''Alternative Fuel Name for Use in Labeling'' is the text that must appear in the labeling.

The ''Maximum Blend Level (Liquid)'' is intended to identify the appropriate maximum acceptable mixture levels of liquid fuels that may contain a blend of fuel types such as ethanol or biodiesel.

The ''Charging Voltage Level(s)'' is intended to indicate both the recommended charging voltage and additional voltage levels that can be used for recharging an electric vehicle: battery only or plug-in hybrid.

The agency developed this table of proposed label content based on alternative fuel labeling currently being applied pursuant to 32905(h) and existing requirements for gaseous fuel vehicles. NHTSA believes that this meets the statutory intent of EISA.

Like the alternative fuel permanent and prominent display, in order to ensure readability, the agency is proposing a minimum letter height measurement and to have the alternative fuel name along with any supporting information presented in a manner that provides clear contrast between the letters and their background color.

Based on the survey of current production fuel filler compartment adhesive labels and information found on fuel caps, the agency proposes a minimum for the text height of 5 millimeters and ''bold face'' when applying language to an adhesive label or a fuel filler cap.

In addition, the agency proposes that the fuel filler compartment information is presented with a clear difference between the lightest and the darkest parts of information. Ideally, this would be black text on a white background, white text on a black background or a combination of colors very similar in contrast.

The agency is not currently proposing, but does seek comment on, whether we should also, or alternatively, require vehicle manufacturers to color-code the fuel cap (or charging port, or other equivalent) for a specific alternative fuel type. If commenters believe that such an additional or alternative requirement would be beneficial, we ask that they provide specific rationale for the benefits of adding this requirement, and quantify the benefits to the extent feasible; we also ask that commenters provide specific recommendations as to what color coding for each fuel they believe would be helpful and why.

We also seek comment on the above proposal for fuel compartment alternative fuel identification, and whether commenters believe that there may be more effective or helpful ways to implement this requirement while still meeting the language and intent of EISA.

E. When does NHTSA propose that the new requirements would be implemented?

NHTSA proposes that all components of this NPRM would apply to vehicles manufactured on or after the first September 1 that is at least six months after the publication date of a final rule implementing this proposal. This proposed timing is intended to allow a minimum of six months lead time for implementation. The agency anticipates finalizing this proposal in the first quarter of 2015. Therefore, we expect that the effective date of this proposed rule would be September 1, 2016, which would provide manufacturers additional lead time. The agency believes the lead time proposed may be necessary; however the agency intends to allow optional early compliance if a manufacturer wishes all vehicles from an affected model year (MY) to be badged and/or labeled the same because we understand that manufacturers may produce MY 2017 vehicles as early as January 1, 2016. This proposed timing would allow for these vehicles to be introduced to the market with the proposed badges in place.

With regard to badging, the agency learned from one badging supplier that the lead time associated with the tooling and production of an externally applied badge is approximately 16 to 18 weeks from design to vehicle production application.[39] In addition, the agency believes that the flexible nature of the proposal for a permanent and prominent display for alternative fuel capability would require little design effort even among vehicle manufacturers that do not currently badge their vehicles. Moreover, since the agency is aware that all vehicle manufacturers currently have business relationships with badge suppliers to produce ''permanent and prominent displays'' of manufacturer names, model lines and other unique model designations, some of which are related to alternative fuel capabilities, as part of their regular production and marketing strategies, the agency does not anticipate that manufacturers will need to develop or seek out new

[37] 32901(a)(1).

[38] Note: To be considered an alternative fuel, alcohol derived fuels need to be blended at levels of at least 85 percent of the total mixture when blended with gasoline or other fuels.

[39] Based on discussion with Douglas Corporation, January 22, 2010. A record of this discussion is available in the docket for this rulemaking.

relationships, which might otherwise create a need for additional lead time.

With regard to owner's manual information, the Alliance of Automobile Manufacturers suggested that a two full model year lead time could be necessary for incorporation of this information.[40] The agency believes this amount of lead time is more than should be necessary in this situation. First, the agency is proposing standardized language that all vehicle manufacturers producing vehicles capable of operating on the alternative fuels covered by this proposal will be required to include. Standardized language should alleviate the lead time that might be required for ''clean sheet'' development by each manufacturer of owner's manual information language if the agency provided only guidelines for what the language should contain rather than specifying it directly.

Additionally, the agency believes that a somewhat shorter time frame for incorporation than that suggested by the Alliance can be achieved. Today, in most cases, owner's manual information is developed, reviewed and approved in an entirely digital environment, which significantly reduces lead time. Moreover, the agency is aware that some manufacturers have moved, or are in the process of moving, to completely digital delivery of owner's manual information, where owner's manual information is delivered via a digital video disc (DVD) or some other digital format.[41] In some of these cases, official vehicle manufacturer owner's manual information is available via the internet.[42]

For fuel compartment labeling, the agency believes the proposed time frame to be reasonable for two reasons. First, as discussed above, in developing this proposal the agency discovered that many manufacturers producing alternative fuel vehicles already label their fuel compartments in order to obtain dual-fuel vehicle credits, pursuant to the requirements in 49 U.S.C. 32905(h). In this NPRM, the agency is simply proposing to require manufacturers to do what many manufacturers are already doing—thus, for the manufacturers already labeling their vehicles, no lead time should theoretically be required. For the manufacturers not currently labeling their alternative fuel vehicles, a supply base for meeting the requirements of 49 U.S.C. 32905(h) is already established, so those manufacturers should be able to leverage this existing supply base and thus mitigate lead time needs.

Further, manufacturers not already in compliance with this component of this proposal are, for the most part, not producing alternative fuel capable vehicles at the present time. The agency recognizes, however, that some vehicle manufacturers will begin production of alternative fueled vehicles during the proposed optional and required compliance time frame.

The agency seeks comment on whether the proposed lead time for each of the requirements is reasonable. If a commenter wishes the agency to provide additional lead time, the agency requests that the commenter provide specific explanations for which elements and why more lead time might be needed. For example, if a commenter sought more lead time for the owner's manual requirements, the agency would be seeking details of the owner's manual publication process and associated timing, along with current and future media that will be used for the owner's manual information.

IV. What are the estimated costs and benefits of the proposal?

In determining estimated industry costs associated with this proposal, the agency first set out to determine a projected MY 2017 volume for vehicles capable of operating on the alternative fuels covered by this proposal. Next, the agency investigated potential ''ball-park'' piece cost and labor cost for labels and exterior vehicle badges. And finally, the agency looked at labor rates for personnel that may be involved with the development of owner's manual information.

To develop a projected alternative fuel vehicle volume for the U.S. market, we used specific data from NHTSA's Corporate Average Fuel Economy (CAFE) program database, current and historical industry volumes from Wards Auto (online), sales outlooks from Pike Research for low speed vehicles (LSVs) and the Energy Information Administration's 2012 Annual Energy Outlook for light duty vehicles. Finally, the agency considered public announcements from manufacturers regarding anticipated future volumes of alternative fuel vehicles such as FFVs, PHEVs, BEVs and FCVs.

For label and badge piece cost and labor costs, the agency spoke with suppliers of both badges and labels currently used in vehicle production. These suppliers have continued and wide-ranging label and badge supply experience inside and outside the automotive industry. In some cases, the suppliers currently produce either badges or labels for multiple vehicle manufacturers.

The agency seeks comment on all cost estimates developed for this proposal; specifically, the estimated piece costs for alternative fuel badges and labels, the estimated costs associated with producing pages of owner's manual information, and any additional costs which may not be included in these estimates. Specific citations to sources for comments on cost estimates would be most helpful to NHTSA.

A. How did NHTSA project alternative fuel vehicle volumes?

As part of the research conducted for development of this proposal, the agency attempted to determine a projected volume of MY 2017 alternative fuel vehicles that could be affected by this proposal. The agency utilized the overall industry sales projections of light duty cars and trucks developed by the Energy Information Agency (EIA) for its 2012 Annual Energy Outlook (AEO) Early Release reference case.[43] When needed, the agency evaluated and applied manufacturer or specific vehicle model market share to further refine MY 2017 projections for specific alternative fuels; an example being E85 capable or ''flex-fuel'' vehicles. A summary of the volume projections by alternative fuel type can be found in Table IV–1.

Using the CAFE program database, the agency learned that the vast majority of FFVs are produced by General Motors, Ford and Chrysler with very few other manufacturers producing FFVs. The agency used this finding to develop an estimated volume for MY 2017 ethanol capable flex-fuel vehicles and based the estimate primarily on announced volume projections from Ford, General Motors and Chrysler where these manufacturers indicated 50 percent of their fleet will have E85 flex-fuel capability by 2012.[44]

To develop projected volume for these manufacturers, the agency applied market share values of 18 percent for General Motors, 15.5 percent for Ford and 11 percent for Chrysler, taken from

[40] Alliance letter to NHTSA RE: NHTSA Consumer Information Rulemaking, June 25, 2010. Available at Docket No. NHTSA–2010–0134.

[41] ''Chrysler Phases Out Paper Owner's Manual'' *http://wheels.blogs.nytimes.com/2009/09/23/chrysler-does-away-with-paper-owners-manual/* (last accessed January 2, 2014).

[42] ''Owners Manuals for Ford Vehicles,'' *https://owner.ford.com/servlet/ContentServer?pagename=Owner/Page/OwnerGuidePageVehicleLookup&BackToLogin=Owner/Page/OwnerGuidePage&ord=14632762* (last accessed December 9, 2013).

[43] AEO2012 Early Release Overview—*http://www.eia.gov/forecasts/aeo12/er/* (last accessed: January 2, 2014).

[44] ''Detroit Three's Flex-Fuel Builds Increasing'' Wards Auto, October 27, 2011 *http://wardsauto.com/news-amp-analysis/detroit-three-s-flex-fuel-builds-increasing* (last accessed: January 2, 2014).

Wards Auto for MY 2011–13, to the total MY 2016–17 industry sales projected by the 2012 Annual Energy Outlook (AEO) Early Release reference case [45] yielding a projected MY 2017 market volume for these manufacturers. The agency then applied the 50 percent FFV fleet value to each manufacturer's projected market-share based volume to determine a projected MY 2017 FFV volume. To prevent double-counting, the agency excluded the volume of other alternative fuel vehicles covered by this proposal and produced by these manufacturers.

The agency also included MY 2017 projections for several current vehicle models that are E85 capable, that are produced by other vehicle manufacturers, and that have production volumes greater than 2000 units. For the most part, these vehicles were large pickup truck and SUV FFV models from Nissan and Toyota. Recognizing that the MYs 2012–2025 Corporate Average Fuel Economy (CAFE) and Greenhouse Gas (GHG) Emission standards become progressively more stringent each model year and that both programs provide incentives for FFVs, it is probable that manufacturers will increase the number of FFV vehicles that they produce in MY 2017 compared to MY 2012. To avoid underestimating cost in this proposal, the agency increased the projected number of vehicles that might be affected by the proposed rule by the equivalent of 50% of the projected MY 2017 production volume of Toyota and Nissan large pickups and SUVs. To estimate the projected MY 2017 production volume of Toyota and Nissan large pickups and SUVs, the agency applied the MY 2013 market share of these vehicles to the projected MY 2017 total industry volume projections.[46] The agency notes that it is not aware of any announcement by either of those companies to produce this quantity of FFVs. Nevertheless, the agency believes that adding the equivalent of 50 percent of Toyota's and Nissan's volume is a reasonable approach for estimating the additional number of vehicles that might be affected by this proposal, because other manufacturers may choose to produce FFVs.

Overall, using the market share based methodology brings simplicity and allows any industry-wide volume increase or decrease to be easily reflected. Using this projection methodology, the agency predicts almost 98 percent of the overall projected MY 2017 alternative fuel vehicle fleet will be E85 capable with an estimated 3,818,555 vehicles produced that year.

In addition to ethanol capable vehicles, cost estimates for this proposal also need to account for the number of vehicles capable of operating on other alternative fuels covered by this proposal. For the U.S. market, this primarily includes compressed natural gas, liquefied petroleum gas, hydrogen and electricity fueled vehicles. Through its research, the agency is not aware of any manufacturers planning to produce a significant number of vehicles capable of operating on alternative fuels such as methanol, coal-derived liquid fuels or fuels (except alcohol) derived from biological materials.[47]

The agency did employ a different methodology for developing volume projections of alternative fuel vehicles covered by this proposal that use fuels other than ethanol. The agency utilized published sales data for battery electric vehicles (BEV) and plug-in electric vehicles (PHEV), as these vehicles have entered commerce and accumulated at least one year of sales data.[48] In addition, the agency incorporated the sales volume of electric low speed vehicles (LSVs) into the volume projections for BEV as these are covered by this proposed rule.[49]

The agency also evaluated and utilized manufacturers' revised or publicly announced projected vehicle volumes for alternative fuel vehicles powered by electricity, compressed natural gas, liquefied petroleum gas and hydrogen. As a result, the agency utilized a ''projected volume'' approach instead of the market share approach that is used for ethanol vehicle volumes. This projected volume approach is believed to be more practicable as the market share of current models are likely to change as other competitive models enter the market, and because future models currently have no market share. However the agency did project slight increases for vehicles already entered into commerce, such as BEVs and PHEVs, based on expanding regional availability in the United States and increased production volumes.

Therefore, the cost estimates in this proposal are based on the alternative fuel vehicle volumes represented by fuel type in the following table.

TABLE IV–1—MY 2017 ALTERNATIVE FUEL VEHICLE VOLUME PROJECTION

Fuel type	Volume	Percent alt fuel volume	Percent industry volume
Ethanol	3,818,555	97.77	22.428
Natural Gas	4,300	0.11	0.025
Electric (BEV) *	32,209	0.82	0.189
Electric (PHEV/EREV)	47,639	1.22	0.280
Hydrogen	274	0.01	0.002
LPG	2,750	0.07	0.016
Biodiesel **	.....	0.00	0.000
Total	3,905,727	100.00	22.940

* Includes LSVs.
** DOT only considers B100 to be an Alternative fuel.

[45] DOE Annual Energy Outlook Early 2012 Release—*http://www.eia.gov/oiaf/aeo/tablebrowser/#release=EARLY2012&subject=15-EARLY2012&table=48-EARLY2012&region=1-0&cases=early2012-d121011b* (last accessed: January 2, 2014).

[46] Ibid.

[47] The agency notes that it recognizes only 'neat' biodiesel (B100) as an alternative fuel. 63 FR 15322 (Mar. 31, 1998).

[48] For reference, the agency used sales information from Wards Auto for these vehicle types.

[49] For LSVs, the agency utilized sales and project data available from a report developed by Pike Research titled, ''Neighborhood Electric Vehicles: Low-Speed Electric Vehicle for Consumers and Fleet Markets: Demand Drivers and Barriers, Technology, Key Industry Players and Market Forecasts,'' Published 2Q 2011.

As discussed, these volumes are estimates based on varied sources of information; some historical and some forward-looking. The agency acknowledges that actual production volumes in the future are likely to be different than the projections developed for this proposal, however, the agency believes the projections have been developed using the best available information at the time of development of this proposal; for example AEO vehicles sales projections and Wards Auto data. The agency notes that the forecast information is from the same sources that have been used in other agency rulemakings and the sources are recognized and used by industry in developing future projections.

The agency also recognizes the many factors that will affect these volume projections some of which include prices of petroleum and non-petroleum derived fuels, infrastructure for alternative fueling accessibility, overall consumer acceptance of alternative fuel vehicle characteristics and finally, the need for vehicle manufacturers to meet more stringent CAFE and greenhouse gas emissions standards.

In light of these many significant variables, the agency seeks comment on these volume projections, including alternative fuel type applications, for MY 2017 and any subsequent model years to gain potentially better information to the overall costs and production-intent alternative fuel type applicability associated with this proposal.

B. What total costs does NHTSA estimate for the proposal?

The agency has estimated the total costs of the proposal in Table IV–2 and Table IV–3 below.

TABLE IV–2—ESTIMATED INDUSTRY COSTS FOR PROPOSAL IN FIRST MODEL YEAR (2012$)

	Low	High
Permanent and Prominent Display Badge	$6,713,112	$13,292,937
Tooling (all fuel types)	41,064	284,287
Fuel Compartment Label	.....	827,436
Owner's Information	.....	348,352
Total	7,929,963	14,753,011

* Values derived from Projected MY2017 Industry Volume of Alternative Fuel Vehicles (Including LSVs).

TABLE IV–3—ESTIMATED ANNUAL INDUSTRY COSTS FOR PROPOSAL AFTER THE FIRST MODEL YEAR (2012$)

	Low	High
Permanent and Prominent Display Badge	$6,713,112	$13,292,937
Fuel Compartment Label	.....	827,436
Owner's Information	.....	328,081
Total	7,868,629	14,448,453

* Values derived from Projected MY2017 Industry Volume of Alternative Fuel Vehicles (Including LSVs).

The estimated costs per requirement are described in detail in the following discussion.

1. What costs does NHTSA estimate for the proposal for ''Permanent and Prominent Display'' of Alternative-Fuel capability?

The agency spoke with a supplier of badges to the automotive industry to gain a better understanding of badge development and implementation options, along with potential piece costs for those options.[50] During the discussion, the supplier suggested multiple options that could align with the lead and alternative proposals for meeting the statutory obligations of a ''permanent and prominent display'' of a vehicle's capability to operate on an alternative fuel.

[50] NHTSA's records of these meetings are available in the docket for this rulemaking.

The first consisted of plastic molded into a specified design. This molded part would be chrome plated and finished with additional decorative or colored aspects per the specified design. Some key aspects of this design are its durability and commonality with model or brand badges found on vehicles in production today. A key consideration for this badge technology is the need to ensure that the rear surface of the badge, the surface that would adhere to a vehicle via an adhesive, has a contour that would be adaptable to most any vehicle due to the rigidity of the plastic molded part.

Another badge technology option is a foil-type material containing the natural language or design, which is covered in a protective urethane coating. The urethane coating provides thickness to the badge and could provide some limited contouring on the surface to add emphasis to components of the design or language contained on the urethane encased foil. The urethane-coated design does provide some cost and tooling advantages over the chrome-plated, ABS plastic molded part, albeit at the possible expense of attractiveness or readability as a badge employing these materials typically results in the text being ''protected'' by a relatively thick layer of material. In either of the two material approaches, the badge is intended to remain affixed and readable over the useful life of the vehicle.

Consistent with the proposal for application of a badge containing natural language, the agency has developed estimated costs associated with the projected alternative fuel vehicle volume for MY 2017 as the basis for annual costs. These costs are considered annual costs with the potential to increase linearly with an increase of alternative fuel vehicles in the marketplace.

The following table contains estimated aggregated labor cost for affixing badges to vehicles in a production environment. The labor value was estimated at $0.35 per badge based on a labor rate of approximately $21 per hour [51] and allowing for one minute of time to apply the badge to the vehicle in the production environment, parameters which the agency considered reasonable for the labor involved.

TABLE IV–4—POTENTIAL BADGE LABOR COST MY2017 (2012$)

Fuel type	Labor cost	Labor hours
Ethanol	$1,336,494	63,642.58
Natural Gas	1,505	71.67
Electric (BEV)	11,273	536.81
Electric (PHEV/EREV)	16,674	793.98
Hydrogen	96	4.57
LPG	963	45.83
Total	1,367,004	65,095.44

The following table shows estimated tooling costs for badges based on information provided by an automotive industry badge supplier.[52] The costs are shown as low and high range values for each badge material type (urethane and ABS plastic/chrome). The estimated tooling costs are expected to be a one-time cost for developing the tooling required to produce either badge type versus a continuous year-over-year aggregated piece cost because, once developed, the designs are not intended to change over time.[53] In addition, these tooling costs would also apply to any future alternative fuel badges that would enter the U.S. market as tooling development is required for each badge design.

TABLE IV–5—MY 2017 ESTIMATED BADGE TOOLING COST (2012$)

	Foil/urethane		ABS plastic/chrome	
	Low	High	Low	High
Per Fuel Type	$6,844	$8,950	$31,587	$47,381

The following table shows estimated annual aggregate industry material cost for manufacturing badges in a production environment (without labor cost). The ranges of costs were developed based on information provided by an automotive industry badge supplier.[54] The low and high cost range values for manufacturing the two types of badge materials (foil/urethane and ABS plastic/chrome) are multiplied by the estimated alternative fuel vehicle volumes to arrive at an annual aggregate ''permanent and prominent display'' cost. The potential estimated labor values discussed in Table IV–4 would need to be combined with these values to arrive at total estimated annual cost.

TABLE IV–6—MY 2017 ESTIMATED ''PERMANENT AND PROMINENT DISPLAY'' AGGREGATED INDUSTRY MATERIAL COSTS (2012$)

	Foil/urethane		ABS plastic/chrome	
Ethanol	$5,226,788	$9,247,395	$7,639,152	$11,659,758
Natural Gas	5,886	10,413	8,602	13,130
Electric (BEV)	44,087	77,999	64,434	98,347
Electric (PHEV/EREV)	65,208	115,367	95,303	145,463
Hydrogen	375	664	548	837
LPG	3,764	6,660	5,501	8,397
Biodiesel	.....	.....	.....	.....
Totals	5,346,108	9,458,498	7,813,542	11,925,932

2. What costs does NHTSA estimate for the ''Owner's Manual Information'' on alternative fuel capability and benefits?

The agency generated the following cost estimates for the development and implementation of the owner's manual information describing the capabilities and benefits of alternative fuel usage.

[51] United States Bureau of Labor Statistics, May 2012, Production Occupations, 51–2099 Assemblers and Fabricators, All Other, hourly mean wage: $21.14 per hour. *http://www.bls.gov/oes/current/oes512099.htm* (last accessed January 27, 2014).

[52] Conversation between NHTSA staff and a representative of the Douglas Corporation, December 22, 2010. A record of this meeting is available in the docket for this rulemaking.

[53] However, the agency acknowledges production tooling does have a limited useful life and can require maintenance during this useful life. For purposes of this proposal, the agency is recognizing the initial cost to develop tooling to produce badge designs. Any subsequent costs are dependent on factors involving production techniques, machine tool maintenance and other variables across, potentially, multiple suppliers that the agency is not able to estimate for this proposal.

[54] Conversation between NHTSA staff and a representative of the Douglas Corporation, December 22, 2010. A record of this meeting is available in the docket for this rulemaking.

TABLE IV–7—ESTIMATED ALTERNATIVE FUEL OWNER'S MANUAL INFORMATION ANNUAL PRINTING COST (2012$)

Startup Costs	Rate	Hours	Cost
Entry Level Technical Writer	$22.60	16.00	$362
Supervisory Technical Writer	33.59	8.00	269
Associate General Counsel	99.17	5.00	496
Labor Cost	.....	.....	1,126
Number of Manufacturers (est. 18)	.....	.....	20,271
Annual Costs	**Rate**	**Pages**	**Cost**
Printing—per page	$0.042	2.00	$0.084
Printing per pagex vehicle volume Table IV–1	.....	.....	328,081
Total Cost	.....	.....	348,352

3. What costs does NHTSA estimate for fuel compartment alternative fuel identification?

The agency is proposing the application of an adhesive label to the inside of the fuel compartment door or ''screen-printing'' language to the fuel filler cap for vehicles capable of operating on an alternative fuel. The fundamentals of this proposal are consistent with labeling currently in production from some manufacturers producing alternative fuel capable vehicles.

To develop cost estimates for this proposal, the agency spoke to suppliers of the fuel compartment alternative fuel labels currently in production to learn more about lead time and piece cost pricing.[55] Using the estimated MY 2017 alternative fuel vehicle volume discussed above as a basis, the agency developed the following industry annual cost estimate including and excluding labor.

For purposes of this cost estimate, the agency estimated the cost associated with producing a separate, adhesive-type label. The agency believes this provides an upper bound estimate as an alternative to implement a ''screen-printed'' label on the fuel filler cap which could potentially be implemented at no piece cost increase because printing information on the fuel tank cap is nearly standard industry practice. In addition, there would be no additional assembly labor cost for attaching the fuel filler cap.

For estimates involving an adhesive label, the agency assumed a per-label cost of $0.037 and used the labor value of $0.175 per label. The labor value is one-half the labor value used for the cost estimate for a ''permanent and prominent display.'' The agency views the fuel tank compartment label application as a less precise labor operation, yielding a reduced estimated labor cost. Based on discussion with industry, NHTSA believes that this is an appropriate value for application of the label as proposed.[56]

TABLE IV–8—MY 2017 FUEL COMPARTMENT ADHESIVE LABEL AGGREGATED INCREMENTAL ANNUAL COST (2012$)

Fuel type	Vehicles	$ w/o labor	$ w/labor
Ethanol	3,818,555	$140,721	$808,968
Natural Gas	4,300	158	911
Electric (BEV)	32,209	1,187	6,823
Electric (PHEV/EREV)	47,639	1,756	10,092
Hydrogen	274	10	58
LPG	2,750	101	583
Totals	3,905,727	143,934	827,436

The agency notes these estimates are based on a piece cost for a label production run of approximately 25,000 labels that include setup and the batch printing run. As defined by the estimated MY 2017 alternative fuel vehicle production volume estimates developed for this proposal, some alternative fuel types will not achieve this volume for the single 2013 model year. The agency acknowledges that this condition may exist for some time regarding specific fuel types, which could require a smaller batch-run of labels that increases piece cost. However, the agency does not foresee these smaller batch runs having a significant effect on the overall cost estimates associated with the proposed label. Conversely, in some cases, a single production run of 25,000 labels would enable a sufficient supply to cover four or five model years without the need for additional sourcing.

