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FEDERAL REGISTER

Vol. 77 Wednesday,
No. 104 May 30, 2012

Pages 31719–31974

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[AMS–DA–10–0055]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the General Specifications for Dairy Plants Approved for United States Department of Agriculture (USDA) Inspection and Grading Service (General Specifications) by raising the maximum allowable somatic cell count in producer herd goat milk from 1,000,000 cells per milliliter to 1,500,000 cells per milliliter. This will ensure that goat milk can continue to be shipped and recognizes that goats have a need for different regulatory limits for somatic cells than cows. In addition this document eliminates mandatory sediment testing on producer milk except for milk in cans. The requirement for sediment testing has become outdated and is no longer needed.

DATES: *Effective:* June 29, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Sausville, Chief, Standardization Branch, Dairy Programs, AMS, USDA, telephone (202) 720–9382 or email *Susan.Sausville@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

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

B. Regulatory Flexibility Act

The final rule has been reviewed in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), and AMS has considered the economic impact of this action on small entities. It is determined that its provisions will not have a significant economic impact on a substantial number of small entities.

AMS provides, under the authority of the Agricultural Marketing Act of 1946, voluntary, user-fee funded inspection and grading services to approximately 400 dairy manufacturing plants. All of the dairy manufacturing plants utilizing the program would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

These amendments will not have a significant economic impact since participation in the USDA-approved plant program is voluntary and the cost to those utilizing the program will not increase.

C. Civil Justice Reform

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

D. Paperwork Reduction Act

The information collection requirements that appear in Part 58 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0110 under the Paperwork Reduction Act (44 U.S.C. chapter 35). This action will not impose any additional reporting or recordkeeping requirements on large or small dairy processors.

Background and Changes

The change for goat milk raises the maximum allowable somatic cell count from 1,000,000 to 1,500,000 cells per milliliter. Due to inherent differences between cows and goats, goat milk with a somatic cell count of 1,500,000 cells per milliliter can be produced from a healthy, non-mastitic udder and therefore is quality milk. The change for goat milk will ensure its continued shipment and recognizes that goats have a need for different regulatory limits for somatic cells than cows. The need for a separate standard for goat milk was recognized by the National Conference on Interstate Milk Shipments (NCIMS), and a proposal to raise the somatic cell count in goat milk was approved at the 2009 NCIMS Conference. This change will align the General Specifications for Dairy Plants Approved for USDA Inspection and Grading with the Grade A requirements for goat milk.

The change on sediment testing eliminates the provisions imposing mandatory sediment testing on producer milk except for milk in cans. The requirement for sediment testing has become outdated and is no longer needed. The regulations governing sediment testing were promulgated in 1975 before dairy operations started using contained milking, storage, and transportation facilities for commercial milk production. The change in sediment testing is based on the fact that the majority of milk sold in the United States is produced using automated milking equipment and systems that provide no opportunity for sediment contamination. Because milk production predominantly occurs in clean, modern facilities, using sealed lines, storage tanks and sanitary pumps with no ''manual handling'' sediment testing is no longer needed except for those producers using cans for milk collection where there is a risk of sediment contamination.

Public Comments

On December 23, 2012, the Department published a proposed rule (76 FR 80280) to amend the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service. The public comment period closed February 23, 2012. One comment was received from the Chairperson of the Other Species Committee of the National Conference on Interstate Milk Shipments (NCIMS) in support of the proposed amendments.

List of Subjects in 7 CFR Part 58

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

For the reasons set forth in the preamble, 7 CFR part 58, Subpart B, is amended as follows:

PART 58—[AMENDED]

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

Authority: 7 U.S.C. 1621–1627.

■ 2. Amend § 58.133 by revising paragraphs (b)(5) introductory text, (b)(5)(ii), and (b)(6) to read as follows:

§ 58.133 Methods for quality and wholesomeness determination.

* * * * *

(b) * * *

(5) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,500,000 per ml. for goat milk), the following procedures shall be applied:

* * * * *

(ii) Whenever two out of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,500,000 per ml. for goat milk), the appropriate State regulatory authority shall be notified and a written notice given to the producer. This notice shall be in effect as long as two of the last four consecutive samples exceed 750,000 per ml. (1,500,000 per ml. for goat milk).

(6) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (b)(5)(ii) of this section. If this sample also exceeds 750,000 per ml. (1,500,000 per ml. for goat milk), subsequent milkings shall not be accepted for market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer may be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,500,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

* * * * *

■ 3. Amend § 58.134 by revising the section heading and paragraphs (b), (c) introductory text, (d), and (e) and removing paragraphs (c)(1) and (2).

The revisions read as follows:

§ 58.134 Sediment content for milk in cans.

(b) *Sediment content classification.* Milk in cans shall be classified for sediment content, regardless of the results of the appearance and odor examination required in § 58.133(a), as follows:

USDA SEDIMENT STANDARD

No. 1 (acceptable)—not to exceed 0.50 mg. or equivalent.

No. 2 (acceptable)—not to exceed 1.50 mg. or equivalent.

No. 3 (probational, not over 10 days)—not to exceed 2.50 mg. or equivalent.

No. 4 (reject)—over 2.50 mg. or equivalent.

(c) *Frequency of tests.* At least once each month, at irregular intervals, one or more cans of milk selected at random from each producer shall be tested.

(d) *Acceptance or rejection of milk.* If the sediment disc is classified as No. 1, No. 2, or No. 3, the producer's milk may be accepted. If the sediment disc is classified No. 4 the milk shall be rejected: *Provided that,* If the shipment of milk is commingled with other milk in a transport tank the next shipment shall not be accepted until its quality has been determined before being picked up; however, if the person making the test is unable to get to the farm before the next shipment it may be accepted but no further shipments shall be accepted unless the milk meets the requirements of No. 3 or better. In the case of milk classified as No. 3 or No. 4, all cans shall be tested. Producers of No. 3 or No. 4 milk shall be notified immediately and shall be furnished applicable sediment discs and the next shipment shall be tested.

(e) *Retests.* On test of the next shipment all cans shall be tested. Milk classified as No. 1, No. 2, or No. 3 may be accepted, but No. 4 milk shall be rejected. The producers of No. 3 or No. 4 milk shall be notified immediately, furnished applicable sediment discs and the next shipment tested. This procedure of retesting successive shipments and accepting probational (No. 3) milk and rejecting No. 4 milk may be continued for not more than 10 calendar days. If at the end of this time all of the producer's milk does not meet the acceptable sediment content classification (No. 1 or No. 2), it shall be rejected.

* * * * *

Dated: May 22, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–13065 Filed 5–29–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2012–0003]

Asian Longhorned Beetle; Quarantined Areas in Massachusetts, Ohio, and New York

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Asian longhorned beetle regulations to make changes to the list of quarantined areas by adding portions of Worcester County, MA, and Clermont County, OH, to the list of quarantined areas. We are also removing a portion of Suffolk County, NY, from the list of quarantined areas based on our determination that the area meets our criteria for removal. These actions are necessary to prevent the artificial spread of Asian longhorned beetle to noninfested areas of the United States and to relieve restrictions on certain areas that are no longer necessary.

DATES: This interim rule is effective May 30, 2012. We will consider all comments that we receive on or before July 30, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2012-0003-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2012–0003, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0003* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Regulatory Policy Specialist, Regulations, Permits and Manuals, PPQ, APHIS, 4700 River Road, Unit 26, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

The Asian longhorned beetle (ALB, *Anoplophora glabripennis*), an insect native to China, Japan, Korea, and the Isle of Hainan, is a destructive pest of hardwood trees. The ALB regulations in 7 CFR 301.51–1 through 301.51–9 (referred to below as the regulations) restrict the interstate movement of regulated articles from quarantined areas to prevent the artificial spread of ALB to noninfested areas of the United States.

On October 25, 2011, an ALB infestation was discovered in the central portion of Shrewsbury in Worcester County, MA. On June 17, 2011, an ALB infestation was discovered in the townships of Monroe and Tate, and in the East Fork State Park in Clermont County, OH. These States have quarantined the infested areas and are restricting the intrastate movement of regulated articles from the quarantined areas to prevent the further spread of ALB within each State. Federal regulations are necessary to restrict the interstate movement of regulated articles from the quarantined areas to prevent the interstate spread of ALB.

The regulations in § 301.51–3(a) provide that APHIS will list as a quarantined area each State, or each portion of a State, where ALB has been found by an inspector, where the Administrator has reason to believe that ALB is present, or where the Administrator considers regulation necessary because of its inseparability for quarantine purposes from localities where ALB has been found.

Less than an entire State will be quarantined only if (1) the Administrator determines that the State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by the regulations on the interstate movement of regulated articles and (2) the designation of less than an entire State as a quarantined area will be adequate to prevent the artificial spread of ALB.

In accordance with these criteria and the recent ALB findings described above, we are adding the Town of Shrewsbury in Worcester County, MA, and a portion of the Township of Monroe, the entire Township of Tate, and the entire acreage of East Fork State Park in Clermont County, OH, to the list of quarantined areas in § 301.51–3(c). The quarantined areas are described in detail in the regulatory text of this document.

In 2000, APHIS established a quarantined area in Islip, Suffolk County, NY, after ALB was first detected in the area in order to prevent the artificial spread of ALB. After the completion of control and regulatory activities, and based on the results of at least 3 years of negative surveys of all regulated host plants within the quarantined area, APHIS determined that the villages of Bayshore, East Islip, and Islip Terrace in the Town of Islip, Suffolk County, NY, have met the criteria for removal of the Federal quarantine for ALB.

Therefore, in this interim rule, we are amending the list of quarantined areas in § 301.51–3(c) by removing the villages of Bayshore, East Islip, and Islip Terrace in the Town of Islip, Suffolk County, NY. This action relieves restrictions on the movement of regulated articles from those areas that are no longer warranted.

Immediate Action

Immediate action is necessary to help prevent ALB from spreading to noninfested areas of the United States. In addition, this rule also relieves restrictions on certain areas that are no longer warranted. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This interim rule is subject to under Executive Order 12866. However, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. The full analysis may be viewed on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov) or obtained from the person listed under **FOR FURTHER INFORMATION CONTACT**.

This rule amends the ALB regulations by adding certain areas in Massachusetts and Ohio to the list of quarantined areas. This rule also removes certain areas in New York from quarantine based on surveys that indicate these areas have met the criteria for release from regulation. Potentially, about 30 entities may be affected in the expanded quarantine area in Massachusetts, and about 80 entities may be affected in Ohio. These businesses include landscape companies, tree service companies, firewood dealers, construction companies, waste haulers, and other operations that move regulated articles from the quarantined areas. Additional costs of operating such businesses under ALB quarantine are small, and principally derive from self-inspection and certification of regulated material under compliance agreements. In Islip, New York, the approximately 90 entities that have been affected by the quarantine will benefit from its removal by no longer having to satisfy movement restrictions. Most if not all of the businesses that will be affected by this rule in the three States are small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

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

Paperwork Reduction Act

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

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501 A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. In § 301.51–3, paragraph (c) is amended as follows:

■ a. Under the heading ''Massachusetts,'' by revising the entry for Worcester County;

■ b. Under the entry for ''New York,'' by removing the second paragraph under the entry for Nassau and Suffolk Counties.

■ c. By adding, in alphabetical order, an entry for ''Ohio.''

The revision and addition read as follows:

§ 301.51–3 Quarantined areas.

* * * * *

(c) * * *

Massachusetts

* * * * *

Worcester County. The portion of Worcester County, including portions or all of the municipalities of Worcester, Holden, West Boylston, Boylston, Auburn, and Shrewsbury that is bounded by a line starting at the intersection of Route 9 (Belmont Street) and the eastern boundary of the town of Shrewsbury; then follow the Shrewsbury town boundary northerly until the Boylston town boundary; then follow the entirety of the Boylston town boundary until it comes to the West Boylston town boundary on the Massachusetts Department of Conservation and Recreation Watershed property; then along the West Boylston town boundary until it intersects Manning Street; then southwest on Manning Street in Holden to Wachusett Street (Route 31); then south on Wachusett Street to Highland Street (still Route 31); then southwest on Highland Street to Main Street; then southeast on Main Street to Bailey Road; then south on Bailey Road to Chapin Road; then south on Chapin Road to its end; then continuing in a southeasterly direction to Fisher Road; then southwest on Fisher Road to Stonehouse Hill Road; then south on Stonehouse Hill Road to Reservoir Street; then southeast on Reservoir Street until it intersects the Worcester city boundary; turn south on Oxford Street to Auburn Street; then southeast on Auburn Street crossing under the Massachusetts Turnpike (I–90) and continuing southeast on Millbury Street; at the intersection of Washington Street, turn northeast and continue along Washington Street to the northern boundary of the Massachusetts Turnpike (I–90); then east along the northern boundary of the Massachusetts Turnpike (I–90) to the Auburn town boundary; then follow the Auburn town boundary northerly to the Worcester city boundary; continue along the Worcester city boundary until the Shrewsbury town boundary; then follow the entirety of the Shrewsbury town boundary until the point of beginning.

* * * * *

Ohio

Clermont County. The portion of Clermont County, including all of the municipalities of Tate and East Fork State Park, and the portions of the Township of Monroe that include the following land parcels: 232609C094, 232609C113, 232609C215, 232609C085, 232609C128, 232609B224, 232609B188, 232609E223, 232609B215, 32609B193, 232609E075, 232609B161, 232609E156, 232609E245, 232609E037, 232609E074, 232609E230, 232609E031, 232609E220, 232609E232, 232609E240, 232609E239, 232609E241, 232609E175, 232609E228, 232609E250, 232609E235, 232609E238, 232609E227, 232609E242, 32609E226, 232609E249, 232609E236, 232609E234, 232609C217, 232609C040, 234715.008, 232609C227, 232609C222, 232609C092, 232609C093, 232609C129, 232609C098, 232609C195, 232609C100, 232609C169, 232609C136, 232609C097, 232609C139, 232609C148, 232609C042, 232609C150, 232609C182, 234715.009, 234715.005, 234715.006, 234715.001, 232609E246, 232609E247, 234715.004, 234715.003, 232609E222, 232609C228, 234425.001, 232609E233, 232609C170, 232609C216, 232609C196, 232609C105, 232609E237, 232609C225, 232609C091, 232609C197, 232609C218, 232609C198, 232609C041, 232609C212, 232609C194, 232609C214, 232609E224, 232609E231, 232609E248, 234715.007, 234715.002, 232609C120, 232609C226, 232609C229, and 232609C043.

Done in Washington, DC, this 23rd day of May 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–13111 Filed 5–29–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 522, and 558

[Docket No. FDA–2012–N–0002]

New Animal Drugs; Change of Sponsor; Estradiol; Estradiol Benzoate and Testosterone Propionate; Progesterone and Estradiol Benzoate; Trenbolone Acetate; Trenbolone Acetate and Estradiol; Melengestrol; Ractopamine; Zilpaterol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for 17 new animal drug applications (NADAs) and abbreviated new animal drug applications (ANADAs) for various steroid ear implants for cattle and for melengestrol acetate liquid Type A medicated article and use in combination medicated feeds for heifers fed in confinement for slaughter from Ivy Laboratories, Division of Ivy Animal Health, Inc., to Elanco Animal Health, Division of Eli Lilly & Co.

DATES: This rule is effective May 30, 2012.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 240–276–8300, email: *steven.vaughn@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Division of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, has informed FDA that it has transferred ownership of, and all rights and interest in, the NADAs and ANADAs in this table to Elanco Animal Health, Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285.

NADA/ANADA	Proprietary name (established name)	21 CFR section
110–315	COMPONENT E–C (progesterone and estradiol benzoate) with TYLAN (tylosin tartrate)	522.1940
	COMPONENT E–S (progesterone and estradiol benzoate) with TYLAN (tylosin tartrate).	
118–123	COMPONENT 200 (estradiol benzoate).	
	ENCORE (COMPUDOSE 400) (estradiol benzoate).	522.840
135–906	COMPONENT E–H (estradiol benzoate and testosterone propionate) with TYLAN (tylosin tartrate)	522.842
200–221	COMPONENT TE–IS (trenbolone acetate and estradiol)	522.2477
	COMPONENT TE–S (trenbolone acetate and estradiol).	
	COMPONENT TE–G (trenbolone acetate and estradiol).	
	COMPONENT TE–IS (trenbolone acetate and estradiol) with TYLAN (tylosin tartrate).	
	COMPONENT TE–S (trenbolone acetate and estradiol) with TYLAN (tylosin tartrate).	
	COMPONENT TE–G (trenbolone acetate and estradiol) with TYLAN (tylosin tartrate).	
	COMPONENT TE–ID (trenbolone acetate and estradiol) with TYLAN (tylosin tartrate).	
200–224	COMPONENT T–H (trenbolone acetate) with TYLAN (tylosin tartrate)	522.2476
	COMPONENT T–S (trenbolone acetate) with TYLAN (tylosin tartrate).	
200–343	HEIFERMAX 500 (melengestrol acetate) Liquid Premix	558.342
200–346	COMPONENT TE–H (trenbolone acetate and estradiol)	522.2477
	COMPONENT TE–H (trenbolone acetate and estradiol) with TYLAN (tylosin tartrate).	
	COMPONENT TE–IH (trenbolone acetate and estradiol).	
	COMPONENT TE–200 (trenbolone acetate and estradiol).	
	COMPONENT TE–200 (trenbolone acetate and estradiol) with TYLAN (tylosin tartrate).	
200–375	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/RUMENSIN (monensin)/TYLAN (tylosin phosphate).	558.342
200–422	HEIFERMAX 500 (melengestrol acetate) Liquid Premix plus RUMENSIN (monensin)	558.342
200–424	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/OPTAFLEXX (ractopamine HCl)/RUMENSIN (monensin)/TYLAN (tylosin phosphate).	558.500
200–427	HEIFERMAX 500 (melengestrol acetate) Liquid Premix plus TYLAN (tylosin phosphate)	558.342
200–430	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/BOVATEC (lasalocid)/TYLAN (tylosin phosphate).	558.342
200–448	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/OPTAFLEXX (ractopamine HCl)/RUMENSIN (monensin).	558.500
200–451	HEIFERMAX 500 (melengestrol acetate) Liquid Premix plus BOVATEC (lasalocid)	558.342
200–479	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/ZILMAX (zilpaterol)/RUMENSIN (monensin)	558.665
200–480	HEIFERMAX 500 (melengestrol acetate) Liquid Premix/ZILMAX (zilpaterol)/RUMENSIN (monensin)/TYLAN (tylosin phosphate).	558.665
200–483	HEIFERMAX 500 (melengestrol acetate) Liquid Premix plus ZILMAX (zilpaterol)	558.665

Accordingly, the Agency is amending the regulations in parts 522 and 558 (21 CFR parts 522, and 558) to reflect the transfer of ownership.

Following these changes of sponsorship, Ivy Laboratories, Division of Ivy Animal Health, Inc., is no longer the sponsor of an approved application. Accordingly, § 510.600 (21 CFR 510.600) is being amended to remove the entries for this firm.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510, 522, and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. In § 510.600, in the table in paragraph (c)(l), remove the entry for ''Ivy Laboratories, Div. of Ivy Animal Health, Inc.''; and in the table in paragraph (c)(2), remove the entry for ''021641''.

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.840 [Amended]

■ 4. In paragraph (b) of § 522.840, remove ''021641'' and in its place add ''000986''.

§ 522.842 [Amended]

■ 5. In paragraph (a)(2) of § 522.842, remove ''021641'' and in its place add ''000986''.

§ 522.1940 [Amended]

■ 6. In paragraph (a)(2) of § 522.1940, remove ''021641'' and in its place add ''000986''.

§ 522.2476 [Amended]

■ 7. In paragraph (b)(l) of § 522.2476, remove ''021641'' and in its place add ''000986''.

§ 522.2477 [Amended]

■ 8. In paragraph (b)(l) of § 522.2477, remove ''021641'' and in its place add ''000986''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 9. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.342 [Amended]

■ 10. In § 558.342, in paragraph (b)(2) and in the ''Sponsor'' column of the table, in paragraphs (e)(l)(i), (e)(1)(ii), (e)(l)(iii), and (e)(l)(ix) remove ''021641''

and in its place add ''000986''; in paragraphs (e)(1)(iv) and (e)(1)(x) add ''000986''; and in paragraph (e)(1)(xi), remove ''02164'' and in its place add ''000986''.

§ 558.500 [Amended]

■ 11. In § 558.500, in the ''Sponsor'' column of the table, in paragraphs (e)(2)(viii) and (e)(2)(x), remove ''021641''.

§ 558.665 [Amended]

■ 12. In § 558.665, in the ''Sponsor'' column of the table, in paragraphs (e)(2), (e)(4), and (e)(6), remove ''021641'' and in its place add ''000986''.

Dated: May 23, 2012.

Elizabeth Rettie,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2012–13010 Filed 5–29–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF STATE

22 CFR Part 62

RIN 1400–AD14

[Public Notice 7902]

Exchange Visitor Program—Summer Work Travel; Correction

AGENCY: Department of State.

ACTION: Interim final rule; correction

SUMMARY: This document contains minor corrections to the Exchange Visitor Program—Summer Work Travel interim final rule published in the **Federal Register** on May 11, 2012. In the interim final rule the facsimile number (under the contact section), a citation to an exception to the category of prohibited jobs, and the date by which the public must submit comments were all incorrect.

DATES: Effective on May 30, 2012.

FOR FURTHER INFORMATION CONTACT: Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505; phone (202) 632–2805; fax (202) 632–2701.

SUPPLEMENTARY INFORMATION:

Correction

In the interim final rule published May 11, 2012, at 77 FR 27593, make the following corrections:

1. On page 27594, in the first column, the **DATES** section is revised to read as follows:

''**DATES:** This rule is effective May 11, 2012, with the exception of 22 CFR 62.32(h)(16) that will go into effect November 1, 2012. The Department will accept written comments from the public up to 60 days from May 11, 2012.''

2. On page 27594, in the first column, the **FOR FURTHER INFORMATION CONTACT** section is revised to read as follows:

''**FOR FURTHER INFORMATION CONTACT:** Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505; phone (202) 632–2805; fax (202) 632–2701.''

Dated: May 24, 2012.

Robin J. Lerner,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–13098 Filed 5–29–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2012–0003]

RIN 1014–AA01

Production Measurement Documents Incorporated by Reference; Correction

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Correcting amendment.

SUMMARY: This document corrects an amendment contained in a final rule published in the **Federal Register** on March 29, 2012, and involves only that portion of the rule relating to the authority citation.

DATES: This correction is effective on May 30, 2012.

FOR FURTHER INFORMATION CONTACT: Wilbon Rhome, Regulations and Standards Branch, at *Wilbon.Rhome@BSEE.gov,* 703–787–1587.

SUPPLEMENTARY INFORMATION: BSEE is correcting a portion of its final rule published March 29, 2012 (77 FR 18916), that omitted part of the authority citation for 30 CFR part 250. The correction involves adding, 30 U.S.C. 1751, to the existing authorities cited.

List of Subjects in 30 CFR Part 250

Continental shelf, Incorporation by reference, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: May 17, 2012.

Ned Farquhar,

Deputy Assistant Secretary—Land and Minerals Management.

Accordingly, the Bureau of Safety and Environmental Enforcement is making the correcting amendment to 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 is revised to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 43 U.S.C. 1334.

[FR Doc. 2012–13086 Filed 5–29–12; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2012–0443]

Drawbridge Operation Regulation; St. Croix River, Stillwater, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operation schedule that governs the Stillwater Highway Drawbridge across the St. Croix River, mile 23.4, at Stillwater, Minnesota. The deviation is necessary due to increased vehicular traffic after a local 4th of July fireworks display. The deviation allows the bridge to be in the closed-to-navigation position to clear increased vehicular traffic.

DATES: This deviation is effective from 10 p.m., July 4, 2012 through 11:30 p.m., July 4, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2012–0443 and are available online by going to *http://www.regulations.gov,* inserting USCG–2012–0443 in the ''Keyword'' box and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Eric A. Washburn, Bridge Administrator, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Minnesota Department of Transportation requested a temporary deviation for the Stillwater Highway Drawbridge, across the St. Croix River, mile 23.4, at Stillwater, Minnesota to be closed-to-navigation on July 4, 2012; as follows:

From 10 p.m. to 11:30 p.m. July 4, 2012, lift span will remain in the closed-to-navigation position.

The Stillwater Highway Drawbridge currently operates in accordance with 33 CFR 117.667 (b), which states specific seasonal and commuter hours operating requirements.

There are no alternate routes for vessels transiting this section of the St. Croix River.

The Stillwater Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 10.9 feet above normal pool. Navigation on the waterway primarily consists of commercial sightseeing/dinner cruise boats and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

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

Dated: May 17, 2012.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2012–13033 Filed 5–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0392]

RIN 1625–AA00

Safety Zone; Belle Pass Dredge Operations, Belle Pass, Mile Marker 1.0 to Mile Marker (−0.2), Port Fourchon, Lafourche Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 500 foot temporary moving safety zone around the U.S. Government Contract Cutterhead Dredge MISSOURI H, while it conducts dredging operations in specified waters of Belle Pass, Port Fourchon, Louisiana. This action is necessary for the protection of persons and vessels on navigable waters during dredging operations. Entry into or transiting in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Morgan City or a designated representative.

DATES: *Effective Date:* This rule is effective in the CFR from May 30, 2012 until 8 a.m. on June 30, 2012. This rule is effective with actual notice for purposes of enforcement beginning 8 a.m. on May 2, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0392]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email Ensign Nicholas Jones, U.S. Coast Guard; telephone (985) 857–8507 ext. 232, email *Nicholas.B.Jones@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM. The Coast Guard received notice on April 27, 2012 from Port Fourchon Harbor Police that fishing vessels were actively fishing in the immediate vicinity of the Dredge MISSOURI H, creating an unsafe condition for mariners. This notice did not provide the time needed for the NPRM process. Publishing a NPRM would be impracticable and contrary to public interest because it would unnecessarily delay the immediate action needed to protect persons and vessels from potential safety hazards associated with dredging operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard received notice on April 27, 2012 from Port Fourchon Harbor Police that fishing vessels were actively fishing in the immediate vicinity of the Dredge MISSOURI H, creating an unsafe condition for mariners. This notice did not provide an opportunity to make this rule effective only upon a lapsing of 30 days post publication in the **Federal Register**. Making this rule effective only upon the lapse of 30 days post publication in the **Federal Register** would be contrary to public interest because it would unnecessarily delay the immediate action needed to protect persons and vessels from potential safety hazards associated with dredging operations.

B. Basis and Purpose

The purpose of this temporary safety zone is to protect persons and vessels during the dredging operations of the Dredge MISSOURI H. The Dredge MISSOURI H will work 24 hours a day, 7 days a week, and will deposit material using floating and submerged pipelines along the Gulf Shoreline of Belle Pass. In addition to the dredging equipment described above, there are numerous work and support vessels associated with the dredging operation. This dredging operation poses significant safety hazards to both vessels and mariners operating in the vicinity of the Dredge MISSOURI H.

C. Discussion of Rule

The Coast Guard is establishing a 500 foot temporary moving safety zone around the Dredge MISSOURI H while

it conducts dredging operations from Mile Marker 1.0 to Mile Marker (-0.2) located in Belle Pass, Port Fourchon, Louisiana. Entry into or transiting in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Morgan City or a designated representative.

The COTP Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of changes in the effective period for the safety zone. This rule is effective from 8 a.m. on May 2, 2012 until 8 a.m. on June 30, 2012.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The temporary safety zone listed in this rule will only restrict vessel traffic from entering or transiting within 500 feet of the Dredge MISSOURI H. The effect of this regulation will not be a significant regulatory action because: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the safety zone; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through Broadcast Notice to Mariners. These notifications will allow the public to plan operations around the affected area.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit in the affected portions of the Dredge MISSOURI H's proposed dredging areas. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Morgan City or a designated representative to enter or transit through the zone.

If you are a small business entity and are significantly affected by this regulation, please contact Ensign Nicholas Jones, Marine Safety Unit Houma, at (985) 857–8507 ext. 232.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive order 13211, Actions Concerning Regulations

That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a moving safety zone in effect for a limited period of time. The moving safety zone provides safety for the public while the Dredge MISSOURI H is conducting dredging operations. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

E. List of Subjects in 33 CFR Part 165

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–0392 is added to read as follows:

§ 165.T08–0392 Safety Zone; Belle Pass Dredge Operations, Belle Pass, Mile Marker 1.0 to Mile Marker (−0.2), Port Fourchon, Lafourche Parish, LA.

(a) *Location.* The following area is a moving safety zone: all waters 500 feet around the Dredge MISSOURI H, while it conducts dredging operations from Belle Pass Mile Marker 1.0 to Mile Marker (−0.2).

(b) *Effective date.* This rule is effective from 8 a.m. on May 2, 2012 until 8 a.m. on June 30, 2012.

(c) *Periods of enforcement.* This rule will be enforced with actual notice from 8 a.m. on May 2, 2012 until 8 a.m. on June 30, 2012. The Captain of the Port Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(d) *Regulations.* (1) In accordance with the general regulations in 33 CFR part 165, subpart C, entry into this zone is prohibited unless authorized by the Captain of the Port Morgan City or a designated representative.

(2) Vessels requiring entry into or passage through the Safety Zone must request permission from the Captain of the Port Morgan City, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (985) 857–8507.

(3) Mariners should contact the Dredge MISSOURI H, on VHF–FM Channel 13 or 16 prior to the arrival at the safety zone for permission to enter or transit through the safety zone.

(4) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or a designated representative.

(5) All persons and vessels shall comply with the instructions of the Captain of the Port Morgan City and designated on-scene patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(e) *Informational Broadcasts.* The Captain of the Port Morgan City or a designated representative will inform the public through Broadcast Notice to Mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: May 1, 2012.

J.C. Burton,

Captain, U.S. Coast Guard, Captain of the Port Morgan City, Louisiana.

[FR Doc. 2012–13031 Filed 5–29–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0073; FRL 9677–3]

Approval and Promulgation of Air Quality Implementation Plans; Illinois; Small Container Exemption From VOC Coating Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the receipt of an adverse comment, EPA is withdrawing the April 16, 2012, direct final rule approving a revision to the Illinois State Implementation plan (SIP). EPA will address the comment in a subsequent final action based upon the proposed rulemaking action, also published on April 16, 2012. EPA will not institute a second comment period on this action.

DATES: The direct final rule published at 77 FR 22497 on April 16, 2012, is withdrawn as of May 30, 2012.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052, *rosenthal.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is withdrawing the April 16, 2012 (77 FR 22497), direct final rule approving a revision to the Illinois SIP that added a ''small container exemption'' for pleasure craft surface coating operations in the Chicago and Metro-East St. Louis 8-hour ozone nonattainment areas. In the direct final rule, EPA stated that if adverse comments were received by May 16, 2012, the rule would be withdrawn and not take effect. On April 16, 2012, EPA received a comment, which it interprets as adverse and, therefore, EPA is withdrawing the direct final rule. EPA will address the comment in a subsequent final action based upon the proposed rulemaking action, also published on April 16, 2012 (77 FR 22550). EPA will not institute a second comment period on this action.

List of Subjects in 40 CFR Part 52

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

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

Dated: May 14, 2012.

Susan Hedman,

Regional Administrator, Region 5.

PART 52—[AMENDED]

■ Accordingly, the amendment to 40 CFR 52.720 published in the **Federal Register** on April 16, 2012 (77 FR 22497) on page 22500 is withdrawn as of May 30, 2012.

[FR Doc. 2012–12507 Filed 5–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2010–0630; FRL–9345–9]

RIN 2070–AJ71

Elemental Mercury Used in Barometers, Manometers, Hygrometers, and Psychrometers; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a significant new use rule (SNUR) under the Toxic Substances Control Act (TSCA) for elemental mercury use in barometers, manometers, hygrometers, and psychrometers. This action will require persons who intend to manufacture (including import) or process elemental mercury for an activity that is designated as a significant new use by this final rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: This final rule is effective June 29, 2012.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2010–0630. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Sue Slotnick, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 566–1973; email address: *slotnick.sue@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

You may be potentially affected by this action if you manufacture (defined by statute to include import) or process elemental mercury used in barometers, manometers, or hygrometers or psychrometers. Potentially affected entities may include, but are not limited to:

• Manufacturers, of instruments and related products for measuring, displaying, and controlling industrial process variables (North American Industrial Classification System NAICS code 334513).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance governed by a final SNUR are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements and the corresponding regulations at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Chemical importers must certify that shipments of the chemical substance comply with all applicable rules and orders under TSCA, including any SNURs. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, TSCA section 12(b) (15 U.S.C. 2611(b)) export notification requirements are triggered by publication of a proposed SNUR. Therefore, on or after June 6, 2011, any persons who export or intend to export elemental mercury are subject to the export notification provisions of TSCA section 12(b) (see § 721.20) and must comply with the export notification requirements in 40 CFR part 707, subpart D. Note that as of January 1, 2013, the Mercury Export Ban Act of 2008 prohibits the export of elemental mercury from the United States (see TSCA section 12(c) (15 U.S.C. 2611(c)).

II. Background

A. What action is the agency taking?

EPA proposed a SNUR for elemental mercury used in barometers, manometers, hygrometers, and pyrometers in the **Federal Register** of May 6, 2011 (Ref. 1). EPA's response to the public comment received on the proposed rule appears in Unit III.C.

This final SNUR will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of elemental mercury for any of the following significant new uses: Use in barometers, manometers, hygrometers, and psychrometers, except for use in barometers, manometers, hygrometers, and psychrometers that were in service prior to May 6, 2011, the publication date of the proposed rule (Ref. 1). Also not included, because the activity is ongoing, is the use of elemental mercury in portable battery-powered motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury. Sphygmomanometers, a type of manometer, as well as other ''devices'' as defined under section 201 of the Federal Food, Drug, and Cosmetics Act (FFDCA), will not be affected by this final rule when manufactured, imported, or processed for use as a device, per TSCA section 3(2)(B)(vi). Finally, manometers used in the natural

gas industry will not be affected by this final rule because they are included in a previous SNUR (Ref. 2).

B. What is the agency's authority for taking this action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In addition to these factors enumerated in TSCA section 5(a)(2), the statute authorizes EPA to consider any other relevant factors.

Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a significant new use notice (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use (15 U.S.C. 2604(a)(1)(B)). As described in Unit II.C., the general SNUR provisions are found at 40 CFR part 721, subpart A.

C. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. However, § 721.45(f) does not apply to this SNUR. As a result, persons subject to the provisions of this final rule are not exempt from significant new use reporting if they import or process elemental mercury as part of an article (see § 721.5). Conversely, the exemption from notification requirements for exported articles (see 40 CFR 707.60(b)) remains in force. Thus, persons who export elemental mercury as part of an article are not required to provide export notification.

Provisions relating to user fees appear at 40 CFR part 700. According to § 721.1(c), persons subject to SNURs must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by TSCA section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA section 5(e), 5(f), 6, or 7 to control the activities on which it has received the SNUN. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in a **Federal Register** document its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707, subpart D. Persons who import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, codified at 19 CFR 12.118 through 12.127; see also 19 CFR 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNURs. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B.

III. Summary of Final Rule

A. Overview of Mercury and Mercury Uses

1. *Mercury.* This final rule applies to elemental mercury (CAS No. 7439–97–6). Mercury is a naturally occurring element. Because of its unique properties (e.g., exists as a liquid at room temperature and forms amalgams with many metals), elemental mercury has been used in many industrial processes and consumer products. In addition to its useful characteristics, mercury also is known to cause adverse health effects in humans and wildlife. These effects can vary depending on the form of mercury to which a person or animal is exposed, as well as the magnitude, duration, and frequency of exposure. The most prevalent human and wildlife exposure to mercury results from ingesting fish contaminated with methylmercury. Methylmercury is an organo-metallic compound that is formed via the conversion of elemental or inorganic mercury compounds by certain microorganisms and other natural processes. For example, elemental mercury may evaporate and be emitted into the atmosphere. Atmospheric mercury can then be deposited directly into water bodies or watersheds, where it can be washed into surface waters via overland run-off. Once deposited in sediments, certain microorganisms and other natural processes can convert elemental mercury into methylmercury.

Methylmercury bioaccumulates, which means that it is taken up and concentrated in the tissues of aquatic, mammalian, avian, and other wildlife. Methylmercury is a highly toxic substance; a number of adverse health effects associated with exposure to it have been identified in humans and in animal studies. Most extensive are the data on neurotoxicity, particularly in developing organisms. Fetuses, infants, and young children generally are more sensitive than adults to the neurological effects of methylmercury.

In 2004, EPA and the Food and Drug Administration (FDA) issued a national consumption advisory concerning mercury in fish. The advisory contains recommended limits on the amount of certain types of fish and shellfish that pregnant women and young children can safely consume. By 2005, all 50 States had issued fish consumption advisories for fish from certain water bodies known to be contaminated by methylmercury. See *http://www.epa.gov/mercury/advisories.htm*.

In addition to methylmercury, exposure to elemental mercury can also pose health risks. Elemental mercury primarily causes health effects when it is breathed as a vapor that can be absorbed through the lungs. These exposures can occur when elemental mercury is spilled, or products that contain elemental mercury break, resulting in releases of mercury to the air, particularly in warm or poorly ventilated indoor spaces.

For a more detailed summary of background information (e.g., chemistry, environmental fate, exposure pathways, and health and environmental effects), as well as references pertaining to elemental mercury that EPA considered before promulgating this final rule, please refer to EPA's proposed SNUR for mercury switches in motor vehicles (Ref. 3), or see the docket for that proposed rule under docket ID number EPA–HQ–OPPT–2005–0036. All documents in the docket are listed in the docket's index, which is available at *http://www.regulations.gov*.

2. *Mercury uses.* Elemental mercury has been used in thousands of products and applications. Over the past 2 decades, there has been a dramatic drop in elemental mercury use by industries in the United States. In response to

increased concerns about exposure to anthropogenic sources of mercury in the environment and also because of the availability of suitable mercury-free products, Federal and State governments have made efforts to limit the use of elemental mercury in certain products. Various States have banned or restricted the manufacture or sale of products containing mercury. While this is not the rationale for this final rule, it does indicate that the transition to cost-effective non-mercury alternatives is already established. See *http://www.epa.gov/mercury/regs.htm#states*.

On October 5, 2007, EPA issued a final SNUR for elemental mercury used in convenience light switches, anti-lock braking system switches, and active ride control system switches in certain motor vehicles (Ref. 4). EPA promulgated another SNUR for flow meters, natural gas manometers, and pyrometers on July 21, 2010 (Ref. 2). For more information on EPA activities on mercury in products and other areas; see *http://www.epa.gov/hg*.

In the past, elemental mercury was used in the manufacture of barometers, manometers, hygrometers, and psychrometers. The latest information available to EPA indicates that the manufacture (including import) of these mercury-containing articles has ceased (with the exception of one psychrometer as described at Unit III.A.5.). EPA also has found that all four products subject to this SNUR currently have effective and economically feasible substitutes (Ref. 5).