C. What benefits does NHTSA estimate for this proposed rule?

As information on the effects of these badges on consumer purchases is not available, a quantitative assessment of the effects of the impacts of badges would be highly speculative. Therefore, NHTSA was not able to quantitatively assess the benefits of this rule. NHTSA notes that the statutory mandate of EISA does not require NHTSA to justify the benefits of the rule as outweighing its costs. However, the agency believes that it is important to recognize the

[55] Conversation with Whitlam Label Company, Inc., November 11, 2010. A record of this meeting is available in the docket for this rulemaking.

[56] These cost estimates do not exclude the volume of vehicles with voluntary labeling at the fuel filler compartment that identifies the alternative fuel type, as an unknown percentage of that voluntary compliance may be due to the labeling requirement of 32905(f) to receive credits under 32906(a). As those credits decrease after 2017 and expire after 2019, current estimates of voluntary compliance may be misleading beyond the first years of this program.

anticipated qualitative benefits of this action.

The primary benefits associated with this proposed rule come from any improvements in consumer decision-making that stems from helping consumers identify which vehicles run on alternative fuels.

The current widespread presence of badges on vehicles, such as make, model and dealership information, supports that external badges influence consumers. The proposed external badges identifying vehicles that are capable of operating on an alternative fuel will heighten awareness of alternative fuel vehicles, thereby making potential consumers more aware of the diverse vehicles choices available on the market. NHTSA believes that this rule will help alternative fuel vehicle deployment by identifying early adopters of these technologies. New technologies, regardless of their relative benefits to previous technologies, are likely to face a slow diffusion process.[57] As part of the ''diffusion of innovations'' [58] process, the dissemination of information on early adopters of a particular innovation is a key component of that innovation's market success.[59]

Vehicles currently in production with alternative fuel capabilities may not be readily distinguishable from their conventional fuel counterparts absent an identifying badge. Greater exposure to the available vehicle choices before making purchasing decisions will complement enhanced consumer information on energy costs and savings on the dealer lot (such as information provided through the recently adopted fuel economy labels).[60] NHTSA also believes that informed choice, while not quantifiable, is an end in itself.

Another anticipated benefit is a decrease in fueling mistakes that could occur with an increased volume and diversity of alternative fueled vehicles on the road along with a potential expansion of fueling options at conventional fueling stations. The agency is not aware of a quantification of safety or economic costs associated with these mistakes, and seeks comment on this issue.

The agency believes that the benefits of this proposal will be higher than the costs. NHTSA requests comment on the benefits described here, and on any additional benefits and/or ways to quantify benefits.

V. Enforcement and Compliance

In adding the 32908(g) requirements, which apply to automobiles, Congress did not amend the existing compliance and civil penalty provisions for automobiles in 49 U.S.C. Chapter 329; therefore, NHTSA tentatively concludes that those provisions apply for regulations promulgated under 32908(g).

A. What compliance provisions govern regulations promulgated under 32908(g)?

49 U.S.C. 32911(a) states, in relevant part, that a person commits a violation of Chapter 329 if the person fails to comply with regulations and standards prescribed under Chapter 329, except sections 32902 (fuel economy standards), 32903 (fuel economy credits), 32908(b) (EPA's fuel economy labeling requirements), 32917(b) (fleet-average fuel economy standards for executive agency automobiles), and 32918 (retrofit devices) and regulations and standards prescribed under those sections. 32908(g) does not fall within those exceptions. Therefore, a violation of 32908(g) is a violation of Chapter 329, thereby subjecting the person to penalties under 32912 as discussed below. A failure to comply with the proposed regulations might include, but would not be limited to, failing to affix a required badge or label, failing to include required text in an owner's manual or including incorrect text, or affixing a badge that does not meet the useful life requirements specified by the agency.

We note that 32911(a) also states that the Secretary of Transportation (by delegation, the Administrator of NHTSA) shall conduct a proceeding, with an opportunity for a hearing on the record, to decide whether a person has committed a violation, and that any interested person may participate in that proceeding. NHTSA has established rules of practice and procedures for adjudicative proceedings conducted pursuant to the Motor Vehicle Information and Cost Savings Act (now codified in relevant part at 49 U.S.C. Chapter 329) which require a proceeding on the record after opportunity for a public hearing. These rules of adjudicative procedure are set forth at 49 CFR Part 511. These procedures would apply to proceedings conducted to determine violations of the regulations proposed today.

B. What is the penalty for non-compliance with regulations promulgated under 32908(g)?

49 U.S.C. 32912(a) states that a person who violates 32911(a) is liable to the United States Government for a civil penalty of not more than $10,000 (now $16,000 as adjusted for inflation) [61] for each violation, and that a separate violation occurs for each day the violation continues. Thus, if, following the procedures laid out in 49 CFR Part 511, NHTSA finds that a person has committed a violation of any of the regulations proposed today, that person would be subject to civil penalties under 32912(a). 32912(d) states further that penalties shall be imposed under this section by written notice. 49 U.S.C. 32913 (compromising and remitting civil penalties), 32914 (collecting civil penalties), and 32915 (appealing civil penalties) would also apply to civil penalty actions for violations of the regulations proposed today.

NHTSA seeks comment on whether the agency should consider any additional information with respect to enforcement and compliance.

VI. Public Participation

NHTSA requests comment on all aspects of this proposed rule. This section describes how you can participate in this process.

A. How do I prepare and submit comments?

1. Further Instructions for Submitting Comments to the NHTSA Docket Are Described Below

Your comments must be written and in English. To ensure that your comments are correctly filed in the docket, please include the Docket Number NHTSA–2010–0134 in your comments. Your comments must not be more than 15 pages long.[62] NHTSA established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents, which are not subject to the page limit, to your comments.

If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using the Optical Character Recognition (OCR) process, thus allowing the agency to search and copy

[57] See Timothy F, Malloy and Peter Sinsheimer, Innovation, Regulation, and the Selection Environment, 57 Rutgers L. Rev 183, 189 (2004).

[58] *See* Everett M. Rogers, Diffusion of Innovations (5th ed. 2003).

[59] *See* Malloy & Sinsheimer, supra, at 188.

[60] 76 FR 39478.

[61] We note that the amount of $10,000 prescribed by 32912(a) has been updated by regulation for inflation. Per 49 CFR 578.6(h)(1), a person that violates 32911(a) is liable to the United States Government for a civil penalty of not more than $16,000 for each violation, and a separate violation occurs for each day the violation continues.

[62] 49 CFR 553.21.

certain portions of your submissions.[63] Please note that pursuant to the Data Quality Act, in order for the substantive data to be relied upon and used by the agencies, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines.

Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg_reproducible* (last accessed January 2, 2014), and DOT's guidelines may be accessed at *http://regs.dot.gov* (last accessed January 2, 2014).

2. Tips for Preparing Your Comments

When submitting comments, please remember to:

- Identify the rulemaking by docket numbers and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—the agencies may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the comment period deadline identified in the **DATES** section above.

B. How do I submit confidential business information?

Following are specific instructions for submitting confidential business information (CBI) to the agency.

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. When you send a comment containing CBI, you should include a cover letter setting forth the information specified in our CBI regulation.[64] In addition, you should submit a copy from which you have deleted the claimed CBI to the Docket by one of the methods set forth above.

C. Will the Agency consider late comments?

NHTSA will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent practicable, we will also consider comments received after that date. If interested persons believe that any new information the agency places in the docket affects their comments, they may submit comments after the closing date concerning how the agency should consider that information for the final rule.

However, the agency's ability to consider any such late comments in this rulemaking will be limited due to the time frame for issuing a final rule. If a comment is received too late for us to practicably consider it in developing a final rule, we will consider that comment as an informal suggestion for future rulemaking action.

D. How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. You may also read the materials at the NHTSA Docket Management Facility by going to the street address given above under **ADDRESSES**.

VII. Regulatory Notices and Analyses

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Orders 12866 and 13563 and the Department of Transportation's regulatory policies and procedures. This action is not significant and therefore was not subject to review by OMB under Executive Order 12866. The benefits and costs of this proposal are described above in Section IV. Because the proposed rule would, if adopted, not be economically significant, the agency has not prepared a Preliminary Regulatory Evaluation.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' [65] No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. It is hereby certified that this proposed rule would not have a significant economic impact on a substantial number of small entities. The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)).

If adopted, the proposal would directly affect motor vehicle manufacturers and final-stage manufacturers that manufacture or are planning to manufacture alternative fuel vehicles. There are an estimated nine large single stage motor vehicle manufacturers and about three small U.S. manufacturers of light plug-in hybrid and electric vehicles that would be subject to the requirements of this proposal.[66] Similarly, there are at least six manufacturers of low-speed vehicles that are small businesses.[67]

A single stage automobile or light truck manufacturer (NAICS code 336111, Automobile Manufacturing; 336112, Light Truck and Utility Vehicle manufacturing) must have 1,000 or fewer employees to qualify as a small business.[68] We believe that all of the U.S. small vehicle manufacturers have fewer than 1,000 employees. We estimate these proposed requirements would cost each small vehicle manufacturer approximately $1.89 to $3.49 per vehicle, or far less than 1% of the cost of one of these vehicles, and would therefore not appear to constitute a significant economic impact. NHTSA seeks comment on this proposed certification.

[63] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

[64] 49 CFR Part 512.

[65] 13 CFR 121.105(a).

[66] Phoenix, Tesla, and Via Electric Vehicles.

[67] Club Car LLC, Columbia ParCar Corporation, Cruise Car Inc., STAR Electric Car Sales, Tomberlin, and Wheego Electric Car, Inc.

[68] 237 According to the Small Business Administration's small business size standards (*see* 13 CFR 121.201).

C. Executive Order 13132 (Federalism)

Executive Order 13132 requires NHTSA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, the agency may not issue a regulation with federalism implications, that imposes substantial direct costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the agency consults with state and local officials early in the process of developing the proposed regulation, provides a federalism summary impact statement to the Office of Management and Budget (OMB) in the preamble, and makes any written communications to the agency from state and local officials available to the director of OMB. NHTSA also may not issue a regulation with federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation, provides a federalism summary impact statement to OMB in the preamble, and makes any written communications to the agency from state and local officials available to the director of OMB.

NHTSA has identified several states [69] that promote the use of alternative fuel vehicles. Some have implemented programs, such as California's Clean Air Vehicle program, that provide High Occupancy Vehicle (HOV) lane access incentives for labeled or specially plated alternative fuel vehicles. These programs often require the owner to apply a badge, sticker, or special license plate that identifies the vehicle as an alternative fuel, low emission, or ''clean-'' Vehicle. This rule is not intended to preempt or in any way affect such programs, as the state programs do not regulate the manufacturers of alternative fuel vehicles or provide consumer information on specific types and benefits of alternative fuel vehicles. NHTSA does not believe that this proposed rule would have ''substantial direct effects on the States, the relationship between the national government and the States or on the distribution of power and responsibilities among the various levels of government'' as described in Executive Order 13132.

EISA does not expressly preempt state laws regarding consumer information or education on alternative fuel vehicles. Under Executive Order 13132, where a federal statute does not expressly preempt state law and there is no clear evidence that Congress intended for preemption to exist, the agency may find that its regulations preempt state law ''only when the exercise of State authority directly conflicts with the exercise of Federal authority under the Federal statute.'' When an agency foresees the possibility of a conflict between state law and federally protected interests, the agency shall attempt to avoid such a conflict through consultation with the appropriate state and local officials. NHTSA is unaware of any state laws regarding consumer information or education on alternative fuel vehicles that would directly conflict with the exercise of Federal authority in this proposed regulation.

NHTSA tentatively concludes that this proposed action would not likely have federalism implications. However, we are aware that some states may have an interest in this proposal, and we welcome information that may help the agency more fully understand how our efforts may coordinate or conflict with state programs and policies. We therefore solicit comment on this proposal from state and local officials and other interested persons.

D. National Environmental Policy Act (NEPA)

For the purposes of the National Environmental Policy Act, NHTSA has determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' [70] NHTSA has considered whether this rulemaking would have any retroactive effect. This proposed rule does not have any retroactive effect.

F. Unfunded Mandates Reform Act

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 expenditures by States, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for 2012 results in $136 million (115.381/81.606 = 1.41). The assessment may be included in conjunction with other assessments, as it is here. This proposal will not result in consumer costs of more than $141 million.

G. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (e.g., the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical.

Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as ''performance-based or design-specific technical specification and related management systems practices.'' They pertain to ''products and processes, such as size, strength, or technical performance of a product, process or material.''

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

For this proposal, the only applicable voluntary consensus standards that NHTSA discovered are the joint SAE/ISO standards mentioned above in the context of research and as a potential alternative proposal. Following the path of using these standards in the context of this proposal poses challenges. The agency believes all fuel types may not be appropriately represented by these symbols and currently some symbols do not exist for specific fuel types. Adding new fuel types may involve revisiting and republishing standards; a time

[69] The states include Arizona, California, Colorado, Florida, Georgia, Hawaii, Maryland, New Jersey, New York, North Carolina, Tennessee, Utah and Virginia.

[70] 61 FR 4729 (Feb. 7, 1996).

consuming process. In addition, the symbols were fundamentally developed for use on controls, the vehicle instrument cluster and road signs versus the application as an exterior badge. The agency believes the symbols, possibly, would have taken a different form if designed from the outset as an exterior badge, where aesthetics and complementing an overall theme may take a higher priority, versus being developed to specified guidelines for application to controls, warning lamps and road signs. Finally, as discussed elsewhere in this proposal, NHTSA remains concerned that following this approach would discourage manufacturer investment in promoting alternative fuel vehicles, and that the redundancy issue (of both manufacturers and NHTSA investing time and effort in developing alternative fuel-specific symbols for each vehicle) make it not the best option.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution or Use)

Executive Order 13211 [71] applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. If the regulatory action meets either criterion, we must evaluate the adverse energy effects of the proposed rule and explain why the proposed regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

The proposed rule seeks to establish alternative fuel vehicle labeling and information requirements that aim to promote the use of alternative fuels and reduce consumption of petroleum. We have tentatively concluded that this proposed rule will not have any adverse energy effects but will instead have positive effects. Accordingly, this proposed rule is not designated as a significant energy action.

I. Regulatory Identifier Number

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

J. Department of Energy and Environmental Protection Agency Review

In accordance with 49 U.S.C. 32908(g)(1), we submitted this proposed rule to the DOE and the EPA for consultation and review.

K. Plain Language

Executive Orders 12866 and 13563 require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

L. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an organization, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.dot.gov/privacy.html* (last visited January 10, 2011).

M. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a federal agency unless the collection displays a valid OMB control number.

As described throughout this notice, NHTSA is proposing to require badges, labels and owner's manual information for new passenger cars and light trucks weighing less than 8,500 pounds in order to increase consumer awareness regarding the benefits and use of alternative fuels. In general, the proposed rule would require manufacturers to disclose information supplied by NHTSA to consumers, and these requirements would not be considered a ''collection of information'' under the Paperwork Reduction Act.[72] However, for certain types of alternative fuel vehicles, manufacturers would be required to affix a badge to the vehicle, but NHTSA has not supplied the exact language to be used on the badge. These include vehicles operating on alcohol other than ethanol or methanol and vehicles operating on fuel derived from biological materials other than biodiesel. Additionally, for certain types of alternative fuel vehicles, manufacturers would be required to disclose additional information on the proposed fuel filler compartment label to assist consumers. For vehicles using liquid fuels, manufacturers would be required to include the appropriate maximum acceptable mixture levels of fuels that may contain a blend of fuel types, such as ethanol or biodiesel. For battery-only electric vehicles and plug-in hybrids, manufacturers would be required to include the recommended charging voltage and additional voltage levels that can used for recharging the vehicles. NHTSA will seek approval of any information collection requirements proposed in this NPRM from OMB.

List of Subjects in 49 CFR Part 575

Consumer protection, Motor vehicle safety, Reporting and recordkeeping requirements, and tires.

For the reasons set forth in the preamble, NHTSA proposed to amend 49 CFR part 575 as follows:

■ 1. Revise the authority citation to read as follows:

Authority: 49 U.S.C. 32302, 32304(A), 30111, 30115, 30117, 30123, 30166, 30168, and 32908, Pub. L. 104–414, 114 Stat. 1800, Pub. L. 109–59, 119 Stat. 1144, Pub. L. 110–140, 121 Stat. 1492, 15 U.S.C. 1232(g); delegation of authority at 49 CFR 1.95.

■ 2. Add § 575.402 to read as follows:

§ 575.402 Alternative Fuel Vehicle Identification and Owner's Manual Information.

(a) *Purpose and scope.* The purpose of this section is to inform consumers which vehicles are capable of operating on alternative fuels and the benefits of using alternative fuels, including their renewable nature and environmental benefits, by conveyance through a permanent and prominent display, a label attached to the fuel tank filler compartment, and standardized owner's manual information.

[71] 66 FR 28355 (May 18, 2001).

[72] 5 CFR 1320.3(c)(2)

(b) *Application.* This section applies to automobiles rated at not more than 8,500 pounds gross vehicle weight with the capability to operate on the alternative fuels as defined by 49 U.S.C. 32901(a)(1).

(c) *Definitions.* (1) *Alternative fuel* has the same meaning as defined in 49 U.S.C. 32901(a)(1).

(2) *Permanent and prominent display* means a badge affixed to the exterior of an automobile, designed for and applied with the ability to remain readable, and attached to the automobile throughout its entire useful life. The badge should be covered by the automobile manufacturer warranty during the automobile's warranted period.

(3) *Fuel compartment label* means text printed on the exterior of the fuel filler cap or an adhesive label affixed to the inside of an automobile refueling compartment, electrical charge port or connection point access door.

(d) *Requirements.* (1) *Required permanent and prominent display.* Prior to being offered for first retail sale, each manufacturer shall affix or cause to be affixed, and each dealer shall maintain or cause to be maintained, an exterior badge on each applicable automobile capable of operation on alternative fuel.

(i) *Location.* The exterior badge shall be located and readily visible at the rear of the vehicle within close proximity to the vehicle model name, model designation and/or additional environmental/advanced technology badging, if applicable. If a vehicle is not equipped with a model name, model designation and/or additional environmental/advanced technology badging, the exterior badge shall be placed in the lower right corner of the vehicle's rear trunk-lid, closeout panel, rear hatch or rear fender depending on vehicle type body configuration.

(ii) *Content.* The badge shall reflect, at the minimum, in natural language the type of alternative fuel the vehicle is capable of operating on in accordance with the following table:

Alternative fuel *	Proposed badge natural language minimum description
Methanol **	Methanol.
Denatured Ethanol **	Ethanol.
Other Alcohols **	Name of other alcohol derived fuel.
Natural Gas	Natural Gas.
Liquefied Petroleum Gas	Propane.
Coal Derived Liquid Fuels	Coal to Liquid.
Hydrogen	Hydrogen.
Fuels (except alcohol) derived from biological materials	Biodiesel *** or name of other fuel derived from biological materials.
Electricity (Battery Electric Vehicle)	Electric.
Electricity (Plug-In Hybrid Electric Vehicle)	Plug-In Hybrid Electric.

* As defined by 49 U.S.C. 32901(a)(1).

** Note: To be considered an alternative fuel, alcohol derived fuels need to be blended at levels of at least 85 percent of the total mixture when blended with gasoline or other fuels.

*** The agency notes that it recognizes only 'neat' biodiesel (B100) as an alternative fuel. 63 FR 15322 (Mar. 31, 1998).

(iii) *Minimum letter height.* The defined natural language minimum description letter size shall be no smaller than 15 millimeters in height when the ''natural language minimum description'' is presented as a standalone badge containing no other text and no smaller than 5 millimeters when the ''natural language minimum description'' is accompanied by other text.

(iv) *Letter finish.* The defined natural language minimum description shall be finished in chrome or silver. If the alternative fuel name in the badge contains a background color independent of the vehicle color, this background color shall provide clear contrast to the alternative fuel name.

(v) *Minimum badge height.* The badge used for ''permanent and prominent'' display shall be no less than 15 millimeters in height.

(2) *Required owner's manual information.* The owner's manual of each vehicle capable of operating on alternative fuels shall contain the following text in the same font and type size specification as other standard text found throughout the owner's manual. In addition, the text shall be located within a box, bordered with a 1-pt. solid black line, with no other text inside the box.

{Section Heading:} Capabilities and Benefits of Using Alternative Fuels

This vehicle is recognized by the U.S. Department of Transportation as an alternative fuel vehicle, because it is capable of operating on a biofuel, electricity, hydrogen, natural gas, propane or other fuel that is not derived primarily from petroleum. Alternative fuel vehicles may provide benefits both to their users and to the nation as a whole over their useful lifetime by operating on non-petroleum-based alternative fuels. Some of the benefits of alternative fuel usage in this vehicle may include:

• *Energy and National Security:* Driving this vehicle on alternative fuels may help to reduce our country's dependence on foreign oil. The United States imports a substantial amount of its petroleum, the majority of which is used to fuel vehicles in the form of gasoline and diesel. Petroleum imports can be vulnerable to supply disruptions and price shocks depending on conditions in the countries that supply us with oil. By using alternative fuels, you may be helping the country be less vulnerable to the supply disruptions and price variability associated with imported oil, and supporting U.S. alternative fuel producers.

• *Environmental Benefits*—Renewability and Emissions: Many alternative fuels are renewable, which means that their sources can be replenished—like plant-based ethanol, or solar-powered electricity. Renewable fuels may have less environmental impact than conventional fuels. Additionally, compared with vehicles fueled by conventional, petroleum-derived diesel and gasoline, many alternative fuel vehicles are estimated to reduce the life cycle greenhouse gas emissions of carbon dioxide.

• *Fuel Type and Availability:* Alternative fuels are increasingly in availability. To learn more about the availability of alternative fuel that can power this vehicle, please visit the Department of Energy's Alternative Fueling Station Locator at *http://www.afdc.energy.gov/afdc/locator/stations/* to determine the location of refueling and/or recharging facilities that meet your driving needs.

Additional Information Resources

• For more information about alternative fuels and alternative fuel

vehicles, please visit the Department of Energy's Alternative Fuels & Advanced Vehicles Data Center at *http://www.afdc.energy.gov*.

• For more information about vehicle safety, please visit *www.safercar.gov*.

(3) *Required fuel filler compartment label.* Prior to being offered for first retail sale, each manufacturer shall affix, or cause to be affixed, and each dealer shall maintain, or cause to be maintained, a label that complies with the requirements of 49 U.S.C. 32905(g)(3) on each applicable automobile capable of operation on an alternative fuel, as defined under 49 U.S.C. 32901(a)(1).

(i) *Location.* The label shall be located within the fuel filler compartment in the form of an adhesive label or as text on the exterior of the fuel filler cap.

(ii) *Content.* For each type of alternative fuel, the label shall include the content indicated in the following table:

Defined alternative fuel *	Alternative fuel name for use in labeling	Maximum blend level (liquid)	Charging voltage level(s)
Methanol **	Methanol	X	
Denatured Ethanol **	Ethanol	X	
Other Alcohols **	[Name of Alcohol Derived Fuel]	X	
Natural Gas	CNG		
Liquefied Petroleum Gas	LPG		
Coal Derived Liquid Fuels	Coal Derived Liquid Fuels	X	
Hydrogen	Hydrogen		
Fuels (except alcohol) derived from biological materials	Biodiesel or [Name of other Biologically derived fuel]	X	
Electricity (Battery Electric Vehicle)	Electricity		X
Electricity (Plug-In Hybrid Electric Vehicle)	Electricity/[Other Fuel Type(s)]	X ***	X

* 49 U.S.C. 32901(a)(1).

** Note: To be considered an alternative fuel, alcohol derived fuels need to be blended at levels of at least 85 percent of the total mixture when blended with gasoline or other fuels.

*** For dual fuel capable non-electric power source.

(iii) *Minimum letter height and style.* The defined minimum letter size shall be no smaller than 5 millimeters in height and in ''bold-face'' type.

(iv) *Letter contrast.* The fuel compartment labeled text shall be presented in high contrast to the background color of the material the text is printed on.

Issued in Washington, DC, under authority delegated in 49 CFR part 1.95.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2014–02957 Filed 2–19–14; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL REGISTER

Vol. 79 Thursday,
No. 34 February 20, 2014

Part III

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation for Certain Industrial Equipment: Alternative Efficiency Determination Methods and Test Procedures for Walk-In Coolers and Walk-In Freezers; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[Docket Number EERE–2011–BT–TP–0024]

RIN 1904–AC46

Energy Conservation for Certain Industrial Equipment: Alternative Efficiency Determination Methods and Test Procedures for Walk-In Coolers and Walk-In Freezers

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

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The U.S. Department of Energy (DOE) proposes to revise its existing regulations for walk-in coolers and walk-in freezers regarding the use of methods other than testing for certifying compliance and reporting ratings in accordance with energy conservation standards. DOE also proposes clarifications its test procedures for this equipment.