3. *Barometers containing elemental mercury.* Barometers are instruments which measure atmospheric pressure. Mercury barometers were manufactured as a long cylindrical tube, typically closed at one end, with a mercury-filled reservoir at the base. The weight of mercury created a vacuum at the top of the tube, and the mercury adjusted until the pressure inside the reservoir equaled the atmospheric pressure. Rising mercury indicated increasing air pressure while dropping mercury indicated decreasing air pressure. Historically, mercury barometers were used in applications where measuring and monitoring changes in air pressure are important, such as weather stations, airports, and ships. Additional uses include scientific demonstration in schools and non-mercury device calibration. A mercury barometer contains between 400 and 620 grams of mercury (Ref. 5).

Alternatives to mercury-containing barometers include aneroid, electronic, and other liquid-based (water or eco-celli) barometers. At least eight States have banned the sale of mercury-containing barometers. Three additional States have general phase-outs of mercury-added products. EPA found sufficient information to conclude that mercury-containing barometers are no longer manufactured in or imported into the United States (Ref. 5).

4. *Manometers containing elemental mercury.* A manometer is an instrument used to measure pressure of gases or liquids. Mercury-containing manometers were manufactured for use in sectors such as dairy farms; heating, ventilation, and air conditioning/plumbing (HVAC) installation and repair; auto/motorcycle industry; laboratories; and in general industrial uses. The amount of mercury used in a single manometer ranged between approximately 30 grams and 525 grams (Ref. 5).

Alternatives to mercury-containing manometers include hydrostatic gauges using mercury-free liquid, aneroid manometers, needle-bourdon gauges, and digital manometers. At least five States have banned the sale of mercury-containing manometers, and four additional States have banned the sale of mercury-containing dairy manometers. The general phase-outs of mercury products in three States apply to manometers. EPA found sufficient information to conclude that mercury-containing manometers are no longer manufactured in or imported into the United States (Ref. 5).

5. *Hygrometers and psychrometers containing elemental mercury.* Hygrometers are instruments used to measure relative humidity (i.e., the moisture content of the air). Psychrometers, which are the most common type of hygrometer, use two mercury-added thermometers, one with a wetted base, and one with a dry base. Hygrometers and psychrometers function similarly; however, they are used in different applications. Historically, mercury-containing hygrometers were used for cigar and tobacco humidors, or in residential settings, while mercury-containing psychrometers were used by atmospheric scientists and weather enthusiasts. The amount of mercury in a single hygrometer or psychrometer was between three and seven grams (Ref. 5).

There are two types of alternatives to mercury-added hygrometers that are readily available and widely used: Spirit-filled devices, which use methyl alcohol or citrus oil thermometers and provide results with comparable accuracy to mercury-added thermometers; and digital devices, which use electronic sensors to measure humidity changes and, when calibrated properly, provide results that are as accurate as mercury devices (Ref. 5).

Seven States have banned the sale and distribution of mercury-containing hygrometers and psychrometers and the devices are subject to the general phase-outs of mercury products in three States. EPA found sufficient information to conclude that only one type of mercury-containing psychrometer is manufactured in or imported into the United States. That one type is a portable, battery-powered, motor-aspirated psychrometer containing less than seven grams of elemental mercury (Ref. 5).

6. *Potential exposure and release.* The typical lifecycle of barometers, manometers, hygrometers, and psychrometers includes several stages: Manufacture, distribution in commerce, use, and waste management (landfilling or recycling). At any point in the lifecycle, there is potential for mercury to be released as liquid or vapor. Workers and others can be exposed to the mercury and it can be released into water, air, or onto land as the mercury is transported, stored, and handled during manufacturing. While the barometers, manometers, hygrometers, and psychrometers are in use, the mercury can vaporize or spill due to breakage during transport, installation, maintenance, refilling, or repair. Other opportunities for release can occur at the end of the lifecycle of barometers, manometers, hygrometers, and psychrometers as these devices are removed from equipment and facilities, and handled during waste management.

B. This Action

EPA is designating as significant new uses the use of elemental mercury in barometers, manometers, hygrometers, and psychrometers. However, use of elemental mercury in these articles that were in service prior to May 6, 2011, will not be covered as a significant new use under this SNUR. Also, use of mercury in portable, battery-powered, motor-aspirated psychrometers that contain fewer than seven grams of mercury is an ongoing use and therefore will not be covered by this SNUR. Due to EPA's concern about use of mercury in products, the Agency may take other action to facilitate the evaluation or control of ongoing uses, as appropriate. For the portable, battery-powered, motor-aspirated psychrometers that contain fewer than seven grams of mercury, EPA may consider whether risk management or other actions will be appropriate. Use of mercury in manometers used in the natural gas industry will not be affected by this SNUR because they are included in a

previous SNUR (Ref 2). Definitions of ''barometer,'' ''manometer,'' ''hygrometer'' and ''psychrometer'' can be found at § 721.10068 of the regulatory text.

This action will amend § 721.10068 and require persons who intend to manufacture or process elemental mercury for a use designated by this final rule as a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of elemental mercury for such significant new use. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

For this SNUR, EPA is not including the general ''article'' exemption at § 721.45(f). Thus, persons importing or processing elemental mercury (including when part of an article) for a significant new use will be subject to the notification requirements of § 721.25. EPA is not including this exemption because barometers, manometers, hygrometers, and psychrometers are articles, and a primary concern associated with this SNUR is potential exposures associated with the lifecycle of these uses. EPA notes that, in accordance with TSCA section 12(a) and § 721.45(g), persons who manufacture or process elemental mercury solely for export will be exempt from the notification requirements of § 721.25, if when distributing the substance in commerce, it is labeled in accordance with TSCA section 12(a)(1)(B). Further, EPA notes that the exemption from the TSCA section 12(b) notification requirements for exported articles (*see* 40 CFR 707.60(b)) will remain in force. Thus, persons who export elemental mercury as part of an article will not be required to provide export notification.

EPA believes elemental mercury is no longer used to manufacture barometers, manometers, hygrometers, and psychrometers (with one exception as discussed), but some of these articles may remain in service in the United States. The ongoing use of such articles, including some maintenance and servicing activities, falls outside of the scope of this SNUR. Thus, the manufacturing and processing of elemental mercury for use in these articles, provided that they were in service prior to the May 6, 2011 proposed rule (Ref. 1), will not be covered by the final rule. For example, if an article that was in service prior to May 6, 2011, is removed from service for maintenance or servicing, including the addition of new mercury, and then placed back into service, any manufacturing or processing of mercury associated with that maintenance or servicing is not covered by the final rule. Otherwise, the addition of mercury to these existing articles could potentially trigger a SNUN under this final rule (i.e., if it involved processing of the mercury), which is not EPA's intent.

C. Response to Public Comment

EPA received one comment on the May 6, 2011 proposed rule (Ref. 1). A copy of the comment is in the docket for this final rule. The comment did not provide any data or make any assertions that manufacture, import, processing, distribution, or use of elemental mercury in barometers, manometers, or hygrometers, and pyrometers is ongoing. A summary of the comment and EPA's response follow.

The commenter suggested that the Federal Government take some form of regulatory action to address the mercury products excluded from the final rule. The products are portable, battery-powered, motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury. The comment also expressed concern that issuance of the SNUR would still allow for future production of mercury-containing barometers, manometers, hygrometers, and psychrometers, which could lead to ''detrimental environmental impact and exposure.'' The comment continues: ''If any resurgence in interest in the production of such products occurs, the EPA should consider regulation under TSCA Section 6.'' EPA's response is that the psychrometers were excluded because the use of mercury in such articles is an ongoing use and therefore not a new use that can be subject to a SNUR. As stated in Unit III.B., the Agency may take other action to facilitate the evaluation or control of ongoing uses of mercury, and may consider risk management actions for them, as appropriate. Second, the purpose of the SNUR is to provide an opportunity for EPA to evaluate and control, where appropriate, use of mercury in the four types of mercury products, if needed, before any of those uses occurs. The SNUR provides this opportunity by requiring that manufacturers and importers notify EPA 90 days before commencing use of mercury in the products.

IV. Significant New Use Determination

A. Rationale

As summarized in Unit III.A., EPA has concerns regarding the environmental fate and the exposure pathways of elemental mercury that lead to the presence of methylmercury in fish and the consumption of mercury-contaminated fish by humans and wildlife. EPA is encouraged by the general discontinuation of the use of elemental mercury in the manufacturing of barometers, manometers, hygrometers, and psychrometers. However, EPA is concerned that the manufacturing or processing of elemental mercury for these significant new uses could be reinitiated in the future. Accordingly, EPA wants the opportunity to evaluate and control, where appropriate, activities associated with those uses, if such manufacturing or processing were to occur again. The required notification provided by a SNUN will provide EPA with the opportunity to evaluate activities associated with a significant new use and an opportunity to protect against unreasonable risks, if any, from exposure to mercury.

Consistent with EPA's past practice for issuing SNURs under TSCA section 5(a)(2), EPA's decision to issue a SNUR for a particular chemical use need not be based on an extensive evaluation of the hazard, exposure, or potential risk associated with that use. Rather, the Agency's action is based on EPA's determination that if the use begins or resumes, it may present a risk that EPA should evaluate before the manufacturing or processing for that use begins. Since the new use does not currently exist, deferring a detailed consideration of potential risks or hazards related to that use is an effective use of resources. If a person decides to begin manufacturing or processing the chemical for the use, the notice to EPA allows the Agency to evaluate the use according to the specific parameters and circumstances surrounding that intended use.

B. Objectives

Based on the considerations in Unit IV.A., EPA has the following objectives with regard to the significant new uses that are designated in this final rule:

1. EPA will receive notice of any person's intent to manufacture or process elemental mercury for any of the described significant new uses before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing of elemental mercury for any of the described significant new uses.

3. EPA will be able to regulate prospective manufacturers or processors of elemental mercury before the described significant new uses of the chemical substance occur, provided that

regulation is warranted pursuant to TSCA sections 5(e), 5(f), 6, or 7.

C. Relevant Factors Considered for This SNUR

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors (see further detail at Unit II.B.).

EPA has determined that manufacturing or processing of elemental mercury for use in barometers, manometers, or hygrometers or psychrometers is a significant new use. This determination is based on the following factor in TSCA section 5(a)(2): ''the extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.'' Increased exposure to mercury is significant because of the adverse health effects described at Unit III.A.1. The latest information available to EPA indicates that there is no ongoing use of elemental mercury in the manufacture or remanufacture of barometers, manometers, hygrometers, and all but one type of psychrometer. Resumption of these uses of elemental mercury could increase the magnitude and duration of exposure to workers and the surrounding environment at facilities of all types involved in the lifecycle of the products, as described in greater detail in Unit III.A.6. Increase in releases could contribute additional mercury to the atmosphere for long-range transport. Resumption of these uses could also result in exposures to workers who had not previously worked in these facilities when elemental mercury was commonly used, as well as exposures to workers who are not currently being exposed to mercury in the manufacture of barometers, manometers, hygrometers, or psychrometers. Increases in mercury releases could lead to increases in mercury concentrations in the environment and reduction in overall human health from consumption of mercury-contaminated fish.

EPA believes that any of these renewed uses of elemental mercury will increase the magnitude and duration of exposure to humans and the environment over that which will otherwise exist. Thus, EPA has determined that any manufacturing or processing of elemental mercury for use in barometers, manometers, or hygrometers or psychrometers is a significant new use, except for mercury use in barometers, manometers, hygrometers, and psychrometers that were in service prior to May 6, 2011; and in portable, battery-powered, motor-aspirated psychrometers that contain less than seven grams of elemental mercury.

V. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who began or begin commercial manufacture or processing of the elemental mercury for a significant new use designated in this rule must cease any such activity before the effective date of the final rule. To resume their activities, these persons must comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person meets the conditions of advance compliance under § 721.45(h), that person is considered to have met the requirements of the final SNUR for those activities.

VI. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require the development of any particular test data before submission of a SNUN. There are two exceptions:

1. Development of test data is required where the chemical substance subject to the SNUR is also subject to a test rule under TSCA section 4 (see TSCA section 5(b)(1)).

2. Development of test data may be necessary where the chemical substance has been listed under TSCA section 5(b)(4) (see TSCA section 5(b)(2)).

In the absence of a TSCA section 4 test rule or a TSCA section 5(b)(4) listing covering the chemical substance, persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); § 721.25, and 40 CFR 720.50). However, as a general matter, EPA recommends that SNUN submitters include data that would permit a reasoned evaluation of risks posed by the chemical substance during its manufacture, processing, use, distribution in commerce, or disposal. EPA encourages persons to consult with the Agency before submitting a SNUN. As part of this optional pre-notice consultation, EPA would discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with this chemical.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

- Human exposure and environmental releases that may result from the significant new uses of the chemical substance.
- Potential benefits of the chemical substance.
- Information on risks posed by the chemical substances compared to risks posed by potential substitutes.

VII. SNUN Submissions

According to § 721.1(c), persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be on EPA Form No. 7710–25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. The e-PMN software is available electronically at *http://www.epa.gov/opptintr/newchems.*

VIII. Economic Analysis

EPA has evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of the chemical substance included in this final rule. EPA's economic analysis (Ref. 5), which is briefly summarized here, is available in the docket for this final rule.

The use of elemental mercury for manufacturing the specified mercury-containing products in the United States appears to have ceased and EPA expects very few, if any, entities will submit a SNUN. As a result, the economic impact of this final rule is anticipated to be either zero or very low.

In the event that a SNUN is submitted, costs are estimated at approximately $8,300 per SNUN submission, and include the cost to

prepare and submit the SNUN, and the payment of a user fee. Businesses that submit a SNUN are subject to either a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than $40 million when combined with those of the parent company (if any), a reduced user fee of $100 (40 CFR 700.45(b)(1)). In its evaluation of this final rule, EPA also considered the potential costs a company might incur by avoiding or delaying the significant new use in the future, but these costs have not been quantified.

IX. References

The following documents are specifically referenced in the preamble for this final rule. In addition to these documents, other materials may be available in the docket established for this final rule under Docket ID number EPA–HQ–OPPT–2010–0630, which you can access through *http://www.regulations.gov.* Those interested in the information considered by EPA in developing this final rule should also consult documents that are referenced in the documents that EPA has placed in the docket, regardless of whether the other documents are physically located in the docket.

1. EPA. Elemental Mercury Used in Barometers, Manometers, Hygrometers/Psychrometers; Significant New Use Rule; Proposed Rule. **Federal Register** (76 FR 26225, May 6, 2011) (FRL–8871–7).
2. EPA. Elemental Mercury Used in Flow Meters, Natural Gas Manometers, and Pyrometers; Significant New Use Rule; Final Rule. **Federal Register** (75 FR 42330, July 21, 2010) (FRL–8832–2).
3. EPA. Mercury Switches in Motor Vehicles; Proposed Significant New Use Rule; Proposed Rule. **Federal Register** (71 FR 39035, July 11, 2006) (FRL–7733–9).
4. EPA. Mercury Switches in Motor Vehicles; Significant New Use Rule; Final Rule. **Federal Register** (72 FR 56903, October 5, 2007) (FRL–8110–5).
5. EPA. 2012. Economic Analysis of the Final Significant New Use Rule for Mercury-Containing Barometers, Manometers, Hygrometers, and Psychrometers. Washington, DC. OPPT/Economics, Exposure and Technology Division (EETD)/Economic and Policy Analysis Branch (EPAB). March 26, 2012.

X. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

Under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51783, October 4, 1993), this action is not a ''significant regulatory action,'' and was not reviewed by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled ''Improving Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for certain EPA regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument, or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0038 (EPA ICR No. 1188). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average 97 hours per response. This burden estimate includes the time needed to review instructions; search existing data sources; gather and maintain the data needed; and complete, review, and submit the required SNUN.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that promulgation of this SNUR will not have a significant economic impact on a substantial number of small entities. The rationale supporting this conclusion is as follows.

Under RFA, small entities include small businesses, small organizations, and small governmental jurisdictions. Small entity is defined in accordance with section 601 of RFA as: A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; a small governmental jurisdiction is a government of a city, county, town, school district or special district with a population of less than 50,000; and a small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. For purposes of assessing the impacts of this rule on small entities, EPA has determined that this final rule is not expected to impact any small not-for-profit organizations or small governmental jurisdictions. As such, the Agency estimated potential impacts are focused on small business.

A SNUR applies to any person (including small or large entities) who intends to manufacture, import, or process a chemical substance for a use the EPA has designated as a ''significant new use.'' By definition of the word ''new,'' and based on information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since this SNUR will require a person who intends to engage in such activity in the future to first notify EPA by submitting a SNUN, no economic impact will occur unless someone files a SNUN to pursue a significant new use in the future or forgoes profits by avoiding or delaying the significant new use. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemical substances, the Agency receives only a handful of notices per year. For example, the number of SNUNs was four in Federal fiscal year (FY) 2005, eight in FY2006, six in FY2007, eight in FY2008, and seven in FY2009. During this 5-year period, three small entities submitted a SNUN. Therefore, EPA believes that the potential economic impact of complying with a SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published as a final rule in the **Federal Register** of August 8, 1997 (62 FR 42690) (FRL–5735–4), the Agency presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

Although this final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of SNUR rulemakings on small entities. Businesses that submit a SNUN are subject to either a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii), or, if they are a small business with annual sales of less than $40 million when combined with those of the parent company (if any), a reduced user fee of $100 (40 CFR 700.45(b)(1)).

D. Unfunded Mandates Reform Act

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reason to believe that any State, local, or Tribal

government will be impacted by this rulemaking. As such, EPA has determined that this regulatory action will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on these governments or small governments such that it is subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538.

E. Federalism

This action will not have federalism implications as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) because it is not expected to have a substantial direct effect on 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.

F. Indian Tribal Governments

This action will not have tribal implications as specified in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). This action is not expected to have substantial direct effects on Indian Tribes, will not significantly or uniquely affect the communities of Indian Tribal governments, and will not involve or impose any requirements that affect Indian Tribes.

G. Protection of Children

This action is not subject to Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

H. Effect on Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because this action is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. Technical Standards

Because this action will not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), 15 U.S.C. 272 note, does not apply to this action.

J. Environmental Justice

This action will not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

XI. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 721

Environmental protection, Barometers, Chemicals, Elemental mercury, Hazardous substances, Hygrometers, Manometers, Psychrometers, Reporting and recordkeeping requirements.

Dated: May 3, 2012.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 721—[AMENDED]

■ 1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 2. In § 721.10068:

■ a. Add the following definitions in alphabetical order to paragraph (a).

■ b. Add paragraph (b)(2)(viii).

The additions read as follows:

§ 721.10068 Elemental mercury.

(a) * * *

Barometer means an instrument used in various applications to measure atmospheric pressure.

* * * * *

Hygrometer means an instrument used in various applications to measure humidity of gases.

Manometer means an instrument used in various applications to measure pressure of gases or liquids.

* * * * *

Psychrometer means an instrument used in various applications to measure humidity of gases.

* * * * *

(b) * * *

(2) * * *

(viii) Manufacturing or processing of elemental mercury for use in barometers, manometers, hygrometers, and psychrometers except for: Natural gas manometers covered by paragraph (b)(2)(vii) of this section; barometers, manometers, hygrometers, and psychrometers that were in service prior to May 6, 2011; and portable battery powered and motor-aspirated psychrometers that contain fewer than seven grams of elemental mercury.

* * * * *

[FR Doc. 2012–13071 Filed 5–29–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120213124–1066–02]

RIN 0648–BB91

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in a regulatory amendment to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This rule increases the commercial and recreational quotas for red snapper in the Gulf of Mexico (Gulf) reef fish fishery for the 2012 fishing year, and for the 2013 fishing year if NMFS determines the acceptable biological catch (ABC) is not exceeded in the 2012 fishing year; eliminates the October 1 closure date of the recreational fishing season; and announces the quota closure date of the 2012 recreational fishing season. This final rule is intended to provide more flexibility in managing recreational red snapper and to help achieve optimum yield (OY) for the Gulf red snapper resource without increasing the risk of red snapper experiencing overfishing.

DATES: This rule is effective June 29, 2012.

ADDRESSES: Electronic copies of the regulatory amendment, which includes an environmental assessment and a regulatory impact review, may be obtained from the Southeast Regional Office Web Site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm.*

FOR FURTHER INFORMATION CONTACT: Cynthia Meyer, Southeast Regional Office, NMFS, telephone 727–824–5305; email: *Cynthia.Meyer@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Gulf reef fish fishery under the FMP. The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On April 12, 2012, NMFS published a proposed rule for the regulatory amendment and requested public comment (77 FR 21955). The proposed rule and the regulatory amendment outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Through this final rule, NMFS sets the 2012 commercial quota at 4.121 million lb (1.869 million kg), round weight; the 2012 recreational quota at 3.959 million lb (1.796 million kg), round weight; the 2013 commercial quota at 4.432 million lb (2.010 million kg), round weight; and the 2013 recreational quota at 4.258 million lb (1.931 million kg), round weight. The 2013 quota increases are contingent on the ABC not being exceeded in the 2012 fishing year. If NMFS determines the 2012 ABC is exceeded, NMFS will maintain the 2012 commercial and recreational quotas in the 2013 fishing year. If this is the case, the Assistant Administrator will file a notification with the Office of the Federal Register to announce that commercial and recreational quotas will remain at 2012 levels in the 2013 fishing year.

This final rule also changes the end of the recreational fishing season from October 1 to December 31. If a quota closure is implemented mid-season and subsequent data indicate the quota was not reached by the quota closure date, NMFS may reopen the season for a limited amount of time before the December 31 end date.

Gulf recreational red snapper landings for 2011 totaled 4.59 million lb (2.08 million kg), round weight, resulting in a 730,000 lb (331,122 kg), round weight, overage. The average weight of red snapper increased from 5.31 to 6.39 lb (2.41 to 2.90 kg), round weight, from 2011 to 2012. In 2011, all Gulf states, except Texas, implemented compatible fishing seasons for red snapper. Taking into account all of these factors, the NMFS Southeast Regional Office conducted an analysis to predict when the recreational red snapper sector would reach the adjusted 2012 quota. This analysis may be found online at the following Web site: *http://sero.nmfs.noaa.gov/sf/pdfs/SERO-LAPP-2012-01%20Gulf%20Red%20Snapper%20Quota%20Closure%2012April2012%20FINAL.pdf.* The analysis uses three different modeling approaches to predict the 2012 closure date. Across all three modeling approaches, the predicted season length ranges from 32 to 41 days. In order to maximize socio-economic benefits to recreational red snapper fishermen, NMFS has determined that the 2012 recreational red snapper quota will be reached in 40 days.

Under 50 CFR 622.34(m), the red snapper recreational fishing season opens each year on June 1 and closes when the recreational quota is projected to be reached. Using finalized 2011 recreational landings data, the increased size of red snapper being landed, and state compatibility with red snapper seasons, NMFS projects the 2012 recreational quota will be met on July 10, 2012. Therefore, the recreational fishing season will open on June 1, 2012, and close at 12:01 a.m., July 11, 2012, for a 40-day season. If subsequent data indicate the quota has not been reached by July 10, 2012, NMFS may reopen the season, before the December 31 end date, by announcing a reopening in the **Federal Register**.

This final rule also revises the definition for ''shrimp'' in the codified text, a change unrelated to the actions in the regulatory amendment.

Comments and Responses

The following is a summary of the comments NMFS received on the proposed rule and NMFS' respective responses. During the comment period, NMFS received 56 comments, including 52 from private citizens, 3 from recreational fishing organizations, and 1 from an environmental group. Comments pertinent to the rule unanimously supported increasing the red snapper quota and removing the fixed closed season to allow for a potential fall season. These comments are not individually addressed in NMFS' responses; NMFS agrees the quota increases and removal of the fixed fall closed season are appropriate actions taken in accordance with the red snapper rebuilding plan.

Many of these same commenters provided additional observations and suggestions that are addressed here. In general, commenters questioned the science on which red snapper management is based; suggested harvesting restrictions be relaxed; and alternative management strategies be developed for recreational red snapper fishing in the Gulf.

Comment 1: Several commenters offered suggestions for alternative actions to manage recreational red snapper harvest. They suggested that bag limits should be increased; the size limit should be decreased because of possible increases in discards from increased stock abundance; recreational fishermen should keep the first fish; the recreational and commercial quotas should be increased because the stock size is bigger than assessed; and the season length should be extended for the same reason. A possible option to extend the length of the red snapper recreational season would be to open on weekends only or have a separate fall weekend season.

Response: The Council has considered all of the suggested options while developing actions to manage Gulf recreational red snapper harvest under the current rebuilding plan. However, for the reasons provided below, the Council has not chosen these alternative options to manage harvest of recreational red snapper.

Increasing the bag limit or reducing the size limit would allow the quota to be harvested in a shorter time period. The Council received substantial public testimony requesting that the recreational fishing season remain open as long as possible. Therefore, the Council chose to keep the bag limit at 2 fish and the size limit at 16 inches (40.6 cm), total length, to allow for a longer season. The Council reduced the size limit for the commercial sector because that component of the reef fish fishery tends to fish in deeper water and has a higher discard mortality rate. NMFS presented analyses to the Council indicating similar reductions in discard mortality are not achieved by reducing the size limit for the recreational sector, which fishes in shallower depths. The Council addressed reducing discard mortality in other actions such as the requirement for dehookers, circle hooks, and venting tools. The Council determined a requirement to keep the first fish presents significant enforcement difficulties.

As of January 10, 2012, the preliminary estimate of the 2011 recreational harvest is 4.59 million lb

(2.08 million kg). However, the 48-day 2011 harvest exceeded the 3.959 million lb (1.796 million kg) 2012 quota established by this rule; therefore, the length of the 2012 season must be reduced to better ensure the recreational quota is not exceeded. The preamble to this rule includes a link to the analysis of how the season length was projected.

The Council recently developed an options paper to consider alternative seasons for the recreational red snapper season and the possibility of a fall weekend season. However, due to the lack of public support and comment at its January 2012 meeting the Council voted to table this regulatory amendment and discuss these actions in the future.

Comment 2: The assessment methods for the red snapper stock would be improved by better data collection, accounting for the reductions in shrimp effort and the higher fecundity of larger fish, and using various advanced survey technologies. Thus, the science upon which the recreational season length estimate is based is unreliable and should not be used to set season length or estimate recreational harvest relative to the quota.

Response: NMFS has determined that the scientific information underlying the management measures in the rule is sufficient and reliable. The methods and data used to project the recreational season length are thoroughly reviewed by the Southeast Fisheries Science Center (SEFSC) to ensure best scientific practices are followed, and that the measures are based upon the best scientific information available. NMFS uses historical landings and changes in regulations to project the length of the season. Landings information was obtained from the Marine Recreational Information Program, including the for-hire charter survey; SEFSC headboat survey; and Texas Parks and Wildlife Department charter and private/rental creel survey.

In addition, the stock assessment used to estimate the 2012 red snapper season length is based on the Southeast Data, Assessment, and Review (SEDAR) process. The SEDAR process was initiated in 2002 to improve the quality and reliability of fishery stock assessments in the South Atlantic, Gulf of Mexico, and U.S. Caribbean. The SEDAR process seeks improvements in the scientific quality of stock assessments, including attempts to place greater relevance on historical and current information to address existing and emerging fishery management issues. This process emphasizes constituent and stakeholder participation in assessment development, transparency in the assessment process, and a rigorous and independent scientific review of completed stock assessments. The SEDAR process is organized around three workshops. The data workshop documents, analyzes, and reviews data sets to be used for assessment analyses. The assessment workshop develops and refines quantitative population analyses and estimates population parameters. The final workshop is conducted by a panel of independent experts who review the data and the assessment and recommends the most appropriate values for critical population parameters and management considerations. Recent assessments of the red snapper stock were conducted within this process. All workshops and Council-initiated meetings to review the assessment were open to the public and included constituents on the various SEDAR panels that reviewed the data and provided recommendations on management measures.

NMFS agrees there are opportunities to improve the stock assessment process, and is making efforts to make such improvements in both data collection and data analysis options.

Comment 3: Although the recreational quota is being increased, a reduced season will cause economic harm to fishing communities dependent on recreational fishing and associated tourism.

Response: NMFS recognizes the 2012 season will be shorter than the 2011 season. In 2011, the recreational sector exceeded the red snapper quota by approximately 730,000 lb (331,122 kg). Section 407(d) of the Magnuson-Stevens Act mandates NMFS to close the recreational red snapper component of the Gulf reef fish fishery when the red snapper quota is met or projected to be met. Although the 2012 season will be shorter than the 2011 season and fishing businesses may not be as profitable, the 2012 season will be longer than the season that would have occurred in the absence of the quota increase, and economic benefits to fishing communities will increase relative to conditions that would occur in 2012 in the absence of the quota increase.

Comment 4: Several commenters addressed issues the Council is considering for future action. They suggested the development of a different system for managing red snapper, such as spatial management, state management, and a better system to determine quota management. The allocation between commercial and recreational sectors should be changed to favor the recreational sector. There should be consideration of a recreational red snapper overage adjustment amendment. The ACLs and AMs for 2013 should be re-assessed and included in a separate amendment to the FMP.

Response: These comments are beyond the scope of the rule; however, the Council is developing such actions for future consideration.

Classification

The Regional Administrator, Southeast Region, NMFS determined that this final rule and the regulatory amendment are necessary for the conservation and management of the Gulf reef fish fishery and are consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No comments were received regarding the certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 24, 2012.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.2, the definition for ''shrimp'' is revised to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Shrimp means one or more of the following species, or a part thereof:

(1) Brown shrimp, *Farfantepenaeus aztecus.*

(2) White shrimp, *Litopenaeus setiferus.*

(3) Pink shrimp, *Farfantepenaeus duorarum.*

(4) Royal red shrimp, *Hymenopenaeus robustus.*

(5) Rock shrimp, *Sicyonia brevirostris.*

* * * * *

■ 3. In § 622.34, paragraph (m) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(m) *Seasonal closure of the recreational sector for red snapper.* The recreational sector for red snapper in or from the Gulf EEZ is closed from January 1 through May 31, each year. During the closure, the bag and possession limit for red snapper in or from the Gulf EEZ is zero.

* * * * *

■ 4. In § 622.42, paragraphs (a)(1)(i) and (a)(2)(i) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(i) *Red snapper.* (A) For fishing year 2012—4.121 million lb (1.869 million kg), round weight.

(B) For fishing year 2013—4.432 million lb (2.010 million kg), round weight.

* * * * *

(2) * * *

(i) *Recreational quota for red snapper.* (A) For fishing year 2012, the recreational quota for red snapper is 3.959 million lb (1.796 million kg), round weight.

(B) For fishing year 2013, the recreational quota for red snapper is 4.258 million lb (1.931 million kg), round weight.

* * * * *

[FR Doc. 2012–13110 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 104
Wednesday, May 30, 2012

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271 and 274

RIN 0584–AE26

Supplemental Nutrition Assistance Program: Trafficking Controls and Fraud Investigations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food and Nutrition Service (FNS) is proposing to amend Supplemental Nutrition Assistance Program (SNAP or Program) regulations at 7 CFR 274.6 to allow State agencies to deny a request for a replacement card until contact is made with the State agency, if the requests for replacement cards are determined to be excessive. State agencies that elect to exercise this authority will be required to protect vulnerable persons, such as individuals with disabilities, homeless individuals, or the elderly, who may repeatedly lose EBT cards but are not committing fraud. FNS proposes to also change the Electronic Benefit Transfer (EBT) card replacement timeframes in the same section to require State agencies to make replacement cards available for pick up or to place the card in the mail within one business day following notice by the household to the State agency that the card has been lost or stolen. This proposed rule would further amend regulations at 7 CFR 271.2 to clarify the definition of trafficking to include the intent to sell SNAP benefits in cases where an individual makes the offer to sell their benefits and/or EBT card online or in person so the State may pursue an intentional Program violation (IPV) against the individual who made the offer.

DATES: To be assured of consideration, comments on this proposed rule must be received by the Food and Nutrition Service on or before July 30, 2012.

ADDRESSES: The Food and Nutrition Service, USDA, invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal e-Rulemaking Portal:* Go to *http://www.regulations.gov.* Preferred method; follow the online instructions for submitting comments on docket [FNS–2012–0028].
- *Fax: Submit comments by facsimile transmission to:* Jane Duffield, Chief, State Administration Branch, Fax number 703–305–0928.
- *Mail:* Comments should be addressed to Jane Duffield, State Administration Branch, 3101 Park Center Drive, Alexandria, VA 22302.
- *Hand Delivery or Courier:* Deliver comments to the Jane Duffield, State Administration Branch, 3101 Park Center Drive, Alexandria, VA 22302, Room 818, Monday–Friday, 8:30 a.m.–5:00 p.m.

All comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jane Duffield at 703–605–4385.

SUPPLEMENTARY INFORMATION:

I. Background

In this rule, FNS is proposing to amend the SNAP regulations at 7 CFR 274.6 to give States an option for handling requests for multiple replacement cards. Current regulations do not allow State agencies to require clients requesting multiple replacement cards to contact the agency and provide an explanation before a new card is issued, even though such requests sometimes indicate fraudulent activity. Under this rule, States could choose to withhold the benefit card when the client has requested an excessive number of replacements, until the client makes contact with the State agency and provides an explanation for the request. State agencies taking up this option would be expected to establish a threshold beyond which contact must be made, but in no instance may that threshold be fewer than four cards in a 12 month period prior to the request, except as provided below. The proposed minimum threshold is based on an analysis by FNS of electronic transaction data that demonstrates a statistically significant difference when a client reaches his or her fourth replacement card, indicating that transaction activity is three times more likely to be flagged as potential trafficking, which is the exchange of benefits for cash or other consideration, compared to clients with three or fewer replacement cards. The State agency would need to notify the client when he or she reaches the threshold for excessive card replacements, as determined by the State agency, and indicate what actions the State agency would take if the client requests another card replacement. The State agency would be expected to refer clients to the fraud investigation unit that respond to the agency request for contact but do not provide an appropriate explanation for such requests and must issue a replacement card while the investigation is ongoing. In all cases, States would be required to protect vulnerable persons who lose EBT cards but are not committing fraud.

FNS proposes to further amend 7 CFR 274.6 to change the EBT card replacement timeframes. Currently, State agencies must ensure that clients receive replacement EBT cards within two business days (or five business days if using a centralized mail issuance system) after the client notifies the State agency that the card has been lost or stolen. The proposed changes would place the requirement on the mailing end instead of the receiving end by requiring State agencies to make replacement cards available for pick up or to place the card in the mail within one business day following notice by the client. The proposed change would alleviate State agencies' responsibility for mail delays beyond their control. Finally, this proposed rule would also clarify the definition of trafficking to include actions that clearly express the intent to sell SNAP benefits or EBT cards in person or online through web sites and social media.

Allow States To Withhold Replacement Cards Until Contact Is Made With the State Agency

FNS proposes to amend regulations in order to provide States with options

when clients request an excessive number of EBT card replacements. States would be able to withhold a replacement card until the client makes contact by phone or in-person with the State agency and provides an explanation for the excessive EBT card requests. The State agency would need to determine what it considers to be excessive, but the threshold may not be less than four card replacements requested within 12 months prior to the request; unless the State agency has sufficient, additional evidence indicating potential misuse that warrants noticing the client sooner than the fourth card request. These might be individuals about whom the State agency has gathered other evidence of suspected fraudulent activity. In these circumstances, the State agency may require the client to provide an explanation by phone or in person before the fifth card request, and, if deemed appropriate, refer the client for investigation. Evidence indicating potential misuse may include, but is not limited to, transactions made with retailers found by FNS to be guilty of trafficking, benefit cards that have a zero balance for both SNAP and cash assistance when the request is made, cards that follow established patterns of trafficking, etc. Further, States with sufficient evidence to warrant noticing the client sooner that the fourth replacement card request are encouraged to begin an investigation without waiting for the client to request another card. States would be required to notify clients when clients reach the threshold number of card replacement requests (not less than upon the fourth card in 12 months prior to the request or as otherwise provided by this proposed rule) prior to taking any action upon receiving a subsequent card replacement request. The notice must inform the client that the next request for card replacement will require contact with the State agency to provide an explanation for the requests, before the replacement card will be issued. The notice must be written in clear and simple language to ensure that the notice is understood.

Many States currently monitor multiple card replacements as a possible indicator of trafficking or other suspicious activity. However, it is difficult for States to prove trafficking on this information alone. States report that they often ask the client to come in to speak with them, but many do not respond. Current regulations do not allow State agencies to require client contact to obtain additional card replacements. FNS proposes to change the regulations so that State agencies have this latitude to require contact prior to issuing another card replacement once a significant threshold has been reached and the client notified. This change would provide States with another opportunity to gather potentially important information and to determine whether assistance or further investigation is warranted. Providing States with this new option supports FNS' commitment to Program integrity while maintaining the intent of the Program to provide nutrition benefits to low income households.

FNS is concerned that when clients request multiple EBT card replacements over a short period of time, there may be one of two possible problematic explanations. It may indicate that the client does not know how to use his or her EBT card properly, and needs additional help or training to protect the card and access benefits. It may also indicate that the client has sold his or her card, perhaps repeatedly, in order to obtain cash or other ineligible items. If the client does not understand how to use, maintain or protect the card, requiring him or her to contact the State office, either in-person or by phone, would allow the State to identify the problem and to assist the client with using the EBT card. On the other hand, the State agency may determine through such contacts, that the client is possibly or likely selling his or her cards, and could then refer him or her to the fraud unit for further investigation. In either event, the client who contacts the State agency would be provided a replacement card and must be allowed to continue to participate. If the client does not contact the State agency, the card may be held until he or she does so and the case must be turned over to the fraud unit for further investigation to determine if there is enough evidence to pursue an Intentional Program Violation (IPV). If the client does contact the State agency but refuses to explain the card losses, the card must be provided and the case must be turned over to the fraud unit for further investigation.

This proposed rule would not require States to pursue these cases, but does provide States with the option to pursue cases when they determine that the requests for card replacement are excessive. In all cases, States would be required to protect vulnerable persons who lose EBT cards but are not committing fraud. FNS is particularly focused on ensuring that persons who may have a greater tendency to lose multiple cards for legitimate reasons such as individuals with disabilities, homeless individuals, or the elderly, are protected and treated appropriately by State agencies that elect to exercise this authority. Furthermore, it is FNS's expectation that upon contact, should the State agency identify that the explanation for the request is appropriate, the State agency must use the contact to educate the client on proper use of the card, document this activity, and should not require contact upon subsequent requests that could be seen as a barrier to participation. It would only be appropriate to require contact upon subsequent requests if the pattern of activity has changed since the initial contact that indicates a likelihood of potential fraud.

Change the EBT Card Replacement Timeframes

State agencies have the option to provide replacement EBT cards in person at the local State SNAP office or by mail. For many clients, having to go into the local SNAP office to pick up a card can present a substantial barrier to getting a replacement card quickly. However, as the United States Postal Service (USPS) scales back its delivery services in many areas, State agencies are finding it more and more difficult to ensure clients receive replacement EBT cards within the timeframes required by FNS. Because State agencies do not have control over the length of time it takes the USPS to get a replacement EBT card into the hands of a SNAP household, FNS believes it is more appropriate to prescribe a timeframe by when the State agency must place the card in the mail instead of when the client must actually receive the card in the mail. FNS continues to believe that clients who have legitimately lost their card or had it stolen must receive a replacement card within a reasonable amount of time to ensure that they have access to benefits needed to meet their dietary needs. To this end, FNS is proposing to require State agencies to act on a notice by the client of a lost or stolen EBT card within one business day. The State would accomplish this requirement by either providing the client with a card for pick-up at the local office or by placing the card in the mail. Similar requirements apply to lost or stolen Personal Identification Numbers (PINs). However, if a PIN is being mailed in combination with a card, States would continue to follow industry standards for mailing PINs separate from the card.

Clarify the Definition of Trafficking

FNS has received numerous reports regarding abuses of the Program involving attempts to sell SNAP benefits in person or online. In an effort to combat fraud and abuse, FNS has taken

many steps to assist States in their ability to identify and further investigate instances of SNAP fraud, including trafficking, and is committed to continuing those efforts. To further assist States, FNS believes it is necessary to clarify the definition of trafficking to include the intent to sell SNAP benefits online or in person. FNS is basing these proposed changes on the existing definition of trafficking while acknowledging that there is another rulemaking in process which proposed additional changes to the trafficking definition. (76 FR 35787, proposed June 20, 2011). That regulation is not yet final. FNS will reflect all changes to the existing definition of trafficking in the final rule at the time of publication.

States have expressed concern with the growing popularity of social media Web sites as a format for advertising SNAP benefits for sale. The use of social media networking sites as a vehicle for trafficking SNAP is an area that needs increased monitoring. FNS has heard from a number of States and from the public that recipients are posting SNAP benefits for sale online and that the frequency of this activity is on the rise. FNS has taken action to discourage several of these Web sites from posting such advertisements, yet the Agency is aware that it still occurs.

Clarifying that the definition of trafficking to include activities demonstrating the intent to sell SNAP benefits would eliminate the common misunderstanding that one must observe or witness an actual transaction in order to pursue these cases as IPVs. State agencies can disqualify a recipient for posting or soliciting SNAP benefits for sale and assign the appropriate penalty to those individuals, such as permanent disqualification and criminal penalties, for particularly egregious offenses. The clarification would also include practices of individuals who target people outside of grocery stores or other locations, offering to sell their benefits for cash or other non-eligible items.

Through discussions with States regarding these issues, FNS has learned that State agencies have difficulty prosecuting these individuals because State agencies believe that the current regulations do not cover these types of activities. By amending the definition, FNS would be clarifying that an IPV for trafficking occurs when there is an attempted sale of benefits before the sale is completed. These proposed changes to regulations would help to ensure that the integrity of the Program is upheld and the benefits are used as intended.

II. Procedural Matters

Executive Order 12866 and Executive Order 13563

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

This proposed rule has been designated non-signficant under section 3(f) of Executive Order 12866.

Regulatory Flexibility Act

This Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This proposed rule would not have an impact on small entities because they do not administer SNAP or investigate suspected intentional Program violations.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Supplemental Nutrition Assistance Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.561. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121. The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce in any way the ability of protected classes of individuals to receive SNAP benefits on

the basis of their race, color, national origin, sex, age or disability.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes.

A. In the fall of 2010, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the impact of this rule on the tribe or Indian Tribal governments. The Joint Consultation sessions were coordinated by USDA's Office of Tribal Relations and held on the following dates and locations:

1. Rapid City, SD—October 28–29, 2010
2. Oklahoma City, OK—November 3–4, 2010
3. Minneapolis, MN—November 8–9, 2010
4. Seattle, WA—November 22–23, 2010
5. Nashville, TN—November 29–30, 2010
6. Albuquerque, NM—December 1–2, 2010
7. Anchorage, AK—January 10–11, 2011

There were no comments about this regulation during any of the aforementioned Tribal Consultation sessions.

B. In the spring of 2011, FNS offered opportunities for consultation with Tribal officials or their designees to discuss the impact of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), Public Law 111–296, on tribes or Indian Tribal governments. The consultation sessions were coordinated by FNS and held on the following dates and locations:

1. HHFKA Webinar & Conference Call—April 12, 2011
2. Mountain Plains—HHFKA Consultation, Rapid City, SD—March 23, 2011
3. HHFKA Webinar & Conference Call—June, 22, 2011
4. Tribal Self-Governance Annual Conference in Palm Springs, CA—May 2, 2011
5. National Congress of American Indians Mid-Year Conference, Milwaukee, WI—June 14, 2011

There were no comments about this regulation during any of the aforementioned Tribal Consultation sessions.

C. In late 2010 and early 2011, USDA engaged in a series of consultative sessions to obtain input by Tribal officials or their designees concerning the effect of this and other rules on Tribes or Indian Tribal governments, or whether this rule may preempt Tribal law.

Reports from the consultative sessions will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. FNS will respond in a timely and meaningful manner to Tribal government requests for any consultation concerning this rule. Currently, FNS provides regularly scheduled quarterly consultation sessions through the end of FY2012 as a venue for collaborative conversations with Tribal officials or their designees.

USDA will offer future opportunities, such as webinars and teleconferences, for collaborative conversations with Tribal leaders and their representatives concerning ways to improve rules with regard to their affect on Indian country.

We are unaware of any current Tribal laws that could be in conflict with the proposed rule. We request that commenters address any concerns in this regard in their responses.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

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

List of Subjects in 7 CFR Parts 271 and 274

Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 271 and 274 are proposed to be amended as follows:

1. The authority citation for 7 CFR parts 271 and 274 continue to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2, the definition of *Trafficking* is revised to read as follows:

§ 271.2 Definitions.

* * * * *

Trafficking means the buying, selling, or intent to sell of SNAP benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, for cash or consideration other than eligible food; or the exchange of firearms, ammunition, explosives, or controlled substances, as defined in section 802 of title 21, United States Code, for coupons.

* * * * *

PART 274—ISSUANCE AND USE OF PROGRAM BENEFITS

3. Paragraph 274.6(b) is amended to read as follows:

a. Revise paragraph (b) introductory text.

b. Add new paragraphs (b)(4) and (b)(5).

The revision and additions read as follows:

§ 274.6 Replacement issuances and cards to households.

* * * * *

(b) *Providing replacement EBT cards or PINs.* The State agency shall make replacement EBT cards available for pick up or place the card in the mail within 1 business day following notice by the household to the State agency that the card has been lost or stolen; unless the State implements a replacement procedure pursuant to paragraph (b)(5) of this section.

* * * * *

(4) The State agency shall provide replacement PINs in accordance with § 274.2(f) and within the same timeframes prescribed for replacement EBT cards in this paragraph. Notwithstanding the previous sentence, the State agency must follow standard industry practices for PINs mailed in combination with a card.

(5) *Multiple requests for replacement cards.* The State agency may require an individual or household to provide an explanation by phone or in person in cases where the number of requests for card replacements is determined excessive. If they so require, the State agency must establish a threshold for the number of card replacements during a specified period of time to be

considered excessive, but that threshold shall not be less than four (4) cards requested within twelve (12) months prior to the request; unless the State agency has sufficient, additional evidence indicating suspected intentional Program violation, as defined at § 273.16(c) of this chapter, which would warrant noticing the client sooner than the fourth card request, requiring the individual or household to provide an explanation by phone or in person before the fifth card request, and, if deemed appropriate, referring the client for investigation.

(i) The State agency must notify the household in writing when it has reached the threshold, indicating that the next request for card replacement will require contact with the State agency to provide an explanation for the requests, before the replacement card will be issued. The notice must:

(A) Be written in clear and simple language;

(B) Meet the language requirements described at § 272.4(b) of this chapter;

(C) Specify the number of cards requested and over what period of time;

(D) Explain that the next request will require contact with the State agency, either in person or by phone, before another card is issued and provide the contact information;

(E) Include a statement that explains what is considered a misuse or fraudulent use of benefits and the possibility of referral to the fraud investigation unit for suspicious activity.

(ii) Following notification, should another card be requested, the State agency may contact the household to request information or require that the household contact the State agency. Upon the household's compliance by contacting the State agency as requested, the household must immediately be issued a replacement card.

(A) The State agency may decline to issue a replacement card if the household does not respond to the State agency's notice to provide an explanation for the need to replace the card and the case must be referred for investigation.

(B) The State agency must educate the client on the proper use of the card if the explanation is deemed appropriate and the State agency should not require contact upon subsequent requests, unless the pattern of card activity has changed since the initial contact and indicates possible fraudulent activity.

(C) The State agency must refer the household for investigation in cases where the household contacts the State agency but refuses to explain the card losses or the explanation provided appears to be indicative of fraud in accordance with § 273.16 of this chapter. The State agency must issue a replacement card for any household that makes the required contact so that the household has access to benefits in its EBT account while the investigation is underway and while awaiting a hearing, in accordance with § 273.16(e)(5).

(iii) In all cases, a State agency shall act to protect households containing homeless persons, elderly or disabled members, victims of crimes, and other vulnerable persons who may lose electronic benefits transfer cards but are not committing fraud.

Dated: May 22, 2012.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2012–12907 Filed 5–29–12; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF ENERGY

10 CFR Parts 429, 430, and 431

[Docket No. EERE–2011–BT–TP–0061]

RIN 1904–AC65

Energy Conservation Program for Consumer Products and Certain Commercial and Industrial Equipment: Test Procedures for Showerheads, Faucets, Water Closets, Urinals, and Commercial Prerinse Spray Valves

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

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: In this notice of proposed rulemaking (NOPR), the U.S. Department of Energy (DOE) proposes to update its test procedures for showerheads, faucets, water closets, and urinals. Specifically, DOE proposes to incorporate by reference the American Society of Mechanical Engineers/American National Standards Institute (ASME/ANSI) Standard A112.18.1–2011 test procedure for faucets and showerheads, which would replace the 1996 version currently referenced by DOE in its test procedure. DOE also proposes to incorporate by reference ASME/ANSI Standard A112.19.2–2008 procedure for water closets and urinals, which would replace the 1995 version currently referenced by DOE in its test procedure. These updates fulfill DOE's obligation under the Energy Policy and Conservation Act (EPCA) to review its test procedures for covered products at least once every 7 years and either amend the applicable test procedures or publish a determination in the **Federal Register** not to amend them. DOE also expects that incorporation of the updated procedures will bring DOE's testing requirements more closely in line with current industry practices, reduce the burden associated with testing and reporting test results for these products, and improve the accuracy of test results.

For commercial prerinse spray valves, DOE has preliminarily determined that no changes are needed to the existing DOE test procedure in order to accurately measure the water consumption of these products, and proposes to retain the existing procedure without change. However, since the American Society for Testing and Materials (ASTM) reapproved this standard in 2009 as F2324–03 (2009), DOE is proposing to incorporate by reference this most recent version. This action would also satisfy the EPCA requirement for DOE to review the test procedures for these products at least once every 7 years.

This notice also announces a public meeting to receive comments on these proposed amendments to the test procedures.

DATES: DOE will hold a public meeting on July 24, 2012, from 9 a.m. to 4 p.m., in Washington, DC. The meeting will also be broadcast as a webinar. See section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this NOPR before and after the public meeting, but no later than August 13, 2012. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to

section V, ''Public Participation,'' near the end of this notice.

Any comments submitted must identify the NOPR for Test Procedures for Showerheads, Faucets, Water Closets, Urinals, and Commercial Prerinse Spray Valves, and provide docket number EERE–2011–BT–TP–0061 and/or regulatory information number (RIN) 1904–AC65. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: PlumbingPrds-2011-TP-0061@ee.doe.gov*. Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. 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 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 regulations.gov index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR%252BPR%252BN%252BO%252BSR%252BPS;rpp=10;po=0;D=EERE-2011-BT-TP-0061*. This Web page will contain a link to the docket for this notice on the regulations.gov site. The regulations.gov Web page will contain simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for information on how to submit comments through regulations.gov.

For further information on how to submit a comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by email: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT:

Mr. Lucas Adin, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1317. Email: *Lucas.Adin@ee.doe.gov.*

Ms. Jennifer Tiedeman, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–6111. Email: *Jennifer.Tiedeman@hq.doe.gov.*

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I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes the showerheads, faucets, water closets, and urinals that are the subjects of today's notice.[1]

Under EPCA, this program consists essentially of four parts: (1) Testing, (2) labeling, (3) Federal energy and water conservation standards, and (4) certification and enforcement procedures. The testing requirements include test procedures that manufacturers of covered products must use as the basis for (1) certifying to the DOE that their products comply with applicable energy and water conservation standards adopted under EPCA and (2) making representations about the energy or water consumption of those products on labels and other materials. Similarly, DOE must use these test procedures to determine whether the products comply with any relevant standards promulgated under EPCA.

EPCA also includes a water conservation standard and test procedure for commercial prerinse spray valves, which are also addressed in this notice. While commercial prerinse spray valves were originally referenced in Part B of EPCA, DOE noted in a final rule published October 18, 2005, that placement of commercial prerinse spray valves in Part B rather than part C of EPCA, which established the Energy Conservation Program for Certain Commercial and Industrial Equipment,[2] was the result of a legislative drafting error, and subsequently adopted the provisions for commercial prerinse spray valves into 10 CFR part 431. 70 FR 60407, 60409.

General Test Procedure Rulemaking Process

In 42 U.S.C. 6293, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA provides, in relevant part, that any test procedures prescribed or amended under this section shall be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of showerheads, faucets, water closets and urinals), or estimated annual

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

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

operating cost of a covered product during a representative average use cycle or period of use and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

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

Effective 180 days after an amended test procedure applicable to a covered product is prescribed, no manufacturer may make any representation with respect to water usage of such product unless such product has been tested in accordance with such amended test procedure and such representation fairly discloses the results of such testing. (42 U.S.C. 6293(c)(2)) However, the 180-day period may be extended for an additional 180 days if the Secretary of Energy (Secretary) determines that this requirement would impose an undue burden. (42 U.S.C. 6293(c)(3))

II. Summary of the Notice of Proposed Rulemaking

EPCA states that the procedures for testing and measuring the water use of faucets and showerheads shall be ASME/ANSI Standard A112.18.1M–1989, ''Plumbing Fixture Fittings,'' for faucets and showerheads, and ASME/ANSI Standard A112.19.6–1990, ''Hydraulic Requirements for Water Closets and Urinals,'' for water closets and urinals; EPCA further specifies that if ASME/ANSI revises these requirements, the Secretary shall adopt such revisions if they conform to the basic statutory requirements for test procedures. (42 U.S.C. 6293(b)(7)–(8)) DOE last amended test procedures for these products in a final rule published in March 1998 (March 1998 final rule), which incorporated by reference ASME/ANSI Standard A112.18.1M–1996, ''Plumbing Fixture Fittings,'' for showerheads and faucets, and ASME/ANSI Standard A112.19.6–1995, ''Hydraulic Performance Requirements for Water Closets and Urinals,'' for water closets and urinals. 63 FR 13308 (March 18, 1998). Since publication of the March 1998 final rule, ASME/ANSI has revised both procedures and issued the most recent versions as A112.18.1–2011, ''Plumbing Supply Fittings,'' for showerheads and faucets in June 2011, and A112.19.2–2008, ''Ceramic Plumbing Fixtures,'' for water closets and urinals in August 2008.

In today's notice, DOE proposes to amend its existing test procedures for showerheads, faucets, water closets, and urinals by adopting, with the exception of certain provisions regarding rounding of measured values, the most recent versions of the corresponding ASME/ANSI procedures for measuring the water consumption of these products. DOE has evaluated these industry procedures and has preliminarily determined that the revised ASME/ANSI test procedures for showerheads, faucets, water, closets, and urinals would (1) produce test results that more accurately measure water use during a representative average use cycle or period of use; and (2) not be unduly burdensome to conduct. 42 U.S.C. 6293(b)(1), (3). DOE has also determined that the adoption of these revised procedures would not alter the measured water use of these products. DOE's determination that the measured water use of showerheads, faucets, water closets, and urinals is not altered is based on an evaluation of the changes to the procedures described in Section III.A for each of the covered products.

Section 135(b)(1) of EPACT 2005 amended section 323(b) of EPCA (42 U.S.C. 6293(b)) to add subsection (14), which states that test procedures for measuring the flow rate for commercial prerinse spray valves ''shall be based on [the] American Society for Testing and Materials [ASTM] Standard F2324, entitled 'Standard Test Method for Pre-Rinse Spray Valves.' '' In a final rule published on December 8, 2006, DOE incorporated by reference the 2003 version of ASTM Standard F2324 in 10 CFR 431.263, and established it as the uniform test method for measurement of the flow rate of commercial prerinse spray valves in section 431.264. 71 FR 71340.

While commercial prerinse spray valves are included in Part B of EPCA as consumer products rather than in Part C, which addresses commercial and industrial equipment, DOE notes that Part C also contains the same provision regarding periodic review of test procedures for covered equipment at least once every seven years. 42 U.S.C. 6314(a)(1)(A). To fulfill this statutory requirement, DOE initiated this rulemaking and proposes in this NOPR to amend its test procedures for commercial prerinse spray valves. Specifically, DOE proposes to update its references in DOE's current test procedures to the latest version of the ASTM Standard by incorporating by reference ASTM Standard F2324–03 (2009), ''Standard Test Method for Prerinse Spray Valves.''

The two statutory provisions that address representative test results and test burden for consumer products, which are discussed in the previous paragraph, also apply to DOE review of the test procedures for commercial and industrial equipment. 42 U.S.C. 6314(a)(2). In this light, DOE has evaluated ASTM F2324–03(2009), ''Standard Test Method for Prerinse Spray Valves,'' and has preliminarily determined that these two provisions are met. ASTM F2324–03(2009) does not involve any substantive amendment to the current DOE test procedure for commercial prerinse spray valves, which is based on ASTM F2324–03. However, to reflect the reapproval of the F2324–03 standard by ASME in 2009, DOE is proposing to incorporate by reference the reapproved version in 10 CFR 431.264.

DOE also proposes to retain the existing descriptors for measures of maximum permissible water use for water closets, urinals, faucets, and showerheads currently found in 10 CFR 430.23(s) through 430.23(v) (gallons or liters per minute or cycle, and gallons or liters per flush), and to retain the existing water use descriptors (gallons or liters per minute) for commercial prerinse spray valves in 10 CFR 431.264.

DOE considers the activity initiated by this proposed rule sufficient to satisfy the statutory requirement that DOE must review its test procedures for all covered products, including plumbing products, at least once every 7 years and either amend the applicable test procedures or publish a determination in the **Federal Register** not to amend them. (42 U.S.C. 6293(b)(1)(A) and 42 U.S.C. 6314(a)(1))

III. Discussion

A. Statutory Plumbing Requirements

1. Test Procedures for Showerheads and Faucets

The current test procedures for showerheads and faucets are found in appendix S of 10 CFR part 430, subpart B, (Appendix S) and require that tests be conducted in accordance with the test procedure requirements specified in section 6.5, ''Flow Capacity Test,'' of ASME/ANSI Standard A112.18.1M–1996. In the revised ASME/ANSI Standard A112.18.1–2011, the flow

capacity test has been moved to section 5.4 of that standard, titled ''Flow Rate.'' Minor substantive changes to the flow capacity test include (1) a requirement that the pressure differential measurement be within ±1 pound per square inch (psi) for faucets and ±2 psi for showerheads (not previously specified for either product), (2) a change in the test procedure temperature range to 5 to 71 °C for faucets (previously 4 to 66 °C) and to 32 to 44 °C for showerheads (previously 4 to 66 °C), (3) a requirement that a container large enough to hold water collected over a minimum of 1 minute be used when using the time/volume test procedure method for faucets and showerheads (not previously specified), and (4) a requirement that flow be maintained during testing for at least 1 minute for showerheads (not previously specified). DOE sees no evidence that the changes identified in this paragraph will result in a change in the measured water use of faucets or showerheads, and therefore proposes to incorporate by reference the applicable section of ASME/ANSI Standard A112.18.1–2011 for testing showerheads and faucets at Appendix S.

The existing test procedure language in Appendix S of 10 CFR part 430 also requires, for all faucets and showerheads, that measurements be recorded at the resolution of the test instrumentation and that calculations be rounded off to the same number of significant digits as the previous step. It also requires that the final water consumption value be rounded to one decimal place for non-metered faucets and for showerheads, and to two decimal places for metered faucets. DOE originally introduced these provisions as part of its 1998 final rule in order to establish uniformity in the calculated results reported in certifications of compliance. 63 FR at 13310. DOE has not received any information since that time indicating that these rounding provisions should be modified, and proposes to retain them without change.

DOE requests comment on these proposed amendments to the existing test procedures for showerheads and faucets, including provisions pertaining to representations of water consumption and calculations of those values.

2. Test Procedures for Water Closets and Urinals

The current test procedure for water closets and urinals is found in appendix T of 10 CFR part 430, subpart B, (Appendix T) and incorporates by reference ASME/ANSI Standard A112.19.6–1995. The test procedure in Appendix T is divided into two sections: ''Test Apparatus and General Instructions,'' and ''Test Measurement,'' both of which reference corresponding provisions in A112.19.6–1995. When ASME merged ASME/ANSI Standard A112.19.6–1995 with ASME/ANSI Standard A112.19.2–2003 ''Vitreous China Plumbing Fixtures'' to produce ASME/ANSI Standard A112.19.2–2008, several sections of the water consumption tests for water closets and urinals that DOE refers to in Appendix T were renumbered and no longer correspond to the same sections DOE references.

a. Test Procedure for Water Closets

DOE proposes to amend its regulations to correspond to the changes that ASME made in the 2008 version of its procedures for water closets. Specifically, the existing DOE test procedure in Appendix T requires that the test apparatus and instructions for testing water closets conform to the requirements specified in section 7.1.2, ''Test Apparatus and General Instructions,'' subsections 7.1.2.1, 7.1.2.2, and 7.1.2.3, of ASME/ANSI Standard A112.19.6–1995, whereas DOE now proposes that its test procedure reference ASME/ANSI Standard A112.19.2–2008, and in particular the sections that specify the requirements for test apparatus instructions and instructions for testing water closets in 7.1.1, 7.1.2, 7.1.3, and 7.1.4. These sections include minor changes to the test setup, which are described in the next paragraph.

The existing DOE test procedure requires that the measurement of the water flush volume of water closets be conducted in accordance with the test requirements specified in ASME/ANSI Standard A112.19.6–1995, section 7.1.6, ''Water Consumption and Hydraulic Characteristics.'' In the updated ASME/ANSI A112.19.2–2008, the test procedure for measuring the water flush volume of water closets is found in section 7.4, ''Water Consumption Test.'' Dual-flush water closets, which are not addressed in the 1995 ASME/ANSI procedure or in DOE's current test procedure, are required under ASME/ANSI A112.19.2–2008 [3] to meet the flush volume requirement for low consumption water closets of 1.6 gallons per flush when the full flush volume is activated. Additional minor updates found in ASME/ANSI A112.19.2–2008 include (1) a required filter in the apparatus set-up (not previously required), (2) required receiving vessel calibration in increments of 0.25 liters (0.07 gallons) (decreased from 0.1 gallons), (3) required use of an electric timer with increments that are accurate within a tenth of a second to verify that the actuator is held for a maximum of 1 second (not previously specified), (4) revised static pressure requirements for flushometer valves with siphonic bowls to 80 psi for one round of tests and 35 psi for the second two rounds (previously one round of tests at each of three pressures: 80, 50, and 15 psi) and a similar provision for flushometer valves with blowout bowls, but at 80 and 45 psi (previously 80, 50, and 35 psi), and (5) required rounding of the total flush volume down to the nearest 0.25 liters (0.07 gallons) (not previously specified). DOE sees no evidence that the changes identified in this paragraph will result in a change in the measured water use of water closets, would produce test results that less accurately measure the water use of water closets during a representative average use cycle, or would be more burdensome to conduct, and therefore proposes to incorporate by reference the applicable sections of ASME/ANSI Standard A112.19.2–2008 for testing water closets into Appendix T, except the rounding provisions, as discussed in section III.A.2.c.

b. Test Procedure for Urinals

The current DOE test procedure for urinals is also found in Appendix T and incorporates by reference ASME/ANSI Standard A112.19.6–1995. The existing DOE test procedure requires that the test apparatus and instructions for testing urinals conform to the requirements specified in ASME/ANSI Standard A112.19.6–1995, section 8.2, ''Test Apparatus and General Instructions,'' subsections 8.2.1, 8.2.2, and 8.2.3. In updated ASME/ANSI Standard A112.19.2–2008, the section that specifies the requirements for test apparatus instructions and instructions for testing urinals is 8.2, ''Test Apparatus and General Instructions,'' which includes subsections 8.2.1, 8.2.2, and 8.2.3. The existing DOE test procedure requires that the measurement of the water flush volume of urinals be conducted in accordance with the test requirements specified in ASME/ANSI A112.19.6–1995, section 8.5, ''Water Consumption.'' In the 2008 version of A112.19.2, these requirements have been moved to section 8.6, ''Water Consumption Test.'' Additionally, minor updates to the water consumption test found in ASME/ANSI A112.19.2–2008 include (1) a

[3] ASME/ANSI A112.19.14–2006, ''Six-Liter Water Closets Equipped with a Dual Flushing Device,'' requires dual-flush water closets to meet the requirements of low consumption water closets when tested in full flush mode in accordance with ASME/ANSI A112.19.2.

required filter in the apparatus set-up (not previously specified), (2) required receiving vessel calibration of 0.25 liters (0.07 gallons) (decreased from 0.1 gallons), and (3) required rounding of the total flush volume down to the nearest 0.25 liters (0.07 gallons) (not previously specified). DOE sees no evidence that the changes identified in this paragraph will result in a change in the measured water use of urinals, produce test results that less accurately measure the water use of urinals during a representative average use cycle, or would be more burdensome to conduct, and therefore proposes to incorporate by reference the applicable sections from ASME/ANSI Standard A112.19.2–2008 for testing urinals into Appendix T, except for the rounding provision, as discussed in section III.A.2.c.

c. Rounding of Test Results for Water Closets and Urinals

For both urinals and water closets, the existing DOE test procedure language in Appendix T requires that measurements be recorded at the resolution of the test instrumentation; that calculations be rounded off to the same number of significant digits as the previous step; and that the final water consumption value be rounded to one decimal place for water closets and for urinals. DOE added these provisions in its 1998 final rule (63 FR 13310–11) and has not received any information since that time indicating that these rounding provisions should be modified. However, in order to maintain consistency with the measurement and calculation methods in the ASME/ANSI A112.19.2–2008 procedure, DOE proposes to amend the rounding provisions in Appendix T to require that the final value of water consumption for each tested unit retain the number of significant digits present in the measured test value. Because EPCA uses gallons as the primary unit of measurement for assessing compliance with the standards for these products, the test values for each model would be converted to gallons after applying the applicable sample statistics in 10 CFR 429.30 or 429.31, and the rated value of water consumption rounded to the nearest 0.01 gallon per flush (or nearest 0.01 liter per flush).

d. Dual-Flush Water Closets

As previously discussed, DOE is proposing to require that dual-flush water closets be tested according to ANSI/ASME Standard A112.19.2–2008 to determine their maximum flush volume, as observed in full flush mode. However, DOE is aware that other testing and reporting metrics have been developed for these products in order to reflect the reduction in average water consumption that results from use of the reduced flow mode. In particular, the Environmental Protection Agency (EPA) WaterSense program's [4] specifications for water closets permit the overall water consumption of dual-flush water closets to be represented as a weighted average of the flush volumes, in which it is assumed that two thirds of all flushes will be the reduced flow (*see* EPA WaterSense Specification for Tank-Type Toilets version 1.1, section 3.2, available at *http://www.epa.gov/WaterSense/docs/revised_het_specification_v1.1_050611_final508.pdf,* or DOE Docket Number EERE–2011–BT–TP–0061, No. 1, p. 1).

DOE is proposing a test procedure to measure the water use of a dual-flush water closet over a representative average period of consumer use (''average representative water use''). DOE may, in a future rulemaking, consider amendments to the certification provisions for water closets that could account for the impact of the reduced flush on the water consumption of dual-flush water closets.

Under the proposed test procedure, the flush volume of the reduced flush would be measured using section 7.4 of ASME/ANSI Standard A112.19.2–2008 in the same manner as the full flush, and the average representative water use would be calculated using the composite average of two reduced flushes and one full flush.

In order to ensure that DOE has considered all relevant aspects of this approach, DOE requests comments on (1) its proposal to develop a test procedure to measure the average representative water use of dual-flush water closets in general, (2) whether the use of a composite average of the flush volumes of a dual-flush water closet is representative of the average water use of these products, and (3) whether the specific ratio of flush volumes proposed in this notice (i.e., two reduced flushes and one full flush) is an appropriate measure of the representative average water use of dual-flush water closets.

DOE requests comment on these proposed amendments to the existing test procedures for water closets and urinals, including provisions pertaining to representations of water consumption and calculations of those values, and the appropriate means of determining the representative average water use of dual-flush water closets.

3. Test Procedure for Commercial Prerinse Spray Valves

The current DOE test procedure for commercial prerinse spray valves is found in section 431.264 of 10 CFR part 431, subpart O, and requires that the test procedure to determine the water consumption flow rate of commercial prerinse spray valves be conducted in accordance with the test requirements specified in sections 4.1 and 4.2 (Summary of Test Method), 5.1 (Significance and Use), 6.1 through 6.9 (Apparatus) except 6.5, 9.1 through 9.5 (Preparation of Apparatus), 10.1 through 10.2.5 (Procedure), and calculations in accordance with sections 11.1 through 11.3.2 (Calculation and Report) of ASTM F2324–03, ''Standard Test Method for Prerinse Spray Valves.'' ASTM has not updated the portions of this ASTM standard that are referenced in the DOE test procedure since DOE incorporated this standard by reference in the December 2008 final rule. 71 FR 71340. After considering that ASTM reapproved this standard in 2009 without making any substantive changes, DOE proposes in this NOPR to amend its current test procedure by incorporating by reference the most recent version of this standard as ASTM Standard F2324–03 (2009), ''Standard Test Method for Prerinse Spray Valves.''

The existing DOE test procedure for commercial prerinse spray valves found at 10 CFR 431.264 requires that measurements be recorded at the resolution of the test instrumentation; that calculations be rounded off to the same number of significant digits as in the previous step; and that the final water consumption value be rounded off to one decimal place as follows: (1) a fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places, or (2) a fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places. DOE proposes to retain these provisions without change.

DOE invites comments on its proposal to retain the existing test procedure for commercial prerinse spray valves, with incorporation by reference of the most recent version of the ASTM standard, and is interested in any views on the suitability of this procedure for meeting the requirements of EPCA with respect to representativeness of measurements and test burden.

[4] WaterSense is a voluntary partnership program administered by the EPA which, among other activities, promotes water conservation by providing certification and labeling for water consuming products, including water closets, that meet certain water conservation standards. Further information is available at *http://www.epa.gov/WaterSense/index.html.*

4. Design Requirements for Showerheads

In addition to the water consumption standards that were promulgated by EPCA for showerheads, the statute includes a provision that showerheads must also meet the requirements of section 7.4.3(a) of ASME/ANSI A112.18.1M–1989, which requires that if a flow control insert is used as a component of a showerhead, the showerhead must be manufactured such that a pushing or pulling force of 8 pounds (8 lbf.) or more is required to remove the insert. DOE subsequently adopted this provision in 10 CFR 430.32(p).

In the March 1998 final rule that adopted ASME/ANSI A112.18.1M–1996 as the test procedure for showerheads and faucets, DOE amended the text in section 430.32(p) to reflect that the aforementioned provision of the ASME/ANSI standard had been moved to section 7.4.4(a). 63 FR 13309–10. This provision was retained in the updated A112.18.1–2011, but has been moved to section 4.11.1 of that standard. Additionally, the language for this provision in the 2011 version of the ASME standard has changed slightly from the 1996 version in that the force required to remove the flow-restricting insert is no longer referred to specifically as a ''pushing or pulling'' force, but rather, is described only as a force of 36 Newtons (N) (8.0 lbf) or more, where the Newton measurement represents a conversion of the original lbf measurement to the International System of Units (SI, or metric units) after rounding to a whole number. Since the amount of force expressed in inch/pound units has not changed, DOE does not view this as a substantive change in the industry requirement and proposes to incorporate the text of this provision from ASME/ANSI Standard A112.18.2–2011 at section 430.32(p) of 10 CFR part 430 as a direct replacement of the existing provision. However, for the purposes of compliance with Federal standards, DOE proposes to retain the 8 lbf metric as the applicable standard in order to maintain consistency with the original statutory provision in 42 U.S.C. 6295(j), which references the 8 lbf requirement as described in the first paragraph of this section. Thus, the proposed text lists 8 lbf as the primary measure, with the equivalent 36 N included as a secondary metric for reference purposes.

While DOE is not proposing any change to this design requirement, DOE notes that no specific test procedure exists in ASME Standard A112.18.1–2011, or in any previous version of that standard, for verifying that a flow-restricting insert remains mechanically retained when subjected to a force of 8 lbs. DOE searched for a more general test method for assessing a pulling or pushing force of this type and was unable to identify any standardized method for this purpose. One of the testing organizations DOE contacted did provide information about the types of test configurations and equipment it typically uses for assessing compliance with this requirement during the compliance tests for showerheads, which generally apply either a pushing or pulling force that is measured using a calibrated force meter. However, since the design configuration of flow-restricting inserts varies among models, a standardized method based upon the setups currently used by test laboratories may not be useful in all cases, particularly if a flow-restricting insert is a threaded screw-in type, wherein a torque would be required to remove it as opposed to a pulling or pushing force. Other flow-restricting inserts are secured to the inlet of the showerhead with a retainer or plastic plate that requires the testing laboratory to adapt its test depending on the specific location of the flow-restricting insert and retainer.

In the absence of any publicly available standard test method, and with limited information about how variation in the designs of flow-restricting inserts may complicate the development of a standardized method, DOE is unable at this time to propose, for inclusion in the test procedure for showerheads, a specific method of verifying the force required to remove a flow-restricting insert. However, since the adoption of a standardized approach would enable manufacturers to more effectively demonstrate compliance with this provision in the case of a challenge and would enable DOE or others to independently verify compliance in a standardized manner, DOE is interested in receiving comments and information on prospective methods for verifying that the 8 lbf requirement in section 4.11.1 of ASME/ANSI Standard A112.18.1–2011 has been met. DOE is also interested in comments and information on showerhead designs that may complicate verification of this provision or make it unnecessary. Based upon information received, DOE may consider proposing a test method as part of a supplemental notice of proposed rulemaking.

5. Definitions

To address certain provisions of the revised ASME/ANSI procedures that were not contemplated in the versions referenced by the existing DOE test procedure, and to establish greater clarity with respect to product coverage, DOE proposes to adopt new definitions for the terms ''accessory,'' ''body spray,'' and ''fitting,'' based on the definitions for these components in ASME/ANSI Standard A112.18.1–2011, and a definition for ''dual-flush water closet'' from ASME/ANSI Standard A112.19.2–2008, all of which would be incorporated into 10 CFR part 430, section 430.2. DOE also proposes a definition for ''hand-held showerhead,'' which is not found in ASME/ANSI A112.18.1–2011, but was derived from the description of these products found in the WaterSense Specification for Showerheads, Version 1.0, developed by the EPA (*See http://www.epa.gov/WaterSense/docs/showerheads_finalspec508.pdf,* or DOE Docket Number EERE–2011–BT–TP–0061, No. 2, p. 1). Finally, DOE proposes an amendment to the existing definition of ''showerhead'' currently found in 10 CFR 430.2. The proposed definition is based upon the definition for showerhead included in ASME/ANSI A112.18.1–2011, but has been modified to more clearly define the extent of DOE's coverage of these products, and to specifically state that safety shower showerheads are not covered products, that hand-held showerheads are covered, and that DOE considers a body spray to be a showerhead for the purposes of regulatory coverage.

DOE also notes that the proposed application of the terms ''fitting'' and ''accessory'' to showerheads, specifically within the context of their coverage under DOE standards, may diverge slightly from previous use of these terms in other DOE documents addressing these products. DOE is proposing to adopt definitions for fitting and accessory, and a definition of showerhead that uses these terms, in order to more closely align the regulatory terminology with that of the industry standards upon which the DOE test procedure and water conservation standards are based, and to ensure that the meanings of these terms are consistent as applied to the products covered by DOE standards.

All components that are defined as an ''accessory'' (or a combined set of accessories) to a supply fitting represent a single covered product that must meet the DOE standard. Any components that are part of the ''fitting'' that is supplying water to an accessory, such as a valve (or valves) and connected piping, are not part of the covered product. Because the applicable water conservation

standard applies to a basic model of a covered product as distributed in commerce, individual basic models that are packaged and sold, or otherwise distributed in commerce, separately and installed into a system by the purchaser would be subject to the standard individually, not as an installed system. In contrast, a system of spraying components that is packaged and/or distributed in commerce as a single ''accessory'' or a single set of ''accessories,'' designed to be attached to a single fitting, would be defined as a single showerhead and would be subject to the 2.5 gallon per minute (gpm) standard assigned to these products under 42 U.S.C. 6295(j).

DOE invites comments on its proposal to adopt definitions for ''accessory,'' ''body spray,'' ''hand-held showerhead,'' ''fitting,'' and ''dual-flush water closet,'' and to amend the definition of ''showerhead'' as shown in the proposed regulatory text at the end of this notice.

B. Supplementary Plumbing Requirements

1. Definition of a Basic Model

DOE defines a ''basic model'' as it applies to showerheads, faucets, water closets, and urinals in 10 CFR 430.2, and it defines ''basic model'' as it applies to commercial prerinse spray valves in section 431.262. With respect to the definitions of ''basic model'' as they apply to showerheads, faucets, and commercial prerinse spray valves, DOE has received no information since the adoption of these definitions indicating that a revision is necessary, and does not propose any revisions to these definitions in this proposed rule.

With respect to water closets and urinals, DOE has received information indicating that confusion may exist among manufacturers regarding how to properly apply the concept of a basic model to certain types of water closets and urinals. More specifically, in the case of flushometer valve water closets and urinals,[5] and certain gravity tank water closets in which the tank and flushing device are concealed within the wall rather than attached directly to the bowl, DOE has been made aware that the water consumption of a given model of bowl for a water closet or urinal can be directly affected by the specific flushometer valve or tank-type flushing device that is paired with that bowl. This has complicated the process of testing, reporting, and labeling water closets and urinals under the existing DOE compliance, certification, and enforcement provisions due to the various combinations of valves and/or tanks from different manufacturers that could be paired with a given bowl.