DATES: *Comments:* DOE will accept comments, data, and information regarding this supplemental notice of proposed rulemaking (SNOPR) no later than March 24, 2014. See section V, ''Public Participation,'' for details.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Alternatively, interested persons may submit comments, identified by docket number EERE–2011–BT–TP–0024 and/or RIN 1904–AC46, by any of the following methods:

- *Email: AED-ARM-2011-TP-0024@ee.doe.gov.* Include EERE–2011–BT–TP–0024 and/or RIN 1904–AC46in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption.
- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, Mailstop EE–5B, 1000 Independence Avenue SW., Washington, DC 20585– 0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza SW., 6th Floor, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

For detailed instructions on submitting comments and additional information on the rulemaking process, see section V of this document (Public Participation).

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

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;D=EERE-2011-BT-TP-0024.* This Web page contains a link to the docket for this notice on the *www.regulations.gov* site. The *www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for information on how to submit comments through *www.regulations.gov*.

For information on how to submit a comment or review other public comments and 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 Office, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

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I. Authority and Background

A. Authority

Title III, Part C of the Energy Policy and Conservation Act of 1975 (''EPCA'' or ''the Act'', Pub. L. 94–163) sets forth a variety of provisions designed to improve energy efficiency. The National Energy Conservation Policy Act (''NECPA'', Pub. L. 95–619) amended EPCA and established the energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) The Energy Independence and Security Act of 2007 (''EISA 2007'') further amended EPCA to include, among others, two types of industrial equipment that are the subject of today's

notice: walk-in coolers and walk-in freezers (collectively, ''walk-ins'' or ''WICFs''). (42 U.S.C. 6311(1)(G)) Walk-ins are enclosed storage spaces of less than 3,000 square feet that can be walked into and are refrigerated to temperatures above and at or below 32 degrees Fahrenheit, respectively. (42 U.S.C. 6311(20)(A)) This term, by statute, excludes equipment designed for medical, scientific, or research purposes. (42 U.S.C. 6311(20)(B))

Under EPCA, the energy conservation program generally consists of four parts: (1) Testing; (2) labeling; (3) establishing Federal energy conservation standards; and (4) certification and enforcement procedures. The testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for making representations about the efficiency of that equipment (42 U.S.C. 6314(d)), including those representations made to DOE that the covered equipment complies with the applicable energy conservation standards adopted pursuant to EPCA. (42 U.S.C. 6316(h)) Similarly, DOE must use these test requirements to determine whether the products comply with the relevant energy conservation standards. (42 U.S.C. 6316(h)) For certain consumer products and commercial and industrial equipment, DOE's testing regulations currently allow manufacturers to use an alternative efficiency determination method (AEDM), in lieu of actual testing, to simulate the energy consumption or efficiency of certain basic models of covered products and equipment under DOE's test procedure conditions. As explained in further detail below, an AEDM is a computer model or mathematical tool used to help determine the energy efficiency of a particular basic model.

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures that DOE must follow when prescribing or amending test procedures for covered products. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section must be reasonably designed to produce test results that measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

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. 6314(b)(2)) Finally, in any rulemaking to amend a test procedure, DOE must determine the extent to which the proposed procedure would alter the equipment's measured energy efficiency. If DOE determines that the amended procedure would alter that equipment's measured energy efficiency, DOE must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6314(a)(6)(D).

B. Background

1. Alternative Efficiency Determination Method

As briefly noted above, AEDMs are computer modeling or mathematical tools that predict the performance of non-tested basic models. They are derived from mathematical models and engineering principles that govern the energy efficiency and energy consumption characteristics of a type of covered equipment. These computer modeling and mathematical tools, when properly developed, can provide a relatively straightforward and reasonably accurate means to predict the energy usage or efficiency characteristics of a basic model of a given covered equipment type. These tools can be useful in reducing a manufacturer's testing burden.

Where authorized by regulation, AEDMs enable manufacturers to rate and certify their basic models by using the projected energy use or energy efficiency results derived from these simulation models. DOE currently permits manufacturers of certain expensive or highly customized equipment to use AEDMs when rating and certifying their equipment.

DOE believes other similar equipment that must currently be rated and certified through testing, such as walk-in refrigeration systems, could also be rated and certified through the use of computer or mathematical modeling. Consequently, to examine whether AEDM usage would be appropriate for walk-in refrigeration systems, DOE sought comment on this topic and other related issues in a Request for Information (RFI), which was published in the **Federal Register** on April 18, 2011. 76 FR 21673.

DOE subsequently issued a Notice of Proposed Rulemaking (NOPR), which was published in the **Federal Register** on May 31, 2012 (May 2012 NOPR), that proposed to expand and revise DOE's existing AEDM requirements for certain commercial equipment covered under EPCA. 77 FR 32038. Specifically, the May 2012 NOPR proposed to allow manufacturers of walk-in refrigeration systems to use AEDMs when certifying the energy use or energy efficiency of basic models of equipment in lieu of testing. *Id.*

Subsequent to the May 2012 NOPR's publication, the Appliance Standards and Rulemaking Federal Advisory Committee (ASRAC) unanimously decided to form a working group to engage in a negotiated rulemaking effort on the certification of commercial HVAC, WH, and refrigeration equipment. During the Working Group's first meeting on April 30, 2013, Working Group members voted to expand the scope of the negotiated rulemaking efforts to include developing methods of estimating equipment performance based on AEDM simulations for commercial HVAC, WH, and refrigeration equipment. The issues discussed by the various participants during the negotiations with DOE were similar to those raised by the commenters in response to the May 2012 NOPR, which included AEDM validation and DOE verification of ratings derived using an AEDM. DOE adopted the Working Group's AEDM recommendation for commercial HVAC, WH, and refrigeration equipment in a Final Rule published in the **Federal Register** on December 31, 2013. 78 FR 79579. DOE notes that neither the Working Group nor the December 2013 final rule addressed the use of AEDMs for WICF refrigeration systems.

This supplemental notice of proposed rulemaking (SNOPR) proposes to align DOE's AEDM regulations by allowing the use of AEDMs when certifying the energy efficiency performance of walk-in refrigeration equipment in a manner similar to that which was recently established for commercial HVAC, refrigeration, and WH equipment. This approach, which was recommended by the Working Group, would help DOE establish a uniform, systematic, and fair approach to the use of these types of modeling techniques that will enable DOE to ensure that products in the marketplace are correctly rated—irrespective of whether they are subject to actual physical testing or are rated using modeling—without unnecessarily burdening regulated entities.

2. Test Procedures for WICF Refrigeration Equipment

The refrigeration system performs the mechanical work necessary to cool the interior space of a walk-in. The system typically comprises two separate primary components, a condenser/compressor (''condensing unit'') and an expansion valve/evaporator (''unit cooler''). DOE's regulations at 10 CFR 431.304, *Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers,*

incorporate by reference AHRI Standard 1250–2009, ''2009 Standard for Performance Rating of Walk-in Coolers and Freezers'' (AHRI 1250) as the testing method for walk-in refrigeration systems. 10 CFR 431.304(b)(9). AHRI 1250 establishes methods to follow when testing a complete refrigeration system (the ''matched system'' test), as well as separate methods to use for testing the unit cooler and condensing unit of a refrigeration system individually and then calculating a combined system rating (the ''mix-match'' test). AHRI 1250 also contains standard rating conditions for cooler and freezer systems; systems where the condenser is located either indoors or outdoors; and systems with single-speed, two-speed, or variable-speed compressors. AHRI 1250 also establishes a method for testing and rating unit coolers that are connected to a multiplex condensing system such as may be found in a supermarket. The rating produced by the AHRI 1250 test procedure is an annual walk-in energy factor (AWEF), defined as ''a ratio of the total heat, not including the heat generated by the operation of refrigeration systems, removed, in Btu [British thermal units], from a walk-in box during one year period of usage for refrigeration to the total energy input of refrigeration systems, in watt-hours, during the same period.'' AHRI 1250, at sec. 3.1.

In addition to these activities, DOE recently proposed energy conservation standards for walk-ins. See 78 FR 55782 (Sept. 11, 2013) (September 2013 standards NOPR). In that notice, DOE proposed standards for complete walk-in refrigeration systems that would require the ratings for the refrigeration system be derived using either the matched system or mix-match tests described above. DOE also proposed standards for unit coolers connected to a multiplex system, based on the unit cooler rating method described above. Responding to the NOPR, several interested parties discussed the concept of establishing separate standards for the unit cooler and condensing unit of a walk-in. In light of that discussion, and of the fact that the unit coolers and condensing units are often sold separately and in many cases are produced by different manufacturers, and that AHRI 1250 includes individual test methods for both components (i.e. the mix-match test method), DOE is proposing in this SNOPR to adopt a methodology that would require the manufacturer of either the unit cooler or condensing unit, if sold separately, to test and certify compliance with DOE's standards and when making representations of the WICF refrigeration system. Manufacturers of a complete WICF refrigeration system may continue to develop a system rating for the purposes of certifying compliance with DOE's standards and making representations of the WICF refrigeration system.

Furthermore, in reviewing AHRI 1250 and conducting limited testing on a WICF refrigeration system at a third-party laboratory to investigate the AEDM validation approach, DOE discovered several issues in the refrigeration test procedures that would require clarification and/or create unnecessary test burden. To simplify the procedure and to clarify certain aspects, DOE is also proposing to provide alternate language to certain requirements contained in AHRI 1250 that DOE's test procedure currently incorporates by reference.

3. Sampling Plan

In order to determine a certified rating for certifying compliance or making energy use representations, DOE requires manufacturers to test each basic model in accordance with the applicable DOE test procedure and apply the sampling plan. In today's notice, DOE is proposing a sampling plan for walk-ins consistent with other commercial equipment regulated under EPCA.

4. Test Procedures and Prescriptive Requirements for WICF Foam Panel R-Value

EPCA mandates prescriptive requirements for the thermal resistance of walk-in panels; wall, ceiling, and doors must have an insulation value of at least R–25 for coolers and R–32 for freezers. (42 U.S.C. 6313(f)(1)(C)) EPCA also requires the use of ASTM C518–04, *Standard Test Method for Thermal Steady-State Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus* (''ASTM C518–04'') to measure the insulation thermal resistance. (42 U.S.C 6314(a)(9)(A)) The walk-in test procedure at 10 CFR 431.304 incorporates ASTM C518–04 by reference. This reference standard is the method by which the thermal conductivity (the ''K factor'') of a walk-in panel is measured; the R-value of the panel is then determined by multiplying 1/K (the reciprocal of K) by the thickness of the panel. The R-value of a freezer panel is determined at a mean insulation foam temperature of 20 degrees Fahrenheit and the R-value of a cooler panel is determined at a mean insulation foam temperature of 55 degrees Fahrenheit. (42 U.S.C. 6314 (a)(9)(A)(iii) and (iv)) Manufacturers must currently use the test procedure detailed in 10 CFR 431.304(b) when certifying compliance with the panel energy conservation standards until January 1, 2015. Manufacturers must use the procedure in 10 CFR 431.304(c) when making representations of energy efficiency both currently and when certifying compliance starting on January 1, 2015. DOE is proposing to modify the test sample preparation procedures incorporated from ASTM C518–04 in both procedures to improve measurement accuracy.

5. Performance-Based Test Procedures for Energy Consumption of Envelope Components

In 10 CFR Part 431, Subpart R, Appendix A, DOE lays out a method for measuring performance-based efficiency metrics for certain WICF envelope components. This method draws from several existing industry test methods by incorporating by reference ASTM C1363–05 *Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus* and *Annex C Determination of the aged values of thermal resistance and thermal conductivity* from both DIN EN 13164 and DIN EN 13165 (two European Union-developed testing protocols) for measuring the energy consumption of WICF floor and non-floor panels. Appendix A also incorporates NFRC 100–2010[E0A1] *Procedure for Determining Fenestration Product U-factors* for determining the energy use of walk-in display and non-display doors. In today's notice, DOE is proposing to modify (1) the test procedures for WICF floor and non-floor panels to address comments received from stakeholders during the standards rulemaking and (2) the WICF display and non-display door test procedure to improve the clarity of the test method.

II. Summary of the Notice of Proposed Rulemaking

Today's proposal comprises five key elements.

First, the Department proposes to allow WICF refrigeration system manufacturers to use AEDMs to rate and certify their basic models by using the projected energy efficiency derived from these simulation models in lieu of testing. DOE is proposing to align the validation requirements proposed for WICF refrigeration AEDMs with those that have already been adopted for commercial HVAC, refrigeration, and WH equipment. DOE is considering this approach because the cooling and refrigeration systems used by these

equipment types operate under similar principles as the refrigeration systems used in walk-ins. This similarity, along with the practical considerations discussed elsewhere in this notice, lend support for applying similar or identical validation requirements for walk-ins as well. Also as part of this approach, the Department is addressing comments received in response to the May 2012 NOPR, which originally proposed to expand AEDMs to WICF refrigeration systems and proposed validation and verification requirements.

Second, today's SNOPR puts forth an alternative method for testing and rating the WICF refrigeration system for unit coolers and condensing units that are sold separately. Specifically, unit cooler manufacturers who distribute a unit cooler for use in a WICF refrigeration system must rate that cooler as though it were to be connected to a multiplex system, and must comply with the standard for a unit cooler connected to a multiplex system. Similarly, manufacturers who distribute a condensing unit for use in a WICF refrigeration system must determine the appropriate rating by using the nominal values for unit coolers proposed in this notice, in lieu of actual unit cooler test data, when calculating AWEF using the mix-match rating method in AHRI 1250. Consistent with this methodology and pending the outcome of the standards rulemaking, DOE is considering modifications to the certification requirements based on the following scheme: (1) A manufacturer that only produces unit coolers for use in a WICF refrigeration system would use the test method described above to establish the WICF refrigeration system rating for each unit cooler (system performance would be established by testing the unit cooler as though it is to be connected to a multiplex system (i.e., using the ''Walk-in Unit Cooler Match to Parallel Rack System'' test method in AHRI 1250, section 7.9))—then, the unit cooler manufacturer would certify the compliance of those basic models with the WICF refrigeration system standard; (2) a manufacturer that only produces condensing units would use the test method described above to establish the WICF refrigeration system rating for each condensing unit (system performance would be established by testing each condensing unit and combining it with the unit cooler nominal values (as proposed in this SNOPR))—then, the condensing unit manufacturer would certify compliance of those basic models with the WICF refrigeration system standard; or (3) a manufacturer that produces both unit cooler basic models and condensing unit basic models that are marketed and sold as a matched system would use the test method in AHRI 1250 to test the unit cooler and the condensing unit as a matched system to get a WICF refrigeration system rating for each matched system it produces and then certify compliance.

Third, DOE proposes the following modifications to the test procedure for WICF refrigeration components:

—Clarifications to the defrost test procedure;
—An alternative method for calculating the defrost energy and heat load of a system with electric defrost in lieu of a frosted coil test;
—A method for calculating defrost energy and heat load of a system with hot gas defrost;
—Change to the minimum fan speed and duty cycle during the off-cycle evaporator fan test;
—Removal of the refrigerant oil and refrigerant composition analysis testing requirements;
—Clarifications and changes to the temperature measurement requirements, intended to reduce testing burden;
—Addition of a test condition tolerance for electrical power frequency and removal the test condition tolerance for temperature of air leaving the unit;
—Quantification of the requirements for insulating refrigerant lines;
—Clarification of piping length requirement;
—Changes to the list of tests for unit coolers in table 15 to achieve consistency with another similar test method; and
—Clarification of voltage imbalance for three-phase power.

Fourth, DOE proposes to modify the current test procedure for measuring the insulation R-value of WICF panels. (10 CFR 431.304) The current DOE test procedure allows, but does not require, panels to be tested with non-foam facers or protective skins attached. (10 CFR 431.304(b)(5), (6) and (c)(5), (6)) Also, the current DOE test procedure allows panel test samples to be up to 4 inches in thickness. (10 CFR 431.304(b)(5) and (c)(5)) The test procedure requires that the R-value be measured at a mean temperature of 20 degrees Fahrenheit for freezer panels (10 CFR 431.304(b)(3) and (c)(3)) and 55 degrees Fahrenheit for cooler panels (10 CFR 431.304(b)(4) and (c)(4)); however no tolerance is currently specified for these temperatures. In light of recent concerns regarding the accuracy of ASTM C518–04 testing of which DOE had not previously been aware, DOE is proposing to require test samples be 1 inch in thickness and without non-foam facers, protective skins, internal non-foam members or edge regions. DOE is proposing to add flatness and parallelism constraints on the test sample surfaces that contact the hot and cold plates in the heat flow meter apparatus. DOE also proposes to add a tolerance of ±1 degree Fahrenheit for the mean temperature during panel R-value testing because DOE believes this will help ensure that the panel testing is conducted in a repeatable and reproducible manner at different laboratories.

Fifth, to all walk-in manufacturers to make energy use representations DOE is proposing a sampling plan for walk-ins consistent with other commercial equipment regulated under EPCA.

Sixth and finally, in response to manufacturer comments on the September 2013 standards NOPR, DOE is proposing to remove the existing performance-based test procedures for WICF floor and non-floor panels (10 CFR Part 431, Subpart R, Appendix A, sections 4.2, 4.3, 5.1, and 5.2). DOE recognizes that these performance-based procedures for WICF floor and non-floor panels are in addition to the prescriptive requirements established in EPCA for panel insulation R-values and, therefore, may increase the test burden to manufacturers.

All of the changes noted above, along with the appropriate sections of the CFR where these changes will appear, are detailed in the summary table below.

TABLE II.1—SUMMARY OF CFR CHANGES

Change	10 CFR Section
Allowing manufacturers to use AEDMs to rate WICF refrigeration systems	429.53.
Specific instructions for applying AEDMs to WICF refrigeration systems	429.70(f).
Changes to test procedures and prescriptive requirements for WICF foam panel R-value	431.304(b)(3)–(6) and 431.304(c)(3)–(6)
Amendments to AHRI 1250 refrigeration system test method, and the panel and door test methods	431.304(c)(8).

TABLE II.1—SUMMARY OF CFR CHANGES—Continued

Change	10 CFR Section
Methods for rating refrigeration components sold separately	431.304(c)(11).
Amendments to performance-based test procedures for energy consumption of envelope components	431 Subpart R, Appendix A.

In any rulemaking to amend a test procedure, DOE generally determines 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)) DOE has tentatively determined that there are no energy conservation standards in effect that would be significantly impacted by the proposed test procedure amendments. A full discussion follows in section III.E below.

Discussion

In response to the May 2012 NOPR, DOE received written comments from 28 interested parties, including manufacturers, trade associations and advocacy groups. Seven additional interested parties commented during the May 2012 NOPR Public Meeting on June 5, 2012. Table II.1 lists the entities that commented on the NOPR and their affiliation. These comments are discussed in more detail below, and the full set of comments, including the public meeting transcript, can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=25;po=0;D=EERE-2011-BT-TP-0024.*

TABLE III.1—INTERESTED PARTIES THAT COMMENTED ON THE MAY 2012 NOPR

Name	Acronym	Organization type
AAON, Inc.	AAON	Manufacturer.
The ABB Group	ABB	Manufacturer.
Air-Conditioning, Heating, and Refrigeration Institute	AHRI	Industry Trade Group.
Appliance Standards Awareness Project & American Council for an Energy-Efficient Economy.	Joint Comment	Advocacy Group.
Baldor Electric	Baldor Electric	Manufacturer.
Bradford White Corporation	Bradford White	Manufacturer.
Burnham Commercial	Burnham	Manufacturer.
Cooper Power Systems	Cooper	Manufacturer.
Crown Boiler Company	Crown Boiler	Manufacturer.
CrownTonka/ThermalRite/International Cold Storage	CT/TR/ICS	Manufacturer.
Danfoss	Danfoss	Manufacturer.
First Co.	First Co.	Manufacturer.
Goodman Global, Inc.	Goodman	Manufacturer.
Heatcraft Refrigeration Products LLC	Heatcraft Refrigeration	Manufacturer.
Hillphoenix, Inc.	Hillphoenix	Manufacturer.
Hussmann Corporation	Hussmann	Manufacturer.
Ingersoll Rand	Ingersoll Rand	Manufacturer.
Johnson Controls, Inc.	JCI	Manufacturer.
Lennox International, Inc.	Lennox	Manufacturer.
Lochinvar, LLC	Lochinvar	Manufacturer.
Mitsubishi Electric	Mitsubishi Electric	Manufacturer.
Modine Manufacturing Company	Modine	Manufacturer.
Mortex Products, Inc.	Mortex	Manufacturer.
National Electrical Manufacturers Association	NEMA	Industry Trade Group.
Nidec Motor Corporation	Nidec	Manufacturer.
Nordyne, LLC	Nordyne	Manufacturer.
Rheem Manufacturing Company	Rheem	Manufacturer.
Schneider Electric	SE	Manufacturer.
Southern Store Fixtures, Inc.	Southern Store Fixtures	Manufacturer.
Trane	Trane	Manufacturer.
True Manufacturing Co. Inc.	True Manufacturing	Manufacturer.
Unico, Inc.	Unico	Manufacturer.
United Cool Air	United Cool Air	Manufacturer.
United Technologies Climate, Controls & Security and ITS Carrier	UTC/Carrier	Manufacturer.
Zero Zone, Inc.	Zero Zone	Manufacturer.

In response to the SNOPR on AEDMs for commercial HVAC, refrigeration and WH equipment, which was published in the **Federal Register** on October 22, 2013, 78 FR 62472, DOE received a comment relevant to this rulemaking from Lennox International, Inc., a manufacturer of HVAC and commercial refrigeration equipment.

The Department also received relevant comments from 23 interested parties in response to the September 2013 Standards NOPR and related NOPR Public Meeting held on October 9, 2013. Table III.2 lists the entities that commented on that NOPR and their affiliation. These comments are discussed in more detail below, and the full set of comments, including the public meeting transcript, can be found at: *http://www.regulations.gov/*

#!docketDetail;D=EERE-2008-BT-STD-0015.

TABLE III.2—INTERESTED PARTIES THAT COMMENTED ON THE SEPTEMBER 2013 STANDARDS NOPR

Name	Acronym	Organization type
Air Conditioning Contractors of America	ACCA	Industry Trade Group.
Air-conditioning, Heating, and Refrigeration Institute	AHRI	Industry Trade Group.
American Council for an Energy Efficient Economy	ACEEE	Advocacy Group.
American Panel Corp	American Panel	Manufacturer.
Appliance Standards Awareness Project	ASAP	Advocacy Group.
Architectural Testing Inc	AT	
Bally Refrigerated Boxes, Inc	Bally	Manufacturer.
CrownTonka Walk-Ins, ThermalRite & International Cold Storage	CT/TR/ICS	Manufacturer
Danfoss Group North America	Danfoss	Manufacturer.
Heatcraft Refrigeration Products LLC	Heatcraft	Manufacturer.
Hillphoenix	Hillphoenix	Manufacturer.
HussmanCorporation	HussmanCorp	Manufacturer.
Imperial Brown	IB	Manufacturer.
KysorWarren	Kysor	Manufacturer.
Lennox International Inc	Lennox	Manufacturer.
Louisville Cooler Mfg	Louisville Cooler	Manufacturer.
Manitowoc	Manitowoc	Manufacturer.
National Coil Company	NCC	Manufacturer.
Nor-Lake, Inc	Nor-Lake	Manufacturer.
Northwest Energy Efficiency Alliance & The Northwest Power and Conservation Council	NEEA, et al	Advocacy Group.
Pacific Gas & Electric, Southern California Gas, Southern California Edison, San Diego Gas & Electric (Ca. State Independently Owned Utilities).	CA IOU's	Utility.
Thermo-Kool	Thermo-Kool	Manufacturer.
US Cooler Co	US Cooler	Manufacturer.

A. Alternative Efficiency Determination Method

In the May 2012 NOPR, in which DOE proposed to expand and revise existing AEDM requirements for commercial equipment covered under EPCA, DOE proposed, among other things, to allow the use of AEDMs for WICFs and to establish specific requirements for AEDM validation [1]—i.e., a process in which manufacturers demonstrate the accuracy of an AEDM model—and DOE verification [2]—i.e., a process followed by DOE when verifying the accuracy of an AEDM model—that would apply to this equipment.

Following the publication of the May 2012 NOPR, the Commercial Certification Working Group was formed in April 2013 to discuss and negotiate certification provisions for commercial heating, ventilation, and air conditioner (HVAC), refrigeration, and water heater (WH) equipment. The Working Group expanded the scope of coverage to include AEDMs. As part of its negotiations, the Working Group also developed AEDM validation and verification requirements. These negotiations led to the publication of an SNOPR on October 22, 2013, hereafter referred to as the October 2013 SNOPR, in which DOE proposed for adoption the Working Group's recommendation on AEDMs, basic model definitions, and compliance requirements for commercial HVAC, refrigeration, and water heating equipment. (78 FR 62472) On December 31, 2013, DOE issued a final rule for AEDM usage by manufacturers of these products. See 78 FR 79579. Today's SNOPR proposes to require that the AEDM validation regulations similar to those that apply to commercial HVAC, refrigeration, and WH equipment would also apply to WICF refrigeration systems. DOE is also addressing comments in response to the May 2012 NOPR.