DOE proposes to retain the existing definitions of a basic model of water closet and basic model of urinal, but emphasizes that the manner in which individual models may be grouped together as basic models for the purposes of reporting water consumption in accordance with 10 CFR 429.12 should be based upon the maximum flow for a given bowl (or urinal body) and the valve or tank with which it is designed to operate. In other words, by certifying a given pairing of water closet bowl and valve (or tank) or urinal body and valve as a basic model under the existing certification and compliance framework, the manufacturer would be certifying that the pairing on which that basic model's rating is based is the maximum flush volume that model of water closet bowl or urinal body is designed to provide, and that it could not be paired with a flushing device or tank that would provide a higher flush volume and still function properly.

Under the compliance certification framework described in the previous paragraph, a manufacturer would be permitted to represent the rated flush volume of a particular model of water closet bowl or urinal body using a representative model of flushometer valve or gravity tank that provides a flush volume at this maximum level, regardless of any other such pairings that may be possible using valves or tanks from other manufacturers. Since, by design, none of the individual models of that basic model of water closet or urinal could operate using a flushing device providing a higher volume, the pairing upon which the certification is based, as well as all other pairings, would be compliant with the applicable water consumption standard. In addition, manufacturers are permitted under the certification provisions of 10 CFR part 429 to rate products conservatively at the maximum flush volume, even if certain combinations of bowls and flushing devices consume less water per flush than the maximum volume permitted by the relevant water consumption standard. Note, however, that if a manufacturer wishes to make representations of the water consumption of a given pairing that provides a lower volume flush than the maximum design volume, such as on product labels or in advertising or marketing materials, that particular pairing must be certified as a separate basic model and rated at the specific flush volume that the manufacturer intends to use in representations.

As a theoretical example of this method, a manufacturer wishes to certify a particular model of flushometer water closet, referred to here as ''model A.'' This model is designed to operate using flushometer valves that provide a volume as high as 1.6 gallons per flush (the Federal standard), and as low as 1.28 gallons per flush (the EPA WaterSense standard). There are many available flushometer valves that meet these requirements, but the manufacturer has tested model A with two flushometer valves: model 1, which operates at 1.6 gallons per flush, and model 2, which operates at 1.28 gallons per flush. The individual model pairings are identified as models A1 and A2, respectively. If the manufacturer is not concerned about labeling this model at any rating less than the Federal standard, then it is permissible to rate the model using valve model 1, and certify model A at 1.6 gallons per flush. To indicate that the basic model can use multiple flush valves, under this model numbering convention it could be certified as basic model A*, with the asterisk as a placeholder value to allow for other valve models. However, if the manufacturer wishes to label a version of model A as meeting the 1.28 gallon per flush standard, the combination that provides that rating must be certified separately as basic model A2.

DOE invites comments on this interpretation of the current definition of a basic model of water closet and urinal, and any other factors that DOE should consider in clarifying the definition of basic model and how manufacturers may group models and rate their water consumption.

2. Statistical Sampling Plans for Certification

The statistical sampling plans required for determining the rated values of water consumption for faucets, showerheads, water closets, urinals, and commercial prerinse spray valves are specified in sections 429.28, 429.29, 429.30, 429.31, and 429.51, respectively, of 10 CFR part 429. While DOE is not proposing to change these provisions in today's NOPR, DOE is interested in receiving comments on all elements of these provisions, including the confidence limits and potential revisions to the respective sampling plans that might better reflect the level of repeatability and reproducibility that is achievable for each test, and the

[5] The term ''flushometer'' refers generally to a type of valve that operates water closets and urinals without the use of a tank by relying principally on pressurized water to provide the flushing action. Flushometers are most commonly used in public restroom facilities.

variability in measured water consumption that is inherent for each product.

3. Information To Be Provided in Certification Reports

10 CFR part 429 describes the information that manufacturers are required to supply to DOE to certify that covered products comply with energy and water conservation standards. Section 429.12 lists the information that manufacturers are required to report for all products, and specific requirements for plumbing products are identified in section 429.28 (for faucets), section 429.29 (for showerheads), section 429.30 (for water closets), section 429.31 (for urinals), and section 429.51 (for commercial prerinse spray valves). DOE proposes to retain the existing reporting requirements for all five product types. DOE proposes to move the rounding provision for the rated value of water consumption for all five product types from the applicable test procedures to part 429 to clarify that rounding of the final rated value of water consumption for a basic model should occur after application of the sampling statistics.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (OMB) 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 proposed action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs (OIRA) in the OMB.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any proposed rule, 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, so that the potential impacts of its rules on small entities are properly considered during the rulemaking process. 68 FR 7990 (February 12, 2003). DOE has made its procedures and policies available on the Office of the General Counsel's Web site at *http://www.gc.doe.gov/gc/office-general-counsel.*

DOE reviewed the proposed rule to amend the test procedures for plumbing equipment including showerheads, faucets, water closets, urinals and commercial prerinse spray valves under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not result in significant economic impacts on small entities. The factual basis for this certification is set forth in the following paragraphs.

For the plumbing equipment manufacturing industry, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purpose of the statute. DOE used the SBA's size standards to determine whether any small entities would be required to comply with the rule. The size standards are codified at 13 CFR part 121. The standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at *www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* Plumbing equipment manufacturers are classified under NAICS 332913, ''Plumbing Fixture Fitting and Trim Manufacturing,'' and NAICS 327111, ''Vitreous China Plumbing Fixture and China and Earthenware Bathroom Accessories Manufacturing.'' The SBA sets a threshold of 500 employees or less for NAICS 332913, and 750 employees or less for NAICS 327111, for an entity to be considered a small business within these categories.

DOE conducted a focused inquiry into small business manufacturers of products covered by this rulemaking. During its market survey, DOE used all available public information to identify potential small manufacturers. DOE's research involved the review of industry trade association membership directories (including the American Society of Plumbing Engineers), product databases (*e.g.,* Federal Trade Commission (FTC), the Thomas Register, California Energy Commission (CEC), and ENERGY STAR databases), individual company Web sites, and marketing research tools (*e.g.,* Dun and Bradstreet reports, Manta) to create a list of companies that manufacture or sell plumbing products covered by this rulemaking. Using these sources, DOE identified 83 manufacturers of showerheads, faucets, water closets, urinals and commercial prerinse spray valves.

DOE then reviewed this data to determine whether the entities met the SBA's definition of a small business manufacturer of covered plumbing products and screened out companies that do not offer products covered by this rulemaking, do not meet the definition of a ''small business,'' or are foreign owned and operated. Based on this review, DOE has identified 48 manufacturers that would be considered small businesses. Through this analysis, DOE determined the expected impacts of the rule on affected small businesses and whether an IRFA was needed (i.e., whether DOE could certify that this rulemaking would not have a significant economic impact on a substantial number of small entities).

Table 1 stratifies the small businesses according to their number of employees. The smallest company has 4 employees and the largest company 375 employees. The majority of the small businesses affected by this rulemaking (88 percent) have fewer than 100 employees. Annual revenues associated with these small manufacturers were estimated at $492.5 million ($10.3 million average annual sales per small manufacturer). According to DOE's analysis, small entities comprise 58 percent of the entire plumbing equipment manufacturing industry covered by the proposed rule.

SMALL BUSINESS SIZE BY NUMBER OF EMPLOYEES

Number of employees	Number of small businesses	Percentage of small businesses	Cumulative percentage
1–10	8	16.7	16.7
11–20	10	20.8	37.5
21–30	3	6.3	43.8
31–40	11	22.9	66.7

SMALL BUSINESS SIZE BY NUMBER OF EMPLOYEES—Continued

Number of employees	Number of small businesses	Percentage of small businesses	Cumulative percentage
41–50	3	6.3	72.9
51–60	1	2.1	75.0
61–70	0	0.0	75.0
71–80	5	10.4	85.4
81–90	0	0.0	85.4
91–100	1	2.1	87.5
101–110	0	0.0	87.5
111–120	0	0.0	87.5
121–130	0	0.0	87.5
131–140	0	0.0	87.5
141–150	0	0.0	87.5
151–200	2	4.2	91.7
201–300	2	4.2	95.8
301–400	2	4.2	100.0
401–500	0	0.0	100.0
Total	48		

As noted in the Summary and Background sections of this NOPR, EPCA requires that DOE review its test procedures for covered products at least once every seven years and to amend them if the Secretary determines that to do so would provide test procedures that would more accurately or completely measure water use and that are not unduly burdensome to conduct. (*See* 42 U.S.C. 6293(b)(1)) To comply with EPCA, this rule proposes to incorporate amendments to ASME/ANSI test procedures, which have been updated for faucets, showerheads, water closets and urinals. Additionally, EPCA prescribes use of the ASTM Standard F2324 for commercial prerinse spray valves, which is a product that is also covered in this rulemaking.

Showerheads and Faucets

DOE is proposing to update its testing procedures for showerheads and faucets by incorporating by reference AMSE/ANSI Standard A112.18.1–2011. These proposed changes involve minor adjustments in test methodology, such as changes in temperatures and inclusion of instrument tolerances that were not previously specified, none of which would require any additional equipment and are not expected to lengthen the time required to complete the test. Because there are no major changes in testing procedures, calculation methodology or certification requirements associated with this proposal, DOE has tentatively determined there would be no incremental cost burden to small entities associated with this change.

Water Closets and Urinals

DOE is proposing to update its water closet and urinal test procedures from those set forth in ASME/ANSI A112.19.6–1995 to comply with ASME/ANSI A112.19.6–2008. The proposed changes involve minor adjustments in test setup, the specification of certain instrumentation tolerances, and minor adjustment to test pressures, none of which would require additional equipment or lengthen the time required to complete the test. Because there are no major changes in testing procedures or requirements for these products, DOE proposes to incorporate this change by reference. The changes proposed in this rule would not alter current testing procedures, calculation methodologies or enforcement. Therefore, DOE has tentatively concluded there would be no incremental cost burden to small manufacturers associated with the non-substantive changes in this proposed rule.

Commercial Prerinse Spray Valves

DOE currently requires that commercial prerinse spray valves be tested according to the ASTM Standard Test Method for Prerinse Spray Valves (ASTM F2324–03). This proposed rule would not make any alterations to this test, as it has not been updated since the 2003 version that DOE incorporated in the Code of Federal Regulations. 70 FR 60407 (October 18, 2005). Thus, DOE determines there would be no incremental cost burden to manufacturers of commercial prerinse spray valves associated with this proposed rule.

As indicated previously, DOE has analyzed the manufacturing industry for showerheads, faucets, water closets, urinals and commercial prerinse spray valves and has determined that 58 percent of all plumbing equipment manufacturers could be classified as small entities according to the SBA classification. Although 58 percent of the market is a significant portion of the overall industry, these manufacturers would not be significantly affected by this rule because there would be no incremental costs to any entity due to its implementation. In the absence of potential cost impacts, the proposed rule by definition would not have disproportionate effects on small businesses.

Based on the criteria outlined in the preceding paragraph, DOE has tentatively concluded that the proposed testing procedure amendments would not have a ''significant economic impact on a substantial number of small entities,'' and the preparation of an IRFA is not warranted. DOE will transmit the certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

DOE seeks comment on its tentative conclusion that the proposed test procedure changes will not have a significant impact on a substantial number of small entities.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of showerheads, faucets, water closets, urinals, and commercial prerinse spray valves must certify to DOE that their products comply with any applicable water conservation standards. In certifying compliance, manufacturers must test

their products according to the DOE test procedures for showerheads, faucets, water closets, urinals, and commercial prerinse spray valves, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including showerheads, faucets, water closets, urinals, and commercial prerinse spray valves. 76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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

D. Review Under the National Environmental Policy Act of 1969

In this notice, DOE proposes to amend its test procedure for showerheads, faucets, water closets, and urinals to improve the ability of DOE's procedures to more accurately account for the water consumption of these products. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, this rule amends an existing rule without changing its environmental effect, and, therefore, is covered by the Categorical Exclusion in 10 CFR part 1021, subpart D, paragraph A5. The exclusion applies because this rule would establish revisions to existing test procedures that would not affect the amount, quality, or distribution of energy usage, and, therefore, would not result in any environmental impacts. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. 64 FR 43255 (August 10, 1999). The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process that it will follow in developing such regulations. 65 FR 13735. DOE examined this proposed rule and determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this 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,'' 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. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation specifies the following: (1) the preemptive effect, if any; (2) any effect on existing Federal law or regulation; (3) a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) the retroactive effect, if any; (5) definitions of key terms; and (6) 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 whether it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this 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) (Pub. L. 104–4; 2 U.S.C. 1501 *et seq.*) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. For a proposed regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish estimates of the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a)–(b)) UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect such governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. (The policy is also available at *http://www.gc.doe.gov/gc/office-general-counsel.*) This proposed rule contains neither an intergovernmental mandate nor a mandate that may result in an expenditure of $100 million or more in any year, so these requirements do not apply.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of

the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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

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

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

K. Review Under Executive Order 13211

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

This proposed regulatory action to amend the test procedures for measuring the water consumption of showerheads, faucets, water closets, and urinals is not a significant regulatory action under Executive Order 12866. It has likewise not been designated as a significant energy action by the Administrator of OIRA. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

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

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

The proposed modifications to the test procedures addressed by this proposed action incorporate testing methods contained in section 5.4 of commercial standard ASME/ANSI Standard A112.18.1–2011 and sections 7.1.1, 7.1.2, 7.1.3, 7.1.4, 7.4, 8.2.1, 8.2.2, 8.2.3, and 8.6 of commercial standard ASME/ANSI Standard A112.19.2–2008. DOE has evaluated these standards and is unable to conclude whether they fully comply with the requirements of section 32(b) of the FEAA (i.e., whether they were developed in a manner that fully provides for public participation, comment, and review.) DOE will consult with the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards, before prescribing a final rule.

V. Public Participation

A. Attendance at the Public Meeting

The time, date and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections of this document. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. To participate via webinar, participants must notify DOE no later than Tuesday, July 17, 2012. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site: *https://www1.gotomeeting.com/register/878216768.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Requests To Speak

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section of this proposed rule. The request and advance copy of statements must be received at least one week before the public meeting and may be emailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via email. Please include a telephone number to enable DOE staff to make a follow-up contact, if needed.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE)

before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the procedures discussed in this section that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, any person may buy a copy of the transcript from the transcribing reporter.

D. 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 of this proposed rule. Interested parties may submit comments using any of the methods described in the **ADDRESSES** section of this proposed rule.

Submitting comments via regulations.gov. The *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 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 or in any document attached to your comment. 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 *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 *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 *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 regulations.gov provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery, or mail. Comments and documents submitted via email, hand delivery, or mail also will be posted to *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 on 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, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (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. 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 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. 10 CFR 1004.11(e)

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).

E. 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 incorporate by reference ASME/ANSI Standard A112.18.1–2011, ''Plumbing Supply Fittings,'' specifically regarding the following substantive changes to the current DOE test procedures for showerheads and faucets: (1) A requirement that the pressure differential measurement be within +/− 1 pound per square inch (psi) for faucets and +/− 2 psi for showerheads (not previously specified for either product), (2) a change in the test procedure temperature range to 5 to

71 °C for faucets (previously 4 to 66 °C) and to 32 to 44 °C for showerheads (previously 4 to 66 °C), (3) required use of a container large enough to hold water collected over a minimum of 1 minute when using the time/volume test procedure method (not previously specified), and (4) a requirement that flow be maintained for at least 1 minute for showerheads (not previously specified).

2. DOE requests comment on the proposed incorporation by reference of the ASME/ANSI Standard A112.19.2–2008, ''Ceramic Plumbing Fixtures,'' specifically regarding the following substantive changes to the current test procedures for water closets and urinals: (1) A required filter in the apparatus set-up (not previously required), (2) receiving vessel calibration of 0.25 liters (0.07 gallons) (decreased from 0.1 gallons), (3) required use of an electric timer with increments that are accurate to within a tenth of a second to verify the actuator is held for a maximum of 1 second (not previously specified), (4) change in the static pressure requirements for a flushometer valve with a siphonic bowl to 80 and 35 psi (previously 80, 50, and 15 psi) and with blowout bowl to 80 and 45 psi (previously 80, 50, and 35 psi), and (5) requiring rounding of the calculated value for each tested unit to the number of significant digits resulting from the test in place of the 0.25 liter increment in the revised ANSI/ASME standard.

3. DOE requests comments on (1) its proposal to develop a test procedure to measure the average representative water use of dual-flush water closets in general, (2) whether the use of a composite average of the flush volumes of a dual-flush water closet is representative of the average water use of these products, and (3) whether the specific ratio of flush volumes proposed in this notice (i.e., two reduced flushes and one full flush) is an appropriate measure of the representative average water use of dual-flush water closets.

4. DOE requests comment on its proposal to retain the existing test procedure for commercial prerinse spray valves and incorporate by reference the most recent version of ASTM F2324–03. DOE is also interested in any views on the suitability of this procedure for meeting the requirements of EPCA with respect to representativeness of measurements and test burden.

5. DOE requests comments and information on prospective methods for verifying that the 8 lb. force requirement in section 4.11.1 of ASME/ANSI Standard A112.18.1–2011 has been met, and any showerhead designs that may complicate verification of the 8 lb. force provision or make it unnecessary.

6. DOE requests comment on its proposed definitions of the terms ''accessory,'' ''body spray,'' ''fitting,'' ''hand-held showerhead,'' and ''dual-flush water closet,'' and its proposed amendment to the existing definition of ''showerhead.''

7. DOE requests comment on the current definition of a basic model of water closet and urinal and any other factors that DOE should consider in determining the appropriate means by which to group various combinations of water closet or urinal bowls with flushing devices as basic models and rate their water consumption.

8. DOE requests comment on all elements of the provisions for the calculation of test results, including the confidence limits; revisions to the sampling plans that might better reflect the level of precision that is achievable for each respective test; and variability in measured water consumption that is expected for each respective product.

9. DOE seeks comment on its tentative conclusion that the proposed test procedure changes will not have a significant impact on a substantial number of small entities.

VI. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Imports, Intergovernmental relations, Small businesses.

10 CFR Part 430

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

10 CFR Part 431

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

Issued in Washington, DC, on May 17, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary of Energy, Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE proposes to amend parts 429, 430 and 431 of chapter II of title 10 of the Code of Federal Regulations, to read 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 429.28 is amended by revising paragraph (b)(2) to read as follows:

§ 429.28 Faucets.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: For non-metering faucets, the maximum water use in gallons per minute (gpm) rounded to the nearest 0.1 gpm; for metering faucets, the maximum water use in gallons per cycle (gal/cycle) rounded to the nearest 0.01 gal/cycle; and for all faucet types, the flow water pressure in pounds per square inch (psi).

3. Section 429.29 is amended by revising paragraph (b)(2) to read as follows:

§ 429.29 Showerheads.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum water use in gallons per minute (gpm) rounded to the nearest 0.1 gpm and the maximum flow water pressure in pounds per square inch (psi).

* * * * *

4. Section 429.30 is amended by revising paragraph (b)(2) to read as follows:

§ 429.30 Water closets.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum water use in gallons per flush (gpf), rounded to the nearest 0.01 gpf.

5. Section 429.31 is amended by revising paragraph (b)(2) to read as follows:

§ 429.31 Urinals.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the

following public product-specific information: The maximum water use in gallons per flush (gpf), rounded to the nearest 0.01 gpf; and for trough-type urinals, the maximum flow rate in gallons per minute (gpm), rounded to the nearest 0.01 gpm, and the length of the trough in inches (in).

6. Section 429.51 is amended by revising paragraph (b)(2) to read as follows:

§ 429.51 Commercial pre-rinse spray valves.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The maximum flow rate in gallons per minute (gpm), rounded to the nearest 0.1 gpm.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

8. Section 430.2 is amended by adding, in alphabetical order, definitions for ''Accessory,'' ''Body spray,'' ''Fitting,'' ''Dual-flush water closet,'' and ''Hand-held showerhead,'' and by revising the definition of ''Showerhead'' to read as follows:

§ 430.2 Definitions.

* * * * *

Accessory means, with respect to plumbing fittings, a component that can, at the discretion of the user, be readily added, removed, or replaced and that, when removed, will not prevent the fitting from fulfilling its primary function.

* * * * *

Body spray means a shower device for spraying water onto a bather from other than the overhead position.

* * * * *

Dual-flush water closet means a water closet incorporating a feature that allows the user to flush the water closet with either a reduced or a full volume of water.

* * * * *

Fitting means a device that controls and guides the flow of water.

* * * * *

Hand-held showerhead means a showerhead that can be fixed in place or used as a movable accessory for directing water onto a bather.

* * * * *

Showerhead means an accessory, or set of accessories, to a supply fitting distributed in commerce for attachment to a single supply fitting, for spraying water onto a bather, typically from an overhead position, including body sprays and hand-held showerheads, but excluding safety shower showerheads.

* * * * *

9. Section 430.3 is amended by revising paragraphs (g)(1) and (g)(2) to read as follows:

§ 430.3 Materials incorporated by reference.

* * * * *

(g) * * *

(1) ASME/ANSI A112.18.1–2011, ''Plumbing Fixture Fittings,'' approved May 31, 2011, IBR approved for appendix S to subpart B.

(2) ASME/ANSI A112.19.2–2008, ''Plumbing Fixture Fittings,'' approved August 1, 2008, IBR approved for appendix T to subpart B.

* * * * *

10. Section 430.23 is amended by revising paragraph (u) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(u) *Water closets.* The maximum water use for water closets, expressed in gallons and liters per flush (gpf and Lpf), shall be measured in accordance with section 3(a) of appendix T of this subpart. The maximum water use for dual-flush water closets, also expressed in gpf and Lpf, shall be the full flush volume, as measured in accordance with section 3(a) of appendix T of this subpart. Representative average water use of dual-flush water closets shall be calculated using a composite average of two reduced flush volumes and one full flush volume, as measured in accordance with section 3(a) of appendix T of this subpart.

* * * * *

11. Appendix S to subpart B of part 430 is amended by revising section 2, ''Flow Capacity Requirements,'' to read as follows:

Appendix S to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Faucets and Showerheads

* * * * *

2. Flow Capacity Requirements

a. Faucets—The test procedures to measure the water flow rate for faucets, expressed in gallons per minute (gpm) and liters per minute (L/min), or gallons per cycle (gal/cycle) and liters per cycle (L/cycle), shall be conducted in accordance with the test requirements specified in section 5.4, Flow Rate, of ASME/ANSI A112.18.1–2011 (incorporated by reference, see § 430.3). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value of each tested unit shall be rounded to one decimal place for non-metered faucets, or two decimal places for metered faucets.

b. Showerheads—The test procedures to measure the water flow rate for showerheads, expressed in gallons per minute (gpm) and liters per minute (L/min), shall be conducted in accordance with the test requirements specified in section 5.4, Flow Rate, of the ASME/ANSI A112.18.1–2011 (incorporated by reference, see § 430.3). Measurements shall be recorded at the resolution of the test instrumentation. Calculations shall be rounded off to the same number of significant digits as the previous step. The final water consumption value of each tested unit shall be rounded to one decimal place.

12. Appendix T to subpart B of part 430 is amended by revising section 2, ''Test Apparatus and General Instructions,'' and section 3, ''Test Measurement,'' to read as follows:

Appendix T to Subpart B of Part 430—Uniform Test Method for Measuring the Water Consumption of Water Closets and Urinals

* * * * *

2. Test Apparatus and General Instructions

a. The test apparatus and instructions for testing water closets shall conform to the requirements specified in section 7.1, General, subsections 7.1.1, 7.1.2, 7.1.3, and 7.1.4 of ASME/ANSI A112.19.2–2008 (incorporated by reference, see § 430.3). Measurements shall be recorded at the resolution of the test instrumentation. Calculations of water consumption for each tested unit shall be rounded off to the same number of significant digits as the previous step.

b. The test apparatus and instructions for testing urinals shall conform to the requirements specified in section 8.2, Test Apparatus and General Instructions, subsections 8.2.1, 8.2.2, and 8.2.3 of ASME/ANSI A112.19.2–2008 (incorporated by reference, see § 430.3). Measurements shall be recorded at the resolution of the test instrumentation. Calculations of water consumption for each tested unit shall be rounded off to the same number of significant digits as the previous step.

3. Test Measurement

a. Water closets—The measurement of the water flush volume for water closets, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 7.4, Water Consumption Test, of ASME/ANSI A112.19.2–2008 (incorporated by reference, see § 430.3). For dual-flush water closets, measurement of the water flush volume for the full flush and reduced flush modes shall be conducted in accordance with all test requirements for water closets specified in this appendix.

b. Urinals—The measurement of water flush volume for urinals, expressed in gallons per flush (gpf) and liters per flush (Lpf), shall be conducted in accordance with the test requirements specified in section 8.6, Water Consumption Test, of ASME/ANSI A112.19.2–2008 (incorporated by reference, see § 430.3).

13. Section 430.32 is amended by revising paragraph (p) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(p) *Showerheads.* The maximum water use allowed for a showerhead shall be 2.5 gallons per minute (9.5 liters per minute) when measured at a flowing pressure of 80 pounds per square inch gage (552 kilopascals). When used as a component of any such showerhead, the flow-restricting insert shall be mechanically retained at the point of manufacture such that a force of 8.0 lbf (36 N) or more is required to remove the flow-restricting insert. This requirement shall not apply to showerheads that would cause water to leak significantly from areas other than the spray face if the flow-restricting insert were removed.

* * * * *

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

14. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317.

15. Section 431.263 is revised to read as follows:

§ 431.263 Materials incorporated by reference.

(a) DOE incorporates by reference the following standard into part 431. The material listed has been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Any subsequent amendment to a standard by the standard-setting organization will not affect the DOE regulations unless and until amended by DOE. Material is incorporated as it exists on the date of the approval and a notice of any change in the material will be published in the **Federal Register**. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* Also, this material is available for inspection at U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, or go to: *http://www1.eere.energy.gov/buildings/appliance_standards/.* This standard can be obtained from the source below.

(b) ASTM. American Society for Testing and Materials International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohoken, PA 19428–2959, (610) 832–9585, or got to *http://www.astm.org.*

(1) ASME Standard F2324–03 (2009), Standard Test Method for Prerinse Spray Valves, approved May 1, 2009; IBR approved for § 431.264.

(2) Reserved.

16. Section 431.264 paragraph (b) is revised to read as follows:

§ 431.264 Uniform test method for the measurement of flow rate for commercial prerinse spray valves.

* * * * *

(b) *Testing and Calculations.* The test procedure to determine the water consumption flow rate for prerinse spray valves, expressed in gallons per minute (gpm) or liters per minute (L/min), shall be conducted in accordance with the test requirements specified in sections 4.1 and 4.2 (Summary of Test Method), 5.1 (Significance and Use), 6.1 through 6.9 (Apparatus) except 6.5, 9.1 through 9.5 (Preparation of Apparatus), and 10.1 through 10.2.5. (Procedure), and calculations in accordance with sections 11.1 through 11.3.2 (Calculation and Report) of ASTM F2324–03 (2009), ''Standard Test Method for Prerinse Spray Valves.'' (incorporated by reference, see § 431.263) Perform only the procedures pertinent to the measurement of flow rate. Record measurements at the resolution of the test instrumentation. Round off calculations to the same number of significant digits as the previous step. Round the final water consumption value to one decimal place as follows:

(1) A fractional number at or above the midpoint between two consecutive decimal places shall be rounded up to the higher of the two decimal places; or

(2) A fractional number below the midpoint between two consecutive decimal places shall be rounded down to the lower of the two decimal places.

[FR Doc. 2012–12919 Filed 5–29–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 429, 430, and 431

[Docket No. EERE–2011–BT–TP–0024]

RIN 1904–AC46

Energy Conservation Program: Alternative Efficiency Determination Methods and Alternative Rating Methods: Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) is holding a public meeting to provide interested parties an opportunity to comment on DOE's proposed modifications to the regulations authorizing the use of alternative methods of determining energy efficiency or energy consumption of various consumer products and commercial equipment.

DATES: DOE will hold a public meeting on Tuesday, June 5, 2012, from 9:00 a.m. to 4:00 p.m., in Washington, DC. DOE must receive requests to speak at the public meeting before 4:00 p.m., Friday, June 1, 2012. Participants seeking to present statements in person during the meeting must submit to DOE a signed original and an electronic copy of statements to be given at the public meeting before 4:00 p.m., Friday, June 1, 2012. Additionally, DOE plans to conduct the public meeting via webinar. Additional details regarding webinar registration will be posted on DOE's certification and enforcement Web page (*http://www1.eere.energy.gov/buildings/appliance_standards/certification_enforcement.html*).

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW., Washington, DC 20585–0121. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the public meeting should advise DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945 to initiate the necessary procedures.

Docket: The docket is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents in the index may be publicly available, such as information that is exempt from public disclosure. A link to the docket Web

page can be found at *www.regulations.gov.* The *www.regulations.gov* Web page contains a link to the docket for this notice, along with simple instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Ashley Armstrong, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 586–6590. Email: *Ashley.Armstrong@ee.doe.gov* or Laura Barhydt, U.S. Department of Energy, Office of General Counsel, GC–32, 1000 Independence Avenue SW., Washington, DC 20585–0121. Phone: (202) 287–5772. Email: *Laura.Barhydt@hq.doe.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Energy Policy and Conservation Act of 1975, as amended (''EPCA'' or, in context, ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. Part A of Title III (42 U.S.C. 6291–6309) provides for the Energy Conservation Program for Consumer Products Other Than Automobiles. The National Energy Conservation Policy Act (NECPA), Public Law 95–619, amended EPCA to add Part A–1 of Title III, which established an energy conservation program for certain industrial equipment. (42 U.S.C. 6311–6317) The Department of Energy (''DOE'') is charged with implementing these provisions.

AEDMs and ARMs 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 product. (In the context of this discussion, the term ''covered product'' applies both to consumer products and commercial equipment that are covered under EPCA.) These computer modeling and mathematical tools, when properly developed, can provide a relatively straight-forward and reasonably accurate means to predict the energy usage or efficiency characteristics of a basic model of a given covered product.

Where authorized by regulation, AEDMs and ARMs enable manufacturers to rate and certify their basic models by using the projected energy use or energy efficiency results derived from these simulation models, reducing the regulatory burden associated with testing.

DOE has issued a Notice of Proposed Rulemaking and is holding this public meeting and webinar to provide interested parties an opportunity to comment on DOE's proposed modifications to the regulations authorizing the use of alternative methods of determining energy efficiency or energy consumption of various consumer products and commercial equipment. The complete Notice of Proposed Rulemaking is posted on DOE's certification and enforcement Web page (*http://www1.eere.energy.gov/buildings/appliance_standards/certification_enforcement.html*).

In particular, DOE is interested in receiving comments and views of interested parties concerning the following issues:

1. DOE requests comment on its proposal not to add a pre-approval process for AEDMs and its proposal to no longer require pre-approval for use of an alternative rating method for residential central air conditioners and heat pumps.

2. DOE requests comment on its proposal to expand the use of AEDMs to other commercial products.

3. DOE requests comment on its proposal to require at least one basic model from each product class to be tested to substantiate the AEDM. Specifically, DOE requests comments from manufacturers as to whether additional clarification is needed for manufacturers of certain covered products to determine all the applicable product classes that would need to be tested to substantiate the AEDM. As part of these comments, the Department is interested in receiving feedback on how manufacturers currently develop any simulation tools to ensure they are applicable across a wide range of product classes.

4. DOE seeks product specific comments on proposed overall and individual tolerance levels by product type. Specifically, DOE seeks data which show that the variability seen in the manufacturing processes, test instrumentation, and testing procedures are such that a different tolerance should be considered.

5. DOE seeks comment on the criteria for selection of basic models and the number of basic models a manufacturer should be required to test for substantiation as well as whether the differences in testing requirements for distribution transformers are appropriate or necessary.

6. DOE seeks comment on the appropriate course of action and the time to complete such steps when a model tested by DOE fails to meet its certified rating.

7. DOE requests comment on the proposal to disallow the use of an AEDM if there is evidence that the mis-rating is willful and/or there are multiple instances of non-compliance.

8. DOE requests comment on the necessity of requiring re-substantiation when there is a change in standards or test procedure and requiring that AEDMs be re-substantiated with active models.

Public Participation

A. Attendance at Public Meeting

The time, date, and location of the public meeting are provided in the **DATES** and **ADDRESSES** sections at the beginning of this document. Anyone who wants to attend the public meeting must notify Ms. Brenda Edwards at (202) 586–2945. Foreign nationals visiting DOE headquarters are subject to advance security screening procedures.

B. Procedure for Submitting Requests to Speak

Any person who has an interest in the topics addressed in this notice, or who is a representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the public meeting. Such persons may hand-deliver requests to speak to the address shown in the **ADDRESSES** section at the beginning of this notice between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Requests may also be sent by mail or email to: Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, or *Brenda.Edwards@ee.doe.gov*. Persons who wish to speak should include in their request a computer diskette or CD in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

DOE requests that those persons who are scheduled to speak submit a copy of their statements at least one week prior to the public meeting. DOE may permit any person who cannot supply an advance copy of this statement to participate, if that person has made alternative arrangements with the Building Technologies Program in advance. When necessary, the request to give an oral presentation should ask for such alternative arrangements.

C. Conduct of Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also employ a professional facilitator to aid discussion. The public meeting will be conducted in an informal, conference style. The meeting will not be a judicial or evidentiary public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). Discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws is not permitted.

DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. A court reporter will record the proceedings and prepare a transcript.

At the public meeting, DOE will allow time for presentations by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant may present a prepared general statement (within time limits determined by DOE) before the discussion of specific topics. Other participants may comment briefly on any general statements. At the end of the prepared statements on each specific topic, participants may clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions from DOE and other participants. DOE representatives may also ask questions about other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of procedures needed for the proper conduct of the public meeting.

DOE will make the entire record of this proposed rulemaking, including the transcript from the public meeting, available for inspection at the U.S. Department of Energy, 6th Floor, 950 L'Enfant Plaza SW., Washington, DC 20024, (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Anyone may purchase a copy of the transcript from the transcribing reporter. Additionally, the record for this proposed rulemaking will be made available at *www.regulations.gov.*

Issued in Washington, DC, on May 24, 2012.

Timothy Unruh,

Acting Deputy Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–13099 Filed 5–29–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0856; Directorate Identifier 2010–NM–117–AD]

RIN 2120–AA64

Airworthiness Directives; the Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier proposed airworthiness directive (AD) for certain the Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM proposed to inspect for part numbers of the operational program software of the flight control computers, and corrective actions if necessary. That NPRM was prompted by reports of undetected erroneous output from a single radio altimeter channel, which resulted in premature autothrottle retard during approach. This action revises that NPRM by also proposing to supersede an existing AD. We are proposing this supplemental NPRM to detect and correct an unsafe condition associated with erroneous output from a radio altimeter channel, which could result in premature autothrottle landing flare retard and the loss of automatic speed control, and consequent loss of control of the airplane. Since the proposal to now supersede an existing AD may impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on this proposed change.

DATES: We must receive comments on this supplemental NPRM by July 16, 2012.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Gregg Nesemeier, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6479; fax: (425) 917–6590; email: *gregg.nesemeier@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–2010–0856; Directorate Identifier 2010–NM–117–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://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each

substantive verbal contact we receive about this proposed AD.

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to certain the Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. That NPRM was published in the **Federal Register** on September 23, 2010 (75 FR 57885). That NPRM proposed to require inspecting for part numbers of the operational program software (OPS) of the flight control computers (FCC), and doing corrective actions if necessary.

Actions Since Previous NPRM (75 FR 57885, September 23, 2010) Was Issued

Since we issued the previous NPRM (75 FR 57885, September 23, 2010), we have determined that the software installation required by AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005), is out of date and new software would be required by this supplemental NPRM.

Comments

We gave the public the opportunity to comment on the previous NPRM (75 FR 57885, September 23, 2010). The following presents the comments received on the previous NPRM and the FAA's response to each comment.

Support for the Previous NPRM (75 FR 57885, September 23, 2010)

The Airline Pilots Association, International (ALPA) supports the NPRM (75 FR 57885, September 23, 2010).

Request To Supersede Previous AD

Continental Airlines (Continental) requested that we revise the NPRM (75 FR 57885, September 23, 2010) to supersede AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005). Continental explained that this would allow the new AD to be accomplished without needing an alternative method of compliance (AMOC) for AD 2005–07–20, which also applied to Model B737 FCC OPS.

Alaska Airlines (Alaska) also requested that we revise paragraph (b) of the NPRM (75 FR 57885, September 23, 2010) to include a reference to AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005), which installed a previous version of FCC software. Alaska explained that we should consider whether AD 2005–07–20 should be superseded by the NPRM.

We agree to revise the NPRM (75 FR 57885, September 23, 2010) by proposing in this supplemental NPRM to supersede AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005). AD 2005–07–20, for certain Model 737–600, –700, –800, and –900 series airplanes, requires installing and testing a certain version of OPS for the FCC. However, AD 2005–07–20 requires installation of an older version of the OPS for the FCC than what this supplemental NPRM would require. We have verified with the manufacturer that the software specified in Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, provides appropriate corrective actions for the unsafe condition identified for the software identified in AD 2005–07–20. We have revised this supplemental NPRM in order to supersede AD 2005–07–20. We have also added paragraph (i)(3) of this supplemental NPRM to give credit for existing AMOCs.

Request To Revise Applicability Section

Continental requested that we revise the NPRM (75 FR 57885, September 23, 2010) by changing the Applicability section so that the NPRM only applies to airplanes with the earlier software. Continental explained that it has determined that the software required to be installed per Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, is a later version than required to be installed by AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005), per Boeing Alert Service Bulletin 737–22A1164, dated May 20, 2004. Continental expressed that later versions of software always seem to be an issue and require an AMOC. Continental stated that to eliminate this issue, we could either allow later software versions or revise the applicability so that it only applies to airplanes with the earlier software installed. Continental suggested that we revise the Applicability section of the NPRM to include the phrase, ''with Flight Control Computers (FCC) Operational Program Software (OPS) 2271–COL–AC1–02, 2270–COL–AC1–03, or 2277–COL–AC1–04 installed.'' Continental also contacted the FAA regarding its comment and provided examples of other AD applicabilities that might be used for this NPRM.

Alaska also requested that we revise the Applicability section of the NPRM (75 FR 57885, September 23, 2010) to exclude airplanes which had FCC software installed per an AMOC to AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005). Alaska explained that this AMOC to AD 2005–07–20 approved the same FCC software specified in the NPRM, i.e., FCC software 2276–COL–AC1–05 or 2275–COL–AC1–06.

We do not agree to revise the Applicability section of this supplemental NPRM to limit it to only airplanes with certain FCC software versions installed. The intent of this supplemental NPRM is to ensure that the proper software is installed on all airplanes listed in the variable number table in Section 1.A., Effectivity, of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. If the required software is found to already be installed by performing the software part number inspection specified in Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, then no more work is necessary. We have not changed the supplemental NPRM in this regard.

However, we do agree to revise this supplemental NPRM to allow for installation of versions of the FCC software that are approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) after the issuance of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. We have revised paragraph (h)(1) of this supplemental NPRM accordingly. We have also clarified paragraph (h)(1) of this supplemental NPRM by referring to table 2 of that service bulletin for the improved software.

We agree to revise the Applicability section (paragraph (c)) of this supplemental NPRM for clarity by referring to the airplanes identified in the variable number table in Section 1.A., Effectivity, of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. We intend that this supplemental NPRM is applicable to all airplanes having variable numbers identified in that table, and that the applicability not be defined by the ''Group 1'' description in section 1.A. of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. We find that the effectivity by variable number in Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, adequately identifies the airplanes affected by the unsafe condition and assures that the unsafe condition is corrected on affected airplanes. We have revised the Applicability section in this supplemental NPRM accordingly.

Request To Include a Terminating Action

Continental requested that we revise the NPRM (75 FR 57885, September 23, 2010) to include a note that states: ''Validation by an operator that aircraft that have had part number (P/N) 831–5854–150 software loaded into their P/N 822–1604–101 or –151 Flight Control Computers in accordance with Boeing Service Letter 737–SL–22–059

constitutes a terminating action for this AD.'' Continental reasoned that Boeing Service Letter 737–SL–22–059 was issued June 29, 2007, and that the letter advises operators that they can load software P/N 2275–COL–AC1–06 (Diskette Set Collins P/N 831–5854–150) into P/N 822–1604–101 and –151 FCCs. Continental explained that the software is listed in table 2 of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010.

We disagree to include the note requested by the commenter. We intend that the applicability of the supplemental NPRM includes all airplanes identified in the variable number table in Section 1.A, Effectivity, of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, requires that operators inspect the FCC OPS part numbers, and that if the software part number installed is listed in table 2 of that service bulletin (which includes P/N 831–5854–150, as the commenter stated), no more work is necessary. Compliance with the requirements of paragraph (h) of the supplemental NPRM is then complete. However, if the operator finds that a software part number listed in table 2 of that service bulletin is not installed, they must install new software. We have revised the AD applicability in paragraph (c) of this supplemental NPRM to more clearly define the affected airplanes. We have not otherwise changed the AD in this regard.

Request To Include Certain Airplanes

Boeing requested that we revise the Summary section and the Applicability section of the NPRM (75 FR 57885, September 23, 2010) to include the phrase, ''airplanes delivered with the Collins Enhanced Digital Flight Control System (EDFCS).'' Boeing reasoned that the NPRM is only applicable to that portion of the Model 737–600, –700, –700C, –800, and –900 series airplane fleet delivered with the Collins EDFCS installed at delivery.

We agree to revise this supplemental NPRM to include the phrase requested by Boeing, although we will use the full company name of the equipment supplier (''Rockwell Collins''). This revision may make it easier for operators to quickly determine whether or not this AD is applicable to their airplanes. Since the effectivity of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, is limited to airplanes equipped with the Rockwell Collins EDFCS, this change will have no actual effect on the AD applicability. We have revised the Applicability section of the supplemental NPRM accordingly.

Request To Rephrase the Unsafe Condition

Boeing requested that we revise the NPRM (75 FR 57885, September 23, 2010) by removing the words ''and correct'' from the phrase ''detect and correct''. Boeing explained that the software change described in Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, does not ''correct'' erroneous radio altimeter outputs—it only ''detects'' them and inhibits the autothrottle landing flare retard mode.

We partially agree to revise the phrasing of the unsafe condition in the supplemental NPRM. The software change described in Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, enables the airplane systems to detect erroneous output from a radio altimeter channel and correct improper autothrottle system response to that erroneous output. While we disagree to completely remove the phrase ''and correct'' from the unsafe condition statement, we have revised the unsafe condition phrasing accordingly throughout the supplemental NPRM.

Request To Change Phrasing Regarding Crew Response

Boeing requested that we revise the NPRM (75 FR 57885, September 23, 2010) by adding the phrase, ''absent proper crew response,'' to the following sentence throughout the NPRM, as such: ''We are proposing this AD to detect erroneous output from a radio altimeter channel, which, absent proper crew response, could result in premature autothrottle landing flare retard and the loss of automatic speed control, and may lead to loss of control of the airplane.'' Boeing explained that this sentence should directly reflect the fact that proper crew response can avoid any of the listed contingencies.

We disagree to revise this supplemental NPRM to include the phrase requested by Boeing. We do not have information at this time that confirms Boeing's comment. We have not changed the AD in this regard.

Request To Clarify the Applicability

Alaska requested that we clarify the applicability of the NPRM (75 FR 57885, September 23, 2010). Alaska explained that the effectivity section of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, could be interpreted to mean that airplanes with FCC software 2276–COL–AC1–05 or 2275–COL–AC1–06 installed did not require accomplishment of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, while the accomplishment section of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, could be interpreted to require that airplanes be inspected to verify that the correct software version is installed.

We agree to clarify the applicability of this supplemental NPRM, which includes all airplanes identified in the airplane variable number table in Section 1.A of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. The applicability of this supplemental NPRM is not defined by the ''Group 1'' description in that section of that service bulletin. We have revised paragraph (c) of this supplemental NPRM for clarity by referring to the variable number table. We have also added Note 1 to paragraph (c) of this supplemental NPRM.

Request To Use the Latest Revision of the Service Information

Alaska requested that we revise the NPRM (75 FR 57885, September 23, 2010) to refer to the latest service information, if a later revision is issued. Alaska noted that ''computer'' is misspelled in the effectivity section of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010.

We acknowledge that ''computer'' is misspelled in the effectivity section of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. However, this typo does not affect the applicability of this supplemental NPRM. Also, we have not received any revised service information; Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, is the latest service information. Therefore, we have not changed this supplemental NPRM in this regard.

Request To Correct Effectivity Between Service Information

Continental requested that we acknowledge that the effectivity between the service information in AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005), and Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, is different.

We agree that the effectivities of Boeing Alert Service Bulletin 737–22A1164, dated May 20, 2004, and Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010; are different. (Boeing Alert Service Bulletin 737–22A1164, dated May 20, 2004, is the appropriate source of service information for AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005). However, we have verified that all airplanes in the

effectivity of Boeing Alert Service Bulletin 737–22A1164, dated May 20, 2004, are also listed in the effectivity of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, is applicable to a larger group of airplanes than Boeing Alert Service Bulletin 737–22A1164, dated May 20, 2004. Therefore, we have not changed the supplemental NPRM in this regard.

Special Flight Permit Paragraph

We have removed paragraph (h) of the NPRM (75 FR 57885, September 23, 2010) from this supplemental NPRM. Paragraph (h) of the NPRM prohibited special flight permits. We have determined that special flight permits are allowed, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199).

FAA's Determination

We are proposing this supplemental NPRM because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. Certain changes described above expand the scope of the original NPRM (75 FR 57885, September 23, 2010). As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this supplemental NPRM.

Proposed Requirements of the Supplemental NPRM

This supplemental NPRM would require accomplishing the actions specified in the service information described previously.

Change to Existing AD

This proposed AD would retain all requirements of AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005). Since AD 2005–07–20 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005)	Corresponding requirement in this proposed AD
paragraph (f)	paragraph (g)

Costs of Compliance

We estimate that this proposed AD affects 207 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation [retained actions from existing AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005].	2 work-hours × $85 per hour = $170.	$0	$170	$35,190
Inspection	1 work-hour × $85 per hour = $85.	N/A	$85 per inspection cycle	17,595

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation	1 work-hour × $85 per hour = $85	$0	$85

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

Authority for This Rulemaking

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

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

Regulatory Findings

We 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 removing airworthiness directive (AD) 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005), and adding the following new AD.

The Boeing Company: Docket No. FAA–2010–0856; Directorate Identifier 2010–NM–117–AD.

(a) Comments Due Date

We must receive comments by July 16, 2012.

(b) Affected ADs

This AD supersedes AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005).

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes, delivered with the Rockwell Collins Enhanced Digital Flight Control System (EDFCS), certificated in any category; as identified in the Variable Number table in Section 1.A., Effectivity, of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010.

Note 1 to paragraph (c) of this AD: This AD is applicable to all airplanes listed in the Variable Number table, and is not defined by the ''Group 1'' description in Section 1.A. of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 22, Auto Flight.

(e) Unsafe Condition

This AD was prompted by reports of undetected erroneous output from a single radio altimeter channel, which resulted in premature autothrottle retard during approach. We are issuing this AD to detect and correct an unsafe condition associated with erroneous output from a radio altimeter channel, which could result in premature autothrottle landing flare retard and the loss of automatic speed control, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Retained Actions With No Changes

This paragraph restates the actions required by paragraph (f) of AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005). For airplanes identified in Boeing Alert Service Bulletin 737–22A1164, dated May 20, 2004: Within 12 months after May 12, 2005 (the effective date of AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005)), install and test an updated version of the operational program software (OPS) of the EDFCS flight control computers (FCCs), in accordance with Boeing Alert Service Bulletin 737–22A1164, dated May 20, 2004.

(h) New Requirements

Within 3 months after the effective date of this AD: Inspect to determine the part number of the OPS of the FCCs, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. Installing software as required by paragraph (h)(1) of this AD, or verifying that the software is installed as specified by paragraph (h)(2) of this AD, terminates the requirements of paragraph (g) of this AD.

(1) For any OPS having a part number identified in table 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010: Before further flight, install software specified in table 2 of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010, or install software that is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) after April 13, 2010, that is fully interchangeable with the software specified in table 2 of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010. Do the installation in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010.

(2) For any OPS having a part number identified in table 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–22A1211, dated April 13, 2010: No further action is required by this paragraph.

(i) Alternative Methods of Compliance (AMOCs)

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

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

(3) AMOCs approved previously in accordance with AD 2005–07–20, Amendment 39–14045 (70 FR 17603, April 7, 2005), are approved as AMOCs for the corresponding provisions of this AD.

(j) Related Information

(1) For more information about this AD, contact Gregg Nesemeier, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6479; fax: (425) 917–6590; email: *gregg.nesemeier@faa.gov*.

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

Issued in Renton, Washington, on May 21, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13028 Filed 5–29–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0490; Directorate Identifier 2012–NM–066–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 707 airplanes, and Model 720 and 720B series airplanes. This proposed AD was prompted by reports of cracking of the midspar fittings, and of the engine and nacelle strut separating from the airplane. This proposed AD would require performing a detailed inspection of the midspar fittings of the nacelle strut to confirm that the correct part number is installed, and installing the correct part number if necessary; performing repetitive high frequency eddy current inspections (HFEC) of the midspar fittings of the nacelle strut for cracks, and repair if necessary; and

performing repetitive general visual inspections of the nacelle struts to verify that the nacelle strut has not drooped below its normal position, applying the droop stripe to the nacelle strut and sailboat fairing if necessary, and repair if necessary. We are proposing this AD to detect and correct cracking of the midspar fitting, which could result in separation of the nacelle strut and engine from the airplane while in flight, and consequent loss of controllability of the airplane.

DATES: We must receive comments on this proposed AD by July 16, 2012.

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

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 165501 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6577; fax: (425) 917–6590; email: *Berhane.Alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0490; Directorate Identifier 2012–NM–066–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://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We have received reports of fatigue cracking of the midspar fittings, and the engine and nacelle strut separating from the airplane. Operators have reported that the cracking occurred on more than 40 airplanes with approximately 9,900 to 63,000 flight hours. In addition, there has been a report of the engine number 3 nacelle strut separating from the airplane and contacting the engine number 4 nacelle strut, which also separated from the airplane. This condition, if not corrected, could result in a fractured midspar fitting, which could cause a separation of the nacelle strut and engine from the airplane while in flight, resulting in loss of controllability of the airplane.

Relevant Service Information

We reviewed Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012. That service information describes procedures for:

- Performing a detailed inspection of the midspar fittings of the engine number 2 and 3 nacelle struts to confirm that the correct part number is installed, and installing the correct part number if necessary.
- Performing HFEC inspections of the midspar fittings of the engine number 2 and 3 nacelle struts for cracks, and repairing if necessary.
- Performing repetitive general visual inspections of the nacelle struts of engine numbers 1, 2, 3, and 4 to verify that the nacelle strut has not drooped below its normal position, applying the droop stripe to the nacelle strut and sailboat fairing if necessary, and repairing if necessary.

The initial compliance times for the HFEC and general visual inspections, and the application of the droop stripe if necessary, is at the later of: (1) Within 1,500 flight cycles or 48 months from the replacement of the nacelle strut inboard and outboard midspar fittings, whichever occurs first, or (2) within 120 days.

For the HFEC inspection, the repetitive interval is within 250 flight cycles or 12 months, whichever occurs first.

For the general visual inspection, the repetitive interval is 30 flight cycles, except after both midspar fittings are replaced on the strut, the next inspection would be performed within 1,500 flight cycles or 48 months, whichever occurs first, from the replacement of both the nacelle strut inboard and outboard midspar fittings.

Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, refers to Boeing 707/720 Service Bulletin 3183, Revision 5, dated September 16, 1993, as an additional source of guidance for the HFEC inspections of the midspar fittings of the engine number 2 and 3 nacelle struts for cracks.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and the Service Information.''

Differences Between the Proposed AD and the Service Information

Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- In accordance with a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) whom we have authorized to make those findings.

Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, refers to ''Manual 707, 720 NDT Part 6, 51–00–00 Figure 24 as an accepted procedure'' for the HFEC inspection. This proposed AD would require that the inspection must be done in accordance with Subject 51–00–00 Figure 24, Steel Part Surface Inspection (Impedance Plane Display), of Part 6, Eddy Current, of the Boeing 707, 720 Nondestructive Test Manual, Document D6–48023, Revision 120, dated March 15, 2012.

Costs of Compliance

We estimate that this proposed AD affects 11 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection, repetitive HFEC inspections and repetitive general visual inspections of the midspar fittings of the nacelle strut.	23 work-hours × $85 per hour = $1,955	$0	$1,955	$21,505

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Install the correct part number	130 work-hours × $85 per hour = $11,050	$7,867 × 4 = $31,468	$42,518

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 airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2012–0490; Directorate Identifier 2012–NM–066–AD.

(a) Comments Due Date

We must receive comments by July 16, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 707–100 long body, –200, –100B long body, and –100B short body series airplanes; Model 707–300, –300B, –300C, and –400 series airplanes; and Model 720 and 720B series airplanes; certificated in any category.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports of cracking of the midspar fittings and of the engine and nacelle strut separating from the airplane. We are issuing this AD to detect and correct cracking of the midspar fitting, which could result in separation of the nacelle strut and engine from the airplane while in flight, and consequent loss of controllability of the airplane.

(f) Compliance

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

(g) Detailed Inspection

Within 120 days after the effective date of this AD: Do a detailed inspection of the midspar fittings of the engine number 2 and 3 nacelle struts to confirm that the correct part number is installed, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012. If any incorrect part number is found: Before further flight, install the correct part number, in accordance with the Accomplishment Instructions of Boeing

707 Alert Service Bulletin A3537, dated January 30, 2012.

Note 1 to paragraph (g) of this AD: Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, refers to Boeing 707/720 Service Bulletin 3183, Revision 5, dated September 16, 1993, as an additional source of guidance for high frequency eddy current inspections of the midspar fittings of the engine number 2 and 3 nacelle struts for cracks.

(h) High Frequency Eddy Current Inspection (HFEC)

At the applicable times specified in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, except as provided in paragraph (j) of this AD: Do an HFEC inspection of the midspar fittings of the engine number 2 and 3 nacelle struts for cracks, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, except as provided by paragraph (k) of this AD. If any crack is found, before further flight, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD. Thereafter, repeat the inspection at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012.

(i) General Visual Inspection of the Nacelle Struts of Engine Numbers 1, 2, 3, and 4

At the applicable times in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, except as provided in paragraph (j) of this AD: Do a general visual inspection of the nacelle struts of engine numbers 1, 2, 3, and 4 to verify that the nacelle strut has not drooped below its normal position, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012. Thereafter, repeat the inspection at the applicable intervals specified in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012.

(1) If any nacelle strut has drooped below its normal position: Before further flight, repair using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

(2) If any nacelle strut has not drooped below its normal position, and no droop stripe has been applied, as specified in Boeing 707/720 Service Bulletin 3377, dated November 21, 1979: At the applicable times in paragraph 1.E., ''Compliance,'' of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, except as provided in paragraph (j) of this AD: Apply the droop stripe to the nacelle strut and sailboat fairing, on each side of the engine numbers 1, 2, 3, and 4 nacelle struts, in accordance with the Accomplishment Instructions of Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012.

(j) Exception to the Compliance Time

Where Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, specifies a compliance time based on ''the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(k) Exception to the Service Information

Where Boeing 707 Alert Service Bulletin A3537, dated January 30, 2012, refers to ''Manual 707, 720 NDT Part 6, 51–00–00 Figure 24 as an accepted procedure'' for the HFEC inspection, this AD requires that the inspection must be done in accordance with Subject 51–00–00 Figure 24, Steel Part Surface Inspection (Impedance Plane Display), of Part 6, Eddy Current, of the Boeing 707, 720 Nondestructive Test Manual, Document D6–48023, Revision 120, dated March 15, 2012.

(l) Credit for Previous Actions

This paragraph provides credit for the installation of the engine droop lines required by paragraph (i) of this AD, if those actions were performed before the effective date of this AD using Boeing 707/720 Service Bulletin 3377, dated November 21, 1979.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), ANM–120S, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, ANM–120S to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(n) Related Information

(1) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6577; fax: (425) 917–6590; email: *Berhane.Alazar@faa.gov.*

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

Issued in Renton, Washington, on May 21, 2012.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–13039 Filed 5–29–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

15 CFR Part 1400

[Docket No. 120517080–2080–01]

Petition for Inclusion of the Arab-American Community in the Groups Eligible for MBDA Services

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Minority Business Development Agency (MBDA) publishes this notice regarding the petition received on January 11, 2012 from the American-Arab Anti-Discrimination Committee (ADC) requesting formal designation of Arab-Americans as a minority group that is socially or economically disadvantaged pursuant to 15 CFR art 1400. The formal designation of the Arab-American community as a group that is socially or economically disadvantaged would allow the members of this community to receive assistance from MBDA funded programs, such as the MBDA Business Center program. The ADC filed a petition, pursuant to 15 CFR part 1400.3, including information specifically related to social and economic discrimination against Arab-Americans. This Notice provides public notice that the United States Department of Commerce (Department) will consider the petition and requests public comment on the propriety of this designation. MBDA will make a decision on the application no later than June 27, 2012.

DATES: Comments must be received by MBDA no later than June 29, 2012.

ADDRESSES: You may submit comments, identified with Docket No. 120517080–2080–01, using any of the following methods:

- *Mail, Hand/Delivery/Courier:* Ms. Josephine Arnold, Chief Counsel,

Minority Business Development Agency, Department of Commerce, 1401 Constitution Avenue NW., Room 5093, Washington, DC 20230.

• *Electronic mail:* Submit comments in Microsoft Word or .pdf format to *AAComments@mbda.gov*.

All comments will be posted on the MBDA Web site at *http://www.mbda.gov*. If you wish to submit confidential business information, please submit the comments to the attention of Josephine Arnold and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. MBDA will make a final determination as to whether the comments will be published or not.

FOR FURTHER INFORMATION CONTACT: Robert Cobbs, Minority Business Development Agency, 1401 Constitution Avenue NW., Room 5053, Washington, DC 20230. Mr. Cobbs may be reached by telephone at (202) 482–2332 and by email at *rcobbs@mbda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The MBDA, pursuant to Executive Order 11625, funds business centers that provide business development services to business concerns owned and controlled by individuals who are members of groups determined by the Department to be socially or economically disadvantaged. Based on the current definitions, the groups considered ''socially and economically disadvantaged,'' listed in Executive Order 11625, are ''Black, Puerto-Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.'' [1] In addition, Hasidic Jews, Asian Pacific Americans and Asian Indians have been included in the list of the groups who are socially or economically disadvantaged and thus eligible for assistance from the MBDA in 15 CFR part 1400.1(c).

The Department is considering the petition of the ADC requesting the addition of Arab-Americans to the list of persons considered ''socially and economically disadvantaged'' pursuant to E.O. 11625 and 15 CFR part 1400. An Arab-American may be defined as an American who traces his or her ethnic roots to one of the countries in the Arab World, including Algeria, Bahrain, Djoubti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Qatar, Somalia, Saudi Arabia, Sudan, Syria, Tunisia, United Arab Emirates, and Yemen. According to the petition, Palestinians also fall under this category. The ADC petition describes the social and economic conditions that Arab-Americans have faced allegedly amounting to discrimination and prejudice in American society and resulting in conditions under which Arab-American individuals have been unable to compete in a business world.[2] The petition provides details of the social and economic discrimination faced by Arab-Americans. A summary of those details from the ADC petition are presented below in Section II.

II. Social and Economic Discrimination Against Arab-Americans

A. Social Discrimination

According to the Petition, Arab-Americans are subject to many prejudices as a result of their distinct cultural and ethnic characteristics. While many of those who consider themselves Arabs are Muslim, the Arab-American Institute states that most Arab-Americans are Christian.[3] Most Arab-Americans speak Arabic, a language that has become one of the defining characteristics of the group.[4] Further, Arab-Americans are known for their different food dishes (tabouli, kibbah, and kabshah) and their unique music tradition that includes the use of percussion instruments not normally found in American culture.[5] These are just a number of ways in which Arab-American culture differs from American culture and the distinctions that have resulted in the prejudices aimed towards the group.

The petition states that Arab-Americans have faced discrimination since the late 1800s, similar to most other minority groups.[6] They were treated the same way as many other minority groups in the United States and had specific derogatory names directed towards them.[7] While this discrimination initially did not hinder their ability to obtain American citizenship, the situation changed in 1910 when the U.S. Census Bureau classified Syrian and Palestinian Arabs as ''Asiatics.'' [8] The Bureau of Immigration and Naturalization, which initially considered Syrians and Palestinians as ''Caucasians,'' subsequently issued a nationwide directive ordering the rejection of citizenship petitions for persons who were not ''free white persons'' or of ''African nativity.'' [9] Some courts declared that Syrians could be considered ''white'' while other courts ruled that they were not ''free white persons.'' [10] For example, after World War I, the government passed the Quota Act that limited the annual quota of nationality to 3 percent of the foreign-born persons from that country.[11] According to the ADC petition, even though the policy was facially race neutral, the implications for Arab-Americans, was dire.[12] The ADC petition notes that Arab immigrants were denied citizenship, except 100 persons annually, under the Quota Act which is widely viewed as an attempt to limit immigration from Arab countries.[13] While the policy was negated by the Immigration Bill in 1965, the ADC petition asserts that Arab-Americans continue to face discrimination in public and private employment, housing, government contracts and government benefits.[14]

The ADC petition mentions a number of court cases that highlight discrimination against Arab Americans on the sole basis of their ethnic background, including a case where three elevator employees were awarded $30,000 in damages as a result of the years of harassment they endured.[15] This level of discrimination increased drastically after the September 11 attacks.[16] According to the petition, while the attacks were carried out by a small group of extremists, the entire Arab-American community suffered from the prejudices other American citizens formed.[17]

The Petition notes that following September 11, 2001, the FBI and other institutions reported a substantial increase in reports of discrimination and harassment against Arab-Americans (the FBI reported a 1600 percent increase).[18] According to the ADC petition, these reports were exacerbated by government-implemented policies that inherently targeted Arab-Americans. The ADC petition asserts that, in the government's efforts to protect Americans, they essentially took away the rights of other Americans and provides the following as examples of

[1] Exec. Order No. 11625, 3 CFR part 616 (1971–1975).

[2] American-Arab Anti-Discrimination Committee (ADC) Petition (filed, January 11, 2012) (ADC Petition or Pet.).

[3] Pet. at 4.

[4] Pet. at 4.

[5] Pet. at 5.

[6] Pet. at 8.

[7] Pet. at 9.

[8] Pet. at 10.

[9] Pet. at 10.

[10] Pet. at 10–11.

[11] Pet. at 13.

[12] Pet. at 13.

[13] Pet. at 13.

[14] Pet. at 14–15.

[15] *Zaytoun* v. *Embassy Row Hotel, Inc.,* No. 6744–83 (D.C. Super. Ct. June 21, 1985).

[16] Pet. at 17.

[17] Pet. at 17.

[18] Pet. at 18.

such government-sponsored programs: The National Security Entry Exit Registration System NSEERS, which required non-immigrants to register at ports of entry and targeted males from Arab nations; stricter travel guidelines; and ''no-fly'' lists which predominantly contained the names of Arab-Americans. According to the Petition, these restrictions hindered the Arab-American community's freedom and as a result, their ability to contribute to a healthy American economy.[19]

B. Economic Discrimination

According to the ADC Petition, Arab-Americans also face economic discrimination as employees and business owners. Citing instances where employees are continuously harassed because of their ethnicity and are subject to constant name-calling and racial profiling, the petition asserts that Arab-Americans either have to constantly deal with discrimination enforced by their employers, their fellow employees or customers that frequent their places of employment.[20] The petition also notes that Arab-Americans have fewer job opportunities, a situation that has been exacerbated by the September 11 attacks and asserts that this fact is supported by a number of studies that highlight employment discrimination against Arab Americans as well as the high number of complaints the ADC receives yearly despite the time that has passed since 9/11.[21]

According to the ADC Petition, the discrimination that Arab-American employees face has decreased their earnings.[22] One study showed that the earning potential of Arab American men dropped considerably between 2000 and 2002 as compared to U.S.-born non-Hispanic white men.[23] Their ability to positively contribute to the economy has also been significantly altered as a result of the increased instances of government-sponsored inspections of workplaces that may have hired individuals with suspected terrorist ties.[24]

Arab-American business owners and entrepreneurs also face economic discrimination. Individuals from the Arab-American community are unable to earn up to their potential as compared to their non-Hispanic white counterparts in similar industries. The Petition notes that while many Arab-Americans are educated and would contribute tremendously to the U.S. economy if they were able to enter into the market, they are held back because of their ethnic background. Also, many times Arab-Americans are confined solely to the small Arab-American communities in which they live because they face harassment if they attempt to expand their business. The Petition further asserts that Arab Americans receive few prime government contracts, as exemplified by a case study conducted in San Francisco between 1992 and 1995.[25] During that time period, Arab-Americans received no construction contracts despite representing a significant amount of the available professional service firms. This can be compared to Latino-Americans, a group already included in the definition of ''minority business enterprise,'' who only received 1 percent of professional service dollars despite representing 6 percent of the professional service firms.[26]

III. Objectives and Scope

By categorizing Arab-Americans as ''socially and economically disadvantaged business concerns'' under 15 CFR part 1400, the same the benefits granted to other socially and economically disadvantaged persons specified under Part 1400 will be available to Arab-American persons and businesses. Specifically, under 15 CFR part 1400, Arab-Americans will be eligible to qualify for MBDA programs and opportunities that help minority businesses overcome discrimination and prejudice as business owners.[27]

The comments received will be reviewed for applicability to the issues to be addressed. MBDA will consider only those comments that address the relevance of including Arab-Americans in the definition of those who are ''socially and economically disadvantaged.'' Commenters should address the following issues in the context of the requirements of the applicable regulations.[28] If any comments received meet the criterion, they will be included in the final decision.

MBDA solicits general comments and comments on the Petition that address the following specific issues:

A. Societal Discrimination

1. Are there specific instances of social discrimination against Arab-Americans that occur over a sustained period of time, which results in significant social or economic disadvantage?
2. Are there any additional characteristics specific to the Arab-American community, other than those described in the ADC Petition, that invoke societal discrimination?
3. Is there evidence that demonstrates Arab-Americans have been subject to employment or educational discrimination? If so, please describe.
4. Is there evidence that demonstrates that Arab-Americans have been denied access to organizations, groups, professional societies or other types of business opportunities in comparison to individuals who are not considered socially or economically disadvantaged?

B. Economic Discrimination

1. What evidence exists that demonstrates Arab-Americans have faced economic discrimination over a sustained period of time resulting in social or economic disadvantage?
2. Please provide any specific information which demonstrates that Arab-Americans have experienced difficulty in obtaining access to capital, technical, or managerial resources as compared to individuals who are not considered socially or economically disadvantaged.
3. Is there any additional evidence of denied opportunities for Arab-Americans to access to those things which would enable them to participate more successfully in the American economic system that is readily available to individuals not considered to be socially or economically disadvantaged?

Josephine Arnold,

Chief Counsel, Minority Business Development Agency.

[FR Doc. 2012–12968 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–21–P

[19] Pet. at 18–21.

[20] Pet. at 21.

[21] Pet. at 21–25.

[22] *Id.* at 23, *citing* American-Arab Anti-Discrimination Committee (ADC), *2010 Legal Department: Legal and Policy Review,* p. 1.

[23] Pet. at 26, citing Alberto Davila and Marie Mora, *Changes in Earnings of Arab Men in the U.S.,* Journal of Population Economics, 2005, vol. 18, issue 4, p. 588.

[24] Pet. at 25–27.

[25] Pet. at 29.

[26] Pet. at 29–31.

[27] Pursuant to 15 CFR 1400.1, the designation for eligibility under Executive Order 11625 will not establish eligibility for any other Federal or Federally-funded program.

[28] *See* 15 CFR 1400.4.

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 151

RIN 3038–AD82

Aggregation, Position Limits for Futures and Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On November 18, 2011, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') published in the **Federal Register** a final rule and interim final rule, which establish a position limits regime for 28 exempt and agricultural commodity futures and options contracts and the physical commodity swaps that are economically equivalent to such contracts. In response to a petition for exemptive relief under the Commodity Exchange Act and certain comments to the Commission's interim final rule for spot-month limits for cash-settled contracts, this notice proposes certain modifications to the Commission's policy for aggregation under the position limits regime in CFTC regulations.

DATES: Comments must be received on or before June 29, 2012.

ADDRESSES: You may submit comments, identified by RIN number3038–AD82, by any of the following methods:

- *Agency Web Site: http://www.cftc.gov.*
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedure established in CFTC regulation 145.9 (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Stephen Sherrod, Senior Economist, Division of Market Oversight, at (202) 418–5452, *ssherrod@cftc.gov;* Neal Kumar, Counsel, Office of General Counsel, at (202) 418–5353, *nkumar@cftc.gov,* Riva Spear Adriance, Senior Special Counsel, Division of Market Oversight, at (202) 418–5494, *radriance@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[1] Title VII of the Dodd-Frank Act[2] amended the Commodity Exchange Act (''CEA'')[3] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

As amended by the Dodd-Frank Act, sections 4a(a)(2) and 4a(a)(5) of the CEA mandate that the Commission establish limits for futures and option contracts traded on a designated contract market (''DCM''), as well as swaps that are economically equivalent to such futures or options contracts traded on a DCM. This mandate directed the Commission to establish position limits on the expedited timeframe of 180 days from the date of enactment for exempt commodities and 270 days from the date of enactment for agricultural commodities. In response to the Congressional mandate, the Commission proposed and ultimately adopted final rules in part 151 regarding position limits for 28 physical commodity futures and option contracts (''Core Referenced Futures Contracts'') and physical commodity swaps that are economically equivalent to such contracts (collectively with Core Referenced Futures Contracts referred to as ''Referenced Contracts'').[4]

The regulations in the part 151 position limits regime, consistent with the Commission's historical approach to position limits,[5] generally includes three components: (1) The level of the limits, which set a threshold that restricts the number of speculative positions that a person may hold in the spot-month, individual month, and all months combined,[6] (2) an exemption for positions that constitute bona fide hedging transactions,[7] and (3) rules to determine which accounts and positions a person must aggregate for the purpose of determining compliance with the position limit levels.[8]

The Commission published Part 151 in the **Federal Register** in November of 2011, but determined to phase in compliance with the new position limits regime.[9] Specifically, 60 days after the Commission publishes a joint final rulemaking with the Securities and Exchange Commission (''SEC'') further defining the term ''swap'' in the **Federal Register**,[10] the rules require market participants to comply with spot-month limits for the 28 physical commodities as well as non-spot month limits for the enumerated agricultural contracts. The Commission also established the spot-month position limit levels for cash-settled contracts on an interim final basis and solicited comments on the appropriateness of such levels.[11] Finally, for the remaining non-spot month limits (*i.e.,* all commodities other than the enumerated agricultural commodities), the rules require compliance on the first calendar day of the third calendar month following a

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/DoddFrankAct/index.htm.*

[2] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.''

[3] 7 U.S.C. 1 et seq.

[4] *See Position Limits for Futures and Swaps,* 76 FR 71626, Nov. 18, 2011.

[5] *See* 17 CFR 150 (1999). Prior to the Dodd-Frank Act rulemaking, the Commission administered position limits under Commission regulation 150, which established federal position limits on certain enumerated agricultural contracts. The position limits on these agricultural contracts are referred to as ''legacy'' limits, and the listed commodities are referred to as ''enumerated'' agricultural commodities.

[6] *See* 17 CFR 151.4.

[7] *See* 17 CFR 151.5. *See also* CEA section 4a(c)(1) & (2).

[8] *See* 17 CFR 151.7.

[9] *See* 76 FR at 71632; and 151.4(d).

[10] Id. *See also Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 76 FR 29818, May 23, 2011 (notice of proposed rulemaking).

[11] *See* 76 FR 71637.

Commission order providing the numerical level of the non-spot month limits based upon a formula provided in part 151.[12]

As noted above, one of the three major components to the Commission's position limits regime is determining which accounts and positions a person must aggregate.[13] The final rule in regulation 151.7 largely adopted the Commission's existing aggregation policy under regulation 150.4. The aggregation provisions generally require that unless a particular exemption applies, a person must aggregate all positions for which that person controls the trading decisions with all the positions for which that person has a 10 percent or greater ownership interest in an account or position, as well as the positions of two or more persons acting pursuant to an express or implied agreement or understanding.[14]

Regulation 151.7 retained the scope of exemptions from aggregation that were contained in regulation 150.4, including the ownership interests of limited partners in pooled accounts,[15] discretionary accounts and customer trading programs of futures commission merchants (''FCM''),[16] and eligible entities with independent account controllers that manage customer positions (''IAC'' or ''IAC exemption'').[17] Further, the Commission provided two additional exemptions for underwriters of securities,[18] and where the sharing of information between persons would cause either person to violate federal law or regulations adopted thereunder.[19] With the exception of the exemption for underwriters, market participants were required to file a notice with the Commission demonstrating compliance with the conditions applicable to each exemption.[20]

B. Aggregation Petition and Interim Final Rule Comments

On January 19th, 2012 the Commission received a petition for interim relief from, among other things, part 151's provision for aggregation of positions across accounts (hereinafter aggregation petition'')[21] under CEA section 4a(a)(7) for purposes of part 151.[22] The Commission has also received letters that generally support the aggregation petition.[23] In addition, several commenters opined on the aggregation rules in connection with the Commission's request for comment on the interim final rule for spot-month position limits on cash-settled contracts.[24] As further discussed below, the aggregation petition and certain interim final rule commenters argue that the Commission should clarify the exemption provided in regulation 151.7(i) where the sharing of information would cause a violation of federal law and expand the exemption to include circumstances in which state or foreign law would prohibit the sharing of information necessary to comply with the aggregation standard. In addition, the aggregation petition and commenters request that the Commission create an aggregation exemption for owned non-financial entities.[25] In this connection, some commenters argue that the Commission should only aggregate on the basis of control and not ownership. Finally, one commenter requests that the Commission expand the exemption provided in 151.7(g) for the ownership interests of broker-dealers connected with specific market-making activity.

1. Exemption for Federal Law Restriction

As noted above, section 151.7(i) provides an exemption from aggregation where the sharing of information between persons would cause either person to violate federal law. The aggregation petition seeks to clarify that the exemption would apply to potential violations of federal law,[26] and also seeks to expand the exemption to apply to local, state, foreign and international law.[27] According to the aggregation petition, the standard in the rule could be read as limited to per se violations of the law, but not cover ''indicia of improper market activity.''[28] Further, market participants may not be able to rely on the exemption where they take certain action to avoid the ''potential'' of a violation. Moreover, the Working Groups argue that the filing of an opinion of counsel to claim the exemption may act as a disincentive for market participants to avail themselves of the exemption because an adverse opinion would harm the applicant.

Similar to the petition, certain commenters to the interim final rule argue that the requirement that the sharing of information ''would cause'' a violation of federal law sets the bar too high to claim the exemption.[29] In this connection, commenters opine that such a high standard makes it too difficult to obtain an opinion of counsel to reach the necessary conclusion.[30] Therefore, several commenters argue that the Commission should clarify that the standard to claim the exemption is that the sharing of information presents either party with a reasonable risk of violating federal law.[31] Commenters also believe that the Commission should expand this exemption to cover potential violations of state and foreign law.[32] Finally, one commenter suggests

[12] *See* 151.4(d)(3).

[13] The proposed rules in this release deal solely with the aggregation of accounts.

[14] *See* 17 CFR 151.7(a) & (b). In addition, the Commission included a new aggregation provision for persons with positions in accounts with identical trading strategies. This provision applies even if a person does not control trading and has a less than 10 percent interest in an account. *See* 17 CFR 151.7(d).

[15] 17 CFR 151.7(c).

[16] 17 CFR 151.7(e).

[17] 17 CFR 151.7(f).

[18] 17 CFR 151.7(g).

[19] *See* 17 CFR 151.7(i).

[20] *See* 17 CFR 151.7(h). The exemption for federal law information sharing restrictions in regulation 151.7(i), also requires that market participants submit an opinion of counsel that the sharing of information would cause a violation of federal law.

[21] The aggregation petition was originally filed by the Working Group of Commercial Energy Firms; certain members of the group later reconstituted as the Commercial Energy Working Group. Both groups (hereinafter, collectively, the ''Working Groups'') wish to present one voice with respect to the petition. A copy of the aggregation petition can be found on the Commission's Web site at *www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/wgap011912.pdf.*

[22] CEA section 4a(a)(7) specifically provides: ''The Commission, by rule, regulation, or order, may exempt, conditionally or unconditionally, any person or class of persons, any swap or class of swaps, any contract of sale of a commodity for future delivery or class of such contracts, any option or class of options, or any transaction or class of transactions from any requirement it may establish under this section with respect to position limits.'' 7 U.S.C. 6a(a)(7).

[23] *See* Commodity Markets Council (''CMC'') on March 9, 2012; Edison Electric Institute and the American Gas Association on March 1, 2012; and the Futures Industry Association (''FIA'') on March 26, 2012.

[24] *See* FIA on January 17, 2012 (''CL–FIA''); Atmos Energy Holdings (''ATMOS'') on January 17, 2012 (''CL–Atmos''); Edison Electric Institute (''EEI'') on January 17, 2012 (''CL–EEI''); and American Gas Association (''AGA'') on January 17, 2012 (''CL–AGA'').

[25] The Commission initially proposed but did not adopt an exemption that would have permitted persons with an ownership or equity interest in a non-financial entity not to aggregate the positions or accounts of the non-financial entity provided the person filed an application demonstrating compliance with certain conditions. *See Position Limits for Derivatives,* 76 FR 4752, 4762–63, Jan. 26, 2011. The Commission determined not to adopt this proposed exemption, but instead generally retained the Commission's existing aggregation policy. *See* 76 FR 71626.