1. Applicable Equipment

In the May 2012 NOPR, DOE proposed to allow the use of AEDMs for WICFs, but limited the proposal to apply only to WICF refrigeration systems. DOE explained that WICF refrigeration systems are low-volume and custom-made for the specific installation and could be accurately rated using a computer simulation to predict their behavior under DOE test conditions. DOE did not propose to permit a similar option when rating other WICF components. WICF panels are relatively simple pieces of equipment and the test results from a basic model of a given panel can be extrapolated to many other panel basic models under the provisions of the test procedure. As for WICF doors, the DOE test procedure already specifies the use of certain modeling techniques that are approved by the National Fenestration Rating Council (NFRC), which, in DOE's view, makes a parallel AEDM provision for these components unnecessary. 77 FR at 32041.

Heatcraft and CT/TR/ICS supported this aspect of the proposal. (Heatcraft, No. 0049 at p. 2; CT/TR/ICS, No.0035 at p. 1) In addition, in response to the October 2013 SNOPR, DOE received a comment from Lennox recommending that DOE allow walk-in manufacturers to use AEDMs when rating their equipment. (Lennox, No. 0080 at p. 4) DOE also received AEDM-related comments in response to the September 2013 standards NOPR. 78 FR 55781. AHRI, Bally, and ACEEE generally recommended that DOE include AEDM provisions for WICFs. ([Docket No. EERE–2008–BT–STD–0015]; AHRI, No. 114 at p. 4; AHRI, Public Meeting Transcript, No. 88 at p. 58; Bally, No. 102 at p. 3; ACEEE, Public Meeting Transcript, No. 88 at p. 87) In addition to its comment from the commercial HVAC, refrigeration and WH

[1] In the May 2012 NOPR, DOE used the term substantiation to refer to the process manufacturers used to prove that their modeling tool, or AEDM, produced accurate results. The Working Group elected to use the term validation, instead of substantiation, for this process. DOE clarifies that substantiation and validation are synonymous and the Department will use the term validation henceforth.

[2] In the May 2012 NOPR, DOE used the term DOE validation to refer to the process DOE used to check that the modeling tool, or AEDM, produced accurate results. The Working Group elected to use the verification, instead of DOE validation, for this process. DOE clarifies that DOE validation and verification are synonymous and the Department will use the term verification henceforth.

rulemaking, Lennox commented in the standards rulemaking that permitting walk-in refrigeration system manufacturers to use AEDMs would reduce the test burden faced by these manufacturers, particularly given the number of possible unit cooler and condenser combinations. ([Docket No. EERE–2008–BT–STD–0015], Lennox, No. 109 at p. 4) During the same rulemaking, Hillphoenix, KeepRite, and NEEA, et al. commented that permitting panel manufacturers to use AEDMs for panel certification would reduce their test burden as well. ([Docket No. EERE–2008–BT–STD–0015]; Hillphoenix, No. 107 at p. 3; KeepRite, No. 105 at p. 2; NEEA et al, No. 101 at p. 2)

In today's notice, DOE proposes as a modification of its earlier May 2012 NOPR to allow WICF refrigeration system manufacturers to use AEDMs when rating the performance of this equipment. DOE is not extending this allowance to WICF panel manufacturers for the reasons described above, but is, instead, proposing other modifications to the walk-in panel test procedure to reduce the burden faced by panel manufacturers while ensuring the overall accuracy of the efficiency ratings. The proposed modifications to the WICF panel test procedure are outlined in section III. C.

2. Validation

a. Number of Tested Units Required for Validation

In the May 2012 NOPR, DOE proposed a number of validation requirements that would apply to walk-in refrigeration systems. DOE proposed that validating an AEDM would require a manufacturer to test a minimum of five basic models, including at least one basic model from each product class to which the AEDM will be applied. As part of these tests, the manufacturer would be required to test the smallest and largest capacity basic models from the product class with the highest sales volume. Additionally, the manufacturer would also need to test the basic model with the highest sales volume from the previous year or, for newly introduced basic models, the basic model which is expected to have the highest sales volume. Finally, all validation test data would need to meet the applicable Federal energy conservation standards and applicable DOE testing procedures. 77 FR 32044–32045.

Commenters responding to that proposal provided general comments, with none specifically relating to walk-ins. AHRI commented that it was unrealistic for a manufacturer who produces fewer than five models to be required to validate an AEDM based on a minimum sample of five units. (AHRI, Public Meeting Transcript, No. 69 at p. 154) Furthermore, AHRI stated that it is disproportionately burdensome to require testing at least five basic models for small manufacturers who manufacture or plan to use an AEDM for only a few basic models compared to manufacturers who offer many basic models and many product classes. AHRI recommended that DOE require testing of only three basic models if the AEDM applies only to 15 or fewer basic models. (AHRI No. 61 at p. 3)

Acknowledging how much work and testing validation of an AEDM requires, Zero Zone noted that it would be difficult for small manufacturers to comply with the proposed requirements and would represent a large amount of work since testing is so complex. Zero Zone recommended that small manufacturers either be exempt from the proposed requirements or have a different sample size requirement to meet. (Zero Zone, Public Meeting Transcript, No. 69 at p. 65) Zero Zone and Hillphoenix agreed with DOE's proposal to require testing of at least one unit from each applicable product class and did not offer comment regarding the assigned product classes. (Zero Zone, No. 64 at p. 1; Hillphoenix, No. 48 at p. 1)

Hillphoenix supported DOE's proposals for the selection requirements of basic models used to validate an AEDM. (Hillphoenix, No. 48 at p. 2) Heatcraft disagreed with DOE's proposed approach, stating that the requirement to test the smallest and largest capacity basic models from the highest sales volume product class is overly burdensome due to the wide range of equipment capacity. (Heatcraft, No. 49 at p. 3) Heatcraft also disagreed with DOE's proposal to require manufacturers to test the highest sales volume basic model because it will not improve the accuracy of the AEDM and because the low-volume, built-to-order nature of WICF equipment will cause sales volumes to constantly shift. (Heatcraft, No. 49 at p. 4)

The Working Group recommended, and DOE adopted, an AEDM validation method for commercial HVAC, refrigeration, and WH equipment that differed from the Department's May 2012 validation proposal. The Working Group proposed to validate an AEDM for commercial HVAC, refrigeration, and WH equipment, a manufacturer must select a minimum number of models from each validation class to which the AEDM is going to apply. (Validation classes are groupings of products based on equipment classes but used for AEDM validation). The Department proposes to extend this concept to WICF refrigeration systems and proposes the validation classes listed in Table III.3. A unit of each basic model selected must undergo a single test conducted in accordance with the DOE test procedure (or, if applicable, a test procedure waiver issued by DOE) at a manufacturer's testing facility or a third-party testing facility. The test result must be directly compared to the result from the AEDM to determine the AEDM's validity. A manufacturer may develop multiple AEDMs per validation class and each AEDM may span multiple validation classes; however, the minimum number of tests must be maintained per validation class for every AEDM a manufacturer chooses to develop. An AEDM may be applied to any model within the applicable validation classes at the manufacturer's discretion. All documentation of test results for these models, the AEDM results, and subsequent comparisons to the AEDM would be maintained as part of both the test data underlying the certified rating and the AEDM validation package pursuant to 10 CFR 429.71.

TABLE III.3—VALIDATION CLASSES

Validation class	Minimum number of distinct models that must be tested
Dedicated Condensing, Medium Temperature, Indoor System	2 Basic Models.
Dedicated Condensing, Medium Temperature, Outdoor System	2 Basic Models.
Dedicated Condensing, Low Temperature, Indoor System	2 Basic Models.
Dedicated Condensing, Low Temperature, Outdoor System	2 Basic Models.
Unit Cooler connected to a Multiplex Condensing Unit, Medium Temperature	2 Basic Models
Unit Cooler connected to a Multiplex Condensing Unit, Low Temperature	2 Basic Models.
Medium Temperature, Indoor Condensing Unit	2 Basic Models.

TABLE III.3—VALIDATION CLASSES—Continued

Validation class	Minimum number of distinct models that must be tested
Medium Temperature, Outdoor Condensing Unit	2 Basic Models.
Low Temperature, Indoor Condensing Unit	2 Basic Models.
Low Temperature, Outdoor Condensing Unit	2 Basic Models.

In order to align with the validation requirements for commercial HVAC, refrigeration, and WH equipment, DOE proposes to adopt the validation approach shown above, which mirrors the approach recommended by the Working Group. In DOE's view, the Working Group's method addresses AHRI's concerns regarding manufacturers that produce a limited number of equipment models. This proposal, if adopted, will also reduce the amount of testing burden noted by Zero Zone. Additionally, today's proposal would not require that a manufacturer test the highest sales volume product, a concern raised by Heatcraft. DOE requests comment on the proposed AEDM validation approach as applied to walk-in refrigeration systems.

b. Tolerances for Validation

In the May 2012 NOPR, DOE proposed to adopt two tolerances that would be applied when validating a WICF refrigeration AEDM. One tolerance would be between the results from a test of a single basic model and the AEDM output for that basic model (i.e., an individual tolerance). A second tolerance would be applied between the average of the test results from all tested basic models and the average of the AEDM outputs for those tested basic models (i.e., an overall average tolerance). 77 FR at 32055–32056. DOE received one comment on this aspect of its proposal. Heatcraft commented that the average tolerance provides no added benefit because it does not necessarily encourage smaller product variation. (Heatcraft, No. 49 at p. 3)

DOE also proposed that both tolerances would apply on both sides of the AEDM output. 77 FR at 32055–32056. That is, a tolerance would be applied regardless of whether the test result indicated that the equipment was more efficient or more consumptive than the AEDM output for the purposes of validation. DOE received a number of comments regarding two-sided tolerances, but none specific to AEDMs for WICFs. Rheem and Hussmann stated that DOE's tolerances should be one-sided, with Hussmann recommending that DOE allow manufacturers to rate equipment conservatively using an AEDM. (Rheem, No. 59 at p. 3; Hussmann, No. 57 at p. 2) JCI also stated that tolerances should be one-sided, and there should be no requirement for re-validation if a manufacturer has conservative ratings. (JCI, No. 66 at p. 6) AAON, Trane, and ACEEE also supported one-sided tolerances and an approach that would allow manufacturers to rate conservatively. (AAON, Public Meeting Transcript, No. 69 at pp. 88 and 212; Trane, Public Meeting Transcript, No. 69 at p. 90; ACEEE, Public Meeting Transcript, No. 69 at p. 90) AAON urged DOE to eliminate one side of the 5 percent tolerance and not penalize manufacturers whose basic models, when tested, achieve a higher rating than that predicted by an AEDM because allowing manufacturers to conservatively predict a basic model's performance would simplify the process and give manufacturers incentives to improve AEDMs and manufacturing processes over time so that they could rate their equipment as efficiently as possible. In AAON's view, this approach would not prevent a manufacturer who might be inclined to calibrate their models more conservatively from using its AEDM. (AAON, No. 40 at p. 5)

Not all manufacturers, however, recommended that DOE remove the conservative tolerance. Instead of completely removing it, AHRI suggested that the conservative tolerance should be increased to 10 percent so that manufacturers can design AEDMs that provide conservative ratings. (AHRI, No. 61 at p. 5) Cooper, on the other hand, stated that tolerances should be two-sided because manufacturers must demonstrate that an AEDM's output is accurate and repeatable. (Cooper, No. 43 at p. 3)

In the NOPR, DOE proposed to set consistent tolerance levels for all products covered under AEDM requirements, except for motors and small electric motors. 77 FR at 32055–32056. DOE proposed a ±5% tolerance on the individual AEDM results as compared to the tested results and a ±3% tolerance on the average of the AEDM outputs as compared to the average tested results. Regarding WICF refrigeration equipment, commenters generally agreed there will be variation in the results from testing, but commenters differed in their suggested tolerance levels. Heatcraft, Zero Zone, Hussmann, and True Manufacturing all commented that the proposed 5 percent tolerance was too tight. (Heatcraft, No. 49 at p. 3; Zero Zone, No. 64 at p. 2; Hussmann, No. 57 at p. 2; True, Public Meeting Transcript, No. 69 at p. 86) Zero Zone recommended a tolerance of 8 percent. (Zero Zone, No. 64 at p. 2) Heatcraft, Hussmann and True Manufacturing identified expected test variations of 10 percent, 11 percent, and 8 percent respectively but did not suggest a tolerance for AEDM validation. (Heatcraft, No. 49 at p. 3; Hussmann, No. 57 at p. 2; True, Public Meeting Transcript, No. 69 at p. 86) Heatcraft suggested that DOE should work with manufacturers to determine the appropriate tolerance based on the expected variations. (Heatcraft, No. 49 at p. 3) CT/TR/ICS disagreed with these parties, stating that the 5 percent tolerance was acceptable so long as testing was conducted with the typical electric utility tolerance of 10 percent. (CT/TR/ICS, No. 35 at p. 1)

The Working Group recommended that for energy efficiency metrics, the AEDM results for a model must be less than or equal to 105 percent of the tested results for that same model. DOE adopted this approach for commercial HVAC, refrigeration, and WH equipment in the December 31, 2013 Final Rule and proposes to use it for WICF refrigeration systems in today's notice to align DOE's AEDM validation requirements for walk-ins with these other types of commercial equipment that are refrigerant-based systems. This approach would eliminate both the tolerance on the average of the AEDM results and two-sided tolerances. DOE requests comments on the proposed tolerances on the AEDM results as compared to the tested results for a given basic model.

3. Certified Rating

For each basic model of commercial HVAC, WH, and refrigeration equipment distributed in U.S. commerce, manufacturers must determine the certified rating based on testing or use of a validated AEDM. DOE's current regulations provide

manufacturers with some flexibility in rating each basic model by allowing the manufacturer the discretion to rate conservatively. For energy efficiency metrics, each model's certified rating must be less than or equal to the model's AEDM result and greater than or equal to the applicable Federal standard. DOE proposes to adopt these requirements for WICF refrigeration equipment rated with AEDMs.

4. Verification

DOE may randomly select and test a single unit of a basic model pursuant to 10 CFR 429.104, which extends to all DOE covered products, including those certified using an AEDM. In the May 2012 NOPR, DOE proposed a method for determining whether those products certified using an AEDM fail to meet federal energy conservation standards and/or fail to meet their certified rating, as well as actions that DOE would take in response to either outcome. 77 FR at 32056.

a. Failure To Meet a Certified Rating

In the May 2012 NOPR, DOE proposed to require that the assessment test result would be compared to the certified rating for a model to determine if a model met its certified rating. If the test result fell outside of the proposed tolerance, the model would not meet its certified rating. In this case, DOE proposed to require that manufacturers re-validate the AEDM that was used to certify the product within 30 days of receiving the test report from DOE. Furthermore, DOE also proposed to require that manufacturers incorporate the test data obtained by the Department for that model into the re-validation of the AEDM. If, after inclusion of DOE's test data and re-validation, the AEDM-certified ratings change for any models, the manufacturer would be required to re-rate and re-certify those models. The manufacturer would not be required to perform additional testing in this re-validation process unless the manufacturer finds it necessary in order to meet the requirements enumerated in the proposed 10 CFR 429.70 (e.g., number of tested units; proposed tolerances; etc.). 77 FR 32056.

A few stakeholders commented on these proposals. Zero Zone commented that the failure of one unit to meet its certified rating should not automatically necessitate re-validation. It suggested that the manufacturer should decide on the appropriate course of action. (Zero Zone, No. 64 at p.3) Lennox further noted that although DOE should use independent, third-party labs for testing, using these entities does not ensure accuracy because third-party labs may not be as familiar with specialized commercial equipment. (Lennox, No. 47 at p. 3)

DOE acknowledges these comments regarding how potential AEDM mis-rating situations should be addressed. First, DOE proposes to assess a unit's performance through third party testing. Under this approach, DOE would begin the verification process by selecting a single unit of a given basic model for testing either from retail or by obtaining a sample from the manufacturer. DOE will select a third-party testing laboratory at its discretion to test the unit selected unless there are cases where there is not a third-party laboratory capable of testing the equipment, in which case DOE may request testing at a manufacturer's facility. The Department will be responsible for the logistics of arranging the testing, and the laboratory is not allowed to communicate directly with the manufacturer. At no time may the test facility discuss DOE verification testing with the manufacturer without the Department present.

If a unit is tested and determined to be outside the rating tolerances described in section I.C.4, DOE will notify the manufacturer. The manufacturer will receive all documentation related to the test set up, test conditions, and test results for the unit if the unit falls outside the rating tolerances. At that time, a manufacturer may present all claims regarding any issues directly with the Department. DOE requests comment on this proposal. The Department notes that 10 CFR 429.13(b) applies to equipment certified using an AEDM, and DOE may require a manufacturer to conduct additional testing if the manufacturer has been found to be in violation of an applicable standard or certification requirement.

b. Action Following Enforcement Testing: Determination of Noncompliance

In the May 2012 NOPR, DOE explained that if a model failed to meet the applicable federal energy conservation standard during assessment testing, DOE may pursue enforcement testing pursuant to 10 CFR 429.110. DOE also stated that, after enforcement testing, if a model were determined to be noncompliant, then all other models within that basic model would be considered noncompliant. This is consistent with DOE's approach for all covered products. All other basic models rated with the AEDM would be considered compliant pending additional investigation. Furthermore, DOE proposed that in a case where the noncompliant model was used for validation of an AEDM, then the AEDM must be re-validated within 30 days of notification, pursuant to the proposed requirements described in section III.A.2. DOE did not propose requiring a manufacturer re-test basic models that were tested previously for validation if DOE has not determined those models to be noncompliant. 77 FR at 32056. DOE received a general comment related to this proposal, but no comments specific to noncompliance determinations for WICF refrigeration equipment. JCI agreed that all AEDM-rated models should not be disqualified if one model is found out of compliance. (JCI, No. 66 at p. 9) Furthermore, JCI stated that without additional information as to why a particular product failed a test, it is not reasonable to arbitrarily assume that all models rated with the AEDM must be re-rated. (JCI, No. 66 at p. 9, 10)

After considering the comment received regarding DOE's proposed response to a finding of noncompliance, DOE has decided to eliminate the proposal to require re-validation of the AEDM if the noncompliant model was used to validate the AEDM. Instead, the Department proposes that the underlying principle that each AEDM must be supported by test data obtained from physical tests of current models will control. Because a noncompliant model may not be distributed in commerce, the manufacturer will need to ensure that the AEDM continues to satisfy the proposed validation requirements described in section III. A. 2. Additional testing would not be necessary unless the noncompliant product was used to satisfy those AEDM validation requirements. Pursuant to this requirement, should the re-validation result in a change in the ratings of products certified using the AEDM, those products must be re-rated and re-certified. DOE is not proposing to require re-testing of products that were not determined noncompliant by DOE.

5. Re-Validation

a. Change in Standards or Test Procedures

DOE proposed in the May 2012 NOPR to require that manufacturers who use an AEDM to certify their products re-validate the AEDM upon publication of an amended test procedure or standard for the AEDM-rated product. 77 FR at 32056. DOE proposed this requirement to account for potential changes to the AEDM as well as to ensure that the AEDM continues to be based upon test data derived from the applicable DOE test procedure and models that meet the

current standards. DOE identified the issuance of a new test procedure or a standard as likely to necessitate changes to the AEDM, either because a change in a test procedure may affect the tested values of the products used to validate the AEDM or because a change in a standard may require additional testing using models that meet the new standard or may force manufacturers to implement new technologies that are not covered by their current AEDM. DOE did not propose a periodic re-validation requirement in light of the potential testing burden involved.

Among the comments received, a large majority of stakeholders suggested that a change in standards or test procedures should not automatically trigger AEDM re-validation, emphasizing that it may only be necessary in the case of a significant change in the regulations. (UTC/Carrier, No. 56 at p. 3; JCI, No. 66 at p. 10; NEMA, No. 44 at p. 5, 18, 19; Lennox, No. 46 at p. 6; AHRI, No. 61 at p. 7) Baldor Electric, Zero Zone, ABB, First Co., Goodman, Heatcraft Refrigeration, and Schneider Electric all argued that re-validation would not be necessary in a case of a change in a test procedure. (Baldor Electric, Public Meeting Transcript, No. 69 at p. 132–34; Zero Zone, No. 64 at p. 4; ABB, No. 39 at p. 3; First Co., No. 45 at p. 3; Goodman, No. 53 at p. 3; Heatcraft Refrigeration, No. 49 at p. 5; SE., No. 41 at p. 12) According to Goodman, AAON, Zero Zone, Ingersoll Rand, and Baldor Electric, re-validation would also not be necessary if there is a change in a prescribed minimum energy efficiency standard. (Goodman, No. 53 at p. 3; Zero Zone, No. 64 at p. 4; Ingersoll Rand, Public Meeting Transcript, No. 69 at p. 134; AAON, No. 40 at p. 7; Baldor Electric, Public Meeting Transcript, No. 69 at p. 132–34) NEMA echoed this view and explained that when an efficiency standard changes, it is possible that the determined energy consumption of basic models might still be higher than the new standard, and more testing would not be necessary. (NEMA, No. 44 at p. 5, 18, 19)

Several stakeholders outlined specific circumstances that would necessitate re-validation due to a change in a standard or test procedure. AHRI and Hillphoenix stated that re-validation should only be required when a change in a test procedure is significant enough to result in a product having a different rated energy consumption or efficiency. (AHRI, Public Meeting Transcript, No. 69 at p. 238–39; Hillphoenix, No. 48 at p. 2) Nordyne, Rheem, Lennox, and CT/TR/ICS added that re-validation should be required if a change in a DOE test procedure has an effect on simulated ratings of an AEDM. (Nordyne, No. 55 at p. 3; Rheem, No. 59 at p. 5; Lennox, No. 46 at p. 6; CT/TR/ICS, No. 35 at p. 2) ABB and Unico commented that re-validation may be necessary when a new federal standard is high enough that the basic models used for validation can no longer meet the minimum standard. (ABB, No. 39 at p. 3; Unico, No. 54 at p. 5) Baldor Electric agreed, stating that unless there is a significant change in technology or a test standard, a manufacturer should not have to re-validate its AEDM. (Baldor Electric, Public Meeting Transcript, No. 69 at pp. 132–34) NEMA suggested that DOE consider the necessity for re-validation on a case-by-case basis, and specifically address and solicit public comment on whether re-validation of an AEDM is needed as a result of changes in a test procedure at the time when DOE proposes to adopt the change in the test procedure. (NEMA, No. 44 at p. 20)

Many manufacturers advocated that re-validation should instead depend on significant changes to the technology of basic models, including changes to the components. (Goodman, No. 53 at p. 3; First Co., No. 45 at p. 3; Rheem, No. 59 at p. 5; Nordyne, No. 55 at p. 3; Unico, No. 54 at p. 3; SE., No. 41 at p. 12) Additionally, Baldor Electric and Ingersoll Rand pointed out during the public meeting that a change in technology should be an important factor in evaluating when re-validation may be necessary, with Ingersoll Rand adding that if there were no change in technology it is unclear why a change in standards would disqualify an AEDM. (Baldor Electric, Public Meeting Transcript, No. 69 at pp. 132–134; Ingersoll Rand, Public Meeting Transcript, No. 69 at p. 137) Schneider Electric specified that manufacturers should revise and re-validate their AEDMs whenever they introduce new products, processes or materials, and that any changes to the AEDM itself should necessitate re-validation. (Schneider Electric, No. 41 at pp. 10 and 12)

DOE agrees with manufacturers' assertions that re-validation should depend on the nature of the regulatory change involved because not every change to the standard or test procedure would necessarily affect a product's energy consumption and/or efficiency or an AEDM's output. DOE also agrees with NEMA that the requirement to re-validate should be determined on a case-by-case basis. Therefore, DOE is not proposing to require re-validation every time the test procedure or standard changes.

However, should DOE believe that re-validation is necessary pursuant to a final rule standard or test procedure, DOE will propose this step in the NOPR for that standard or test procedure rulemaking to allow stakeholders to provide comment.

b. Re-Validation Using Active Models

DOE is concerned that an AEDM's accuracy may be compromised if the models that are used to validate it become obsolete. To address this issue, DOE proposed to require manufacturers to re-validate their AEDMs if one of the basic models used for validation is no longer in production or if it becomes obsolete. 77 FR at 32056. DOE requested comment on this proposed approach.

The majority of commenters on this topic disagreed with DOE's proposal, stating that once an AEDM is validated, it is valid regardless of whether one of the basic models used for its validation is discontinued. Stakeholders further asserted that discontinuance of a basic model does not necessarily indicate a change in technology; therefore, it should not automatically invalidate the AEDM, and re-validation of the AEDM should not be required. (United Cool Air, No. 51 at p. 10; First Co., No. 45 at p. 3; Lennox, No. 46 at p. 6; Unico, No. 54 at p. 3; Ingersoll Rand, Public Meeting Transcript, No. 69 at p. 134; JCI, No. 66 at p. 10) UTC/Carrier recommended that inactive models should be allowed for re-validation as long as they use the same technology as the products currently in production and meet the minimum energy efficiency standards. (UTC/Carrier, No. 56 at p. 3) AAON further added that if the product was current at the time the test was performed, test data should remain valid for re-validation for at least five years after a unit becomes obsolete. (AAON, No. 40 at p. 7) JCI pointed out that continuous re-validation due to elimination of some models would create an unstable environment for new product development. (JCI, No. 66 at p. 10) According to Rheem, AHRI and Zero Zone, the decision regarding when re-validation is necessary should be left to the manufacturer. (Rheem, No. 59 at p. 5; AHRI, No. 61 at p. 9; Zero Zone, No. 64 at p. 4) Only Schneider Electric agreed with DOE's proposal that AEDMs must be re-validated only with active models. (SE, No. 41 at p. 12)

While DOE appreciates manufacturers' concerns regarding the additional testing burden and possible turnover of AEDM models imposed by this requirement, DOE continues to have concerns regarding the accuracy of an AEDM based on data from obsolete models. Thus, DOE is retaining the

proposal to require re-validation of an AEDM if a basic model used for its validation is discontinued or becomes obsolete. DOE believes that this requirement will ensure that AEDMs continue to produce accurate ratings, without imposing a significant testing burden on manufacturers.