[26] Aggregation petition at 18.

[27] Id. at 24.

[28] Id. at 17.

[29] *See* CL–FIA at 16–17; CL–Atmos at 5–6; and CL–EEI at 17–18.

[30] CL–EEI at 17–18; and CL–Atmos at 5–6.

[31] CL–FIA at 16–17; CL–EEI at 17–18; and CL–Atmos at 5–6.

[32] CL–AGA at 2; CL–FIA at 16–17; CL–EEI at 17–18; and CL–Atmos 5–6.

that the Commission should remove the requirement to file an opinion of counsel to claim the exemption, which the commenter believes is burdensome.[33]

2. The Owned Non-Financial Entity Exemption and Aggregation Based on Ownership Generally

As noted above, the proposed rules for part 151 proposed that a person with a 10 percent or greater ownership or equity interest in a non-financial entity need not aggregate the positions of the non-financial entity with his own positions, if the person filed an application with the Commission demonstrating compliance with certain conditions. This exemption was not part of the Commission's previously existing aggregation policy for position limits on the enumerated agricultural contracts in part 150. Ultimately, the Commission determined to largely retain its existing aggregation policy with limited additional exemptions, and did not adopt the proposed owned non-financial entity exemption.

According to the aggregation petition, the Commission's failure to include an exemption for a person's ownership interest in a non-financial entity will result in ''serious adverse consequences'' to the Working Groups participants, and represents a ''drastic departure from current market practices.'' [34] In light of these consequences, the aggregation petition includes a draft owned non-financial entity exemption for the Commission to incorporate into its aggregation policy. The draft exemption is similar, but not identical to, the owned non-financial entity exemption that the Commission proposed but did not adopt as part of its final rule.[35]

The aggregation petition suggests that without an owned non-financial entity exemption, the rules would force information sharing and the coordination of trading between entities, which would be contrary to existing best practices for antitrust compliance.[36] Given the conflict with such practices, the Working Groups argue that compliance with the position limits rules may create liability under the antitrust laws. The Working Groups also argue that the aggregation rules, as adopted by the Commission, are contrary to certain industry best practices that ''go beyond the letter of the law or applicable regulations in order to ensure that activities of unregulated entities are kept separate from activities of regulated entities to the greatest extent possible.'' [37]

The aggregation petition also opines that the information sharing between persons necessary to comply with the position limits would impose significant costs that would impact the physical and derivatives markets.[38] According to the Working Groups, entities with complex corporate structure arrangements that include established information barriers to ensure compliance with other regulatory requirements will face significant costs to monitor positions on an intra-day basis, notwithstanding the current lack of control over such trading.[39] In this case, the Working Groups claim that aggregation will significantly impact holding companies and firms that invest in commercial firms, particularly in the context of ''passive investment.'' Such firms will have to monitor the commercial firm for compliance with position limits and ''insert itself into the management of the firm.'' [40] In addition, according to the Working Groups, the aggregation of futures, cleared swaps and bilateral swaps across entities on a real time basis requires technology that does not yet exist.[41] The aggregation petition also points to concerns surrounding allocation and reporting of positions, sharing of information on physical inventories, and information sharing for the unwinding of accounts.[42]

The Working Groups assert that the position limit rules represent a ''drastic departure from the *status quo.''* [43] According to the aggregation petition, the Commission's position limits previously only applied to agricultural commodity futures and options on futures, and DCM position limits applied to futures on energy and metals commodities.[44] However, the Commission's new position limits rules will apply to swaps for the first time. Further, the Working Groups contend that DCMs previously provided ''aggregation exemptions that provided the flexibility necessary for commercial enterprises to manage their position limit obligations across entities without undue burden.'' [45] In addition, the aggregation of accounts across commercial firms could lead to decreased liquidity and competition in the energy derivatives market.

In light of these changes, the Working Groups believe that the Commission should provide relief in the form of an owned non-financial entity exemption. The aggregation petition includes a draft owned non-financial entity exemption that follows the Commission's prior proposed exemption with some modifications.[46]

Similar to the aggregation petition, commenters to the interim final rule request that the Commission adopt an owned non-financial entity exemption.[47] FIA and EEI argue that without such an exemption, market participants would have to aggregate all positions held by any entity in which it has a ten percent ownership interest, even if such interest is passive without control over trading. According to FIA, such a consequence would ''have an unnecessary and profoundly negative impact on users of Referenced Contracts, and their affiliates with no corresponding benefit to the stability or integrity of the market.'' [48] EEI also argues that the owned non-financial entity exemption would provide commercial firms the same aggregation relief as eligible entities that rely on the independent account controller exemption.[49]

Several commenters also address the requirement that persons aggregate

[33] CL–AGA at 5.

[34] *See* Aggregation petition, pg. 5–16.

[35] Id. at Exhibit A.

[36] Id. at 7. The Working Groups cite to best practices issued by the Federal Trade Commission and the U.S. Department of Justice regarding antitrust guidelines (''Antitrust Guidelines for Collaboration Among Competitors''). Available at *www.ftc.gov/os/2000/04/ftcdojguidelines.pdf.*

[37] Id. at pg. 9.

[38] Id. at 10–16.

[39] Similarly, according to the aggregation petition, the aggregation requirements impose significant compliance burdens where ownership interests may involve international companies, or where a corporate structure includes multiple levels of companies between a parent company and a child company with an account or position.

[40] Id. at 11.

[41] Id.

[42] Id. at 12–14.

[43] Id. at 14.

[44] The Commission notes that although the aggregation petition describes the final position limit rules, including the aggregation requirements, as a ''drastic departure from the status quo,'' and seeks to differentiate between Commission and DCM rules regarding treatment of owned positions for purposes of aggregation, many current and past DCM rules require aggregation of the positions a person either owns or controls. *See* Board of Trade of the City of Chicago, Inc. (''CBOT'') Rule 559.D; Chicago Mercantile Exchange, Inc. (''CME'') Rule 559.D; New York Mercantile Exchange, Inc. (''NYMEX'') Rule 559.D; ICE Futures U.S., Inc. (''ICE US'') Rule 6.12; Board of Trade of Kansas City, Missouri, Inc. (''KCBT'') Rule 2008.00; and Minneapolis Grain Exchange, Inc. (''MGE'') Rule 7310. *See also* NYMEX Rule 9.35, MGEX Rule 7310 and CBOT Rule 425.05 as examples of older rules requiring aggregation of the positions a person either owns or controls, which were in effect over the last 10 years. Furthermore, acceptable practices adopted by the Commission in August, 2001, provided DCMs with a safe harbor for position limit rules that aggregated positions a person owns or controls. See 66 FR 42256, 42280, August 10, 2001, Appendix B to Part 38, Core Principle 5. *See also http://www.cftc.gov/files/foia/fedreg01/foi010810a.pdf.*

[45] Id. at 15.

[46] Id. at Exhibit A.

[47] CL–FIA at 17–18; and CL–EEI at 16–17.

[48] CL–FIA at 18. *See also* CL–EEI at 16–17.

[49] CL–EEI at 16.

based upon ownership of positions generally. These commenters recommend that the Commission only aggregate based on control, and not aggregate positions based upon an ownership interest in a position or account.[50] According to these commenters, aggregation through an ownership interest, absent control of trading decisions, will impose significant burdens for entities to aggregate on an intra-day basis, may harm liquidity, and does not address the potential concerns about coordinated trading. Similar to the comments regarding the owned non-financial entity exemption, commenters submit that aggregating positions based solely on ownership creates substantial compliance burdens within the context of a complex corporate structure. In this connection, EEI suggests that the Commission not require an entity to aggregate owned positions if an entity could show the independence of trading decisions of the owned entity.[51]

3. Exemption for Underwriters

As noted above, Commission rule 151.7(g) includes an exemption from the ownership criteria for aggregation if the ownership interest:

> Is based on the ownership of securities constituting the whole or a part of an unsold allotment to or subscription by such person as a participant in the distribution of such securities by the issuer or by or through an underwriter.

FIA submits that the Commission should clarify and expand this exemption to include an ownership interest based on the acquisition or disposition of securities acquired in connection with the trading or market-making activities of a broker-dealer registered with the SEC, or a comparable broker-dealer.[52] FIA believes that aggregation based upon a 10 percent ownership interest should not be required if the broker-dealer acquires the interest—(1) In anticipation of demand, (2) as part of its normal market-making activity, or (3) as a result of a routine life cycle event, such as a stock distribution. Such ownership interests, according to FIA, do not present the same concerns about sharing transaction or position information that may facilitate coordinated trading.[53]

In response to the issues raised in the aggregation petition and comments to the interim final rule, the Commission has determined to propose modifications to certain position limits aggregation provisions.

II. Proposed Rules

A. Proposed Rules for Information Sharing Restriction

The Commission is proposing to clarify that the scope of the exemption in regulation 151.7(i) includes a reasonable risk of a violation of federal law. The Commission intended to cover such risks in the final rule and is therefore proposing to amend regulation 151.7(i) to make clear that the exemption includes circumstances in which the sharing of information would create a reasonable risk of a violation of federal law or regulations adopted thereunder.

The proposed rules retain the requirement that market participants file an opinion of counsel to rely on the exemption in regulation 151.7(i). The opinion allows Commission staff to review the legal basis for the asserted regulatory impediment to the sharing of information, and is particularly helpful where the asserted impediment arises from laws and/or regulations that the Commission does not directly administer. Further, Commission staff will have the ability to consult with other federal regulators as to the accuracy of the opinion, and to coordinate the development of rules surrounding information sharing and aggregation across accounts in the future. The Commission also notes that the proposed clarification should address the concerns of commenters that obtaining an opinion of counsel could be difficult if the Commission read the existing standard to include only per se violations.

With regard to comments that the exemption should permit persons to rely upon ''best practices'' or other ''guidelines,'' the Commission notes that the proposed exemption applies to situations where the sharing of information creates a reasonable risk of violating federal law or regulations adopted thereunder. Whether a reasonable risk exists will depend on the interconnection of the applicable statute and regulatory guidance, as well as the particular facts and circumstances as applied to the statute and guidance. Notwithstanding the Commission's facts and circumstances review of potentially conflicting federal law or regulations, the exemption in regulation 151.7(i) is effective upon filing of the notice in 151.7(h) and opinion of counsel. These provisions authorize the Commission to request additional information beyond that contained in the notice filing, and the Commission may amend, suspend, terminate or otherwise modify a person's aggregation exemption upon further review. As the Commission gains further experience with the exemption for federal law information sharing restriction in regulation 151.7(i), the Commission anticipates providing further guidance to market participants.

1. Proposed Rules for Information Sharing Restriction—Foreign Law

For the same reasons the Commission adopted the exemption for federal information sharing restrictions, the Commission proposes extending the exemption to the law of a foreign jurisdiction. In addition, similar to the clarification for the exemption for federal law information sharing restriction, the Commission is also proposing an exemption where the sharing of information creates a reasonable risk of violating the law of a foreign jurisdiction. However, the Commission remains concerned that certain market participants could potentially use the existing and proposed expansion of the exemption in regulation 151.7(i) to evade the requirements for the aggregation of accounts. In this regard, this proposed rule, consistent with the exemption for federal law information sharing restriction, includes the requirement to file an opinion of counsel specifically identifying the restriction of law and facts particular to the market participant claiming the exemption.[54]

The Commission notes that the aggregation petition references information sharing restrictions that arise from ''international'' law. The proposed rules include relief from aggregation for information sharing that could create a reasonable risk of violating the law of a foreign jurisdiction. The Commission seeks comment as to whether this proposal adequately addresses the concerns of market participants outlined in the interim final rule comments and the

[50] *See e.g.,* CL–FIA at 15; CL–EEI at 1–2, 14–15; CL–Atmos at 3–5; and CL–AGA at 1–3.

[51] *See e.g.,* CL–EEI at 14–15.

[52] CL–FIA at 6, 16.

[53] CL–FIA at 16.

[54] The Commission notes that the proposed expansion of this exemption includes a proposed technical change to regulation 151.7(i). The proposed technical change specifies that the ''notice'' filing referenced in current regulation 151.7(i) is a reference to the notice filing requirements set forth in regulation 151.7(h). In addition, the Commission has proposed a technical change to the FCM exemption in current regulation 151.7(e). Proposed regulation 151.7(e)(4) is designed for ease of reference for market participants to follow the filing requirements in regulation 151.7(h), which requires persons claiming the FCM exemption in regulation 151.7(e) to file pursuant to regulation 151.7(h). Finally, the Commission is also proposing a technical change to the form and manner of filing for an aggregation exemption in regulation 151.10(b)(4). Specifically, this proposed change makes clear that a notice filing for an aggregation exemption is effective upon filing.

aggregation petition, and as to whether those concerns are valid. The Commission specifically requests comment on the types of ''international'' law, if any, which could create information sharing restrictions other than the law of a foreign jurisdiction. Should the regulation 151.7(i) exemption include ''international'' law or is it sufficient to refer to the ''law of a foreign jurisdiction''? Alternatively, the Commission is considering a case-by-case approach through petitions submitted pursuant to CEA section 4a(a)(7). Should the Commission adopt such a case-by-case approach?

2. Proposed Rules for Information Sharing Restriction—State Law

After consideration of the aggregation petition and the interim final rule comments the Commission is also proposing to establish an exemption for situations where information sharing restrictions could trigger state law violations. In addition, similar to the clarification for the exemption for federal law information sharing restriction, the Commission is also proposing that the state law information sharing restriction apply to situations where the sharing of information creates a reasonable risk of violating the state law. However, as noted above, the Commission remains concerned about the potential for evasion within the context of this exemption. In this regard, this proposed rule, consistent with the federal law information sharing restriction, includes the requirement to file an opinion of counsel specifically identifying the restriction of law and facts particular to the market participant claiming the exemption.

The Commission solicits comments as to the appropriateness of extending the information sharing exemption to state law. Should the Commission provide for such an exemption? Alternatively, the Commission is considering a case-by-case approach through petitions submitted pursuant to CEA section 4a(a)(7). Should the Commission adopt such a case-by-case approach and otherwise rely upon the preemption of state law in administering its aggregation policy?

The Commission notes that the aggregation petition cites to Texas Public Utility Code Substantive Rule 25.503, which provides that ''a market participant shall not collude with other market participants to manipulate the price or supply of power.'' [55] That provision applies to intra-state transactions and resembles regulations of the Federal Energy Regulatory Commission.[56] In this regard, should the Commission limit application of the proposed exemption for state law information sharing restrictions to laws that have a comparable provision at the federal level? What criteria should the Commission use in identifying state laws that a person may rely upon for an exemption from aggregation?

The Commission also solicits additional comment as to the types of state laws, including specific laws, which could create an information sharing restriction in conflict with the Commission's aggregation policy.

The Commission further notes that the aggregation petition seeks to extend the exemption to information sharing restrictions that arise from ''local'' law.[57] However, neither the aggregation petition nor interim final rule commenters have provided examples, and the Commission is concerned that an exemption for local law would be difficult to implement due to the number of laws and/or regulations that would need to be considered and the vast numbers of localities that might issue such laws and/or regulations.

The Commission solicits comment as to the appropriateness of extending the information sharing exemption to ''local'' law. Commenters are asked to provide the scope of local law and identify any specific laws that create information sharing restrictions that would conflict with the Commission's aggregation policy. What criteria could the Commission use in identifying local laws that a person may rely upon for an exemption from aggregation? Should the Commission adopt a case-by-case approach through petitions submitted pursuant to CEA section 4a(a)(7) and otherwise rely upon the preemption of local law in administering its aggregation policy?

B. Proposed Rules—Ownership of Positions Generally

The Commission continues to consider ownership an appropriate measure for aggregation. Section 4a(a)(1) of the CEA provides for the general aggregation standard with regard to position limits, and specifically provides:

> In determining whether any person has exceeded such limits, the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.[58]

Congress incorporated this provision into Section 4a as part of the CEA Amendments of 1968 (''1968 Act'').[59] The legislative history to the 1968 Act indicates that Congress added this language to expressly incorporate prior administrative determinations of the Commodity Exchange Authority (predecessor to the Commission).[60] Prior to the 1968 Act, administrative determinations as well as regulations of the Commodity Exchange Authority announced standards that included control of trading and the ownership of positions.[61]

In light of the language in section 4a, the legislative history and regulatory developments, the Commission has

[55] Aggregation petition at 24.

[56] *See e.g.* 18 CFR 1c.1 & 1c.2.

[57] Aggregation petition at 24.

[58] 7 U.S.C. 6a.

[59] Public Law 90–258, 82 Stat. 26 (1968).

[60] *See* S. Rep No. 947, 90th Cong., 2 Sess. 5 (1968). This senate report provides:

> Certain longstanding administrative interpretations would be incorporated in the act. As an example, the present act authorizes the Commodity Exchange Commission to fix limits on the amount of speculative ''trading'' that may be done. The Commission has construed this to mean that it has the authority to set limits on the amount of buying or selling that may be done and on the size of positions that may be held. All of the Commission's speculative limit orders, dating back to 1938, have been based upon this interpretation. The bill would clarify the act in this regard * * *.
>
> Section 2 of the bill amends section 4a(1) of the act to show clearly the authority to impose limits on ''positions which may be held.'' It further provides that trading done and positions held by a person controlled by another shall be considered as done or held by such other; and that trading done or positions held by two or more persons acting pursuant to an express or implied understanding shall be treated as if done or held by a single person.

[61] *See* Administrative Determination (''A.D.'') 163 (Aug. 7, 1957) (''[I]n the application of speculative limits, accounts in which the firm has a financial interest must be combined with any trading of the firm itself or any other accounts in which it in fact exercises control.''). In addition, the Commission's predecessor, and later the Commission, provided the aggregation standards for purposes of position limits in the large trader reporting rules. *See* Supersedure of Certain Regulations, 26 FR 2968, Apr. 7, 1961. In 1961, then regulation 18.01 read:

> ''(a) *Multiple Accounts.* If any trader holds or has a financial interest in or controls more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such accounts shall be considered as a single account for the purpose of determining whether such trader has a reportable position and for the purpose of reporting.'' 17 CFR 18.01 (1961).

The provisions concerning aggregation for position limits generally remained part of the Commission's large trader reporting regime until 1999 when the Commission incorporated the aggregation provisions into part 150.4 with the existing position limit provisions in part 150. *See* 64 FR 24038, May 5, 1999. The Commission's part 151 rulemaking also incorporates the aggregation provisions in part 151.7 along with the remaining position limit provisions in part 151. *See* 76 FR 71626, Nov. 18, 2011.

historically viewed, and continues to view, section 4a as requiring aggregation on the basis of either ownership or control.[62] The Commission also believes that aggregation of positions across accounts based upon ownership is a necessary part of the Commission's position limit regime.[63] An ownership standard establishes a bright-line test that provides certainty to market participants and the Commission.[64]

Absent aggregation on the basis of ownership, the Commission would have to apply a control test in all cases, which poses significant administrative challenges to individually assess control across all market participants. Further, if the statute only required aggregation based on control, market participants may be able to use an ownership interest to circumvent aggregation in circumstances where an ownership interest is used to directly or indirectly influence control over the account or position. The Commission also notes that the ownership prong attributes a position to the beneficial owner of multiple accounts that amount to an unduly large position, which position limits are intended to prevent. Therefore, the proposed rules would continue to require aggregation based upon either ownership or control.

Regarding a threshold level to aggregate on the basis of ownership, the Commission has generally found that an ownership or equity interest of less than 10 percent in an account or position that is controlled by another person who makes discretionary trading decisions does not present a concern that such ownership interest results in control over trading or can be used indirectly to create a large speculative position through ownership interests in multiple accounts. As such, the Commission has traditionally viewed an ownership interest below 10 percent as not warranting aggregation.[65] Commenters suggest that a similar analysis should prevail for an ownership interest of 10 percent or more where such ownership represents a passive investment that does not involve control of the trading decisions of the owned entity. Commenters argue that under these conditions, such passive investments would present a reduced concern for trading pursuant to direct or indirect control, as well as a reduced risk for persons with positions in multiple accounts to hold an unduly large overall position.

While prior Commission rulemakings have generally restricted exemptions to the ownership criteria to limited partners of commodity pools and independent account controllers managing customer funds for an eligible entity, the Commission has considered a broader passive investment exemption.[66] Further, the Commission indicated in the part 151 final rule that the development of aggregation exemptions could occur over time.[67] This incremental approach to account aggregation standards reflects the Commission's historical practice.[68] Consistent with that practice, the Commission has considered the additional information provided and the concerns raised by the aggregation petition and interim final rule commenters, and believes it appropriate to propose certain relief from the ownership criteria of aggregation.[69]

1. Disaggregation Relief for Owned Entities

Proposed rule 151.7(b) continues the Commission's longstanding rule that persons with an ownership or equity interest in an account or position of less than 10 percent need not aggregate such positions solely on the basis of the ownership criteria. Persons with a 10 percent or greater ownership interest would still generally be required to aggregate the account or positions. However, proposed rule 151.7(b)(1) establishes a notice filing procedure to permit a person in specified circumstances to disaggregate the positions of a separately organized entity (''owned entity''), even if such person has a 10 percent or greater interest in the owned entity. The notice filing would need to demonstrate compliance with certain conditions set forth in 151.7(b)(1)(i), and such relief would not be available to persons with a greater than 50 percent ownership or equity interest in the owned entity. Similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission may subsequently call for additional information as well as reject, modify or otherwise condition such relief. Further, such person is obligated to amend the notice filing in the event of a material change to the circumstances described in the filing.

The proposed criteria to claim relief under 151.7(b)(1) address the Commission's concerns that an

[62] *See e.g., Exemptions from Speculative Position Limits for Positions which have a Common Owner but which are Independently Controlled and for Certain Spread Positions,* 53 FR 41563, 41564, Oct. 24, 1988); and *Exemption from Speculative Position Limits for Positions which have a Common Owner but which are Independently Controlled and for Certain Spread Positions,* 55 FR 30926, July 30, 1990.

[63] *See also, Exemptions from Speculative Position Limits for Positions which have a Common Owner but which are Independently Controlled and for Certain Spread Positions,* 53 FR 13290, 13292, Apr. 22, 1988. In response to two separate petitions, the Commission proposed the independent account controller exemption from speculative position limits, but declined to remove the ownership standard from its aggregation policy.

[64] *See also Revision of Federal Speculative Position Limits and Associated Rules,* 64 FR 24038, 24044, May 5, 1999 (''[T]he Commission * * * interprets the 'held or controlled' criteria as applying separately to ownership of positions or to control of trading decisions.''); and 53 FR 13290, 13293 (1988).

[65] The Commission codified this aggregation threshold in its 1979 statement of policy on aggregation, which was derived from the administrative experience of the Commission's predecessor. *See* Statement of Policy on Aggregation of Accounts and Adoption of Related Reporting Rules, 44 FR 33839, 33843, Jun. 13, 1979. Note, however, rule 151.7(d) will separately require aggregation of investments in accounts with identical trading strategies.

[66] *See e.g.,* 53 FR 13290, 13292 (1988) (proposal). The 1988 proposal for the independent account controller rule requested comment on the possibility of a broader passive investment exemption, and specifically noted:

''[Q]uestions also have been raised regarding the continued appropriateness of the Commission's aggregation standard which provides that a beneficial interest in an account or positions of ten percent or more constitutes a financial interest tantamount to ownership. This threshold financial interest serves to establish ownership under both the ownership criterion of the aggregation standard and as one of the indicia of control under the 1979 Aggregation Policy.

In particular, certain instances have come to the Commission's attention where beneficial ownership in several otherwise unrelated accounts may be greater than ten percent, but the circumstances surrounding the financial interest clearly exclude the owner from control over the positions. The Commission is requesting comment on whether further revisions to the current Commission rules and policies regarding ownership are advisable in light of the exemption hereby being proposed. If such financial interests raise issues not addressed by the proposed exemption for independent account controllers, what approach best resolves those issues while maintaining a bright-line aggregation test?''

[67] *See* 76 FR 71626, 71654.

[68] *See e.g.,* 53 FR 41563, 41567, Oct. 24, 1988 (the definition of eligible entity for purposes of the IAC exemption originally only included CPOs, or exempt CPOs or pools, but the Commission indicated a willingness to expand the exemption after a ''reasonable opportunity'' to review the exemption.); 56 FR 14308, 14312, Apr. 9, 1991 (The Commission expanded eligible entities to include commodity trading advisors, but did not include additional entities requested by commenters until the Commission had the opportunity to assess the current expansion and further evaluate the additional entities); and 64 FR 24038, May 5, 1999 (The Commission expanded the list of eligible entities to include many of the entities commenters requested in the 1991 rulemaking).

[69] The Commission notes that ownership and control are considered separately for the aggregation of accounts. As such, if the Commission were to adopt the proposed exemption outlined below, and a market participant qualified for the exemption, such person would nonetheless have to aggregate those same accounts or positions identified in the exemption if such person otherwise controlled trading, acted pursuant to an express or implied agreement or held positions in accounts with identical trading strategies.

ownership or equity interest of 10 percent and above may facilitate or enable control over trading of the owned entity or allow a person to accumulate a large position through multiple accounts that could overall amount to an unduly large position. Essentially, the proposed rules amending the ownership criteria for aggregation across accounts establish a rebuttable presumption that persons with an ownership or equity interest of 10 percent or greater must aggregate, but such persons may file for disaggregation relief if their ownership interest does not exceed 50 percent and they can demonstrate independence by meeting the criteria described below.[70]

Proposed rule 151.7(b)(1)(i)(A) conditions aggregation relief for the ownership interest in another entity on a demonstration that a person filing for disaggregation relief and the owned entity do not have knowledge of the trading decisions of the other. The Commission believes that where an entity has an ownership interest in another entity and neither entity share trading information, such entities demonstrate independence. In contrast, persons with knowledge of trading decisions of another in which they have an ownership interest are likely to take such decisions into account in making their own trading decisions, which implicates the Commission's concern about independence and enhances the risk for coordinated trading. For purposes of this provision, the Commission does not consider knowledge of overall end-of-day position information to necessarily constitute knowledge of trading decisions, so long as the position information cannot be used to dictate or infer trading strategies. As such, the knowledge of end-of-day positions for the purpose of monitoring credit limits for corporate guarantees would not necessarily constitute knowledge of trading information. However, the ability to monitor the development of positions on a real time basis could constitute knowledge of trading decisions because of the substantial likelihood that such knowledge might affect trading strategies or influence trading decisions of the other.

Proposed rule 151.7(b)(1)(i)(B) conditions aggregation relief on a demonstration that such person seeking disaggregation relief and the owned entity trade pursuant to separately developed and independent trading systems. Further, proposed rule 151.7(b)(1)(i)(C) conditions relief on a demonstration that such person and the owned entity have, and enforce, written procedures to preclude the one entity from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities. The Commission has applied these same conditions in connection with the IAC exemption to ensure independence of trading between an eligible entity and an affiliated independent account controller.[71] Such conditions have been useful in ensuring that trading is not coordinated through the development of similar trading systems, and that procedures are in place to prevent the sharing of trading decisions between entities. Similar to the IAC exemption, the proposed owned entity exemption in proposed rule 151.1(b)(1) would permit disaggregation if there is independence of trading between two entities. Thus the Commission proposes to include the above conditions, which are already applicable in the IAC context, and which should also strengthen the independence between the two entities for the owned entity exemption.

Proposed rule 151.7(b)(1)(i)(D) conditions aggregation relief on a demonstration that such person does not share employees that control the owned entity's trading decisions, and the employees of the owned entity do not share trading control with such persons. The Commission is concerned that shared employees with knowledge of trading decisions undermine the independence of trading between entities. Similar to the restriction on information sharing, the sharing of employees with knowledge of trading decisions presents a strong risk to the independence of trading between entities. In the aggregation petition, the Working Groups submit that entities should be permitted to share ''attorneys, accountants, risk managers, compliance and other mid- and back-office personnel.''[72] At this time, the Commission questions, and seeks comment regarding, whether the sharing of such persons compromises independence because it would provide each entity with knowledge of the other's trading decisions.[73]

Proposed rule 151.7(b)(1)(i)(E) conditions aggregation relief on a demonstration that the person and the owned entity do not have risk management systems that permit the sharing of trades or trading strategies with the other. This condition addresses concerns that risk management systems that permit the sharing of trades or trading strategies with each other present a significant risk of coordinated trading through the sharing of information.[74] The Commission has not proposed a condition that the risk management system be separately developed from the risk management system of the owned entity, and the Commission seeks comment as to whether risk management systems that do not communicate trade information can maintain independence of trading between entities.[75]

Proposed rule 151.7(b)(1)(ii) conditions aggregation relief on a demonstration that such person does not have greater than a 50 percent ownership or equity interest in the owned entity. An equity or ownership interest above 50 percent constitutes a majority ownership or equity interest of the owned entity and is so significant as to require aggregation under the ownership prong of Section 4a(a)(1) of the CEA. This proposal would provide administrative certainty and would address concerns about circumvention of position limits by coordinated trading or direct or indirect influence between entities. To the extent that the majority owner may have the ability and incentive to direct, control or influence the management of the owned entity, the proposed bright-line test would be a reasonable approach to the aggregation of owned accounts pursuant to Section

[70] The Commission notes that the conditions for independence apply to the person filing the notice as well as the owned entity. In addition, for purposes of complying with the proposed conditions, such ''person'' shall include any entity that such person must aggregate pursuant to regulation 151.7. For example, if company A files a notice under proposed regulation 151.7(b)(1) for company A's equity interest of 30 percent in company B, then company A must comply with the conditions for the exemption, including any entity with which company A aggregates positions under 151.7. In this connection, if company A controls the trading of company C, then there must be independence between company B and company C for purposes of company A's 151.7(b)(1) notice filing.

[71] *See* 17 CFR 151.7(f).

[72] Aggregation petition at Exhibit A.

[73] The Commission notes that the proposed condition barring the sharing of employees that control the owned entity's trading decisions would include a prohibition on sharing of employees described in the aggregation petition (attorneys, accountants, risk managers, compliance and other mid-and back-office personnel), to the extent such employees are aware of the trading decisions of the person or the owned entity.

[74] This condition is similar to a condition proposed in the aggregation petition.

[75] The Commission remains concerned that a trading system, as opposed to a risk management system, that is not separately developed from another system can subvert independence because such a system could apply the same or similar trading strategies even without the sharing of trading information.

4a(a)(1). A person with a greater than 50 percent ownership interest in multiple accounts would have the ability to hold and control a significantly large and potentially unduly large overall position in a particular commodity, which position limits are intended to prevent.[76]

The proposed owned entity exemption and the clarification and expansion of the violation of law exemption address concerns raised in the aggregation petition and interim final rule comments. First, the clarification and extension of the violation of law exemption responds to concerns that market participants could face increased liability under state, federal and foreign law. While the aggregation petition and other commenters argue that an owned non-financial entity exemption would reduce the risk of liability under antitrust and other laws, the proposed clarification and expansion would allow market participants to avail themselves of the violation of law exemption in those circumstances where the sharing of information creates a reasonable risk of violating the above mentioned bodies of law.

The proposed owned entity exemption applies to both financial and non-financial entities that have passive ownership interests. Market participants that qualify for the exemption can file a notice with the Commission demonstrating independence between entities and, thereafter, forgo the development of monitoring and tracking systems for the aggregation of accounts. The Commission seeks comment as to whether such passive interests present a significantly reduced risk of coordinated trading compared to owned entities that fail the criteria for the proposed exemption. In addition, the Commission specifically requests comment as to whether the proposed relief should be limited to ownership interests in non-financial entities.

While the owned non-financial entity exemption mentioned in the aggregation petition would permit disaggregation even if the owned entity is a wholly owned company, the Commission is concerned that an ownership interest greater than 50 percent presents heightened concerns for coordinated trading or direct or indirect influence over an account or position, and that permitting disaggregation at that level of ownership would be inconsistent with the statutory requirement to aggregate on the basis of ownership. Small ownership interests of less than 10 percent do not warrant aggregation. A 10 percent or greater ownership interest has served as a useful measure for aggregation, but the Commission has determined relief may be warranted for passive investments. However, for the reasons discussed above, an ownership interest greater than 50 percent requires aggregation because ownership at that level serves as a useful benchmark for the increased risk of direct or indirect influence over the trading of an owned entity. Because the circumstances facilitating control can be difficult to monitor, a facts and circumstances review would be difficult to administer by both market participants and the Commission. In addition, a person with a greater than 50 percent ownership interest in multiple accounts may have the ability to hold a significantly large and potentially unduly large overall position in a particular commodity, which position limits are intended to prevent. Therefore, the Commission proposes limiting the availability of the exemption to those having an ownership interest no greater than 50 percent because such a bright-line rule would provide clarity to market participants and a useful tool for the Commission to simplify aggregation where there is an increased and substantial risk of coordinated trading.[77]

With regard to filing requirements for the exemption in regulation 151.7(b) (1), the Commission notes that market participants would be required to file in accordance with regulation 151.7(h).[78] As such, market participants must file a notice with the Commission with a description of how they adhere to the criteria in regulation 151.7(b)(1) and a certification that the conditions are met. This certification, as well as any other certification made under regulation 151.7(h), must come from a senior officer of the market participant with knowledge as to the contents of the notice.[79] Therefore, the Commission is proposing to clarify in regulation 151.7(h)(1)(ii) that such certification come from a senior officer. Further, regulation 151.7(h)(3) requires market participants to promptly update a notice filing in the event of a material change of the information contained in the notice filing.[80]

With regard to the type of material necessary to file a notice to claim an exemption under 151.7(b)(1), the Commission notes that each submission must be specific to the facts of the particular entity. The person claiming the exemption must provide specific facts that demonstrate compliance with each condition of relief. Such a demonstration should likely include an organizational chart including the ownership and control structure of the involved entities, a description of the risk management system, a description of the information-sharing systems (including bulletin boards, and common email addresses of the entities identified), an explanation of how and to whom the trade data and position information is distributed (including the responsibilities of the individual receiving such information), and the officers that receive reports of the trade data and position information.[81]

The Commission specifically requests comments as to the appropriateness of the owned entity exemption as well as the conditions applicable to the exemption. Should the Commission add additional criteria? If so, what criteria and why? Should the Commission require market participants to submit additional information to claim the exemption? If so, what information and why? With regard to the owned entity exemption, should the Commission alter the scope of the exemption? If so, how should it be altered and why? Further,

[76] The Commission notes that aggregation based on ownership looks to a person's equity interest regardless of voting control. By way of comparison, with a greater than 50 percent interest in voting shares, such person generally is required to consolidate the owned entity for purposes of the Generally Accepted Accounting Principles (''GAAP''). *See* Financial Accounting Standards Board Accounting Standards Codification Topic 810, at paragraphs 810–10–15–8 and 10, available at *https://asc.fasb.org/. See also* Accounting Research Bulletin 51 at paragraph 3 and Statement of Financial Accounting Standard No. 94 at paragraph 2. The Commission believes that aggregation based upon an ownership or equity interest of greater than 50 percent, regardless of voting interest, is appropriate to address the heightened risk of direct or indirect influence over the owned entity. Further, unless a particular exemption applies, a person with a 50 percent or greater voting interest in an owned entity would likely be required to aggregate the positions of the owned entity on the basis of control.

[77] The Commission reminds market participants that proposed regulation 151.7(b)(1) does not affect the applicability of a separate exemption from aggregation (e.g., the independent account controller exemption).

[78] Where the provisions of regulation 151.7 require a person to file a notice, entities cannot rely upon an exemption unless such entity has properly filed a notice in accordance with regulation 151.7(h).

[79] *See* 17 CFR 151.7(h)(1)(ii). Market participants should update the certification if the individual certifying compliance no longer works for the company.

[80] In this regard, the Commission clarifies that a material change would include, among other events, if the person making the original certification is no longer employed by the company. *See also* CEA § § 6(c)(2) and 9(a)(3).

[81] The Commission notes that this list is not meant to be exhaustive of the factors that would indicate an exemption is warranted and should not be interpreted as being solely sufficient to claim the exemption because each filing is fact specific. As noted earlier, the Commission may demand additional information regarding the exemption within its discretion.

at what percent of ownership interest should a market participant no longer be able to claim the exemption proposed in regulation 151.7(b)(1), if any? Are there specific circumstances in which a higher percentage of ownership than 50 percent would be appropriate to claim the exemption in regulation 151.7(b)(1) notwithstanding the concerns described above regarding coordinated trading, direct or indirect influence, and significantly large and potentially unduly large overall positions in a particular commodity? In addition, the Commission welcomes comment on the owned non-financial entity exemption set forth in appendix A of the aggregation petition as an alternative to the owned entity exemption proposed herein.

2. Higher Tier Entities

In connection with the Working Groups' request for the Commission to include an owned non-financial entity exemption, the Working Groups also request that the Commission provide relief from the filing requirements for claiming the exemption. Specifically, the aggregation petition argues that if an entity files a notice and claims the owned non-financial entity exemption, then ''every higher-tier company (a company that holds an interest in the company that submitted the notice) need not aggregate the referenced contracts of the owned non-financial entities identified in the notice.'' [82] Thus, the Commission is proposing rules that provide relief to such ''higher-tier entities'' within the context of a corporate structure.[83]

Proposed rule 151.7(j) provides that higher-tier entities may rely upon a notice for exemption filed by the owned entity, and such reliance would only go to the accounts or positions specifically identified in the notice. For example, if company A has a 30 percent interest in company B, and company B has filed an exemption notice for the accounts and positions of company C, then company A may rely upon company B's exemption notice for the accounts and positions of company C. Should company A wish to disaggregate the accounts or positions of company B, company A would have to file a separate notice for an exemption.

The proposed rules also provide that a higher-tier entity that wishes to rely upon an owned entity's exemption notice must comply with conditions of the applicable aggregation exemption other than the notice filing requirements. Although higher-tier entities need not submit a separate notice to rely upon the notice filed by an owned entity, the Commission notes that it may, upon call, request that a higher-tier entity submit information to the Commission, including the possibility of an on-site visit, demonstrating compliance with the applicable conditions.

The Commission believes that these proposed rules, if adopted, should significantly reduce the filing requirements for aggregation exemptions. Further, the Commission does not anticipate that the reduction in filing will impact the Commission's ability to effectively survey the proper application of exemptions from aggregation. The initial filing of an owned entity exemption notice should provide the Commission with sufficient information regarding the appropriateness of the exemption, while repetitive filings of higher-tier entities would not be expected to provide additional substantive information. However, the Commission again notes that higher-tier entities would still be required to comply with the substantive conditions of the exemption specified in the owned entity's notice filing.

C. Underwriting

As noted above, Commission regulation 151.7(g) includes an exemption from aggregation where an ownership interest is in an unsold allotment of securities. FIA requests that the Commission expand the exemption to include situations where securities are owned in anticipation of demand as part of normal market-making activity, or as a result of a routine life cycle event, such as a stock distribution.

The Commission believes that the ownership interest of a broker-dealer registered with the SEC, or similarly registered with a foreign regulatory authority,[84] in an entity based on the ownership of securities acquired as part of reasonable activity in the normal course of business as a dealer is largely consistent with the ownership of an unsold allotment of securities covered by the underwriting exemption currently found in regulation 151.7(g). In both circumstances, the ownership interest is likely transitory and not to hold for investment purposes. Accordingly, the Commission is proposing an aggregation exemption in regulation 151.7(g) for such activity.[85]

However, the Commission notes that this exemption would not apply where a broker-dealer acquires more than a 50 percent ownership interest in another entity because this would not be consistent with holding such a transitory interest for the purpose of market making and runs a higher risk of coordinated trading.[86] Therefore, a broker-dealer that acquires more than 50 percent ownership interest in another entity must aggregate that entity, in the absence of another aggregation exemption.

The Commission requests comment on whether ownership of stock, by a broker-dealer registered with the SEC or similarly registered with a foreign regulatory authority, that is acquired as part of reasonable activity in the normal course of business as a dealer, without other ownership interests or indicia of control or concerted action, warrants aggregation.

D. Independent Account Controller for Eligible Entities

As noted above in section I.A of this release, section 151.7(f) provides an eligible entity with an exemption for the eligible entity's customer accounts that are managed and controlled by independent account controllers. In the part 151 rulemaking, the Commission adopted the same definitions of eligible entity and independent account controller found in the Commission's prior position limit regulations in regulation 150.1. The definition of eligible entity includes ''the limited partner or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter * * *.'' However, with regard to a CPO that is exempt under regulation 4.13, the definition of an independent account controller only extends to ''a general partner of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter.'' At the time the Commission expanded the IAC exemption to include regulation 4.13 commodity pools, market participants generally structured such pools as limited partnerships.[87]

The Commission understands that today, not all regulation 4.13 commodity pools are formed as partnerships. For example, regulation

[82] Aggregation petition at 23.

[83] For purposes of the discussion below, ''higher-tier'' entities include entities with a 10 percent or greater ownership interest in an owned entity.

[84] *See* 15 U.S.C. 78o.

[85] The Commission specifically notes that this proposed exemption would not apply to registered broker-dealers that acquire an ownership interest in securities with the intent to hold for investment purposes.

[86] With regard to FIA's request that the exemption include a broker-dealer's ownership of securities in anticipation of demand or as part of routine life cycle events, the proposed rules would cover such activity if the activity was in the normal course of the person's business as a dealer.

[87] *See* 63 FR 38532.

4.13 pools may be formed as limited liability companies and have managing members, not general partners.

The Commission is proposing to expand the definition of independent account controller to include the managing member of a limited liability company. As such, regulation 4.13 commodity pools established as limited liability companies would be accorded the same treatment as such pools formed as limited partnerships. The limitation of the exemption to general partners was based upon a market structure that, historically, did not generally include regulation 4.13 commodity pools established as limited liability companies. In light of market developments since the Commission expanded IACs to include regulation 4.13 pools as eligible entities, it may not be appropriate for there to be a distinction between limited partnerships and limited liability companies in this regard. As such, the Commission is proposing to amend the definitions of eligible entity and independent account controller in part 151.1 to specifically provide for regulation 4.13 commodity pools established as limited liability companies.

The Commission intends to coordinate the disposition of the petition with the implementation of position limits under part 151. To do so, among other things, the Commission has directed staff to promptly review comment letters as soon as practicable following close of the comment period. Further, in order to provide an orderly transition to the compliance dates specified in part 151.4, the Commission intends to finalize consideration of the petition prior to the first compliance date of part 151.

III. Related Matters

A. Considerations of Costs and Benefits

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing an order.[88] Section 15(a) further specifies that the costs and benefits shall be evaluated in light of the following five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The proposed rules provide the public with an opportunity to comment on concerns raised in the aggregation petition and in comments on the interim final rule. The petitioner and the commenters seek clarification of certain provisions of the Commission's aggregation policy, and seek to alter or expand exemptions from aggregation to include circumstances where there may be a low risk of coordinated trading. The Commission requests comment on all aspects of its consideration of costs and benefits, including identification and assessment of any costs and benefits not discussed herein. In addition, the Commission requests that commenters provide data and any other information or statistics that they believe supports their positions with respect to the Commission's consideration of costs and benefits.

1. Aggregation Petition and Other Comments

As discussed in section I.B. of this release, the Commission received a petition seeking relief from certain aggregation provisions in the final rules, as well as several comments regarding aggregation in response to the interim final rule on cash-settled contract limits. Among other things, the aggregation petition requests that the Commission provide an aggregation exemption for owned non-financial entities similar to an exemption that the Commission proposed but did not adopt in its final rules.[89]

The aggregation petition states that compliance with the final rules' aggregation requirements would require information sharing and coordination of trading that is contrary to current best practices.[90] The aggregation petition contends that the aggregation rules may impede investment in commercial firms, impair liquidity and competition in energy derivatives markets, or cause firms to exit the market altogether.[91] Further, the aggregation petition states that the aggregation rules necessitate the development and implementation of extensive and expensive information technology systems that can track positions across numerous affiliates, even if those affiliates currently trade independently of each other.[92] The aggregation petition also submits that companies with an ownership position in a joint venture would have to divest their interest to avoid operational difficulties associated with aggregating positions.[93] The petitioner contends that these asserted costs could be mitigated if the Commission were to adopt a variant of the owned non-financial entity exemption,[94] clarify that the violation of law exemption applies to situations in which there is a ''reasonable risk'' of violating the applicable law, expand the violation of law exemption to include possible violations of local, state, foreign, and international law,[95] and adopt provisions relieving ''higher-tier'' entities of the filing requirement, as discussed above.[96]

Several commenters to the Commission's interim final rule also suggest that the Commission adopt a version of the ''owned non-financial entity'' exemption; these commenters argue that even above 10 percent ownership, where there is no common control, there is no risk of coordinated trading and, therefore, no need for aggregation of positions.[97] These commenters recommend that the Commission aggregate based on control, and not based on an ownership interest in a position or account.[98] Commenters contend that aggregation of accounts in passive investments, where the owned entity is independently managed and controlled, will be costly and have a negative impact on markets and market participants.[99] Commenters also claim that many businesses establish information barriers between affiliates, and that the final rules would require the destruction of those barriers in order to ensure compliance.[100]

As with the petitioners, commenters to the interim final rule also assert that the aggregation provisions impose significant operational challenges for entities and end-users in particular, requiring them to develop and maintain costly internal infrastructure mechanisms to ensure compliance.[101] FIA estimates that for a large conglomerate, costs to comply with the final rule's aggregation procedures could be high. In particular, FIA estimates that each entity could spend as much as $500,000 to $1,000,000 to identify all entities subject to

[88] 7 U.S.C. 19(a).

[89] As part of the proposed rules for part 151, the Commission proposed that persons with an ownership or equity interest in a non-financial entity need not aggregate the positions or accounts of the non-financial entity provided the person filed an application demonstrating compliance with certain conditions. *See Position Limits for Derivatives,* 76 FR 4752, 4762–63, Jan. 26, 2011.

[90] *See* Aggregation Petition at 19.

[91] Id. at 10–16.

[92] Id. at 11.

[93] Id. at 15.

[94] Id. at Exhibit A.

[95] Id. at 16–18.

[96] Id. at 23.

[97] *See* CL–FIA at 15; CL-Atmos at 4–5; and CL–EEI at 14–15.

[98] *See* e.g. CL–FIA at 15; CL–EEI at 1–2, 14–15; CL-Atmos at 3–5; and CL–AGA at 1–3.

[99] *See* CL–FIA at 18 and CL–EEI at 16–17.

[100] *See* CL–FIA at 15; CL–EEI at 14–15; and CL-Atmos at 3.

[101] *See* CL–EEI at 14–15; and CL-Atmos at 1–2.

aggregation and to establish protocols for reporting all commonly owned and controlled positions in Referenced Contracts; as much as $1,000,000 to $1,500,000 to establish new information technology systems for consolidating and tracking aggregated position information; and approximately $100,000 for each entity subject to aggregation to report position information to its affiliates and/or controlling entities.[102]

With regard to the exemption for federal law information sharing restriction in regulation 151.7(i), several commenters also suggest that the Commission extend the exemption to include state and foreign jurisdictions.[103] One commenter wrote that the provision in regulation 151.7(i) that requires an opinion of counsel to obtain such an exemption was too burdensome and should be revised.[104]

One commenter also suggests that the Commission extend the underwriting exemption in regulation 151.7(g) to include situations where a broker-dealer acquires positions for legitimate dealing reasons, such as in anticipation of increased demand, as part of its normal market-making activity, or as a result of a routine life-cycle event.[105]

2. Summary of the Commission's Proposal

Exemption for Violation of Laws. In the final part 151 rules, the Commission included an exemption from aggregation for those entities for whom sharing the requisite information would violate federal law. The Commission seeks to clarify that it always intended the exemption to apply in those circumstances in which the sharing of information presents a ''reasonable risk'' of violating the applicable law(s).

As explained above, one commenter urged the Commission to drop the requirement that, to obtain the violation-of-laws exemption an entity must submit an opinion of counsel (as discussed in section II.C). Such an opinion allows the Commission to review the facts and circumstances supporting the claimed exemption, and thus the proposed rules would retain the requirement to submit an opinion of counsel.

In light of the aggregation petition and comments on the interim final rule, the Commission is including in this proposal an expansion of the violation-of-law exemption to include state law and the law of foreign jurisdictions. The existing rule allows entities who believe that the aggregation provisions would require them to violate state or foreign laws to seek an exemption on a case-by-case basis. The Commission seeks comment as to the scope of the proposed exemption.

Proposed Owned Entity Exemption. Proposed rule 151.7(b)(1) provides that any person with an ownership or equity interest in an entity (financial or non-financial) of 10 percent or greater may disaggregate the owned entity's positions upon demonstrating compliance with each of several specified indicia of independence.[106] The proposed indicia are that such person and the owned entity: (1) Do not have knowledge of the trading decisions of the other; (2) trade pursuant to separately developed and independent trading systems; (3) have in place policies and procedures to preclude sharing knowledge of, gaining access to, or receiving data about, trades of the other; (4) do not share employees that control the trading decisions of the other; and (5) maintain a risk management system that does not allow the sharing of trade information or trading strategies between entities. In addition, such person's ownership or equity interest in the owned entity cannot exceed 50 percent.

The aggregation petition and several of the other commenters urge that the Commission should permit market participants to disaggregate accounts in situations where ownership of an account is passive, as they contend there is a less of a concern regarding coordinated trading.[107] The aggregation petition and other commenters suggest that the Commission add an owned non-financial entity exemption, which they contend would incorporate such situations as well as alleviate potential negative impacts to liquidity and competition in both physical and derivatives markets.

The Commission is proposing to permit disaggregation of entities where a person has no greater than a 50 percent interest in the entity and meets certain other conditions. The proposed owned-entity exemption would apply to a person's passive investments in either financial or non-financial entities. Those who qualify under this proposal would have to demonstrate that they meet all of its conditions. The Commission seeks comment as to whether the concerns suggested by the aggregation petition and other commenters are valid, whether this proposal meets those concerns, and whether the 50 percent limit and other conditions are appropriate.

Expansion of the Underwriter Exemption. The Commission is also proposing to expand the exemption for the underwriting of securities that was adopted as regulation 151.7(g) to include ownership interests acquired through the market-making activities of an affiliated broker dealer. This proposal would exempt from aggregation ownership interests acquired as part of a person's reasonable market-making activity in the normal course of business as a broker-dealer registered with the SEC or comparable registration in a foreign jurisdiction,[108] so long as there is no other ownership interests or indicia of control or concerted action. The Commission intends for this proposal to apply to ownership interests that are likely transitory and not for investment purposes, and seeks comment as to whether such interests are at a low risk for the coordination of trading or whether this exemption could lead to evasion of applicable position limits.[109]

Proposed ''Higher-Tier'' Entity Filing Relief. The Commission also is proposing to extend filing relief to ''higher-tier'' entities. As such, proposed regulation 151.7(j) provides that higher-tier entities may rely on exemption notices filed by owned entities. Commenters claim that such an exemption would reduce the burden of filing exemption notices by eliminating redundancies. The Commission seeks comment as to whether this proposal will in fact reduce the filing burden for claiming an exemption, and whether the proposal would affect the Commission's

[102] *See* CL–FIA at 19–20.

[103] *See* CL–EEI at 17–18; CL–AGA at 1–2; CL–FIA at 6; and CL-Atmos at 5.

[104] *See* CL–AGA at 5.

[105] *See* CL–FIA at 16.

[106] As discussed in section II.D.1, at over 50 percent ownership, the proposed ownership standard would mandate aggregation in order to give effect to the statutory requirement that positions ''held'' by a person must be aggregated, and because of a person's ability to influence management and the concomitant heightened concerns about coordinated trading. The owned entity exemption does not impact the availability of the IAC, FCM, and federal, state, or foreign law information sharing restriction exemptions as found in regulation 151.7(h). However, as proposed, this exemption from the ownership criteria would not apply to investments in accounts with identical trading strategies.

[107] They further contend that a lack of an owned non-financial entity exemption could increase liability for antitrust and other federal law and regulations. This concern is addressed by the proposed clarification discussed above, which provides that market participants may avail themselves of the violation of law exemption if the sharing of information creates a reasonable risk of a violation.

[108] *See* 15 U.S.C. 78o.

[109] The Commission specifically notes that this proposed exemption would not apply to registered broker-dealers that acquire an ownership interest in securities with the intent to hold for investment purposes.

ability to oversee how exemptions are applied in the market.

Independent Account Controller Exemption. As discussed above, the IAC exemption in regulation 151.7(f) previously included commodity pools exempt from registration under § 4.13 that are structured as limited partnerships. The Commission is proposing to allow commodity pools structured as limited liability companies to rely on the IAC exemption. The Commission seeks comment as to whether there is any relevant distinction between limited partnerships and limited liability companies for purposes of this exemption.

3. Consideration of Costs and Benefits

It is the Commission's goal that this proposal uphold part 151's regulatory aims without diminishing its effectiveness. In so doing, the Commission adheres to its belief that aggregation represents a key element to prevent evasion of prescribed position limits and that its historical approach towards aggregation—one that appropriately blends consideration of ownership and control indicia—remains sound.[110]

The Commission seeks comment as to whether compliance with this proposal will reduce the costs market participants will incur to comply with the aggregation requirements of the final rules. In particular, how would the cost of filing a notice for disaggregation relief compare with the cost of developing systems necessary to aggregate the positions of owned entities under the current version of part 151? Note that, in the preamble to part 151, the Commission estimated that the filing of a Notice of Disaggregation would create certain costs for market participants.[111] In particular, the Commission approximated that the aggregation-related reporting requirements would affect ''ninety entities, resulting in a total burden, across all these entities, of 225,000 annual labor hours and $5.9 million in annualized capital, start-up, total operating, and maintenance costs.'' [112] The Commission has estimated the additional burden that may result from the proposed rules as part of its Paperwork Reduction Act calculations, and requests comment on those estimations.[113] The Commission also seeks comment as to how many entities would be able to take advantage of the proposed exemption. Alternatively, how many entities would be able to take advantage of the owned non-financial entity exemption described in the aggregation petition?

Because costs associated with the aggregation of positions are highly variable and entity-specific, the Commission requests that commenters submit data from which the Commission can consider and quantify the costs of the proposed rules.

In assessing benefits, it is important for the Commission to determine whether the proposed rules will enhance the Commission's ability to monitor compliance with position limits by focusing the Commission's resources on those entities most at risk of coordinated trading through multiple accounts. The Commission seeks comment as to whether the proposed amendments to the Commission's aggregation policy will result in lower costs for market participants without compromising the core purposes of the position limits regime.

4. Section 15(a) Considerations

As the Commission has long held, position limits are an important regulatory tool that is designed to prevent concentrated positions of sufficient size to manipulate or disrupt markets. The aggregation of accounts for purposes of applying position limits represents an integral component that impacts the effectiveness of those limits. In the final rule, the Commission implemented a policy for the aggregation of accounts that largely tracked its longstanding standards of aggregation, which were designed to prevent evasion of those position limits. The proposed rules would amend this policy to introduce and expand certain exemptions. The Commission intends for the proposed rules to preserve the important protections of the existing aggregation policy, but at a lower cost for market participants. The Commission requests comment on its consideration of the costs and benefits of the proposed rules in relation to each of the Section 15(a) factors discussed herein.

a. Protection of Market Participants and the Public

The Commission wants to ensure that the exemptions proposed in these rules will not lessen the protection of market participants and the public that the aggregation policy in the Final Rule provides. Given that the account aggregation standards are necessary to implement an effective position limit regime, it is important that the clarified and expanded exemptions of the proposed rules be sufficiently tailored to exempt from aggregation only those accounts that do pose a low risk of coordinated trading. The Commission believes that clarifying the scope of the violation of law exemption to include the risk of violating the applicable law more accurately informs market participants as to the standard for claiming the exemption. The proposed owned-entity exemption maintains the Commission's historical presumption threshold of 10 percent ownership or equity interest and makes that presumption rebuttable only where several conditions indicative of independence are met. This exemption focuses on the conditions that impact trading independence. The Commission intends that any exemption it adopts would allow the Commission to direct its resources to monitoring those entities with a higher risk of coordinated trading and thus at a higher risk of circumventing position limits, without reducing the protection of market participants and the public that the Commission's aggregation policy affords.

Similarly, the Commission intends for the ''higher-tier'' entity exemption, and the expansion of the underwriting and IAC exemptions, to reduce costs for market participants without a compromise to the integrity or effectiveness of the Commission's aggregation policy.

The Commission welcomes comment regarding whether the proposed rules would impact protection of market participants and the public.

b. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

The Commission wants to ensure that the exemptions proposed in these rules would fully preserve account aggregation as a tool to uphold the integrity of the part 151 position limit regime, which helps maintain the overall competitiveness and integrity of derivatives markets. The Commission seeks comment regarding whether the proposed rules would impact the efficiency, competitiveness, and/or financial integrity of futures markets.

c. Price Discovery

Similarly, the Commission wants to ensure that the exemptions proposed in these rules do not adversely impact the price discovery process, which the part 151 position limit regime (including the account aggregation provisions in

[110] The Commission's general policy on aggregation is derived from CEA Section 4a(a)(1), which directs the Commission to aggregate based on separate considerations of ownership, control, or persons acting pursuant to an express or implied agreement.

[111] The costs of filing the Notice included costs of filing an opinion of counsel as well as the other necessary information under § 151.7(h).

[112] 76 FR 71626 at 71683.

[113] See section III.C.2 of this release.

§ 151.7) is designed to protect. The Commission welcomes comment as to whether the proposed rules would impact price discovery.

d. Sound Risk Management

The Commission wants to ensure that the exemptions proposed in these rules will not lessen the effectiveness of the sound risk management practices that the Final Rule promotes. The Commission welcomes comment as to whether the proposed rules would impact sound risk management practices.

e. Other Public Interest Considerations

The Commission has not identified any other public interest considerations related to the costs and benefits of the proposed rules. The Commission welcomes comment as to whether there are additional public interest considerations the Commissions should consider.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that agencies consider the impact of their regulations on small businesses.[114] The requirements related to the proposed amendments fall mainly on DCMs, swap execution facilities (''SEF'') that are trading facilities, FCMs, foreign brokers, and large traders. The Commission has previously determined that DCMs, FCMs, foreign brokers and large traders are not ''small entities'' for the purposes of the RFA.[115] Further, in the Commission's position limits rule,[116] the Commission determined that SEFs, which includes SEFs that are trading facilities, are not ''small entities'' for purposes of the RFA.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies, on behalf of the Commission, pursuant to 5 U.S.C. 605(b), that the actions proposed to be taken herein would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (''PRA'') imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA.[117] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Certain provisions of the proposed regulations would result in new collection of information requirements within the meaning of the PRA. The Commission seeks to supplement the control number assigned by the Office of Management and Budget (''OMB'') for part 151—Position Limits for Futures and Swaps (OMB control number 3038–0077). Therefore the Commission is submitting this proposal to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11.

In January of 2012, the Commission received a petition requesting relief under section 4a(a)(7) of the CEA and clarification of certain aggregation requirements in regulation 151.7. In response to that petition, the Commission is proposing to clarify certain aspects of the aggregation standards, and to expand the scope of certain exemptions from aggregation. If adopted, responses to this collection of information would be mandatory to the extent persons wish to rely upon the exemptions contained within the proposed amendments to Commission regulation 151.7. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, headed ''Commission Records and Information.'' In addition, the Commission emphasizes that section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.[118] The Commission also is required to protect certain information contained in a government system of records pursuant to the Privacy Act of 1974.[119]

Proposed rule 151.7(b)(1) establishes an exemption for a person to disaggregate the positions of a separately organized entity (''owned entity''). To claim the exemption, a person would need to meet certain criteria and file a notice with the Commission in accordance with regulation 151.7(h). The notice filing would need to demonstrate compliance with certain conditions set forth in regulations 151.7(b)(1)(i)–(vii). Similar to other exemptions from aggregation, the notice filing would be effective upon submission to the Commission, but the Commission may call for additional information as well as reject, modify or otherwise condition such relief. Further, such person is obligated to amend the notice filing in the event of a material change to the filing.

The proposed rules also amend regulation 151.7(i), which provides an exemption from aggregation where the sharing of information between persons would cause either person to violate federal law. The proposed amendments clarify that the exemption would apply to a situation where the sharing of information creates a reasonable risk of a violation of federal law or regulations adopted thereunder, and not solely a per se violation. For the same reasons the Commission adopted the exemption for information sharing restrictions for federal law, the Commission expanded the exemption in regulation 151.7(i) to generally extend to the state law and the law of a foreign jurisdiction. The proposed rules also retain the requirement that market participants file a notice demonstrating compliance with the condition and an opinion of counsel that the sharing of information could create a reasonable risk of a violation of state or federal law or the law of a foreign jurisdiction. The opinion allows Commission staff to review the legal basis for the asserted regulatory impediment to the sharing of information, and is particularly helpful where the asserted impediment arises from laws and/or regulations that the Commission does not directly administer. Further, Commission staff will have the ability to consult with other federal regulators as to the accuracy of the opinion, and to coordinate the development of rules surrounding information sharing and aggregation across accounts in the future.

The Commission is also proposing to amend the definitions of eligible entity and independent account controller in part 151.1 to specifically provide for regulation 4.13 commodity pools established as limited liability companies. These proposed amendments will likely expand the number of entities that can file for the independent account controller aggregation exemption.

Finally, the proposed rules include relief from notice filings for ''higher-tier'' entities, which, under proposed regulation 151.7(j), may rely on the filings submitted by owned entities. A ''higher-tier'' entity need not submit a separate notice pursuant to the notice filing requirements to rely upon the notice filed by an owned entity as long as it complies with conditions of the applicable aggregation exemption.

[114] 44 U.S.C. 601 et seq.

[115] *See Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act,* 47 FR 18618, Apr. 30 1982. *See also Special Calls,* 72 FR 34417, Jun. 22, 2007 (foreign broker determination).

[116] 76 FR 71626, Nov. 18, 2011.

[117] 44 U.S.C. 3501 et seq.

[118] 7 U.S.C. 12(a)(1).

[119] 5 U.S.C. 552a.

2. Reporting Burdens

Proposed regulation 151.7(b)(1) specifies that qualified persons may file a notice claiming exemptive relief from aggregation. Proposed regulation 151.7(b)(1)(vii) states that the notice is to be filed in accordance with regulation 151.7(h), which requires a description of the relevant circumstances that warrant disaggregation and a statement that certifies that the conditions set forth in the exemptive provision have been met. Persons claiming the exemption would be required to submit to the Commission, as requested, such information as relates to the claim for exemption. An updated or amended notice must be filed with the Commission upon any material change.

With regard to the existing filing procedure for claiming exemptions from aggregation, in the part 151 final rule the Commission estimated that ninety entities would incur a burden of 225,000 annual labor hours as well as $5.9 million in annualized capital, start-up, total operating, and maintenance costs. This estimate was based on each entity submitting one notice of disaggregation per year at a burden of 2,500 labor hours. Given the expansion of the exemptions that market participants may claim, the Commission anticipates an increase in the number of notice filings; however, because of the relief for ''higher-tier'' entities under proposed regulation 151.7(j), the Commission expects that increase to be offset by a reduction in the number of filings by ''higher-tier'' entities. Thus, the Commission anticipates a small net increase in the number of filings under regulation 151.7 as a result of the proposed rules. The Commission believes that this small increase will create a small increase in the annual labor burden. However, because entities will have already incurred the capital, start-up, operating, and maintenance costs to file other exemptive notices, the Commission does not anticipate an increase in those costs.

In light of the Commission providing for these additional exemptions, the Commission estimates that 90 entities will each file two notices annually under proposed regulation 151.7(b)(1), at an average of 20 hours per filing. Thus, the Commission approximates a total per-entity burden of 40 labor hours annually. Using the same labor cost estimates as in the existing collection (OMB# 3038–0077),[120] such a burden would cost approximately $3,100 per entity for filings under proposed regulation 151.7(b)(1). Under proposed regulation 151.7(f), the Commission anticipates that 10 entities will annually file one notice each, at an average of 20 hours per filing, for a per-entity burden of 20 labor hours annually. Such a burden would cost approximately $1,600 per entity. Finally, the Commission anticipates that 45 entities will annually file one notice each under proposed regulation 151.7(i), at an average of 80 hours per filing, for a per-entity burden of 80 hours each. Such a burden would cost approximately $6,300 per entity. Monetary estimates have been rounded to the nearest hundred.

In sum, the Commission estimates that 145 entities would submit a total of 235 responses per year and incur a total burden of 7,400 labor hours at a cost of approximately $582,000 annually in addition to the existing burden under § 151.7.

3. Comments on Information Collection

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility, (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information, (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected, and (4) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by email at *OIRA-submissions@omb.eop.gov.* Please provide the Commission with a copy of comments submitted so that all comments can be summarized and addressed in the final regulation preamble. Refer to the Addresses section of this notice for comment submission instructions to the Commission. A copy of the supporting statements for the collection of information discussed above may be obtained by visiting *RegInfo.gov*. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is most assured of being fully considered if received by OMB (and the Commission) within 30 days after the publication of this notice of proposed rulemaking.

List of Subjects in 17 CFR Part 151

Position limits, Bona fide hedging, Referenced contracts.

In consideration of the foregoing, pursuant to the authority contained in the Commodity Exchange Act, the Commission hereby proposes to amend chapter I of title 17 of the Code of Federal Regulations as follows:

PART 151—POSITION LIMITS FOR FUTURES AND SWAPS

1. The authority citation for part 151 is revised to read as follows:

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

2. In § 151.1, revise the definition for ''eligible entity'' and paragraph (5) of the definition of ''independent account controller'' to read as follows:

§ 151.1 Definitions.

* * * * *

Eligible Entity means a commodity pool operator; the operator of a trading vehicle which is excluded, or which itself has qualified for exclusion from the definition of the term ''pool'' or ''commodity pool operator,'' respectively, under § 4.5 of this chapter; the limited partner, limited member or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings association; an insurance company; or the separately organized affiliates of any of the above entities:

* * * * *

Independent Account Controller

* * *

(5) Who is registered as a futures commission merchant, an introducing broker, a commodity trading advisor, or

[120] The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $78.61 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2010, modified to account for an 1800-hour work-year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight); ''programmer (senior)'' (60% weight), ''compliance advisor (intermediate)'' (20%), ''systems analyst'' (10%), and ''assistant/associate general counsel'' (10%).

an associated person of any such registrant, or is a general partner or manager of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter.

* * * * *

3. Revise § 151.7 to read as follows:

3. In § 151.7:

a. Revise paragraph (b);

b. Add paragraph (e)(4);

c. Revise paragraphs (g), (h), and (i); and

d. Add paragraph (j).

The revisions and additions read as follows:

§ 151.7 Aggregation of positions.

* * * * *

(b) *Ownership of accounts generally.* For the purpose of applying the position limits set forth in § 151.4, except for the ownership interest of limited partners, shareholders, members of a limited liability company, beneficiaries of a trust or similar type of pool participant in a commodity pool subject to the provisos set forth in paragraph (c) of this section or in accounts or positions in multiple pools as set forth in paragraph (d) of this section, any person holding positions in more than one account, or holding accounts or positions in which the person by power of attorney or otherwise directly or indirectly has a 10 percent or greater ownership or equity interest, must aggregate all such accounts or positions. However—

(1) Any person with a 10 percent or greater ownership or equity interest in an owned entity, need not aggregate the accounts or positions of the owned entity with any other accounts or positions such person is required to aggregate, provided that:

(i) Such person, including any entity that such person must aggregate, and the owned entity:

(A) Do not have knowledge of the trading decisions of the other;

(B) Trade pursuant to separately developed and independent trading systems;

(C) Have and enforce written procedures to preclude each from having knowledge of, gaining access to, or receiving data about, trades of the other. Such procedures must include document routing and other procedures or security arrangements, including separate physical locations, which would maintain the independence of their activities;

(D) Do not share employees that control the trading decisions of either; and

(E) Do not have risk management systems that permit the sharing of trades or trading strategy;

(ii) Such person does not have greater than a 50 percent ownership or equity interest in the owned entity; and

(iii) Such person complies with the requirements of paragraph (h) of this section.

(2) [Reserved]

* * * * *

(e) * * *

(4) The futures commission merchant or the affiliate has complied with the requirements of paragraph (h) of this section.

* * * * *

(g) *Exemption for underwriting.* Notwithstanding any of the provisions of this section, a person need not aggregate the positions or accounts of an owned entity if the ownership interest is based on the ownership of securities constituting the whole or a part of an unsold allotment to or subscription by such person as a participant in the distribution of such securities by the issuer or by or through an underwriter.

(1) *Further,* a broker-dealer registered with the Securities and Exchange Commission, or similarly registered with a foreign regulatory authority, need not aggregate the positions or accounts of an owned entity if the ownership interest is based on the ownership of securities acquired as part of reasonable activity in the normal course of business as a dealer, *provided that,* such person does not have actual knowledge of the trading decisions of the owned entity.

(h) *Notice filing for exemption.* (1) Persons seeking an aggregation exemption under paragraph (b)(1), (c), (e), (f), or (i) of this section shall file a notice with the Commission, which shall be effective upon submission of the notice, and shall include:

(i) a description of the relevant circumstances that warrant disaggregation; and

(ii) a statement of a senior officer of the entity certifying that the conditions set forth in the applicable aggregation exemption provision have been met.

(2) Upon call by the Commission, any person claiming an aggregation exemption under this section shall provide such information concerning the person's claim for exemption as is requested by the Commission. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

(3) In the event of a material change to the information provided in the notice filed under this paragraph, an updated or amended notice shall promptly be filed detailing the material change.

(4) A notice shall be submitted in the form and manner provided for in § 151.10.

(i) *Exemption for law information sharing restriction.* Notwithstanding any other provision of this section, a person is not subject to the aggregation requirements of this section if the sharing of information associated with such aggregation creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder, and provided that such a person does not have actual knowledge of information associated with such aggregation. Provided further, that such person file a prior notice pursuant to paragraph (h) of this section and an opinion of counsel that the sharing of information creates a reasonable risk that either person could violate state or federal law or the law of a foreign jurisdiction, or regulations adopted thereunder. *Provided however,* the exemption in this paragraph shall not apply where the law or regulation serves as a means to evade the aggregation of accounts or positions. All documents submitted pursuant to this paragraph shall be in English, or if not, accompanied by an official English translation.

(j) *Higher-Tier Entities.* If an owned entity has filed a notice under paragraph (h) or (i) of this section, any person with an ownership or equity interest of 10 percent or greater in the owned entity need not file a separate notice identifying the same positions and accounts previously identified in the notice filing of the owned entity, provided that:

(1) Such person complies with the conditions applicable to the exemption specified in the owned entity's notice filing, other than the filing requirements; and

(2) Such person does not otherwise control trading of the accounts or positions identified in the owned entity's notice.

(3) Upon call by the Commission, any person relying on the exemption in paragraph (j)(1) of this section shall provide to the Commission such information concerning the person's claim for exemption. Upon notice and opportunity for the affected person to respond, the Commission may amend, suspend, terminate, or otherwise modify a person's aggregation exemption for failure to comply with the provisions of this section.

4. In § 151.10, revise paragraph (b)(4) to read as follows:

§ 151.10 Form and manner of reporting.

* * * * *

(b) * * *

(4) A notice of disaggregation is filed pursuant to § 151.7(h), in which case the notice shall be effective upon filing.

* * * * *

5. In § 151.12, revise paragraph (a)(5) and add paragraph (a)(6) to read as follows:

§ 151.12 Delegation of authority to the Director of the Division of Market Oversight.

(a) * * *

(5) In § 151.7(j)(1)(iii) to call for additional information from a trader claiming the exemption in § 151.7(j)(1).

(6) In § 150.10 for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part.

* * * * *

Issued in Washington, DC, on May 17, 2012 by the Commission.

David A. Stawick,

Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix 1—Statement of Commissioner Jill E. Sommers

I support the Commission's proposed rules that, among other things, expand the exemptions relating to information sharing restrictions, expand the circumstances under which market participants will not be required to aggregate positions, and reduce the reporting burdens on higher tier entities. I am pleased that we recognize that the final position limits rules issued on November 18, 2011 set forth an unworkable and overly restrictive approach to these issues.

Essentially, as they relate to ''owned entities,'' the proposed rules contain three ''tiers'' for purposes of aggregation. First, if the ownership interest is less than 10 percent, one need not aggregate positions with those of the owned entity. Second, if the ownership interest is between 10 percent and 50 percent, one must aggregate positions with those of the owned entity unless it can be shown that there is a lack of knowledge of, and control over, the trading of the owned entity. Third, if the ownership interest exceeds 50 percent, one must always aggregate positions with those of the owned entity, even if there is a lack of knowledge of, and control over, the trading of the owned entity.

I question whether a bright-line approach is the correct approach, and if it is, whether the line should be drawn at 50 percent. In the absence of knowledge of, and control over, trading of an owned entity, is there a real difference between owning 49 percent and owning 50 percent? I don't think there is. In justifying 50 percent as the correct place to draw the line, the preamble to the proposed rules states, ''such a bright-line rule would provide clarity to market participants and a useful tool for the Commission to simplify aggregation.'' Providing clarity and certainty to market participants is important. However, if providing clarity and certainty results in a one-size-fits-all answer that fails to take into account the varying needs of a very diverse group of market participants, the clarity and certainty are of little use. Moreover, while it is important to establish an aggregation approach that the Commission can effectively administer, I hesitate to put too much weight on ''simplifying'' the approach if the simplified approach is needlessly restrictive.

In my dissent to the final position limits rules, I expressed concern that with regard to the 19 new reference contracts, the Commission was taking on ''front-line oversight of the granting and monitoring of bona-fide hedging exemptions for the transactions of massive, global corporate conglomerates that on a daily basis produce, process, handle, store, transport, and use physical commodities in their extremely complex logistical operations.'' My concerns apply equally to the issue of aggregation. We have limited experience as it relates to these new reference contracts, and no experience aggregating swaps into the overall calculations. In the face of such limited experience, our apparent certainty on where to draw lines is troubling.

[FR Doc. 2012–12526 Filed 5–29–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141075–09]

RIN 1545–BJ15

Property Transferred in Connection With the Performance of Services Under Section 83

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to property transferred in connection with the performance of services under section 83 of the Internal Revenue Code (Code). These proposed regulations affect certain taxpayers who received property transferred in connection with the performance of services.

DATES: Written or electronic comments must be received by August 28, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–141075–09), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–141075–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov/* (IRS REG–141075–09).

FOR FURTHER INFORMATION CONTACT: Concerning these proposed regulations, Thomas Scholz or Dara Alderman at (202) 622–6030 (not a toll-free number); concerning submissions of comments, and/or to request a hearing, Oluwafunmilayo (Fumni) Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 83(a) of the Internal Revenue Code (Code) provides that if, in connection with the performance of services, property is transferred to any person other than the person for whom such services are performed, the excess of (1) the fair market value of the property (determined without regard to lapse restrictions) at the first time the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture, whichever occurs earlier, over (2) the amount (if any) paid for such property, is included in the gross income of the service provider in the first taxable year in which the rights of the person having the beneficial interest in such property are transferable or are not subject to a substantial risk of forfeiture. Section 83(c)(1) provides that the rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of such property are conditioned upon the future performance of substantial services by any individual.

Section 1.83–3(c)(1) provides that, for purposes of section 83 and the regulations, whether a risk of forfeiture is substantial or not depends upon the facts and circumstances. Section 1.83–3(c)(1) further provides that a substantial risk of forfeiture exists where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or the occurrence of a condition related to a purpose of the transfer, and the possibility of forfeiture is substantial if such condition is not satisfied. Illustrations provided in § 1.83–3(c)(2) of the regulations demonstrate when a substantial risk of forfeiture will be considered to exist.

In addition to providing that a person's rights in property are subject to a substantial risk of forfeiture if conditioned upon the future

performance of substantial services by any individual, the legislative history indicates that the drafters intended that ''in other cases the question of whether there is a substantial risk of forfeiture depends upon the facts and circumstances.'' H.R. Rep. No. 91–413 (Pt. 1), 91st Cong., 1st Sess. 62, 88 (1969–3 Cum. Bull. 200, 255); S. Rep. No. 91–552, 91st Cong., 1st Sess. 119, 121 (1969–3 Cum. Bull. 423, 501). The current regulations adopt this approach by finding that a substantial risk of forfeiture may also arise if the rights to the property are subject to a condition related to the purpose of the transfer. Some confusion has arisen as to whether other conditions may also give rise to a substantial risk of forfeiture. *See Robinson* v. *Commissioner,* 805 F.2d 38 (1st Cir. 1986). The proposed regulations clarify that a substantial risk of forfeiture may be established only through a service condition or a condition related to the purpose of the transfer.

Similarly, confusion has arisen as to whether, in determining whether a substantial risk of forfeiture exists, the likelihood that a condition related to the purpose of the transfer will occur must be considered. *Id.* A conclusion that such likelihood need not be considered would lead to anomalies not intended by the statute. For example, assume that stock transferred by an employer to an employee was made nontransferable and also subject to a condition that the stock be forfeited if the gross receipts of the employer fell by 90% over the next three years. Assume further that the employer is a longstanding seller of a product and that there is no indication that either there will be a fall in demand for the product or an inability of the employer to sell the product, so that it is extremely unlikely that the forfeiture condition will occur. Although, arguably, the condition is a condition related to the purpose of the transfer because it would, to some degree, incentivize the employee to prevent such a fall in gross receipts, the Treasury Department and the IRS do not believe that such a condition was intended to defer the taxation of the stock transfer. Accordingly, the proposed regulations would clarify that, in determining whether a substantial risk of forfeiture exists based on a condition related to the purpose of the transfer, both the likelihood that the forfeiture event will occur and the likelihood that the forfeiture will be enforced must be considered.