DOE notes that under its proposal, manufacturers may continue to test their models beyond the minimum validation requirements as a means to affirm an AEDM's validity. As long as the manufacturer has sufficient test data underlying the AEDM to meet the validation requirements at all times, additional testing for re-validation would not be required by DOE. In other words, a manufacturer may continue to use data from an obsolete or discontinued model to internally validate an AEDM or as an input to its algorithms. However, the manufacturer must meet the minimum validation requirements with test data from active models.

c. Time Allowed for Re-Validation

In the NOPR, DOE proposed that, should a manufacturer be required to re-validate an AEDM for any reason, it must complete the re-validation process and re-rate and re-certify basic models as necessary within 30 days. The requirement to re-validate may be a result of a change in federal standards, a change in the applicable test procedure, the basic model used to validate the AEDM becoming inactive or found to be noncompliant with standards, or the failure of a basic model to meet its certified rating during assessment or enforcement testing. DOE proposed that if a manufacturer failed to re-validate the AEDM and to re-rate and re-certify any models as necessary within 30 days, then the AEDM and all certifications made using the AEDM would be considered invalid. 77 FR at 32056.

A large majority of interested parties stated that 30 days is insufficient to perform the additional testing required for re-validation of an AEDM and suggested extending the proposed time limit. Sixty days was proposed as a more appropriate timeframe by Goodman and Schneider Electric; 180 days by AAON and UTC/Carrier; and 90 to 120 days by the remaining twelve stakeholders. (Bradford White, No. 38 at p. 1; ABB, No. 39 at p. 3; AAON, No. 40 at p. 6; Modine, No. 42 at p. 4; Lennox, No. 47 at p. 3; Heatcraft Refrigeration, No. 49 at p. 4; Zero Zone, No. 64 at p. 3; Goodman, No. 53 at p. 3; SE., No. 41 at p.11; UTC/Carrier, No. 56 at p. 3; NEMA, No. 44 at p. 18; Hillphoenix, No. 48 at p. 2; Unico, No. 54 at p. 4; Rheem, No. 59 at p. 4; AHRI, No. 61 at pp. 6–7) Zero Zone suggested that a time limit of 18 to 36 months would be an appropriate time to update an AEDM in case of a change in a standard or a test procedure. (Zero Zone, No. 64 at p. 4) Schneider Electric stated that 30 days after an AEDM's revision would be sufficient to re-evaluate and re-certify products in distribution. However, it added that if a manufacturer's products are not in distribution at the time, the manufacturer should be allowed 180 days to re-evaluate and re-certify them. (Schneider Electric, No. 41 at p. 11)

After considering these suggestions, DOE is declining to propose a time limit to re-validate an AEDM. The AEDM must satisfy the fundamental requirement for validating an AEDM at all times.

B. Refrigeration Test Procedure

During DOE's rulemaking to establish test procedures for WICF equipment, which resulted in a final rule published on April 15, 2011 (''April 2011 test procedure final rule;'' 76 FR 21580), interested parties supported DOE's approach to use AHRI 1250 (I–P)–2009, ''2009 Standard for Performance Rating of Walk-In Coolers and Freezers'' (''AHRI 1250''), for WICF refrigeration testing. AHRI 1250 is an industry-developed testing protocol used to measure walk-in efficiency. However, DOE is proposing to add certain modifications to AHRI 1250. These modifications are designed to either clarify certain steps in AHRI 1250 or reduce the testing burden of manufacturers while ensuring that accurate measurements are obtained.

1. Rating of Refrigeration Components

The AHRI 1250 test procedure incorporated into DOE's regulations applies to unit coolers and condensing units tested and sold together as a matched system, ''mix-matched'' unit coolers and condensing units (i.e., unit coolers and condensing units tested separately, with a system rating determined using a calculation methodology), and unit coolers connected to compressor racks or multiplex condensing systems. It also describes the methods for measuring the refrigeration capacity, on-cycle electrical energy consumption, off-cycle fan energy, and defrost energy. Standard test conditions, which differ for indoor and outdoor locations and for coolers and freezers, are also specified. The test procedure includes a calculation methodology to compute an annual walk-in energy factor (AWEF), which is the ratio of heat removed from the envelope to the total energy input of the refrigeration system over a year. AWEF is measured in Btu/W-h and measures the efficiency of a refrigeration system, meaning the unit cooler and condenser combination.

In response to the September 2013 standards NOPR, the Department received a number of comments regarding the potential certification problems related to establishing an efficiency metric for WICF refrigeration systems. Some stakeholders commented that a single metric would be difficult to enforce given the walk-in market structure, and observed that creating separate metrics for each component of the refrigeration system (i.e. the unit cooler and condenser unit) would allow manufacturers to certify equipment performance. ASAP expressed concern that treating the complete refrigeration system as a ''component'' could lead to a standard with a high rate of non-compliance. ASAP also commented that separate standards for unit coolers and remote condensing units would be more practical [than a single standard], since the proposed standard resulted in a lack of clarity for manufacturers producing only unit coolers, only condensing units, or mix-match systems; however, such an approach could allow manufacturers of components to circumvent the standard by claiming their product was not designed for use in walk-ins, and that DOE should ensure the definition of ''covered equipment'' does not create this loophole. ([Docket No. EERE–2008–BT–STD–0015]; ASAP, No. 113 at p. 1–3) NCC stated that standards based on the combined refrigeration system would rely on the contractors or designers to comply with the standard and would make DOE enforcement difficult. ([Docket No. EERE–2008–BT–STD–0015]; NCC, No. 96 at p. 2) NCC commented that original equipment manufacturers of unit coolers and condensing units who sell these components separately do not have control over how their components are matched with others to form a mix-match refrigeration system. As a result, in its view, design consultants and contractors would have to be relied upon for certifying the AWEF of a system comprised of components from two different manufacturers, making this proposed approach unenforceable due to the large number of design consultants and contractors as compared to the relatively small number of refrigeration manufacturers. In light of these concerns, NCC recommended DOE set energy efficiency standards for condensing units and unit coolers separately. ([Docket No. EERE–2008–

BT–STD–0015]; NCC, No 96 at p. 2) CA IOUs also suggested that DOE enforce separate standards for unit coolers and condensing units. ([Docket No. EERE–2008–BT–STD–0015]; CA IOUs, Public Meeting Transcript, No. 88 at p. 385) Bally agreed that separate standards for condensers and evaporators were more practical than a combined standard for the refrigeration system. ([Docket No. EERE–2008–BT–STD–0015]; Bally, No. 102 at p. 3) AHRI stated that often, the unit cooler and condensing unit are purchased independently and was concerned about treating the refrigeration system as a single component. ([Docket No. EERE–2008–BT–STD–0015]; AHRI, Public Meeting Transcript, No. 88 at p. 42)) Keeprite agreed that that since evaporators and condensing units are often sold or distributed independently of each other, and with no knowledge of how the consumer would pair them, separate standards for each component would be more practical than a system standard. ([Docket No. EERE–2008–BT–STD–0015]; Keeprite, No. 105 at p. 1)

Other manufacturers described the potential burden created by having a single metric. AHRI commented that since walk-ins are often custom-designed, it would be impossible for manufacturers to accurately estimate the number of possible refrigeration system configurations that could potentially include any given combination of condensing unit/unit cooler options. ([Docket No. EERE–2008–BT–STD–0015]; AHRI, No. 114 at p.3) Heatcraft also remarked that unit coolers and condensing units should be treated separately because of the infinite number of possible combinations. ([Docket No. EERE–2008–BT–STD–0015]; Heatcraft, Public Meeting Transcript, No. 88 at p. 41) American Panel noted that manufacturers can easily determine the efficiency of a paired condenser and evaporator if the two components were made by the same company and sold together, but given the number of different combinations of condensers and evaporators sold by a manufacturer, that manufacturer could be required to test or rate a thousand different systems to be able to certify all their possible combinations. ([Docket No. EERE–2008–BT–STD–0015]; American Panel, Public Meeting Transcript, No. 88 at pp. 48 and 105) Manitowoc commented that requiring that manufacturers test matched refrigeration systems was not feasible because manufacturers of condensing units did not manufacture evaporators and vice versa; additionally, this approach would result in an infinite number of combinations. Manitowoc supported the idea of setting separate standards for condensing units and unit coolers, but noted that without an AEDM in place, these component level standards would still result in undue financial burden for manufacturers. ([Docket No. EERE–2008–BT–STD–0015]; Manitowoc, No. 108 at pp. 1 and 2)

Commenters also noted that separate metrics for the unit cooler and condenser unit would simplify the testing and certification process. Lennox commented that regulating the condensing unit and unit cooler at the component, rather than system, level would greatly simplify manufacturer testing. ([Docket No. EERE–2008–BT–STD–0015]; Lennox, No. 109 at p.6) CA IOUs stated that DOE should consider splitting the refrigeration standard into condensing unit and unit cooler standards to simplify the certification process for assemblers and suggested that DOE provide a voluntary mix/match standard level. ([Docket No. EERE–2008–BT–STD–0015]; CA IOUs, Public Meeting Transcript, No. 88 at p. 56) The CA IOUs also suggested that the test procedure be modified to require the testing of matching systems only for ''self-contained'' units. ([Docket No. EERE–2008–BT–STD–0015]; CA IOUs, No. 110 at p. 2) ASAP supported the component level approach because a refrigeration system is not necessarily sold by a single manufacturer. ([Docket No. EERE–2008–BT–STD–0015]; ASAP, Public Meeting Transcript, No. 88 at p. 46) US Cooler supported a component level approach for refrigeration equipment because, in its view, the approach would give manufacturers more flexibility to meet the requirements since components would be certified individually and could be put together to determine the system's energy consumption. ([Docket No. EERE–2008–BT–STD–0015]; US Cooler, Public Meeting Transcript, No. 88 at p. 51) NEEA et al. also recommended that individual refrigeration system components, including all unit coolers and dedicated condensing units, should be rated and certified. ([Docket No. EERE–2008–BT–STD–0015]; NEEA et al., No. 101 at p. 3)

Not all commenters, however, supported the refrigeration system component level approach. ACCA noted that it would be easier to enforce a standard for a matched system. ([Docket No. EERE–2008–BT–STD–0015]; ACCA, Public Meeting Transcript, No. 88 at p. 47) Louisville Cooler commented that certifying at a component level would discourage manufacturers from making system improvements in order to avoid repeating the certification process. ([Docket No. EERE–2008–BT–STD–0015]; Louisville Cooler, Public Meeting Transcript, No. 88 at p. 50) Danfoss mentioned that refrigeration components are themselves composites of other components and sub-components such as compressors, valves, controls, etc. Danfoss commented that requiring separate certification of condensing units, unit coolers, and other sub-components such as valves was a logical step, but was concerned that pushing the regulation down to the component level would be difficult to manage and DOE would lose the opportunity to pursue system level performance improvements. Danfoss suggested a non-regulatory approach to raise system level efficiency. Danfoss further pointed out that certified condensing units and evaporators must still be properly matched and, currently, no particular entity controls is responsible for this task. ([Docket No. EERE–2008–BT–STD–0015]; Danfoss, Public Meeting Transcript, No. 88 at pp. 32, 45 and 57)

Commenters offered suggestions as to how the Department could regulate refrigeration components separately. Hussmann supported separate standards for WICF refrigeration condensing units and unit coolers and stated that AHRI should update the WICF refrigeration test procedure, AHRI 1250, to include a methodology to obtain separate AWEFs. ([Docket No. EERE–2008–BT–STD–0015]; Hussmann, No. 93 at pp. 1 and 3) NEEA, et al. commented that if unit coolers and condensing units were rated and certified separately, walk-in providers would have more flexibility to select components that best meet customer needs. The group also suggested that DOE utilize the mix-match testing option in AHRI 1250 to facilitate component-level standards ([Docket No. EERE–2008–BT–STD–0015]; NEEA, No. 101 at p. 3) ACEEE suggested DOE use an AEDM approach for separate certification of condensers and unit coolers. ACEEE suggested that a simple software tool could provide allowable versus forbidden matches with respect to size matching and other characteristics but did not suggest any specific software tools currently on the market. ([Docket No. EERE–2008–BT–STD–0015]; ACEEE, Public Meeting Transcript, No. 88 at p. 43) Louisville Cooler suggested that given an evaporator rating, DOE could establish a plus-or-minus [capacity] range to match it with a particular compressor. ([Docket No. EERE–2008–BT–STD–0015]; Louisville Cooler, Public Meeting Transcript, No. 88 at p. 50) American

Panel stated that the performance curves for unit coolers and condensing units should meet around a 10 degree temperature difference [between the internal dry-bulb temperature and the saturated evaporator temperature]. (([Docket No. EERE–2008–BT–STD–0015]; American Panel, Public Meeting Transcript, No. 88 at p. 59)

Based on these comments noting the difficult nature of testing and rating walk-in refrigeration systems, particularly with respect to the large number of possible combinations of unit coolers and condensing units that can make up the WICF refrigeration system, the Department is proposing the following approach to allow manufacturers to test a condenser or unit cooler separately, but rate that component with an AWEF metric consistent with DOE's proposed energy standard. Under this approach, a manufacturer who sells a unit without a matched condensing unit must rate and certify a refrigeration system containing that unit cooler by testing according to the methodology in AHRI 1250 for unit coolers matched to a parallel rack system (see AHRI 1250, section 7.9). The manufacturer would use the calculation method in this section to determine the system AWEF and certify this AWEF to DOE. Additionally, all unit coolers tested and rated as part of a system unit this method must comply with the standards in the multiplex equipment classes.

A manufacturer who sells a condensing unit separately must rate and certify that a refrigeration system containing that condensing unit by conducting the condensing unit portion of the AHRI 1250 mix/match test method. The results from the mix/match test would be combined with a nominal unit cooler capacity and power, based on nominal values for saturated suction temperature and unit cooler fan and electric defrost energy use factors, in order to calculate an AWEF for the refrigeration system basic model containing that condensing unit. (Condensing units built to utilize hot gas defrost must use the method for estimating hot gas defrost heat load and energy use outlined in the following section.) These nominal values are listed in Table III.6. (These values will be incorporated into 10 CFR 431.304.)

DOE developed the nominal values from DOE testing and modeling of WICF refrigeration systems. DOE observed the following test and model results for on-cycle fan power and used the average value for its nominal factor:

TABLE III.4—EVAPORATOR FAN POWER TEST AND MODEL RESULTS

Unit tested or modeled	On-cycle fan power (W)	Gross capacity at highest ambient rating condition (Btu/h)	On-cycle evaporator fan power, per Btu/h of gross capacity at highest ambient condition (W-h/Btu)
Test: Cooler System—Unit 1	320	23727	0.013
Test: Cooler System—Unit 2	208	15377	0.014
Test: Freezer System—Unit 3	119	7325	0.016
Test: Freezer System—Unit 4	113	7804	0.014
Model: Cooler System—Unit 5	265	12831	0.021
Model: Cooler System—Unit 6	252	14975	0.017
Model: Freezer System—Unit 7	133	6998	0.019
Model: Freezer System—Unit 8	126	8039	0.016
Average	.....	.....	0.016

Off-cycle unit cooler fan power is expressed in terms of the on-cycle fan power and would represent performance consistent with a unit cooler meeting the energy conservation standard. The energy conservation standard assumes that manufacturers would implement variable speed fan controls in order to meet the standard, which reduces the fan speed by 50 percent when the compressor is off. According to the fan laws,[3] this would reduce power to 12.5 percent of full-speed power, or 0.5^(1/3). However, due to fan efficiency losses at lower speed, DOE is assuming that the power would be 20 percent of full speed power.

For electric defrost energy, DOE also used test results from low temperature systems in developing the nominal factors. The results are as follows:

TABLE III.5—DEFROST ENERGY TEST RESULTS

Unit tested	Average defrost energy per cycle (Wh/cycle)	Gross capacity at highest ambient rating condition (Btu/h)	On-cycle evaporator fan power, per Btu/h of gross capacity at highest ambient condition (W-h/Btu)
Test: Freezer System—Unit 3	880	7325	0.12
Test: Freezer System—Unit 4	928	7804	0.12
Average	.....	.....	0.12

[3] Fan laws are theoretical principles that express the relationship between variables that impact fan performance. American Society of Heating, Refrigerating, and Air-Conditioning Engineers, *ASHRAE Handbook—HVAC Systems and Equipment,* Section 20.4. 2008.

Electric defrost heat contribution would be expressed in terms of the electric defrost power. In the AHRI 1250 calculations, the electric defrost heat contribution is equivalent to the power contribution converted from Watts to Btu/h, less the heat embodied in the defrost meltwater which is drained from the unit. In testing, DOE observed that defrost meltwater heat accounted for approximately 5 percent of the heat input. Therefore, DOE is assuming that electric defrost heat contribution to the interior of the box is 95 percent of the electric defrost power, converted from Watts to Btu/h.

The standards for the relevant equipment class of dedicated condensing refrigeration systems would apply to condensing unit basic models that were rated without a matched unit cooler. DOE requests comment on its proposal to allow unit coolers and condensing units to be rated separately, and particularly the nominal values described in Table III.6.

TABLE III.6—NOMINAL VALUES FOR UNIT COOLER SATURATED SUCTION TEMPERATURE AND ENERGY USE FACTORS

	Coolers	Freezers
Saturated Suction Temperature (°F)	25	−20
On-cycle evaporator fan power, per Btu/h of gross capacity at highest ambient condition (W-h/Btu).	0.016	0.016
Off-cycle evaporator fan power (W)	0.2 × on-cycle evaporator fan power	
Electric defrost energy per cycle, per Btu/h of gross capacity (W-h/cycle per Btu/h).	0	0.12
Number of cycles per day	As specified in installation instructions or, if no instructions, 4	
Daily electric defrost heat contribution (Btu)	0.95 × daily electric defrost energy use × 3.412	

2. Defrost Test

The existing test procedure incorporates a mandatory defrost test for freezer systems with electric defrost (AHRI 1250, Section C11). This test is designed to calculate electric defrost power consumption based on the (1) amount of energy consumption per defrost under both dry and frosted coil conditions, (2) number of defrosts per day, and (3) temperature and weight of the melt-water exiting the unit through the defrost drain pipe. DOE testing has shown that the test may be overly burdensome for manufacturers to conduct due to the difficulty of maintaining the moist air infiltration conditions for the frosted coil test in a repeatable manner. To minimize this burden while ensuring that the test sufficiently measures the energy consumption of walk-in freezer systems, DOE proposes to make the full defrost test optional, allowing manufacturers to choose between performing the full test and using a shorter and less burdensome methodology described as follows. DOE requests comment on the following calculation methodology and nominal values for electric defrost.

—First, the energy input for the dry coil condition shall be measured as specified in AHRI 1250, section C11.1 to obtain DF_d in W-h.

—In lieu of testing in the frost load conditions, the frosted coil energy use (DF_f) shall be the product of 1.05 multiplied by $DF_{d.}$ (This value was developed from DOE test results.)

—For systems without adaptive defrost, the number of defrosts per day (N_{DF}) shall be based on the defrost frequency recommended in the installation instructions for the unit; if no defrost frequency is specified, the number of defrosts per day shall be set to 4.

—For systems with adaptive defrost, the optional test in section C11.2 may be performed to establish the time between dry coil defrosts. The number of defrosts per day calculated by this optional test shall be averaged with the number of defrosts per day that would occur under frosted conditions (as calculated in the previous paragraph). Otherwise, for systems with adaptive defrost, if the optional test is not performed, the number of defrosts per day (N_{DF}) shall be set to the average of 1 and the number of defrosts per day that would occur under frosted load conditions.

—The daily contribution of the load attributed to defrost, Q_{df} (Btu) shall be 95 percent of the daily defrost energy use in watt-hours, multiplied by 3.412 Btu/W-h. (This percentage is based on DOE test data, which showed that water thermal load is approximately 5 percent of the electric input (see discussion in previous section III. B. 1. This thermal load is deducted from the defrost heat load calculation, consistent with AHRI 1250 equation C14.)

The existing test is designed to measure the power consumption for electrical defrost and does not provide a method to measure the energy use associated with hot-gas defrost systems. DOE is tentatively proposing correction factors for calculating the heat contribution and energy use for hot gas defrost systems. The correction factors and calculations would apply to equipment tested as a matched pair system, to unit coolers, and to condensing units tested and rated individually.

The correction factor for heat contribution is based on DOE's assumption that the heat contribution from hot gas defrost is approximately half that of an equivalent electric defrost. This estimate is based on the fact that electric defrost heat is supplied through separate heater rods which radiate more heat to the surrounding environment, while for hot gas defrost, the hot gas is circulated through, and the heat is applied directly onto, the refrigerant tubes, increasing the amount of the coil in contact with the heat source and reducing the amount of heat lost. DOE is proposing to use a heat contribution factor of 0.18 Btu *per defrost cycle* per Btu/h of capacity at the highest ambient test condition—that is, heat contribution equal to half of the nominal factor for defrost watt-hours per cycle per Btu/h of gross capacity proposed in Table III.6, multiplied by a conversion factor of 3.412 Btu/W-h, and reduced by 10 percent due to meltwater drainage. The correction factor shall be applied to the AHRI 1250 calculation for daily contribution of the load attributed to defrost, as follows:

$$Q_{DF} = 0.18 \text{ Btu/defrost per Btu/h capacity} \times Q_{ref} \times N_{DF}$$

Where:

Q_{ref} = Gross refrigeration capacity in Btu/h as measured at the high ambient condition (90 °F for indoor systems and 95 °F for outdoor systems)

N_{DF} = Number of defrosts per day; shall be set to the number recommended in the

installation instructions for the unit (or if no instructions, shall be set to 4) for units without adaptive defrost and 2.5 for units with adaptive defrost to be consistent with the nominal values determined previously for rating systems without performing the frosted-coil or optional dry coil defrost test

The daily average defrost energy required for the refrigeration system (DF) shall be zero for a unit cooler connected to a multiplex condensing system because the evaporator would be acting as a condenser extension when taking hot gas from a compressor rack during defrost operation, and thus would not be expected to add to the rack's energy use. For a dedicated condensing system, the daily defrost energy shall be equivalent to half of the calculated daily defrost heat (Q_{DF}) converted from Btu to W-h. This is based on the assumption that during a hot gas defrost cycle, part of the defrost heat would be supplied by compressor heat generated during normal cooling operation, and the refrigeration system would be acting as a heat pump (i.e., it would be operating in reverse) with a COP of approximately 2. DOE requests comment on this approach, particularly with respect to the proposed correction factors. DOE notes that should a hot gas defrost test be developed, DOE will consider adopting such a test in a future test procedure rulemaking.

3. Off-Cycle Evaporator Fan Test

AHRI 1250, section C10 contains a method for determining the off-cycle power of evaporator fans that are controlled by a ''qualifying control,'' which may include adjustable fan speed control or periodic ''stir cycles'' which turn the fans on and off according to a certain duty cycle. AHRI 1250, section C10 specifies that ''stir cycle'' controls shall be adjusted so that the greater of a 25 percent duty cycle or the manufacturer default is used for measuring off-cycle fan energy; and that variable speed controls shall be adjusted so that the greater of 25 percent fan speed or the manufacturer's default fan speed shall be used for measuring off-cycle fan energy. In comments on the WICF Standards preliminary analysis, which were discussed in the September 2013 NOPR, interested parties mentioned that a 75 percent reduction in duty cycle or fan speed could cause temperature stratification in the interior of the walk-in, which would impact food safety. DOE proposed in the NOPR to change the fan speed control characteristics to be equivalent to a 50 percent reduction in duty cycle or fan speed. (See 78 FR 55818.) Accordingly, DOE is proposing in this SNOPR to amend the test procedure such that ''stir cycle'' controls shall be adjusted so that the greater of a 50 percent duty cycle or the manufacturer default is used for measuring off-cycle fan energy; and that variable speed controls shall be adjusted so that the greater of 50 percent fan speed or the manufacturer's default fan speed shall be used for measuring off-cycle fan energy. DOE requests comment on this proposal.

4. Refrigerant Oil Testing

Most refrigeration systems use oil-lubricated compressors. A small amount of oil generally escapes the compressor through the discharge connection and circulates through the system, continually returning to the compressor in the suction line in a properly-designed and installed system. Under AHRI 1250, a measurement of the ratio of oil to refrigerant in the liquid refrigerant passing from the condenser to the unit cooler is required per ANSI/ASHRAE Standard 41.4. This information is used to adjust the capacity measurement, since a portion of the liquid mass flow would be oil that does not contribute to refrigeration capacity (see AHRI 1250, section C3.4.6). DOE recognizes that this test requires additional test apparatus and may prove burdensome. Furthermore, DOE testing has shown that in equipment with integrated oil-separators, the ratio of oil to refrigerant tends to be lower than the maximum of 1 percent mandated in AHRI 1250, section C3.4.6. Therefore, in light of the negligible amount of oil present in the refrigerant lines in these types of units and thus the very low likelihood of excess oil being present in the system, DOE is proposing that condensing units with on-board oil-filters would not be required to perform this test.

5. Temperature Measurement

The AHRI 1250 procedure specifies a tolerance of ±0.2 °F for all refrigerant temperature measurements and that temperature measuring instruments must be placed in thermometer wells (small devices that extend into the refrigerant tube that contact the refrigerant and provide a more accurate temperature measurement). DOE notes that measurements to a ±0.2 °F accuracy cannot be obtained by thermocouples and require use of resistance temperature detectors (RTDs). DOE also notes that thermometer wells are generally large enough to require large fittings with diameters significantly larger than those of most refrigerant tubes used for unit coolers. DOE further notes that thermocouples are available with accuracy close to the ±0.2 °F requirement in sheathed arrangements, which can more easily achieve the goal of immersing the temperature sensor into the refrigerant flow. Further, DOE notes that (a) the impact of the uncertainty of temperature measurements of refrigerant entering and leaving the unit cooler on the potential capacity measurement is small enough to be acceptable for an accuracy requirement of ±0.5 °F, and (b) the accuracy requirement for all other refrigerant temperature measurements could be relaxed further, since these other measurements have much less effect on overall test accuracy. In order to address these concerns and provide more flexibility for testing, DOE is proposing that the required tolerance for test temperature measurement be maintained at ±0.5 °F for measurements at the inlet and outlet of the unit cooler, but be altered to ±1.0 °F for all other temperature measurements, allowing for the use of smaller temperature measurement probes which can more easily be placed in contact with the refrigerant while not impeding its flow. Additionally, DOE is proposing to allow the test to be conducted using sheathed sensors immersed in the flowing refrigerant for refrigerant temperature measurements upstream and downstream of the unit cooler, in order to reduce test burden. No refrigerant temperature measurements other than those upstream and downstream of the unit cooler would require a thermometer well or sheathed sensor immersion. DOE requests comment on these proposed changes to the temperature measurement approach.

6. Test Condition Tolerances

AHRI 1250 specifies the operating test condition tolerances for the steady-state test (AHRI 1250, Table 2), including tolerances for electrical voltage. DOE recognizes the importance of also establishing a test condition tolerance of 1 percent for electrical power frequency, and proposes to modify the existing test procedure to set a test condition tolerance for the frequency of electrical power, in keeping with most other industry-accepted test procedures for refrigeration systems and similar equipment.

Additionally, since temperature measurements of air leaving the unit are not used in the calculation of AWEF and do not contribute to the test results, DOE is proposing to delete the requirements related to the condition tolerances or measurements of air leaving the unit. DOE also proposes to remove the tolerances for wet bulb temperature on the outdoor system conditions, except for units with

evaporative cooling, as wet bulb temperature (which is an indicator of humidity) is not expected to impact the performance of air-cooled condensing units. DOE is proposing to retain all other measurements of air entering the heat exchangers, including dry bulb outdoor conditions and dry bulb and wet bulb indoor conditions (wet bulb temperature or humidity levels greater than the required test conditions could cause excessive frosting of the coil and affect its rated capacity).

7. Insulation

The existing test procedure specifies that in the test setup, the pipe lines between the unit cooler and condensing unit ''shall be well insulated''—a description that lacks specificity. In recognition of this shortcoming, DOE proposes to modify the setup by requiring a minimum thermal resistance (R-Value). Based on the most commonly found insulation materials in field conditions, DOE is proposing that the insulation be set up as recommended by the manufacturer in installation literature or, if there is no recommendation, insulation shall be equivalent to a half-inch thick insulation with a material having an R-Value of at least 3.7 per inch. Adding this condition should not pose a significant test burden since insulation material with the specified resistivity is commonly used and readily available. Under the proposal, flow meters would not need to be insulated but must not contact the floor. DOE requests comment on this approach.

8. Composition Analysis

The AHRI 1250 test procedure requires that for systems using zeotropic refrigerant mixtures (that is, those that have ''glide''—i.e. refrigerant mixtures that change temperature during a phase change at constant pressure), a composition analysis of the refrigerant mixture shall be conducted in order to ensure compliance with AHRI Standard 520. This test requires that a sample of the superheated vapor refrigerant be extracted while the system is still running. DOE recognizes that this procedure can represent substantial test burden, with comparably insignificant improvements to the accuracy of the final AWEF measured, and is proposing to delete this requirement from DOE's test procedure. DOE requests comment on this amendment, given the limited effect on AWEF if refrigerants with glide are properly liquid-charged and there are no test system leaks.

9. Piping Length

While DOE's test procedure currently requires that the length of piping between the condenser and unit cooler be 25 feet, DOE proposes to clarify that this length does not include the length of any flow meters that the refrigerant might flow through. Furthermore, in order to ensure an accurate replication of field conditions, and to prevent erroneous efficiency measurements due to excessive refrigerant pre-cooling, DOE proposes to specify that the length of piping allowed within the cooled space shall be a maximum of 15 feet. In cases where there are multiple unit coolers and, therefore, multiple branches of piping, the 15 feet limit would apply to each branch individually as opposed to the total length of the piping.

10. Other Clarifications and Modifications

DOE is also proposing to clarify the language of the test procedure in order to address potential areas of confusion. Specifically, DOE is proposing changes to the list of tests for unit coolers (Table 15: Refrigerator Unit Cooler and Table 16: Freezer Unit Cooler), in order to display additional data that are currently included only by reference to AHRI 420. (Testing standard AHRI 420, Performance Rating of Forced-Circulation Free-Delivery Unit Coolers for Refrigeration, establishes definitions and various requirements regarding testing, data collection marking/name plate information, and conformance conditions with respect to unit coolers.) Specifically, Tables 15 and 16 are modified to include the liquid inlet saturation temperature and outlet superheat conditions required in AHRI 420 for testing these types of unit coolers. DOE is clarifying these values because they can significantly affect the rated capacity. Also, while the existing test procedure sets a maximum allowable voltage imbalance for three-phase power supply, DOE proposes to add a clarification that the stated maximum imbalance of 2 percent refers to the maximum imbalance for voltages measured between phases (rather than phase-to-neutral).

C. Test Procedure for WICF Panel R-Value (ASTM C518–04)

Currently, 10 CFR 431.304 *Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers* incorporates by reference ASTM C518–04, a standard method for determining the thermal transmission properties (i.e. the thermal conductance or conductivity) of a material using the heat flow meter apparatus. The heat flow meter apparatus determines the thermal conductivity of a material by inducing one-dimensional heat flow across a test specimen and measuring the heat flux and temperature difference across the specimen. The heat flux measurement is accomplished using a heat flux transducer, or thermopile. A thermopile consists of multiple thermocouples and produces an electrical voltage proportional to an applied thermal gradient. To ascertain the heat flux based on this electrical voltage, the thermopile must first be calibrated using a material having a known thermal conductivity. ASTM C518–04 recommends using a standard material that is traceable to a national standards laboratory (Section 6.4.2).See ASTM C518–04.

Walk-in wall panels are typically made of rigid foam insulation, either board-stock type or ''foam-in-place'' type foam, with thin ''facers'' made of metal or other suitable material on either side of the foam. In order to meet the efficiency standards set by EPCA (42 U.S.C. 6313 (f)(1)(C)), the foam core is typically 3.5 to 6 inches thick, with the thin facers making an insignificant contribution to the overall R-value of the panel.

Currently, the DOE test procedure requires that ''foam produced inside of a panel (''i.e. foam-in-place'') must be tested in its final foamed state.'' See 10 CFR 431.304(b)(5). Additionally, panels may be tested using ASTM C518–04 with non-foam protective skins or facers still attached, but must not include structural members or other non-foam materials. The procedure does not require manufacturers to consider non-foam member and/or edge regions when testing to ASTM C518–04. (10 CFR 431.304 (b)(5)–(6) and (c)(5)–(6)). Regarding these provisions, DOE clarified in a final rule issued on October 21, 2011,that non-foam members and edge regions are only to be considered in U-factor testing using ASTM C1363. See 76 FR at 65364.DOE further stated that the measurement of the R-value of the foam with facers should be equal to a measurement of the R-value of the foam without the facers. See id. Metal facers make a negligible contribution to the overall R-value of the panel because of the high thermal conductivity of metals typically used as facer material and their small thickness. For example, for an R–25 foam walk-in cooler panel (4 inches thick) with two 0.04-inch thick steel facers (each with a thermal conductivity of 21 Btu/h/ft/°F), the steel facers represent 0.001 percent of the panel's overall thermal resistance.

DOE now recognizes that in practice, the inclusion of facers, non-foam internal members, or edge regions in testing using ASTM C518–04 may produce unreliable results. ASTM C518–04 states that ''special care shall be taken in the measurement procedure for specimens exhibiting appreciable inhomogeneities, anisotropies, rigidity, or especially high or low resistance to heat flow. The use of a heat flow meter apparatus when there are thermal bridges present in the specimen may yield very unreliable results.'' (ASTM C518–04 (4.4)) DOE recognizes that ASTM C518–04's heat flow apparatus testing is intended to measure the thermal conductivity of a single homogenous material, and that the industry's standard practice is to remove facers prior to testing WICF panels. Additionally, DOE testing has shown a minimum of 31 percent and maximum of 62 percent difference in R-value per inch (R/in) in testing panels at freezer conditions (20 °F) with and without facers.

DOE is also aware that the removal of facers will accelerate the aging process for polyurethane foams. Over time, the thermal conductivity of polyurethane foams used for insulation will increase (resulting in a decreased R-value) due to the diffusion of air into the foam. The rate at which the thermal conductivity increases depends on the blowing agent used, thickness of the foam, the permeability of a facing material, if present, and the temperature at which the foam is aged. The thermal conductivity of a 0.4 inch-thick foam core without facers can increase by as much as 20% when aged at 90 °F for 8 days. However, a 1.5 inch-thick foam core without facers may show a negligible difference in thermal conductivity when aged at the same conditions.[4] Additionally, ASTM C518–04, Section 7.3 states that materials must be conditioned according to their specifications where applicable, typically for a period of 24 hours. For the reasons cited above, DOE proposes a requirement that samples be tested without non-foam facers, protective skins, non-foam internal members, or edge regions. DOE also proposes that tests be completed within 48 hours of being cut to minimize the impact of the accelerated aging process on the test results.

[4] See ''Aging of Polyurethane Foam Insulation in Simulated Refrigerator Panels—Initial Results with Third-Generation Blowing Agents'' by Kenneth E. Wilkes et al., published by Oak Ridge National Laboratory for presentation at The Earth Technologies Forum, October 26–28, 1998, Figures 2 and 4(b).

DOE further clarifies that edge regions should make up a small portion of the area of a full panel assembly and their exclusion should not have an impact when measuring panel R-value. If DOE later determines that edge regions comprise a large enough area to warrant their inclusion when measuring a panel's R-value, DOE will revisit its regulations in order to ensure the test procedure still results in an R-value that accurately represents the panel.

Currently, the DOE test procedure allows test samples for foam-in-place panels to be as thick as 4 inches. If the foam-in-place panel is thicker than 4 inches, a sample less than or equal to 4 inches thick would be taken from the center of the foam-in-place panel. If a panel incorporates foam produced as board stock, the board stock can be tested as-is before assembly into a panel. (10 CFR 431.304(b)(5) and (c)(5)) In order to meet the minimum R-value requirements established in EPCA of R–25 (coolers) or R–32 (freezers) (42 U.S.C. 6313(f)(1)(C)), walk-in cooler and freezer panels found on the market are often 4 inches in thickness although DOE does not require a specific thickness to meet the current standards.

ASTM C518–04 makes several recommendations with regard to test specimen thickness. The measurements obtained using the heat flow meter apparatus (as in ASTM C518–04) are relative to a calibration standard with known thermal conductivity. Section 4.5.1.1 requires that this standard material be measured by a recognized national standards laboratory. Section 6.1 of ASTM C518–04 states ''the apparatus [heat flow meter] shall be calibrated with materials having similar thermal characteristics and thicknesses as the materials to be evaluated.'' Section 6.5.4 states ''if tests are to be conducted at thicknesses other than the calibrated thickness, make a thorough study of the error of the heat flow meter apparatus at other thicknesses.'' Furthermore, ASTM C518–04 states ''the combined thickness of the specimen or specimens, the heat flux transducer and any damping material, which in total equals the distance between the cold and hot plates, must be restricted in order to limit the effect of edge losses on the measurements.'' (ASTM C518–04 (7.6.1))

DOE recognizes that the most appropriate standard reference material (SRM) for calibration currently offered by the National Institute of Standards and Technology (NIST) is 1450d (previously 1450c, fibrous glass board material) which has a thickness of 1 inch. NIST SRM 1453 (polystyrene board) has similar thermal conductivity but a thickness of 0.5 inches. A 4-inch thick, R–32 test specimen is, therefore, 4 times thicker than the 1450c/d SRM and has approximately 8 times the thermal resistance.

In light of recommendations in ASTM C518–04 cited above, DOE believes the current discrepancies between a test sample thickness and calibration standard thickness and between a test sample thermal resistance and calibration standard thermal resistance could contribute to error in measuring the thermal resistance of the test sample. Therefore, DOE proposes to reduce the allowable thickness of the sample from no more than 4 inches to no more than 1 inch. This thickness is the same as the NIST SRM 1450c/d calibration standard and DOE believes that this modification to the test procedure will reduce the error associated with the discrepancies listed above. DOE is also proposing that this 1 inch thickness test sample be taken from the center of a panel (meaning centered on a plane half the distance between the surfaces on which facers were attached), as the foam aging process previously described occurs at a faster rate closer to exposed surfaces. Material at the center of the panel will have experienced the smallest effect of foam aging.

The DOE test procedure at 10 CFR 431.304 does not currently place any restriction on the uniformity of the shape of the test specimen surfaces that contact the hot and cold plates of the heat flow meter. However, accurate and reliable measurements of the heat flux and surface temperatures depend on uniform contact between the hot and cold plates and the specimen surfaces. Section 7.4.3 of ASTM C518–04 states that rigid or high conductance specimen surfaces ''should be made flat and parallel to the same degree as the heat-flow-meter.'' Furthermore, any cutting operation used to remove the facers and/or reduce the thickness of the foam test specimen may leave undesirable surface incongruities or voids, resulting in poor contact between the plate and specimen and yielding unreliable test results.

With regard to panel testing using ASTM C518–04, and in light of the evidence cited above, DOE is proposing that test specimens be 1 inch in thickness and cut from the center of a WICF panel (thus removing the facer material). This thickness is in keeping with currently available SRMs from NIST and would result in test specimens with the same thickness as the 1450c/d SRM and approximately 2 times the thermal resistance. DOE also proposes tolerances of ±0.03 inches on

the flatness of both test specimen surfaces and a tolerance of ±0.03 inches on the parallelism between the test specimen surfaces to ensure uniform contact between theses surfaces and the hot and cold plates of the heat flow meter. DOE proposes that testing be completed within 48 hours of sample cutting in order to mitigate the effects of foam aging on the test results.

DOE also proposes the addition of a tolerance of ±1 degree Fahrenheit on the mean temperature at which panels are tested. This is proposed to ensure repeatability of, and comparability between, tests. Currently, the test procedure does not specify a tolerance for these temperatures (20 degrees Fahrenheit for freezers and 55 degrees Fahrenheit for coolers). (10 CFR 431.304(b)(3), (b)(4), (c)(3) and (c)(4)) DOE believes that with the reduction in test sample thickness and removal of facers or other non-foam elements, heat gain from the surrounding environment into the test apparatus and sample should be reduced. DOE testing showed that at freezer conditions 4 inch thick samples with facers maintained an average mean temperature of 22.8 °F while a 1 inch thick sample without facers maintained a mean temperature of 19.5 °F (as compared to mean temperature 20 °F as required by the DOE test procedure). (10 CRF 431.304(b)(3) and(c)(3)) Based on research and test data described, DOE is proposing that the mean temperatures prescribed in the test procedure should be more precisely maintained and ±1 degree Fahrenheit tolerance can be achieved.

DOE clarifies the phrase ''final chemical form'' in 10 CFR 431.304(b)(5) and (c)(5). For ''foam-in-place'' or ''blown'' foams (typically polyurethane), ''final chemical form'' means the foam is cured as intended and ready for use as a finished panel. For foam produced as board stock (typically polystyrene), ''final chemical form'' means after extrusion and ready for assembly into a panel or after assembly into a panel. DOE recognizes that air continuously diffuses into the foam as part of the aging process, and so ''final chemical form'' is ambiguous in this regard. As proposed, testing would be completed within 48 hours of samples being cut for testing to minimize the effect of accelerated aging on the thermal conductivity when the foam is directly exposed to air. Furthermore, DOE is proposing to remove language from paragraphs (b)(5) and (c)(5) that is believed to be redundant. Specifically, the requirement that ''foam produced inside of a panel (''foam-in-place'') must be tested in its final foamed state'' would be removed, as the requirement that foam be in it final chemical form as described above is sufficient.

DOE recognizes that some panels contain two or more different layers of insulating material. To accommodate these types of panels, DOE is proposing that for panels that have more than one type of insulating material, a sample of each material shall be tested as specified in 10 CFR 431.304 and the R-value of the panel shall be calculated according to the proportion the materials occur in the panel. Therefore, for a panel with *i* types of insulating material, the R-Value shall be calculated as follows:

$$R_{panel} = \sum_{1}^{i} \frac{t_i}{k_i}$$

Where:

k_i is the k factor of type *i* material as measured by ASTM C518, and t_i is the thickness of type *i* material that appears in the panel.

DOE requests comment on this formula.

In paragraphs (b), (b)(6), (c) and (c)(6) of 10 CFR 431.304, DOE is proposing to remove references to manufacturers. The requirements of these paragraphs are not limited to testing performed by manufacturers. Independent testing laboratories or other entities would be responsible for meeting these requirements for any testing that has its purpose as described in paragraphs (b) and (c), namely for certifying compliance with applicable energy conservation standards and, since October 12, 2011, for representations of energy efficiency or energy use.

D. Performance-Based Test Procedures for Walk-In Coolers and Freezers

As described above, WICF panels must meet prescriptive requirements for foam insulation R-values based on ASTM C518–04 testing incorporated in 10 CFR 431.304. Additionally, the test procedure at Appendix A to Subpart R of Part 431 *(Uniform Test Method for the Measurement of Energy Consumption of the Components of Envelopes of Walk-In Coolers and Walk-In Freezers)* establishes the method and metrics by which the energy consumption (envelope components) or efficiency (refrigeration components) may be measured; this includes floor and non-floor panels. Sections 4.2 and 4.3 establish the calculation procedures that result in a thermal conductivity, U-value, metric for floor and non-floor panels, and sections 5.1 and 5.2 establish the methods by which the required measurements are taken. Section 5.1 incorporates by reference ASTM C1363–05 *Standard Test Method for Thermal Performance of Building Materials and Envelope Assemblies by Means of a Hot Box Apparatus;* section 5.2 incorporates by reference Annex C *Determination of the aged values of thermal resistance and thermal conductivity* of DIN EN 13164 and DIN EN 13165.

While ASTM C518–04 testing is intended to establish the thermal resistance of the center of a WICF panel, the required testing to ASTM C1363–05 is intended to capture the overall thermal transmittance of a WICF panel, including thermal bridges and edge effects (Note: Thermal transmittance is the reciprocal of thermal resistance). Similar to ASTM C518–04, DIN EN 13164/13165 testing is intended to measure the thermal resistance of the center of a WICF panel; however, DIN EN 13164/13165 also captures the effects of foam aging on the thermal resistance.

In response the September 2013 standards NOPR, the Department received a number of comments regarding the WICF panel test procedure. Some stakeholders supported the use of the U-value metric. Nor-Lake commented that U-factor was an acceptable metric for panels. ([Docket No. EERE–2008–BT–STD–0015]; Nor-Lake, No 115 at p. 2) NEEA supported the use of a basic model U-value for specifying the panel efficiency. NEEA added that the current metric set by Congress—the R-value from ASTM C518—does not adequately measure the broad range of panel types and configurations available. In NEEA's view, a panel U-value, as defined in the proposed standard, would be far more accurate in assessing panel efficiency. ([Docket No. EERE–2008–BT–STD–0015]; NEEA et al, No. 101 at p.2)

DOE also received a number of comments expressing concern over the availability and capability of laboratories to conduct the DOE test procedure for determining panel U-value, specifically ASTM C1363–10, EN 13164:2009–02, and EN 13165:2009–02. Thermo-Kool, Kysor, Imperial-Brown, and Hillphoenix each stated that they have not identified any laboratories capable of conducting the long-term thermal aging test methods required under EN 13164:2009–02 and EN 13165:2009–02. ([Docket No. EERE–2008–BT–STD–0015]; Thermo-Kool, No. 97 at p. 1; Kysor, No. 88 at p. 67; Imperial-Brown, No. 98 at p. 1; Hillphoenix, No. 107 at p. 2) Bally recommended that long-term thermal aging be dropped from the proposed standard until more resources, which DOE infers to mean test labs, are available in the United States. ([Docket

No. EERE–2008–BT–STD–0015]; Bally, No. 102 at p. 2) Thermo-Kool, Kysor, Manitowoc, Imperial-Brown, and Hillphoenix commented that only two laboratories in the United States are capable of conducting ASTM C1363–10. ([Docket No. EERE–2008–BT–STD–0015]; Thermo-Kool, No. 97 at p. 1; Kysor, No. 88 at p. 67; Manitowoc, No. 108 at p. 1; Imperial-Brown, No. 98 at p. 1; Hillphoenix, No. 107 at p. 2)

AHRI noted that American laboratories were largely unfamiliar with ASTM C1363–05, DIN EN 13164:2009–02, and DIN EN 13165:2009–02. Further, AHRI commented that the limited supply of testing capacity and the increased demand for testing as a result of the proposed rule could raise the cost of testing. ([Docket No. EERE–2008–BT–STD–0015]; AHRI, No. 114 at p.4) Manufacturers reiterated that the limited number of test facilities available would increase testing costs. Hillphoenix and Imperial-Brown commented that the insufficient number of third-party test facilities in the United States would significantly increase testing costs, which would heavily impact small manufacturers. ([Docket No. EERE–2008–BT–STD–0015]; Hillphoenix, No. 107 at pp. 2 and 6) Hillphoenix estimated that testing panels would result in testing costs higher than $500,000 per manufacturer. Hillphoenix recommended DOE allow AEDMs for walk-in panel certification to reduce this financial burden. ([Docket No. EERE–2008–BT–STD–0015]; Hillphoenix, No. 107 at p.6) Louisville Cooler also commented that the cost of testing panels was prohibitive, especially for small manufacturers, and stated that there was not a test facility or certification body that could perform the test. Louisville cooler suggested DOE determine if at least three test facilities are capable of performing the DOE test procedure for walk-in panels. ([Docket No. EERE–2008–BT–STD–0015]; Louisville Cooler, No. 81 at p.1 and Public Meeting Transcript, No. 88 at pp. 83–84)

Other manufacturers commented that the current cost of testing at a third-party facility is too high. American Panel commented that the ASTM C1363–10 test has a cost-burden of around $4000 for each test (a cost it considers excessive) and that ATSM C518 is more practical for measuring the heat gain through insulation panels. ([Docket No. EERE–2008–BT–STD–0015]; American Panel, No. 99 at p. 1) American Panel further remarked that small manufacturers could not absorb this testing cost. ([Docket No. EERE–2008–BT–STD–0015]; American Panel, No. 99 at p. 2) Manitowoc, US Cooler, and Nor-Lake also commented that the testing requirements would cause a significant financial burden to small manufacturers ([Docket No. EERE–2008–BT–STD–0015]; Manitowoc, No. 108 at p. 4; U.S. Cooler, No. 75 at p. 1; Nor-Lake, No. 115 at p.3) Imperial Brown estimated that the total cost of testing would be in the range of $2.5 million per manufacturer, which is prohibitive particularly for small businesses.([Docket No. EERE–2008–BT–STD–0015]; Imperial Brown, No. 98 at pp. 2 and 4) Imperial Brown did not clarify if the $2.5 million test cost was solely for certification of walk-in panels. ICS, et al. stated that the high cost of testing to ASTM C1363–10 will create a significant burden on all manufacturers and recommended that DOE use ASTM C518. ([Docket No. EERE–2008–BT–STD–0015]; CT/TR/ICS, No. 100 at p. 5)

Two manufacturers noted that laboratory availability would impact manufacturers' ability to meet the test procedure effective date. Manitowoc commented that the limited number of laboratories makes it difficult for manufacturers to meet the test procedure effective date. ([Docket No. EERE–2008–BT–STD–0015]; Manitowoc, No. 108 at p.1) Kysor also recommended that DOE extend the test procedure effective date until more labs are qualified to perform the walk-in panel tests. ([Docket No. EERE–2008–BT–STD–0015]; Kysor, No. 88 at p. 67; Kyson, No. 88 at p. 35)

DOE also received comments opposing the long-term thermal aging test methods. Bally expressed confusion as to how the long-term thermal aging tests were incorporated into the proposed standard. ([Docket No. EERE–2008–BT–STD–0015]; Bally, No. 102 at p. 2) Imperial-Brown noted that EN 13165:2009–02 requires panels to be [aged] for 6 months, which creates additional burden for manufacturers. ([Docket No. EERE–2008–BT–STD–0015]; Imperial-Brown, No. 98 at p. 1) CT/TR/ICS commented that the thermal [aging] testing is unnecessary because the time frame required for a significant reduction in panel R-value is likely beyond the panel's useable lifetime. ([Docket No. EERE–2008–BT–STD–0015]; CT/TR/ICS, No. 100 at p. 1)

Interested parties also opposed using the U-value as the efficiency metric for walk-in panels. Bally did not support using the U-value as a metric for panels because of what it viewed as the lack of laboratories that are capable of performing ASTM C1363, the unknown cost of testing, and the variability in construction methods—all of which make it difficult to ascertain a U-value for a panel. In its view, ASTM C1363–05 is a cumbersome test method with little added value. Bally recommended DOE continue to use R-value as the metric because panel manufacturers are already accustomed to the DOE test procedure for determining R-value (10 CFR 431.304(a)). ([Docket No. EERE–2008–BT–STD–0015]; Bally, No. 102 at p. 1–2)

Thermo-Kool commented that the U-factor test alone does not determine the overall energy use of the envelope because there are other factors that play a larger role in the envelope's energy use such as the refrigeration system, lighting, and infiltration. Thermo-Kool asserted that R-value as measured by ASTM C518 was a sufficient metric for measuring panel performance and the R-value could be used to calculate U-value. ([Docket No. EERE–2008–BT–STD–0015]; Thermo-Kool, No. 97 at pp.1–2)

Imperial-Brown, Kysor, and Hillphoenix recommended using the R-value calculated from ASTM C518 in order to reduce the burdensome test requirements. ([Docket No. EERE–2008–BT–STD–0015]; Imperial-Brown, No. 98 at p. 1–2; Kysor, No. 88 at p. 35; Hillphoenix, No. 107 at p. 2) AHRI recommended that DOE translate the proposed standard to prescriptive requirements to eliminate testing requirements or increase the current R-value standards. ([Docket No. EERE–2008–BT–STD–0015]; AHRI, No. 114 at p. 2)

Several manufacturers suggested alternative methods of determining a walk-in panel's overall thermal conductivity or resistance. Hillphoenix suggested DOE use a calculation methodology with thermal resistance values from the ASHRAE Fundamentals Handbook for components like the perimeter frame, additional blocking, metal layers and large metal lock housings to determine the panel's overall U-value. ([Docket No. EERE–2008–BT–STD–0015]; Hillphoenix, No. 107 at p. 2) CA IOU recommended reducing testing burden by using a calculation approach for U-factor based on measured U-factor of foam and framing components. ([Docket No. EERE–2008–BT–STD–0015]; CA IOU, No. 88 at p. 86) Kysor agreed with CA IOU's proposal because it is less costly to manufacturers. ([Docket No. EERE–2008–BT–STD–0015]; Kysor, No. 88 at p.86) ICS commented that thermal transmission properties of all panel components are available and can be used to calculate overall R-value. ([Docket No. EERE–2008–BT–STD–0015]; CT/TR/ICS, No. 100 at pp. 5–6) Bally recommended that a panel's U-

value be calculated using a ratio of the edge area to total area. ([Docket No. EERE–2008–BT–STD–0015]; Bally, No. 88, at p. 367 and Bally, No. 102 at p. 5) American Panel commented that the ratio of frame to perimeter widely varied with panel size and its use was not sufficiently penalizing manufacturers of large panels using wooden frames or other inefficient designs. Further, American Panel suggested that the R-value of panels be calculated using a weighted average of the R-values of the frame and the core. ([Docket No. EERE–2008–BT–STD–0015]; American Panel, No. 88 at p. 369)

Architectural Testing, an independent test facility, suggested specific changes. It noted that 10 CFR 431.304 appendix A, section 5.1 describes a test sequence that is not efficient or cost effective. They recommended performing the ASTM C1363 on two assembled panels, after which a core sample from one of the panels tested with ASTM C1363 could then be tested according to ASTM C518 at the same surface temperatures as the ASTM C1363 test. Architectural Testing also recommended that DOE align the test conditions described in 10 CFR 431.304 appendix A, section 5.3 for ASTM C1363 to the conditions required for testing display and non-display doors with NFRC 100. Architectural Testing further stated that the long-term thermal aging tests, EN 13164 and EN 13165, reference other European standards, like EN 12667 or EN 12939, which are similar to ASTM C518. Architectural Testing recommended that DOE modify the test procedure so that the intent of EN 13165 and 13165 is still followed, but that the thermal measurements would be conducted according to ASTM C518. Finally, Architectural Testing recommended that DOE remove the sample size limitations from 10 CFR 431.304 appendix A, section 5.2 because these sample sizes are uncommon and cause increased testing costs. ([Docket No. EERE–2008–BT–STD–0015]; Architectural Testing, No. 111 at pp. 1–3)

In response to the extensive number of comments DOE received regarding test burden and lab availability, DOE is proposing to remove the test procedures in 10 CFR 431, Appendix A to Subpart R that reference ASTM C1363–05 and DIN EN 13164/13165 and their accompanying calculation procedures, leaving only ASTM C518–04 testing in 10 CFR 431.304 for establishing the thermal resistance of WICF panels. This would remove in their entirety sections 4.2, 4.3, 5.1 and 5.2 from 10 CFR 431, Appendix A of Subpart R.

DOE is also proposing several minor changes to section 5.3 for clarification purposes only. Specifically, DOE is proposing that section 5.3(a)(2)'s title change from ''Internal conditions'' to ''Cold-side conditions'' and section 5.3(a)(3)'s title change from ''External conditions'' to ''Warm-side conditions.'' The terms ''internal'' and ''external'' are irrelevant in the context of the testing apparatus described in NFRC 100[E0A1] (incorporated by reference). DOE also proposes to specify the surface convective heat transfer coefficients referred to in paragraph (a)(1); these values are 30 Watts per meter-Kelvin (W/m-K) for the cold side of the hot box apparatus and 7.7 W/m-K for the warm side. This proposed change would only clarify these terms. These values are specified in ASTM C1199–09 *Standard Test Method for Measuring the Steady-State Thermal Transmittance of Fenestration Systems Using Hot Box Methods* which is referred to by NFRC 100[E0A1].

E. Sampling Plan

In order to determine a certified rating for certifying compliance or making energy use representations, DOE requires manufacturers to test each basic model in accordance with the applicable DOE test procedure and apply the sampling plan. In today's notice, DOE is proposing a sampling plan for walk-ins consistent with other commercial equipment regulated under EPCA. The sampling requirements are included in the proposed section 429.53 of Subpart B of 10 CFR Part 429. For consistency with other commercial equipment regulated under EPCA, DOE is proposing that a minimum of two units of a WICF component basic model be tested to develop a representative rating, as prescribed in 10 CFR 429.11. However, manufacturers may test more units of a basic model, if desired. DOE is proposing that any represented energy consumption values of a walk-in basic model shall be lower than or equal to the higher of the mean of the sample or the 95 percent lower confidence limit (UCL) of the true mean divided by 1.05. Additionally, DOE is proposing that any represented energy efficiency values of a walk-in basic model shall be greater than or equal to the lower of the mean of the sample or the 95 percent lower confidence limit (LCL) of the true mean divided by 0.95.

F. Compliance With Other EPCA Requirements

In amending a test procedure, EPCA generally directs DOE to determine to what extent, if any, the proposed amendments would alter the measured energy efficiency or measured energy use of a covered product. (42 U.S.C. 6293(e)(1)) If the amended test procedure alters the measured energy efficiency or measured energy use, the Secretary must amend the applicable energy conservation standard accordingly. (42 U.S.C. 6293(e)(2))

With regard to the AEDMs for WICF refrigeration systems, energy conservation standards for refrigeration systems have not been established. Therefore, this aspect of DOE's proposal (i.e. permitting the use of separate AEDMs when rating the unit cooler and condenser unit) would not implicate this particular provision. DOE will, of course, consider any impacts from the adopted approach it finalizes as part of its standards analysis.

DOE tentatively concludes the amendments to the test procedure for walk-in cooler and freezer panels at 10 CFR 431.304 described in section III.B above will not have an impact on the measurement of energy consumption. With regards to the removal of facers as described above in section III.B, the thin metal facers that are adjoined to the foam WICF panel would ensure accurate and reliable test results and to better align the DOE test procedure with the requirements of ASTM C518–04.

With regard to the proposed requirements for the thickness of the WICF panel test specimen in section III.B, the thermal conductivity that is measured during ASTM C518–04 is an intrinsic property of the material itself and this requirement is proposed to ensure reliable measurement of this property. The nominal thickness of the original WICF panel assembly would still be divided by this thermal conductivity (1/K multiplied by panel thickness) to arrive at the panel R-value. Therefore, the R-value obtained is still comparable to the currently prescribed energy conservation standards.

The proposed requirements of section III.B concerning the flatness and parallelism of the test specimen surfaces are intended to ensure accurate test results. While the incorporated by reference ASTM C518–04 makes recommendations regarding the flatness and parallelism of these surfaces, DOE believes it is necessary to prescribe greater specificity for these parameters to improve consistency and repeatability during testing. Again, this proposed requirement would not alter the end R-value result in such a way as to require amendment of the energy conservation standards.

DOE also tentatively concludes that the addition of tolerances to the mean temperature of the test will have no effect on the measurement of panel R-value. The mean temperatures prescribed for testing (20 degrees

Fahrenheit for freezer panels and 55 degrees Fahrenheit for cooler panels) are not being altered from their current values. Rather this tolerance is proposed as a means for ensuring test repeatability and comparability.

Performance-based energy conservation standards that would rely on the test procedures described in 10 CFR part 431, Subpart R, Appendix A, as well as the AHRI 1250 test procedure, have not yet been established by DOE. Therefore, the changes proposed in today's notice—i.e., the removal of ASTM C1363, DIN EN 13165, and DIN EN 13164; the amendments to NFRC 100[E0A1]; and the amendments to AHRI 1250—will not affect the measurement of any current energy conservation standards.

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 regulatory 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 the preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by 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: *www.gc.doe.gov.* DOE reviewed the test procedures considered in today's SNOPR under the provisions of the Regulatory Flexibility Act (RFA) and the policies and procedures published on February 19, 2003.

DOE reviewed the AEDM requirements and the test procedure modifications being proposed under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. As discussed in more detail below, DOE found that because the provisions of this proposed rule will not result in increased testing and/or reporting burden for manufacturers and would, if adopted, permit additional manufacturers to use an AEDM for the purposes of rating and certifying their equipment, which would reduce manufacturer testing burden. Accordingly, based on DOE's review, manufacturers are unlikely to experience increased financial burden if the provisions presented in today's proposal are adopted.

First, DOE is proposing to allow walk-in manufacturers to use an AEDM to certify their products. Previously, no walk-in manufacturers were eligible to use an AEDM. Today's proposal would adopt voluntary methods for certifying compliance in lieu of conducting actual physical testing—which in turn, would reduce the testing and reporting burden of walk-in manufacturers who elect to use an AEDM to certify their equipment. Furthermore, the proposed validation requirements for an AEDM would not require more testing than that which is currently required under DOE's regulations at 10 CFR 429.12. While the Department believes that permitting greater use of AEDMs will reduce the affected manufacturer's test burden, their use is at the manufacturer's discretion. If, as a result of any of the regulations herein, a manufacturer believes that use of an AEDM would increase rather than decrease their financial burden, the manufacturer may choose not to employ the method. Should a manufacturer choose to abstain from using an AEDM, this provision, if adopted, would not apply and the manufacturer would continue to remain subject to the requirements of the applicable DOE test procedures for walk-ins, which would result in no change in burden from that which is required currently.

DOE is also codifying alternate methods for certifying individual walk-in cooler and freezer components, which should further decrease the burden of existing DOE regulations. DOE is currently undertaking an energy conservation standards rulemaking to set performance standards for walk-in cooler components, including panels, doors, and refrigeration systems. Under the provisions of the March 2011 Final Rule, the ''component'' manufacturer would be required to certify compliance with these standards once they go into effect—however, there were no provisions for manufacturers of individual refrigeration components (i.e. unit coolers and condensing units) to separately certify their components to an energy conservation standard, since the proposed refrigeration system standard would apply to the whole refrigeration system. These manufacturers could potentially have incurred a large burden by having to test all combinations of the components they wished to certify. Additionally, manufacturers of only one type of component could have been inadvertently prevented from selling their equipment because there would have been no available certification mechanism. This SNOPR proposes an alternate certification methodology by which manufacturers of either component of a walk-in refrigeration system—the condensing unit or the unit cooler—may certify compliance with the applicable standard without having to test every combination of components that they produce. DOE believes this approach will significantly reduce the testing and certification burden for all manufacturers, including small businesses.

Finally, DOE is proposing to adopt several clarifications and modifications to the existing test procedures that are intended to further reduce testing burden. For example, DOE is proposing not to require the use of long-term thermal resistance testing of foam and to allow manufacturers to certify their panels based on testing to ASTM C518, a simpler test method that is already in use in the industry. For a complete list of test procedure modifications, see section III.

For the reasons enumerated above, DOE is certifying that this proposal, if promulgated, would not have a significant impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

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

subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

DOE is proposing amendments to its test procedures and related provisions for walk-in coolers and walk-in freezers. DOE has determined that this proposal 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. This proposed rule would amend the existing test procedures without affecting the amount, quality, or distribution of energy usage, and, therefore, would 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 10, 1999), imposes certain requirements on Federal 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 has examined this proposed rule and has tentatively determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed 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) 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. Regarding the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and tentatively determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. (Pub. L. 104–4, sec. 201, codified at 2 U.S.C. 1531) For regulatory actions likely to result in a rule that may cause 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)) 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 them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. (62 FR 12820) (This policy is also available at *www.gc.doe.gov/gc/office-general-counsel.*) DOE examined today's proposed rule according to UMRA and its statement of policy and has tentatively determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year. Accordingly, no further assessment or analysis is required under UMRA.

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

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

I. Review Under Executive Order 12630

Pursuant to Executive Order 12630, ''Governmental Actions and Interference

with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), DOE has determined that this proposed rule would 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 Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

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

DOE has reviewed today's proposal and determined, 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 for this rulemaking.

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

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101, *et seq.*), DOE must comply with all laws applicable to the former Federal Energy Administration, including section 32 of the Federal Energy Administration Act of 1974 (Pub. L. 93–275), as amended by the Federal Energy Administration Authorization Act of 1977 (Pub. L. 95–70). (15 U.S.C. 788; FEAA) Section 32 provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (FTC) concerning the impact of the commercial or industry standards on competition. Today's proposed rule does not propose to incorporate any commercial standards. The commercial standards discussed in today's rulemaking were already adopted in the Test Procedures for Walk-In Coolers and Walk-In Freezers, which was published in the **Federal Register** on April 15, 2011. 76 FR 21580. DOE conducted a review under Section 32 of the Federal Energy Administration Act of 1974 in the April 2011 test procedure final rule. 76 FR 21580, 21604.

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

All submissions received must include the agency name and docket number and/or RIN for this rulemaking. No telefacsimilies (faxes) will be accepted.

Submitting comments via regulations.gov. The *www.regulations.gov* Web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (CBI)). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the Web site will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or mail. Comments and documents submitted via email, hand delivery/courier, or mail also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not

necessary to submit printed copies. No telefacsimiles (faxes) will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English, and are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''confidential'' including all the information believed to be confidential, and one copy of the document marked ''non-confidential'' with the information believed to be confidential deleted. Submit these documents via email or on a CD, if feasible. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items; (2) whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on its proposal to align AEDM validation requirements for WICF refrigeration equipment to the validation requirements for commercial HVAC, refrigeration, and WH equipment.

2. DOE requests comment on the following tolerances for WICF AEDMs. For energy consumption metrics, the AEDM result for a model must be equal to or greater than 95 percent of the tested results for that same model. For energy efficiency metrics, the AEDM results for a model must be less than or equal to 105 percent of the tested results for that same model.

3. DOE seeks comment regarding the proposed requirement imposed on the manufacturer to re-certify any basic model with test data, including test data provided by DOE, in the case of a model failing to meet its AEDM rating.

4. DOE requests comment on its proposal to not require re-validation of an AEDM upon every change in a federal conservation standard or test procedure, but retain discretion to evaluate each case individually and require re-validation on a case-by-case basis in the NOPR upon issuance of a final standard rule or test procedure.

5. DOE requests comment on whether 90 days is an appropriate amount of time to complete the re-validation, re-rating and re-certification steps for cases where they are necessary for AEDMs.

6. DOE requests comment on its proposal to allow unit coolers and condensing units to be rated separately, and particularly the nominal values described in Table III.6.

7. DOE seeks comment on its nominal values for calculating electric defrost power and heat load in the absence of a full defrost test or for an individual condensing unit. DOE also seeks comment on its nominal values for calculating hot gas defrost power and heat load. The nominal values may be found in sections III. B. 1. and III. B. 2.

8. DOE requests comment on its proposed amendments and clarifications to the test procedure; specifically (but not limited to) its modifications to the off-cycle evaporator fan test (section III. B. 3.), temperature measurement (section III. B. 5.), refrigerant line insulation (section III. B. 7.), and composition analysis (section III. B. 8.).

9. DOE asks whether the proposed requirement to remove facers or protective skins from panels before measuring thermal resistance is appropriate.

10. DOE asks whether the proposed requirement that a test sample for panel thermal resistance measurement be 1 inch in thickness and from the center of a WICF panel is appropriate.

11. DOE asks whether the tolerances specified for flatness (+/−0.03) and parallelism (.030 inches) for WICF panels before measuring thermal resistance are appropriate and sufficient.

12. DOE asks whether a tolerance of ±1 degree Fahrenheit for mean temperature during thermal resistance measurement is appropriate and sufficient.

13. DOE asks whether a 48-hour period after cutting the WICF panel for measuring thermal resistance is appropriate and sufficient,

14. DOE requests comment on its proposal to remove the test procedures in 10 CFR 431, Appendix A to Subpart R that reference ASTM C1363–05 and DIN EN 13164/13165 and their accompanying calculation procedures, leaving only ASTM C518–04 testing in 10 CFR 431.304 for establishing the thermal resistance of WICF panels.

15. DOE asks whether the surface heat transfer coefficients prescribed by NFRC 100[E0A1] are appropriate.

VI. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's notice of proposed rulemaking.

List of Subjects

10 CFR Part 429

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

10 CFR Part 431

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

Issued in Washington, DC, on February 7, 2014.

Kathleen B. Hogan,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 431 of Chapter II, Subchapter D 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 429.53 is revised to read as follows:

§ 429.53 Walk-in coolers and walk-in freezers.

(a) *Determination of represented value.*

(1) *Refrigeration equipment:* Manufacturers shall determine the represented value, which includes the certified rating, for each basic model of walk-in cooler or freezer refrigeration equipment, either by testing, in conjunction with the applicable sampling provisions, or by applying an AEDM.

(i) *Units to be tested.*

(A) If the represented value for a given basic model is determined through testing, the general requirements of § 429.11 apply; and

(B) For each basic model selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(*1*) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*i*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i_{th} sample; Or,

(*ii*) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n–1 degrees of freedom (from Appendix A to subpart B). And,

(*2*) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*i*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; Or,

(*ii*) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n–1 degrees of freedom (from Appendix A to subpart B).

(ii) *Alternative efficiency determination methods.* In lieu of testing, a represented value of efficiency or consumption for a basic model of a walk-in cooler or freezer refrigeration system must be determined through the application of an AEDM pursuant to the requirements of § 429.70 and the provisions of this section, where:

(A) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the output of the AEDM and less than or equal to the Federal standard for that basic model; and

(B) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the output of the AEDM and greater than or equal to the Federal standard for that basic model.

(2) *WICF components other than those specified in (a)(1) of this subsection.*

(i) *Units to be tested.*

(A) If the represented value for a given basic model is determined through testing, the general requirements of § 429.11 apply; and

(B) For each basic model selected for testing, a sample of sufficient size shall be randomly selected and tested to ensure that—

(*1*) Any represented value of energy consumption or other measure of energy use of a basic model for which consumers would favor lower values shall be greater than or equal to the higher of:

(*i*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

and, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; Or,

(*ii*) The upper 95 percent confidence limit (UCL) of the true mean divided by 1.05, where:

$$UCL = \bar{x} + t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n–1 degrees of freedom (from Appendix A to subpart B). And,

(*2*) Any represented value of energy efficiency or other measure of energy consumption of a basic model for which consumers would favor higher values shall be less than or equal to the lower of:

(*i*) The mean of the sample, where:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

And, $\bar{x}$ is the sample mean; n is the number of samples; and x_i is the i^{th} sample; Or,

(*ii*) The lower 95 percent confidence limit (LCL) of the true mean divided by 0.95, where:

$$LCL = \bar{x} - t_{.95}\left(\frac{s}{\sqrt{n}}\right)$$

And $\bar{x}$ is the sample mean; s is the sample standard deviation; n is the number of samples; and $t_{0.95}$ is the t statistic for a 95% one-tailed confidence interval with n–1 degrees of freedom (from Appendix A to subpart B).

(b) Certification reports. (1) Except that § 429.12(b)(6) applies to the certified component, the requirements of § 429.12 are applicable to manufacturers of the components of walk-in coolers and freezers (WICFs) listed in paragraph (b)(2) of this section, and;

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information:

(i) For WICF doors: The door type, R-value of the door insulation, and a declaration that the manufacturer has incorporated the applicable design requirements. In addition, for those WICFs with transparent reach-in doors and windows: The glass type of the doors and windows (e.g., double-pane with heat reflective treatment, triple-pane glass with gas fill), and the power draw of the antisweat heater in watts per square foot of door opening.

(ii) For WICF panels: The R-value of the insulation (except for glazed

portions of the doors or structural members)

(iii) For WICF refrigeration systems: The motor purpose (i.e., evaporator fan motor or condenser fan motor), the horsepower, and a declaration that the manufacturer has incorporated the applicable design requirements.

■ 3. Section 429.70 is amended by adding paragraph (f) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency or energy use.

* * * * *

(f) *Alternative efficiency determination method (AEDM) for walk-in refrigeration equipment.*

(1) *Criteria an AEDM must satisfy.* A manufacturer may not apply an AEDM to a basic model to determine its efficiency pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency or energy consumption characteristics of the basic model as measured by the applicable DOE test procedure;

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data; and

(iii) The manufacturer has validated the AEDM, in accordance with paragraph (f)(2) of this section.

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability as follows:

(i) The manufacturer must select at least the minimum number of basic models for each validation class specified in paragraph (f)(2)(iv) of this section to which the particular AEDM applies. Using the AEDM, calculate the energy use or energy efficiency for each of the selected basic models. Test a single unit of each basic model in accordance with paragraph (f)(2)(iii) of this section. Compare the results from the single unit test and the AEDM output according to paragraph (f)(2)(ii) of this section. The manufacturer is responsible for ensuring the accuracy and repeatability of the AEDM.

(ii) *Individual Model Tolerances:*

(A) The predicted efficiency for each model calculated by applying the AEDM may not be more than five percent greater than the efficiency determined from the corresponding test of the model.

(B) The predicted energy efficiency for each model calculated by applying the AEDM must meet or exceed the applicable federal energy conservation standard.

(iii) *Additional Test Unit Requirements:*

(A) Each AEDM must be supported by test data obtained from physical tests of current models; and

(B) Test results used to validate the AEDM must meet or exceed current, applicable Federal standards as specified in part 431 of this chapter;

(C) Each test must have been performed in accordance with the applicable DOE test procedure with which compliance is required at the time the basic model is distributed in commerce; and

(D) For a mismatched WICF refrigeration system, an AEDM may not simulate or model portions of the system that are not required to be tested by the DOE test procedure. That is, if the test results used to validate the AEDM are for either a unit cooler only or a condensing unit only, the AEDM must estimate the system rating using the nominal values specified in the DOE test procedure for the other part of the refrigeration system.

(iv) *WICF Refrigeration Validation Classes*

Validation class	Minimum number of distinct models that must be tested
Dedicated Condensing, Medium Temperature, Indoor System	2 Basic Models.
Dedicated Condensing, Medium Temperature, Outdoor System	2 Basic Models.
Dedicated Condensing, Low Temperature, Indoor System	2 Basic Models.
Dedicated Condensing, Low Temperature, Outdoor System	2 Basic Models.
Unit Cooler connected to a Multiplex Condensing Unit, Medium Temperature	2 Basic Models.
Unit Cooler connected to a Multiplex Condensing Unit, Low Temperature	2 Basic Models.
Medium Temperature, Indoor Condensing Unit	2 Basic Models.
Medium Temperature, Outdoor Condensing Unit	2 Basic Models.
Low Temperature, Indoor Condensing Unit	2 Basic Models.
Low Temperature, Outdoor Condensing Unit	2 Basic Models.

(3) *AEDM Records Retention Requirements.* If a manufacturer has used an AEDM to determine representative values pursuant to this section, the manufacturer must have available upon request for inspection by the Department records showing:

(i) The AEDM, including the mathematical model, the engineering or statistical analysis, and/or computer simulation or modeling that is the basis of the AEDM;

(ii) Equipment information, complete test data, AEDM calculations, and the statistical comparisons from the units tested that were used to validate the AEDM pursuant to paragraph (f)(2) of this section; and

(iii) Equipment information and AEDM calculations for each basic model to which the AEDM has been applied.

(4) *Additional AEDM Requirements.* If requested by the Department the manufacturer must perform at least one of the following:

(i) Conduct simulations before representatives of the Department to predict the performance of particular basic models of the product to which the AEDM was applied;

(ii) Provide analyses of previous simulations conducted by the manufacturer; or

(iii) Conduct certification testing of basic models selected by the Department.

(5) *AEDM Verification Testing.* DOE may use the test data for a given individual model generated pursuant to § 429.104 to verify the certified rating determined by an AEDM as long as the following process is followed:

(i) *Selection of units:* DOE will obtain units for test from retail, where available. If units cannot be obtained from retail, DOE will request that a unit be provided by the manufacturer.

(ii) *Lab Requirements:* DOE will conduct testing at an independent, third-party testing facility of its choosing. In cases where no third-party laboratory is capable of testing the equipment, it may be tested at a manufacturer's facility upon DOE's request.

(iii) *Manufacturer Participation:* Testing will be performed without manufacturer representatives on-site.

(iv) *Testing:* All verification testing will be conducted in accordance with

the applicable DOE test procedure, as well as each of the following to the extent that they apply:

(*A*) Any active test procedure waivers that have been granted for the basic model;

(*B*) Any test procedure guidance that has been issued by DOE;

(*C*) If during test set-up or testing, the lab indicates to DOE that it needs additional information regarding a given basic model in order to test in accordance with the applicable DOE test procedure, DOE may organize a meeting between DOE, the manufacturer and the lab to provide such information.

(*D*) At no time during the process may the lab communicate directly with the manufacturer without DOE present.

(v) *Failure to meet certified rating:* If a model tests worse than its certified rating by an amount exceeding the tolerance prescribed in paragraph (f)(5)(vi) of this section, DOE will notify the manufacturer. DOE will provide the manufacturer with all documentation related to the test set up, test conditions, and test results for the unit. Within the timeframe allotted by DOE, the manufacturer may then present all claims regarding testing validity.

(vi) *Tolerances:*

(*A*) For consumption metrics, the result from a DOE verification test must be less than or equal to the certified rating × (1 + the applicable tolerance).

(*B*) For efficiency metrics, the result from a DOE verification test must be greater than or equal to the certified rating × (1 − the applicable tolerance).

Equipment	Metric	Applicable tolerance
Refrigeration systems (including components)	AWEF	5%

(vii) *Invalid Rating:* If, following discussions with the manufacturer and a retest where applicable, DOE determines that the testing was conducted appropriately in accordance with the DOE test procedure, the rating for the model will be considered invalid. Pursuant to 10 CFR 429.13(b), DOE may require a manufacturer to conduct additional testing as a remedial measure.

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 4. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

■ 5. Section 431.304 is amended by:

■ a. Revising paragraphs (b) introductory text, and (b)(3) through (6);

■ b. Adding paragraph (b)(7);

■ c. Revising paragraphs (c) introductory text, and (c)(3) through (6);

■ d. Re-designating paragraphs (c)(7) through (c)(10) as paragraphs (c)(8) through (c)(11), respectively;

■ e. Adding new paragraph (c)(7);

■ f. Revising newly redesignated paragraphs (c)(8) through (10);

■ g. Adding paragraph (c)(12).

The revisions and additions read as follows:

§ 431.304 Uniform test method for the measurement of energy consumption of walk-in coolers and walk-in freezers.

* * * * *

(b) This paragraph (b) shall be used for the purposes of certifying compliance with the applicable energy conservation standards of the R-value of panels until January 1, 2015.

* * * * *

(3) For calculating the R value for freezers, the K factor of the foam at 20 ± 1 degrees Fahrenheit (average foam temperature) shall be used.

(4) For calculating the R value for coolers, the K factor of the foam at 55 ± 1 degrees Fahrenheit (average foam temperature) shall be used.

(5) Foam shall be tested after it is produced in its final chemical form. (For foam produced inside of a panel (''foam-in-place''), ''final chemical form'' means the foam is cured as intended and ready for use as a finished panel. For foam produced as board stock (typically polystyrene), ''final chemical form'' means after extrusion and ready for assembly into a panel or after assembly into a panel.) Foam from foam-in-place panels must not include any structural members or non-foam materials. Foam produced as board stock may be tested prior to its incorporation into a final panel. A test sample no more than one inch in thickness must be taken from the center of a panel (meaning, centered on a plane half the distance between the surfaces on which facers were attached) and any protective skins or facers must be removed. The two surfaces of the test sample that will contact the hot plate assemblies (as defined in ASTM C518) must both maintain ±0.03 inches flatness tolerance and also maintain parallelism with respect to one another within ±0.03 inches. Testing must be completed within 48 hours of samples being cut for testing.

(6) Internal non-foam member and/or edge regions shall not be considered in ASTM C518 testing.

(7) For panels consisting of two or more layers of dissimilar insulating materials (excluding facers or protective skins), test each material as described in paragraph (4). For a panel with *n* layers of insulating material, the R-Value shall be calculated as follows:

$$R_{panel} = \sum_{1}^{i} \frac{t_i}{k_i}$$

Where:

k_i is the k factor of type *i* material as measured by ASTM C518, and t_i is the thickness of type *i* material that appears in the panel.

(c) This paragraph (c) shall be used for any representations of energy efficiency or energy use starting on October 12, 2011 and to certify compliance to the energy conservation standards of the R-value of panels on or after January 1, 2015.

* * * * *

(3) For calculating the R value for freezers, the K factor of the foam at 20 ± 1 degrees Fahrenheit (average foam temperature) shall be used.

(4) For calculating the R value for coolers, the K factor of the foam at 55 ± 1 degrees Fahrenheit (average foam temperature) shall be used.

(5) Foam shall be tested after it is produced in its final chemical form. (For foam produced inside of a panel (''foam-in-place''), ''final chemical form'' means the foam is cured as intended and ready for use as a finished panel. For foam produced as board stock (typically polystyrene), ''final chemical form'' means after extrusion and ready for assembly into a panel or after assembly into a panel.) Foam from foam-in-place panels must not include any structural members or non-foam materials. Foam produced as board stock may be tested prior to its incorporation into a final panel. A test sample no more than one inch in thickness must be taken from the center of a panel (meaning, centered on a plane half the distance between the surfaces on which facers were attached) and any protective skins or facers must be removed. The two surfaces of the test sample that will contact the hot plate assemblies (as defined in ASTM C518) must both maintain ±0.03 inches flatness tolerance and also maintain parallelism with respect to one another within ±0.03 inches. Testing must be completed within 48 hours of samples being cut for testing.

(6) Internal non-foam member and/or edge regions shall not be considered in ASTM C518 testing.

(7) For panels consisting of two or more layers of dissimilar insulating materials (excluding facers or protective skins), test each material as described in

paragraph (4). For a panel with *n* layers of insulating material, the R-Value shall be calculated as follows:

$$R_{panel} = \sum_{1}^{i} \frac{t_i}{k_i}$$

Where:

k_i is the k factor of type *i* material as measured by ASTM C518, and

t_i is the thickness of type *i* material that appears in the panel.

(8) Determine the U-factor, conduction load, and energy use of walk-in cooler and walk-in freezer display panels by conducting the test procedure set forth in appendix A to this subpart section 4.1.

(9) Determine the energy use of walk-in cooler and walk-in freezer display doors and non-display doors by conducting the test procedure set forth in appendix A to this subpart, sections 4.4 and 4.5, respectively.

(10) Determine the Annual Walk-in Energy Factor of walk-in cooler and walk-in freezer refrigeration systems by conducting the test procedure set forth in AHRI 1250 (incorporated by reference; see § 431.303), with the following modifications:

(i) In Table 2, Test Operating and Test Condition Tolerances for Steady-State Test, electrical power frequency shall have a Test Condition Tolerance of 1 percent. Also, refrigerant temperature measurements shall have a tolerance of +/−0.5F for unit cooler in/out, +/−1.0F for all others temperature measurements.

(ii) In Table 2, the Test Operating Tolerances and Test Condition Tolerances for Air Leaving Temperatures shall be deleted.

(iii) In Table 2, The Test Condition Tolerance for Outdoor Wet Bulb Temperature of 0.3 applies only to units with evaporative cooling.

(iv) In section C3.1.6, refrigerant temperature measurements upstream and downstream of the unit cooler may use sheathed sensors immersed in the flowing refrigerant instead of thermometer wells.

(v) In section C3.5, for a given motor winding configuration, the total power input shall be measured at the highest nameplate voltage. For three-phase power, voltage imbalances shall be no more than 2 percent from phase to phase.

(vi) In the test setup (section C8.3), the condenser and unit cooler shall be connected by pipes of the manufacturer specified size. The pipe lines shall be insulated with a minimum total thermal resistance equivalent to ½″ thick insulation having a flat-surface R-Value of 3.7 ft^2-°F-hr/Btu per inch or greater. Flow meters need not be insulated but must not be in contact with the floor. The lengths of each of the connected liquid line and suction line shall be 25 feet, not including the requisite flow meters. Of this length, no more than 15 feet shall be in the conditioned space. In the case that there are multiple branches of piping, the maximum length of piping applies to each branch individually as opposed to the total length of the piping.

(vii) In section C3.4.5, for verification of sub-cooling downstream of mass flow meters, only the sight glass and a temperature sensor located on the tube surface under the insulation are required.

(viii) Delete section C3.3.6.

(ix) In section C11.1, to determine frost load defrost conditions, the Frost Load Conditions Defrost Test (C11.1.1) is optional. If the frost load test is not performed, the frost load defrost DF_f shall be equal to 1.05 times the dry coil energy consumption DF_d measured using the dry coil condition test in section C11.1 and the number of defrosts per day N_{DF} shall be set to 4.

(x) In section C11.2, if the system has an adaptive or demand defrost system, the optional test may be run as specified to establish the number of defrosts per day under dry coil conditions and this number shall be averaged with the number of defrosts per day calculated under the frost load conditions. If the system has an adaptive or demand defrost system and the optional test is not run, the number of defrosts per day N_{DF} shall be set to the average of 1 and the number of defrosts per day calculated under the frost load conditions (section (c)(8)(ix)).

(xi) In section C11.3, if the frost load test is not performed, the daily contribution of the load attributed to defrost Q_{DF} in Btu shall be calculated as follows:

$$Q_{DF} = 0.95 \times 3.412\ \text{Btu/W-h} \times \frac{DF_d + DF_f}{2} \times N_{DF}$$

Where:

DF_d = the defrost energy, in W-h, at the dry coil condition

DF_f = the defrost energy, in W-h, at the frosted coil condition

N_{DF} = the number of defrosts per day

(xii) In section C11, if the unit utilizes hot gas defrost, Q_{DF} and DF shall be calculated as follows:

$Q_{DF} = {}_{x}\, N_{DF}$

Where:

Q_{ref} = Gross refrigeration capacity in Btu/h as measured at the high ambient condition (90 °F for indoor systems and 95 °F for outdoor systems)

N_{DF} = Number of defrosts per day; shall be set to the number recommended in the installation instructions for the unit (or if no instructions, shall be set to 4) for units without adaptive defrost and 2.5 for units with adaptive defrost

For unit coolers connected to a multiplex system: The defrost energy, DF, in W-h = 0.

For dedicated condensing systems or condensing units tested separately:

$$DF = 0.5 \times \frac{Q_{DF}}{3.412}\ \text{Btu/W-h} \times N_{DF}$$

(xiii) In section C3.4.6, for units with integrated oil separators, the ratio of oil to refrigerants can be assumed to be less than 1% without the need for confirmatory testing.

(xiv) Section C10 shall be revised to read:

Off-cycle evaporator fan test. Upon the completion of the steady state test for walk-in systems, the compressors of the walk-in systems shall be turned off. The unit coolers fans' power consumption shall be measured in accordance with the requirements in Section C 3.5. Off-cycle fan power shall be equal to on-cycle fan power unless evaporator fans are controlled by a qualifying control. Qualifying evaporator fan controls shall have a user adjustable method of destratifying air during the off-cycle including but not

limited to: adjustable fan speed control or periodic ''stir cycles.'' Controls shall be adjusted so that the greater of a 50% duty cycle or the manufacturer default is used for measuring off-cycle fan energy. For variable speed controls, the greater of 50% fan speed or the manufacturer's default fan speed shall be used for measuring off-cycle fan energy. When a cyclic control is used at least three full ''stir cycles'' are measured.

(xv) Table 15 and Table 16 are modified as follows:

TABLE 15—REFRIGERATOR UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling, °F	Compressor capacity	Outlet superheat, °F	Test objective
Off Cycle Fan Power.	35	<50	.....	.....	.....	Compressor Off	.....	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	35	<50	25	105	9	Compressor On	6.5	Determine Net Refrigeration Capacity of Unit Cooler.
Refrigeration Capacity Suction B.	35	<50	20	105	9	Compressor On	6.5	Determine Net Refrigeration Capacity of Unit Cooler.

TABLE 16—FREEZER UNIT COOLER

Test description	Unit cooler air entering dry-bulb, °F	Unit cooler air entering relative humidity, %	Saturated suction temp, °F	Liquid inlet saturation temp, °F	Liquid inlet subcooling, °F	Compressor capacity	Outlet superheat, °F	Test objective
Off Cycle Fan Power.	−10	<50	.....	.....	.....	Compressor Off	.....	Measure fan input power during compressor off cycle.
Refrigeration Capacity Suction A.	−10	<50	25	105	9	Compressor On	6.5	Determine Net Refrigeration Capacity of Unit Cooler.
Refrigeration Capacity Suction B.	−10	<50	20	105	9	Compressor On	6.5	Determine Net Refrigeration Capacity of Unit Cooler.
Defrost	−10	[1]	.....	.....	.....	Compressor Off	.....	Test according to Appendix C Section C11.

[1] Various.

* * * * *

(12) *Rating of walk-in cooler and freezer refrigeration system components sold separately*

(i) A unit cooler, if sold separately, shall be rated using the method for testing a unit cooler connected to a multiplex condensing system.

(ii) A condensing unit, if sold separately, shall be rated using the following nominal values:

Saturated suction temperature at the evaporator coil exit T_{evap} (°F) = 25 for coolers and −20 for freezers

On-cycle evaporator fan power $EF_{comp,on}$ (W) = 0.016 W-h/Btu × $q_{mix,cd}$ (Btu/h); where $q_{mix,cd}$ is the gross cooling capacity at the highest ambient rating condition (90 °F for indoor units and 95 °F for outdoor units)

Off-cycle evaporator fan power $EF_{comp,off}$ (W) = 0.2 × $EF_{comp,on}$ (W)

For medium temperature (cooler) condensing units: Daily defrost energy use DF (W-h) = 0 and daily defrost heat load contribution Q_{DF} (Btu) = 0

For low temperature (freezer) condensing units without hot gas defrost capability:

Daily defrost energy use DF (W-h) = 0.12 (W-h/cycle)/(Btu/h) × $q_{mix,cd}$ (Btu/h) × N_{DF} for freezers

Defrost heat load contribution Q_{DF} (Btu) = 0.95 × DF (W-h)/3.412 Btu/W-h

For low temperature (freezer) condensing units with hot gas defrost capability, DF and Q_{DF} shall be calculated using the method in paragraph (10)(xii) of this section.

The number of defrost cycles per day (N_{DF}) shall be set to the number recommended in the installation instructions for the unit (or if no instructions, shall be set to 4) for units without adaptive defrost and 2.5 for units with adaptive defrost.

(iii) Only fixed capacity condensing units may be certified in this manner. Multiple-capacity condensing units must be rated and certified as part of a matched system.

■ 6. Appendix A to Subpart R of part 431 is amended by:

■ a. Removing and reserving sections 4.2, 4.3, 5.1, and 5.2;

■ b. Revising paragraph 5.3(a)(1);

■ c. Removing in paragraph 5.3(a)(2) the word ''Internal'' and adding in its place the words ''Cold-side''; and

■ d. Removing in paragraph 5.3(a)(3) the word ''External'' and adding in its place the words ''Warm-side''.

The revision reads as follows:

Appendix A to Subpart R of Part 431—Uniform Test Method for the Measurement of Energy Consumption of the Components of Envelopes of Walk-In Coolers and Walk-In Freezers

* * * * *

4.2 [Removed and Reserved]

4.3 [Removed and Reserved]

* * * * *

5.1 [Removed and Reserved]

5.2 [Removed and Reserved]

5.3 * * *

(a) * * *

(1) The average surface heat transfer coefficient on the cold-side of the apparatus shall be 30 Watts per square-meter-Kelvin (W/m^2*K) ± 5%. The average surface heat transfer coefficient on the warm-side of the apparatus shall be 7.7 Watts per square-meter-Kelvin (W/m^2*K) ± 5%.

* * * * *

[FR Doc. 2014–03101 Filed 2–19–14; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 79 Thursday,
No. 34 February 20, 2014

Part IV

The President

Executive Order 13658—Establishing a Minimum Wage for Contractors

Federal Register
Vol. 79, No. 34
Thursday, February 20, 2014

Presidential Documents

Title 3—

The President

Executive Order 13658 of February 12, 2014

Establishing a Minimum Wage for Contractors

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Property and Administrative Services Act, 40 U.S.C. 101 *et seq.,* and in order to promote economy and efficiency in procurement by contracting with sources who adequately compensate their workers, it is hereby ordered as follows:

Section 1. *Policy.* This order seeks to increase efficiency and cost savings in the work performed by parties who contract with the Federal Government by increasing to $10.10 the hourly minimum wage paid by those contractors. Raising the pay of low-wage workers increases their morale and the productivity and quality of their work, lowers turnover and its accompanying costs, and reduces supervisory costs. These savings and quality improvements will lead to improved economy and efficiency in Government procurement.

Sec. 2. *Establishing a minimum wage for Federal contractors and subcontractors.* (a) Executive departments and agencies (agencies) shall, to the extent permitted by law, ensure that new contracts, contract-like instruments, and solicitations (collectively referred to as ''contracts''), as described in section 7 of this order, include a clause, which the contractor and any subcontractors shall incorporate into lower-tier subcontracts, specifying, as a condition of payment, that the minimum wage to be paid to workers, including workers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. 214(c), in the performance of the contract or any subcontract thereunder, shall be at least:

(i) $10.10 per hour beginning January 1, 2015; and

(ii) beginning January 1, 2016, and annually thereafter, an amount determined by the Secretary of Labor (Secretary). The amount shall be published by the Secretary at least 90 days before such new minimum wage is to take effect and shall be:

(A) not less than the amount in effect on the date of such determination;

(B) increased from such amount by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (United States city average, all items, not seasonally adjusted), or its successor publication, as determined by the Bureau of Labor Statistics; and

(C) rounded to the nearest multiple of $0.05.

(b) In calculating the annual percentage increase in the Consumer Price Index for purposes of subsection (a)(ii)(B) of this section, the Secretary shall compare such Consumer Price Index for the most recent month, quarter, or year available (as selected by the Secretary prior to the first year for which a minimum wage is in effect pursuant to subsection (a)(ii)(B)) with the Consumer Price Index for the same month in the preceding year, the same quarter in the preceding year, or the preceding year, respectively.

(c) Nothing in this order shall excuse noncompliance with any applicable Federal or State prevailing wage law, or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under this order.

Sec. 3. *Application to tipped workers.* (a) For workers covered by section 2 of this order who are tipped employees pursuant to 29 U.S.C. 203(t),

the hourly cash wage that must be paid by an employer to such workers shall be at least:

(i) $4.90 an hour, beginning on January 1, 2015;

(ii) for each succeeding 1-year period until the hourly cash wage under this section equals 70 percent of the wage in effect under section 2 of this order for such period, an hourly cash wage equal to the amount determined under this section for the preceding year, increased by the lesser of:

(A) $0.95; or

(B) the amount necessary for the hourly cash wage under this section to equal 70 percent of the wage under section 2 of this order; and

(iii) for each subsequent year, 70 percent of the wage in effect under section 2 for such year rounded to the nearest multiple of $0.05.

(b) Where workers do not receive a sufficient additional amount on account of tips, when combined with the hourly cash wage paid by the employer, such that their wages are equal to the minimum wage under section 2 of this order, the cash wage paid by the employer, as set forth in this section for those workers, shall be increased such that their wages equal the minimum wage under section 2 of this order. Consistent with applicable law, if the wage required to be paid under the Service Contract Act, 41 U.S.C. 6701 *et seq.,* or any other applicable law or regulation is higher than the wage required by section 2, the employer shall pay additional cash wages sufficient to meet the highest wage required to be paid.

Sec. 4. *Regulations and Implementation.* (a) The Secretary shall issue regulations by October 1, 2014, to the extent permitted by law and consistent with the requirements of the Federal Property and Administrative Services Act, to implement the requirements of this order, including providing exclusions from the requirements set forth in this order where appropriate. To the extent permitted by law, within 60 days of the Secretary issuing such regulations, the Federal Acquisition Regulatory Council shall issue regulations in the Federal Acquisition Regulation to provide for inclusion of the contract clause in Federal procurement solicitations and contracts subject to this order.

(b) Within 60 days of the Secretary issuing regulations pursuant to subsection (a) of this section, agencies shall take steps, to the extent permitted by law, to exercise any applicable authority to ensure that contracts as described in section 7(d)(i)(C) and (D) of this order, entered into after January 1, 2015, consistent with the effective date of such agency action, comply with the requirements set forth in sections 2 and 3 of this order.

(c) Any regulations issued pursuant to this section should, to the extent practicable and consistent with section 8 of this order, incorporate existing definitions, procedures, remedies, and enforcement processes under the Fair Labor Standards Act, 29 U.S.C. 201 *et seq.;* the Service Contract Act, 41 U.S.C. 6701 *et seq.;* and the Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*

Sec. 5. *Enforcement.* (a) The Secretary shall have the authority for investigating potential violations of and obtaining compliance with this order.

(b) This order creates no rights under the Contract Disputes Act, and disputes regarding whether a contractor has paid the wages prescribed by this order, to the extent permitted by law, shall be disposed of only as provided by the Secretary in regulations issued pursuant to this order.

Sec. 6. *Severability.* If any provision of this order, or applying such provision to any person or circumstance, is held to be invalid, the remainder of this order and the application of the provisions of such to any person or circumstance shall not be affected thereby.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an agency or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) This order shall apply only to a new contract or contract-like instrument, as defined by the Secretary in the regulations issued pursuant to section 4(a) of this order, if:

(i) (A) it is a procurement contract for services or construction;

(B) it is a contract or contract-like instrument for services covered by the Service Contract Act;

(C) it is a contract or contract-like instrument for concessions, including any concessions contract excluded by Department of Labor regulations at 29 C.F.R. 4.133(b); or

(D) it is a contract or contract-like instrument entered into with the Federal Government in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public; and

(ii) the wages of workers under such contract or contract-like instrument are governed by the Fair Labor Standards Act, the Service Contract Act, or the Davis-Bacon Act.

(e) For contracts or contract-like instruments covered by the Service Contract Act or the Davis-Bacon Act, this order shall apply only to contracts or contract-like instruments at the thresholds specified in those statutes. For procurement contracts where workers' wages are governed by the Fair Labor Standards Act, this order shall apply only to contracts or contract-like instruments that exceed the micro-purchase threshold, as defined in 41 U.S.C. 1902(a), unless expressly made subject to this order pursuant to regulations or actions taken under section 4 of this order.

(f) This order shall not apply to grants; contracts and agreements with and grants to Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93–638), as amended; or any contracts or contract-like instruments expressly excluded by the regulations issued pursuant to section 4(a) of this order.

(g) Independent agencies are strongly encouraged to comply with the requirements of this order.

Sec. 8. *Effective Date.* (a) This order is effective immediately and shall apply to covered contracts where the solicitation for such contract has been issued on or after:

(i) January 1, 2015, consistent with the effective date for the action taken by the Federal Acquisition Regulatory Council pursuant to section 4(a) of this order; or

(ii) for contracts where an agency action is taken pursuant to section 4(b) of this order, January 1, 2015, consistent with the effective date for such action.

(b) This order shall not apply to contracts or contract-like instruments entered into pursuant to solicitations issued on or before the effective date for the relevant action taken pursuant to section 4 of this order.

(c) For all new contracts and contract-like instruments negotiated between the date of this order and the effective dates set forth in this section, agencies are strongly encouraged to take all steps that are reasonable and legally permissible to ensure that individuals working pursuant to those contracts and contract-like instruments are paid an hourly wage of at least $10.10 (as set forth under sections 2 and 3 of this order) as of the effective dates set forth in this section.

THE WHITE HOUSE,
February 12, 2014.

[FR Doc. 2014–03805
Filed 2–19–14; 11:15 am]
Billing code 3295–F4

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Thursday, February 20, 2014

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S. 25 / P.L. 113–82

To ensure that the reduced annual cost-of-living adjustment to the retired pay of members and former members of the Armed Forces under the age of 62 required by the Bipartisan Budget Act of 2013 will not apply to members or former members who first became members prior to January 1, 2014, and for other purposes. (Feb. 15, 2014; 128 Stat. 1009)

S. 540 / P.L. 113–83

Temporary Debt Limit Extension Act (Feb. 15, 2014; 128 Stat. 1011)

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