Finally, the proposed regulations would clarify that, except as specifically provided in section 83(c)(3) and § 1.83–3(j) and (k), transfer restrictions do not create a substantial risk of forfeiture, including transfer restrictions which carry the potential for forfeiture or disgorgement of some or all of the property, or other penalties, if the restriction is violated. This position is supported by the legislative history of section 83. The Senate Report, under the heading ''General reasons for change,'' provides as follows:

> The present tax treatment of restricted stock plans is significantly more generous than the treatment specifically provided in the law for other types of similarly funded deferred compensation arrangements. An example of this disparity can be seen by comparing the situation where stock is placed in a nonexempt employees' trust rather than given directly to the employee subject to restrictions. If an employer transfers stock to a trust for an employee and the trust provides that the employee will receive the stock at the end of 5 years if he is alive at that time, the employee is treated as receiving and is taxed on the value of the stock at the time of the transfer. However, if the employer, instead of contributing the stock to the trust, gives the stock directly to the employee subject to the restriction that it cannot be sold for 5 years, then the employee's tax is deferred until the end of the 5-year period. In the latter situation, the employee actually possesses the stock, can vote it, and receives the dividends, yet his tax is deferred. In the case of the trust, he may have none of these benefits, yet he is taxed at the time the stock is transferred to the trust.

S. Rep. No. 91–552, 1969–3 CB 423, 500. See also H. Rep. No. 91–413, 1969–3 CB 200, 254.

The legislative history shows that Congress intended for section 83 to be interpreted in such a way that precluded the use of transfer restrictions as a means of deferring the taxable event. If interpreted otherwise, section 83 would not alter the tax treatment of the particular transaction that Congress described as the reason for the statutory change.

Moreover, Congress later added section 83(c)(3) concerning sales that may give rise to suit under section 16(b) of the Securities Exchange Act of 1934 (the ''Exchange Act''). See Public Law 97–34, sec. 252, 1981–2 CB 256, 303. Section 83(c)(3) provides that so long as the sale of property at a profit could subject a person to suit under section 16(b) of the Exchange Act, such person's rights in such property are (A) subject to a substantial risk of forfeiture, and (B) not transferable. Section 1.83–3(j) of the regulations further provides that, for purposes of section 83 and the regulations, if the sale of property at a profit within six months after the purchase of the property could subject a person to suit under section 16(b) of the Exchange Act, the person's rights in the property are treated as subject to a substantial risk of forfeiture and as not transferable until the earlier of (i) the expiration of such six-month period, or (ii) the first day on which the sale of such property at a profit will not subject the person to suit under section 16(b) of the Exchange Act.

Consistent with section 83(c)(3) and § 1.83–3(j), Revenue Ruling 2005–48 (2005–2 CB 259) provides that the only provision of the securities law that would delay taxation under section 83 is section 16(b) of the Exchange Act. The ruling further provides that other transfer restrictions (such as restrictions imposed by lock-up agreements or restrictions relating to insider trading under Rule 10b–5 of the Exchange Act) do not cause rights in property taxable under section 83 to be substantially nonvested. Revenue Ruling 2005–48 notes that the Treasury Department and the IRS intend to amend the section 83 regulations to explicitly set forth the holdings in the ruling.

Explanation of Provisions

The proposed regulations would amend the second sentence of § 1.83–3(c)(1) of the existing regulations to add the word ''only'' to the phrase ''[a] substantial risk of forfeiture exists [only] where * * *'' The purpose of this addition is to clarify that a substantial risk of forfeiture may be established only through a service condition or a condition related to the purpose of the transfer.

The proposed regulations would amend the second sentence of § 1.83–3(c)(1) of the existing regulations to delete the clause ''if such condition is not satisfied.'' The purpose of the deletion is to clarify that, in determining whether a substantial risk of forfeiture exists based on a condition related to the purpose of the transfer, both the likelihood that the forfeiture event will occur and the likelihood that the forfeiture will be enforced must be considered.

The proposed regulations would amend § 1.83–3(c)(1) of the existing regulations to add a sentence stating that a transfer restriction, including a transfer restriction which carries the potential for forfeiture or disgorgement of some or all of the property or other penalties if the restriction is violated, does not create a substantial risk of forfeiture. The purpose of this addition is to incorporate the holding in Rev. Rul. 2005–48.

Furthermore, consistent with Rev. Rul. 2005–48, the proposed regulations would amend § 1.83–3(j)(2) to include an example illustrating the application of section 16(b) of the Exchange Act to

an option. The regulations are not intended to provide guidance on the application of section 16(b) of the Exchange Act. Rather, for purposes of the examples it is assumed that the period of liability is determined in accordance with the applicable law, including any applicable court decisions. *See, for example, Stella* v. *Graham-Paige Motors,* 132 *Fed.* Supp. 100, 103 (S.D.N.Y. 1955), *rev'd other grounds,* 232 F.2d 299 (2d Cir.), *cert. denied,* 352 U.S. 831 (1956). The proposed regulations also would add two additional examples to § 1.83–3(c)(4) illustrating that a substantial risk of forfeiture is not created solely as a result of potential liability under Rule 10b–5 of the Exchange Act or a lock-up agreement. Rev. Rul. 2005–48 will be obsoleted when the proposed regulations are published as final regulations. See § 601.601(d)(2).

Proposed Effective Date

These regulations under section 83 are proposed to apply as of January 1, 2013, and will apply to property transferred on or after that date. Taxpayers may rely on the proposed regulations for property transferred after publication of these proposed regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Thomas Scholz and Dara Alderman, Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for Part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 1.83–3 is amended by:

1. Revising paragraph (c)(1).
2. Adding *Example 6* and *Example 7* to paragraph (c)(4).
3. Adding *Example 4* to paragraph (j)(2).
4. Removing paragraph (j)(3).
5. Redesignating paragraph (k)(1) as paragraph (k).
6. Removing paragraph (k)(2).
7. Adding paragraph (l).

The additions and revisions read as follows:

§ 1.83–3 Meaning and use of certain terms.

* * * * *

(c) *Substantial risk of forfeiture*—(1) *In general.* For purposes of section 83 and the regulations, whether a risk of forfeiture is substantial or not depends upon the facts and circumstances. A substantial risk of forfeiture exists only where rights in property that are transferred are conditioned, directly or indirectly, upon the future performance (or refraining from performance) of substantial services by any person, or upon the occurrence of a condition related to a purpose of the transfer if the possibility of forfeiture is substantial. Property is not transferred subject to a substantial risk of forfeiture to the extent that the employer is required to pay the fair market value of a portion of such property to the employee upon the return of such property. The risk that the value of property will decline during a certain period of time does not constitute a substantial risk of forfeiture. A nonlapse restriction, standing by itself, will not result in a substantial risk of forfeiture. Except as set forth in paragraphs (j) and (k) of this section, restrictions on the transfer of property, whether contractual or by operation of applicable law, will not result in a substantial risk of forfeiture. For this purpose, transfer restrictions that will not result in a substantial risk of forfeiture include, but are not limited to, restrictions that if violated, whether by transfer or attempted transfer of the property, would result in the forfeiture of some or all of the property, or liability by the employee for any damages, penalties, fees or other amount.

* * * * *

(4) * * *

Example 6. On January 3, 2013, Y corporation grants to Q, an officer of Y, a nonstatutory option to purchase Y common stock. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Q has the right to purchase 100 shares of Y common stock for $10 per share, which is the fair market value of a Y share on the date of grant of the option. On May 1, 2013, Y sells its common stock in an initial public offering. Pursuant to an underwriting agreement entered into in connection with the initial public offering, Q agrees not to sell, otherwise dispose of, or hedge any Y common stock from May 1 through November 1 of 2013 (''the lock-up period''). Q exercises the option and Y shares are transferred to Q on August 15, 2013, during the lock-up period. The underwriting agreement does not impose a substantial risk of forfeiture on the Y shares acquired by Q because the provisions of the agreement do not condition Q's rights in the shares upon anyone's future performance (or refraining from performance) of substantial services or on the occurrence of a condition related to the purpose of the transfer of shares to Q. Accordingly, neither section 83(c)(3) nor the imposition of the lock-up period by the underwriting agreement preclude taxation under section 83 when the shares resulting from exercise of the option are transferred to Q.

Example 7. Assume the same facts as in *Example 6,* except that on May 1, 2013, Y also adopts an insider trading compliance program, under which, as applied to 2013, insiders (such as Q) may trade Y shares only between November 5 and November 30 of that year (''the trading window''). Under the program, if Q trades Y shares outside the trading window without Y's permission, Y has the right to terminate Q's employment. However, the exercise of the nonstatutory options outside the trading window for the Y shares is not prohibited under the insider trading compliance program. As of August 15, 2013 (the date Q fully exercises the option), Q is in possession of material nonpublic information concerning Y that would subject him to liability under Rule

10b–5 under the Securities Exchange Act of 1934 if Q sold the Y shares while in possession of such information. Neither the insider trading compliance program nor the potential liability under Rule 10b–5 impose a substantial risk of forfeiture on the Y shares acquired by Q, because the provisions of the program and Rule 10b–5 do not condition Q's rights in the shares upon anyone's future performance (or refraining from performance) of substantial services or on the occurrence of a condition related to the purpose of the transfer of shares to Q. Accordingly, none of section 83(c)(3), the imposition of the trading window by the insider trading compliance program and the potential liability under Rule 10b–5 preclude taxation under section 83 when the shares resulting from exercise of the option are transferred to Q.

* * * * *

(j) * * *

(2) * * *

Example 4. On January 3, 2013, Y corporation grants to Q, an officer of Y, a nonstatutory option to purchase Y common stock. Y stock is traded on an established securities market. Although the option is immediately exercisable, it has no readily ascertainable fair market value when it is granted. Under the option, Q has the right to purchase 100 shares of Y common stock for $10 per share, which is the fair market value of a Y share on the date of grant of the option. The grant of the option is not a transaction exempt from section 16(b) of the Securities Exchange Act of 1934. On August 15, 2013, Y stock is trading at more than $10 per share. On that date, Q fully exercises the option, paying the exercise price in cash, and receives 100 Y shares. Q's rights in the shares received as a result of the exercise are not conditioned upon the future performance of substantial services. Because no exemption from section 16(b) was available for the January 3, 2013 grant of the option, the section 16(b) liability period expires on July 1, 2013. Accordingly, the section 16(b) liability period expires *before* the date that Q exercises the option and the Y common stock is transferred to Q. Thus, the shares acquired by Q pursuant to the exercise of the option are not subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b). As a result, section 83(c)(3) does not preclude taxation under section 83 when the shares acquired pursuant to the August 15, 2013 exercise of the option are transferred to Q. If, instead, Q exercises the nonstatutory option on May 30, 2013 when Y stock is trading at more than $10 per share, the shares acquired are subject to a substantial risk of forfeiture under section 83(c)(3) as a result of section 16(b) through July 1, 2013.

* * * * *

(l) *Effective/applicability date.* Paragraphs (j) and (k) of this section apply to property transferred after December 31, 1981. Paragraph (c)(1), *Example 6* and *7* of paragraph (c)(4), and *Example 4* of paragraph (j)(2) of this section apply to property transferred on or after January 1, 2013.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–12855 Filed 5–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–142561–07]

RIN 1545–BH31

Regulations Revising Rules Regarding Agency for a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations regarding the agent for an affiliated group that files a consolidated return (consolidated group). The proposed regulations provide guidance concerning the identity and authority of the agent for the consolidated group (agent for the group). These proposed regulations affect all consolidated groups. This document also invites comments from the public regarding these proposed regulations.

DATES: Written or electronic comments and a request for a public hearing must be received by August 28, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–142561–07), room 5205, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–142561–07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–142561–07).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Gerald B. Fleming at (202) 622–7770 or Richard M. Heinecke at (202) 622–7930; concerning submissions of comments or a request for a public hearing, Funmi Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review and approval under OMB approval number 1545–1699 in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)).

Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:SP, Washington, DC 20224. Comments on the collection of information should be received by July 30, 2012.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the collection will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in the proposed regulations are in § 1.1502–77(c)(3), (c)(4), (c)(5), and (f)(3).

The proposed regulations provide that an entity that is the agent for the group, upon becoming the default successor, is required to notify the Commissioner in writing (under procedures prescribed by the Commissioner), in accordance with § 1.1502–77(c)(3), that it is the default successor.

The proposed regulations under § 1.1502–77(c)(4) further provide that, when the agent for the group designates an agent for the group under circumstances in which the agent for the group's existence terminates without a default successor, the agent for the group must notify the Commissioner in writing (under procedures prescribed by the Commissioner) of the designation and provide an agreement executed by the designated entity acknowledging

that it will serve as the agent for the group. If the designated entity was not itself a member of the group during the consolidated return year because the designated entity is a successor of a member of the group for the consolidated return year, the agent for the group must furnish a statement by the designated entity acknowledging that it is or will be primarily liable for the tax as a successor of a member.

The proposed regulations at § 1.1502–77(c)(5) require a designated substitute agent to give notice to each member of the group when the Commissioner has designated a substitute agent for the group.

Under § 1.1502–77(f)(3), if an entity ceases to be a member of a group, such entity may file a written notice of that fact with the Commissioner and request a copy of the notice of deficiency with respect to the Federal income tax for a consolidated return year during which the entity was a member, or a copy of any notice and demand for payment of such deficiency, or both.

The collections of information are required to obtain a benefit, for example, to identify a substitute agent for the group. The likely respondents are business or other for-profit institutions.

The burden for the collection of information in § 1.1502–77(c)(3), (c)(4), (c)(5), and (f)(3) is as follows:

Estimated total annual reporting burden: 200 hours.

Estimated average annual burden per respondent: 2 hours.

Estimated number of respondents: 100.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Background

This document proposes amendments to 26 CFR part 1 under section 1502 of the Internal Revenue Code of 1986 (Code). Section 1.1502–77 provides the existing regulations concerning the agent for a group and the designation of a new agent to act for the group. Section 1.1502–77 was promulgated in 2002 in TD 9002 (June 28, 2002) (67 FR 43538), and supplemented by TD 9255 (71 FR 13001) (March 14, 2006) and TD 9343 (72 FR 40066) (July 23, 2007) (each providing authority to replace the common parent as agent where the parent is a foreign entity). Subsequent to 2002, the IRS and Treasury Department issued other regulations, §§ 1.856–9, 1.1361–4(a)(6), and 301.7701–2(c)(2)(iii), which provide that an entity treated as disregarded from its owner for Federal income tax purposes is not disregarded for purposes of its tax liability for periods during which it was not disregarded. These proposed regulations conform to the subsequent guidance by permitting a non-corporate entity to be agent for the group.

These proposed regulations provide greater certainty as to which entity will be the substitute agent for the group by identifying a default successor agent for the group. Under the proposed regulations, an entity (whether foreign or domestic) is a default successor if it becomes the single entity primarily liable, pursuant to applicable law (including, for example, by operation of a state or Federal merger statute), for the tax liability of the former agent of the group upon the termination of the agent's existence. (The determination of tax liability is made without regard to § 1.1502–1(f)(4) or § 1.1502–6(a)). When the agent for the group terminates under applicable law and there is no default successor, the agent for the group may designate a substitute agent.

Furthermore, as discussed under ''Explanation of Provisions'' the proposed amendments clarify and supplement the existing regulations to address other issues that have arisen. This notice of proposed rulemaking also requests comments with respect to several issues that the proposed amendments do not address.

Explanation of Provisions

1. Overview

These proposed regulations generally retain the rules, concepts and examples from the existing regulations regarding the agent for a consolidated group. However, the rules, concepts and examples from the existing regulations have been renumbered, restructured and revised to provide greater clarity. Examples in the final regulations also have been modified to reflect the more limited circumstances in which an agent may be selected by the IRS or the former agent. In addition, when these proposed regulations are adopted, the IRS plans to issue contemporaneous guidance in a revenue procedure superseding Rev. Proc. 2002–43 (2002–2 CB 99) (see § 601.601(d)(2)(ii)(*b*) of this chapter). Rev. Proc. 2002–43 provides instructions regarding all communications relating to the determination of a substitute agent to act on behalf of a consolidated group. In general, it is anticipated that the instructions in the superseding revenue procedure will update Revenue Procedure 2002–43 to reflect the rules in the adopted regulations.

2. Automatic Designation of a Default Successor Agent

Under the existing regulations, a common parent that is going out of existence may designate its successor, another member of the group, or a group member's successor entity as the substitute agent for the group. In practice, the terminating common parent, when it has designated a substitute agent at all, has generally designated its successor rather than another member as the substitute agent.

The proposed regulations provide that the terminating agent's default successor automatically becomes the agent for the group. The former agent cannot designate an agent if there is a default successor, and the IRS can replace a default successor only in limited circumstances. See § 1.1502–77(c)(5). If the agent for the group has no default successor, the agent for the group may designate an entity that was a member of the group for the consolidated return year or a successor of such member. Narrowing the option to designate the agent for the group is consistent with the pattern of choices exhibited by taxpayers under the existing regulations and minimizes the difficulties that arise when a terminating agent fails to designate a substitute. In the rare cases in which an entity serving as agent terminates its existence without having a default successor, the IRS and Treasury Department expect that fact generally will be clear. Accordingly, IRS and taxpayers can readily identify situations in which a new agent must be designated. Furthermore, having the default successor become the substitute agent is the intuitively appropriate choice because it is generally consistent with the handling of tax matters involving non-consolidated entities and non-consolidated taxes.

A default successor must notify the IRS in writing (under procedures prescribed by the IRS) that it is the default successor. Until the IRS receives such notification, any notice of deficiency or other communication mailed to the predecessor agent for the group, even if no longer in existence, is considered as having been properly mailed to the agent for the group, and the IRS is not required to act on any communication (including, for example, a claim for refund) submitted on behalf of the group by any person (including the default successor) other than the predecessor agent for the group.

3. Entities That Can Be an Agent for the Group

In general, § 1.1502–77(e) provides that the common parent, as agent for the group, ceases to be the agent for the group if its existence terminates under applicable law, if it becomes an entity disregarded from its owner for Federal tax purposes, or if it becomes an entity that is reclassified as a partnership for Federal tax purposes.

When the existing regulations were adopted in 2002, there was no direct guidance concerning whether the party liable for a disregarded entity's Federal taxes with respect to periods before it becomes disregarded should be the disregarded entity or its owner. Section 1.1502–77(e) generally precludes the common parent from continuing to serve as the agent for the group if it becomes a disregarded entity or partnership. Subsequent regulatory amendments provided that an entity treated as disregarded from its owner for Federal income tax purposes (whether a single member eligible entity, a Qualified Real Estate Investment Trust Subsidiary or a Qualified Subchapter S Subsidiary) is not disregarded for purposes of its tax liability for taxable periods during which it was not disregarded. See TD 9183 (70 FR 9220) (February 25, 2005), as supplemented in TD 9462 (74 FR 46903) (September 14, 2009) and TD 9553 (76 FR 66181) (October 26, 2011). Thus, such an entity, rather than its owner, is the party liable for the taxes arising in taxable periods before the entity became disregarded.

These proposed regulations include disregarded entities and partnerships among the entities capable of serving as substitute agents for prior years. Accordingly, the transformation or merger of a common parent into a disregarded entity or partnership after the taxable year of the return generally will result in the disregarded entity or partnership becoming the agent for the group. Because the entity that was formerly a corporation serving as the agent for the group is no longer treated as a corporation for Federal income tax purposes after the change in its classification, it will not be a continuing member of a consolidated group in future periods. Nevertheless, the continuing or successor juridical entity is the agent for the group for prior periods. This result will obtain whether the change in classification is effectuated by a merger under state law, a conversion under state law, or a tax election.

4. TEFRA Partnerships

Section 402 of the Tax Equity and Fiscal Responsibility Act of 1982 (96 Stat. 324) (TEFRA) provides that the tax treatment of partnership items shall be determined at the partnership level. These TEFRA provisions are in sections 6221 through 6234. A partner in a TEFRA partnership is subject to the provisions of sections 6221 through 6234. In general, the IRS will deal with the tax matters partner (TMP) regarding specified matters for the partners in a TEFRA partnership.

The existing regulations at § 1.1502–77(a)(6)(iii) provide that ''[t]he Commissioner generally will deal directly with any member in its capacity as a partner of a [TEFRA] partnership'' but also permits the Commissioner to deal with the common parent, as agent for the group, if requested to do so in accordance with the provisions of § 301.6223(c)–1(b). This provision was intended to facilitate IRS audits of TEFRA partnerships by permitting the IRS TEFRA audit team to deal with a member-partner without the involvement of the agent for the group. However, these rules have created some confusion, especially with respect to the execution of consents to extend the statute of limitations and settlement agreements in connection with TEFRA audits.

Subject to enumerated exceptions in (f)(2)(iii) (relating to a member's actions as TMP and the Commissioner's discretion to deal directly with the member-partner), section 1.1502–77(f)(2)(iii)(A) provides that the agent for the group is the agent for any matter related to a TEFRA partnership in which a member is a partner. Consistent with this general rule, these proposed regulations would delete the provision of the existing regulations that the common parent, as agent for the group, will not act as agent for a member that is a partner in a TEFRA partnership for purposes of executing a settlement agreement under section 6224(c). The proposed regulations also clarify that only the agent for the group can extend the statute of limitations with respect to items other than the items of the TEFRA partnership. Section 1.1502–77(g), Example 11.

5. Commissioner's Affirmative Approval

The existing regulations at § 1.1502–77(d)(1)(i)(A) and (d)(1)(ii) provide that any designation of the substitute agent for the group must be approved by the Commissioner. The IRS is aware of having denied this approval only in the very limited circumstance in which the designation was not made in accordance with the regulations. Because the IRS would deny approval only infrequently, the proposed regulations do not require IRS approval of the designation of an agent for the group by the terminating agent. This proposed change will enhance efficiency and save resources. However, the proposed regulations retain the requirement that a terminating agent must notify the IRS in writing (under procedures prescribed by the IRS) of the designation of the agent for the group so that IRS records will reflect the identity of the agent for the group.

The proposed regulations also provide several limited circumstances in which the IRS may designate or replace the agent for the group, either on its own initiative or at the request of other members. The IRS will not, however, have the ability to replace a domestic default successor under circumstances in which it could not replace the common parent.

6. Foreign Entity

Under the existing regulations, a substitute agent is required to be a domestic entity for Federal income tax purposes. However, the existing regulations also provide that the Commissioner may designate another domestic member of the group to act as the agent for the group (a domestic substitute agent) if the common parent is an entity created or organized under the laws of a foreign country and is treated as a domestic corporation by reason of section 7874 (or regulations under that section) or a section 953(d) election (a foreign common parent). This rule recognizes that foreign agents may present unique logistical issues, and provides the Commissioner full discretion to replace a foreign agent should those issues arise.

Although a foreign entity may raise practical difficulties in certain cases, the IRS and Treasury realize that a foreign entity, especially a default successor, may have the best access to information relating to prior consolidated return years. Furthermore, the IRS and Treasury believe that it is important for a consolidated group to have, to the greatest extent practicable, an entity that is authorized to act on its behalf to enable the group to communicate with the IRS and to ensure that the group can timely meet its compliance obligations (for example, file a timely final return if the group terminates). The IRS and Treasury also believe that the interests of the government and taxpayers are best served by a rule that clearly identifies the group's agent. Balancing special logistical issues and the importance of continual agency, the

proposed regulations do not preclude a foreign entity from being the agent for the consolidated group. However, the IRS retains discretion to replace a foreign entity that is an agent for a consolidated group.

7. Agency Does Not Include Any Winding Up Period After Dissolution

These proposed regulations also provide that an entity cannot serve as the agent for the group during any winding up period that follows its dissolution.

The existing regulations predicate agency on the continued existence of the corporation under applicable law. Questions have arisen as to what actions can be performed by a dissolved entity that has a ''winding up'' period following its dissolution. In many states, a dissolved corporation or entity may continue to perform certain acts after its dissolution to wind up its affairs. The duration of such a winding up period and the scope of the permissible actions vary from jurisdiction to jurisdiction. To resolve questions about whether a dissolved entity may be the agent for the remaining members of the consolidated group during the winding up period, these proposed regulations provide that an entity that has dissolved or otherwise ceased to exist under applicable law can no longer be the agent for the group, irrespective of any winding up period under applicable law.

8. The Agent for the Group's Failure To Fulfill Its Duties With Respect to the Consolidated Group

These proposed regulations include no new mechanism to address situations in which the agent for the group fails to fulfill its duties on behalf of the members of the consolidated group, for example by not filing a return, not requesting a refund, or not cooperating with an examination. Under those circumstances, the members might not be able to accurately file or determine their Federal tax liability or obtain their refunds. The government might have difficulty determining which, if any, member is entitled to a refund, forcing it to interplead all potential claimants in any such refund case.

The IRS and Treasury Department request comments on whether and how to implement a mechanism whereby the subsidiary members can request that the IRS designate another member of the group to be the agent when the common parent or substitute agent does not discharge its obligations as agent. Comments should consider under what circumstances and how this mechanism might be invoked to ensure that it is narrowly applied.

9. Possible Resignation of the Agent for the Group

Under the existing regulations, a common parent, as agent for the group, remains the agent for the group for consolidated return years for which it was the common parent of the group. Only a termination of the common parent under applicable law will result in either the successor becoming the default substitute agent or an agent being designated for the group. The proposed regulations do not provide a mechanism for an existing agent to resign and limit the ability of the agent to displace its obligations transactionally by mandating the designation of any default successor. The Treasury Department and the IRS are considering whether, and under what circumstances, the regulations should allow an agent for the group to resign as the agent, and invite comments on this issue.

Proposed Effective/Applicability Date

The amendments to § 1.1502–77 are proposed to apply to consolidated return years beginning on or after the date final regulations are published in the **Federal Register**. The current rules of § 1.1502–77 continue to apply with respect to consolidated return years beginning before the effective date of final regulations. Those regulations are proposed to be republished as § 1.1502–77B.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12666, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily will affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are timely submitted to the IRS.

The Treasury Department and the IRS request comments on all aspects of the proposed rules. In addition, comments are requested on the treatment in the proposed regulations of entities that become disregarded as entities separate from their owners or classified as partnerships for Federal tax purposes.

All comments that are submitted by the public will be available for public inspection and copying at *http://www.regulations.gov* or upon request. A public hearing may be scheduled if requested in writing by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Richard M. Heinecke, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended to read in part as follows:

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

Section 1.1502–77 also issued under 26 U.S.C. 1502 and 6402(j). * * *

Section 1.1502–77A also issued under 26 U.S.C. 1502 and 6402(j). * * *

Section 1.1502–77B also issued under 26 U.S.C. 1502 and 6402(j). * * *

Par. 2. Section 1.338–1 is amended by removing the language ''§ 1.1502–77(e)(4)'' in the last sentence of paragraph (b)(2)(viii) and adding the language ''§ 1.1502–77(c)(8)'' in its place.

Par. 3. Section 1.1502–41A, paragraph (c) heading is revised to read as follows:

* * * * *

(c) *Effective/applicability dates.* * * *

Par. 4. Section 1.1502–77 is redesignated as § 1.1502–77B and added immediately following newly designated § 1.1502–77B the undesignated center heading and revised paragraph (h)(1)(i) to read as follows:

§ 1.1502–77B Agent for the group applicable for consolidated return years beginning on or after June 28, 2002, and before [the date final regulations are published in the Federal Register].

Regulations Applicable to Taxable Years Beginning on or After June 28, 2002, and Before [the Date Final Regulations Are Published in the Federal Register]

* * * * *

(h) *Effective/Applicability date*—(1) *Application*—(i) *In general.* This section applies to taxable years beginning on or after June 28, 2002, and before [the date final regulations are published in the **Federal Register**].

* * * * *

Par. 5. New § 1.1502–77 is added to read as follows:

§ 1.1502–77 Agent for the group.

(a) *Agent for the group.* Except as provided in paragraphs (e) and (f)(2) of this section, one entity (the agent for the group) is the sole agent that is authorized to act in its own name regarding all matters relating to the Federal income tax liability for the consolidated return year for each member of the group and any successor or transferee of a member (and any subsequent successors and transferees thereof). The common parent during the consolidated return year to which the matter relates or such other entity as is provided in paragraph (c) of this section is the agent for the group. Agency for the group is established for each consolidated return year and is not affected by the status or membership of the group in later years. Thus, for as long as it remains in existence under applicable law and is not replaced under paragraph (c)(5)(i)(C) of this section, a corporation or entity that is the agent for the group for a particular consolidated return year remains the agent for the group for that year regardless of whether one or more subsidiaries later cease to be members of the group, whether the group files a consolidated return for any subsequent year, whether the agent for the group ceases to be the agent for the group or a member of the group in any subsequent year, or whether the group continues pursuant to § 1.1502–75(d) with a new common parent in any subsequent year.

(b) *Definitions.* The following definitions apply for purposes of this section only—

(1) *Successor.* A *successor* is an individual or entity (including a disregarded entity) that is primarily liable, pursuant to applicable law (including, for example, by operation of a state or Federal merger statute), for the tax liability of a corporation which was a member of the group but is no longer in existence under applicable law. The determination of tax liability is made without regard to § 1.1502–1(f)(4) or § 1.1502–6(a). (For inclusion of a successor in references to a subsidiary or member, see paragraph (b)(5)(iii) of this section.)

(2) *Entity.* The term *entity* includes any corporation, limited liability company or partnership formed under any state, Federal, or foreign jurisdiction. The term entity includes a disregarded entity. The term entity does not include an entity during any winding up period if the entity's existence has terminated pursuant to the law under which it is organized.

(3) *Disregarded entity.* The term *disregarded entity* includes any of the following types of entities disregarded as separate from their owners—

(i) Qualified real estate investment trust subsidiaries (within the meaning of section 856(i)(2));

(ii) Qualified subchapter S subsidiaries (within the meaning of section 1361(b)(3)(B)); and

(iii) Single owner eligible entities (within the meaning of Treas. Reg. § 301.7701–3).

(4) *Default successor.* A successor to the agent for the group is the default successor if it is an entity (whether domestic or foreign) that is the sole successor to the agent for the group. A partnership is treated as a sole successor with primary liability notwithstanding that one or more partners may also be primarily liable by virtue of being partners.

(5) *Member or subsidiary.* All references to a member or subsidiary for a consolidated return year include—

(i) Each corporation that was a member of the group during any part of such year (except that any reference to a subsidiary does not include the common parent);

(ii) Each corporation whose income was included in the consolidated return for such year, notwithstanding that the tax liability of such corporation should have been computed on the basis of a separate return, or as a member of another consolidated group, under the provisions of § 1.1502–75; and

(iii) Except as indicated otherwise, a successor of any of the foregoing corporations.

(c) *Identity of the agent for the group*—(1) *In general.* Except as otherwise provided in this section, the common parent or its default successor, if any, is the agent for the group. Any entity that is an agent pursuant to this paragraph (c) acts as agent for the group to the same extent and subject to the same limitations as are applicable to the common parent.

(2) *New common parent after a group structure change.* If the group continues in existence with a new common parent under the principles of § 1.1502–75(d) during a consolidated return year, the common parent at the beginning of the year is the agent for the group through the date of the § 1.1502–75(d) transaction, and the new common parent becomes the agent for the group beginning the day after the transaction, at which time the new common parent becomes the agent for the group with respect to the entire consolidated return year (including the period through the date of the transaction) and the former common parent is no longer the agent for that year.

(3) *Notification by default successor.* A default successor must notify the Commissioner in writing (under procedures prescribed by the Commissioner) that it is the default successor. Until the Commissioner receives such notification—

(i) Any notice of deficiency or other communication mailed to the predecessor agent for the group, even if no longer in existence, is considered as having been properly mailed to the agent for the group; and

(ii) The Commissioner is not required to act on any communication (including, for example, a claim for refund) submitted on behalf of the group by any person (including the default successor) other than the predecessor agent for the group.

(4) *Designation by terminating agent.* (i) Prior to the termination of its existence without a default successor, the agent for the group may designate an entity described in paragraph (c)(4)(ii) of this section to act as agent for the group, effective upon its termination.

(ii) The terminating agent for the group may designate as agent for the group, for any consolidated return year for which it is the agent for the group—

(A) Any corporation that was a member of the group during any part of the consolidated return year, or

(B) Any successor of such a corporation or of the agent for the group that is an entity (whether domestic or foreign), including an entity that will become a successor at the time that the agent for the group's existence terminates.

(iii) The agent for the group must notify the Commissioner in writing (under procedures prescribed by the Commissioner) of the designation and provide an agreement executed by the designated entity acknowledging that it will serve as the agent for the group,

and, if the designated entity was not itself a member of the group during the consolidated return year (because the designated entity is a successor of a member of the group for the consolidated return year), a statement by the designated entity acknowledging that it is or will be primarily liable for the tax as a successor of a member.

(iv) If the agent for the group's existence terminates without there being a default successor, and it has not designated an entity to act as agent for the group in its place pursuant to this paragraph (c)(4)—

(A) Any notice of deficiency or other communication mailed to the agent for the group, even if no longer in existence, is considered as having been properly mailed to the agent for the group; and

(B) The Commissioner is not required to act on any communication (including, for example, a claim for refund) submitted on behalf of the group by any person.

(5) *Designation by the Commissioner.* (i) The Commissioner may, at any time, with or without a request from any member of the group, designate an entity described in paragraph (c)(4)(ii) of this section to act as the agent for the group if—

(A) The agent for the group's existence terminates without there being a default successor and no designation is made under paragraph (c)(4) of this section;

(B) The Commissioner believes that the agent for the group or its default successor exists but such entity has not responded to the Commissioner's notices sent to the last known address on file for the entity or any notices left at the usual place of business for such entity; or

(C) The agent for the group is or becomes a foreign entity as a result of any action or transaction (including, for example, a continuance into a foreign jurisdiction).

(ii) The Commissioner will notify the designated entity in writing of its designation, and the designation is effective upon receipt by the designated entity of such notice. The designated entity must give notice of the designation to each member of the group during any part of the consolidated return year, but a failure by the designated entity to notify any such member of the group does not invalidate the designation.

(iii) At the request of any member, the Commissioner may, but is not required to, replace an agent for the group previously designated under this paragraph (c)(5) with another entity described in paragraph (c)(4)(ii) of this section.

(iv) If the Commissioner replaces the agent for the group pursuant to this paragraph (c)(5), the replaced agent for the group ceases to be the agent after the Commissioner designates another agent.

(6) *Successors to designated agents.* The designation of an agent for the group under paragraph (c)(4) or paragraph (c)(5) of this section includes its default successors, if any.

(7) *Purported agent for the group.* If any entity files a consolidated return, or takes any other action related to the tax liability for the consolidated return year, purporting to be the agent for the group but is subsequently determined not to have been the agent for the group with respect to the claimed group, that entity is treated, to the extent necessary to avoid prejudice to the Commissioner, as if it were the agent for the group.

(8) *Section 338 transactions.* Notwithstanding section 338(a)(2), a target corporation for which an election is made under section 338 is not deemed to terminate for purposes of this section.

(d) *Examples of matters subject to agency.* With respect to any consolidated return year for which it is the agent for the group—

(1) The agent for the group makes any election (or similar choice of a permissible option) that is available to a subsidiary in the computation of its separate taxable income, and any change in an election (or similar choice of a permissible option) previously made by or for a subsidiary, including, for example, a request to change a subsidiary's method or period of accounting;

(2) All correspondence concerning the income tax liability for the consolidated return year is carried on directly with the agent for the group;

(3) The agent for the group files for all extensions of time, including extensions of time for payment of tax under section 6164, and any extension so filed is considered as having been filed by each member;

(4) The agent for the group gives waivers, gives bonds, and executes closing agreements, offers in compromise, and all other documents, and any waiver or bond so given, or agreement, offer in compromise, or any other document so executed, is considered as having also been given or executed by each member;

(5) The agent for the group files claims for refund, and any refund is made directly to and in the name of the agent for the group and discharges any liability of the Government to any member with respect to such refund;

(6) The agent for the group takes any action on behalf of a member of the group with respect to a foreign corporation including, for example, elections by, and changes to the method of accounting of, a controlled foreign corporation in accordance with § 1.964–1(c)(3);

(7) Notices of claim disallowance are mailed only to the agent for the group, and the mailing to the agent for the group is considered as a mailing to each member;

(8) Notices of deficiencies are mailed only to the agent for the group (except as provided in paragraph (f)(3) of this section), and the mailing to the agent for the group is considered as a mailing to each member;

(9) Notices of final partnership administrative adjustment under section 6223 with respect to any partnership in which a member of the group is a partner may be mailed to the agent for the group, and, if so, the mailing to the agent for the group is considered as a mailing to each member that is a partner entitled to receive such notice (for other rules regarding partnership proceedings, see paragraph (f)(2)(iii) of this section);

(10) The agent for the group files petitions and conducts proceedings before the United States Tax Court, and any such petition is considered as also having been filed by each member;

(11) Any assessment of tax may be made in the name of the agent for the group, and an assessment naming the agent for the group is considered as an assessment with respect to each member; and

(12) Notice and demand for payment of taxes is given only to the agent for the group, and such notice and demand is considered as a notice and demand to each member.

(e) *Matters reserved to subsidiaries.* Except as provided in this paragraph (e) and paragraph (f)(2) of this section, no subsidiary has authority to act for or to represent itself in any matter related to the tax liability for the consolidated return year. The following matters, however, are reserved exclusively to each subsidiary—

(1) The making of the consent required by § 1.1502–75(a)(1);

(2) Any action with respect to the subsidiary's liability for a Federal tax other than the income tax imposed by chapter 1 of the Internal Revenue Code (Code) (including, for example, employment taxes under chapters 21 through 25 of the Code, and miscellaneous excise taxes under chapters 31 through 47 of the Code);

(3) The making of an election under section 936(e); and

(4) The making of an election to be treated as a Domestic International Sales Corporation under § 1.992–2.

(f) *Dealings with members.* (1) *Identifying members in notice of a lien.* Notwithstanding any other provisions of this section, any notice of a lien, any levy or any other proceeding to collect the amount of any assessment, after the assessment has been made, must name the entity from which such collection is to be made.

(2) *Direct dealing with a member*—(i) *Several liability.* The Commissioner may, upon issuing to the agent for the group written notice that expressly invokes the authority of this provision, deal directly with any member of the group with respect to its liability under § 1.1502–6 for the consolidated tax of the group, in which event such member has sole authority to act for itself with respect to that liability. However, if the Commissioner believes or has reason to believe that the existence of the agent for the group has terminated, he may, if he deems it advisable, deal directly with any member with respect to that member's liability under § 1.1502–6.

(ii) *Information requests.* The Commissioner may, upon issuing to the agent for the group written notice, request information relevant to the consolidated tax liability from any member of the group. However, if the Commissioner believes or has reason to believe that the existence of the agent for the group has terminated, he may request such information from any member of the group.

(iii) *Members as partners in partnerships subject to the provisions of sections 6221 through 6234.*

(A) Except as otherwise provided in this paragraph (f)(2)(iii), the general rule of paragraph (a)(1) of this section applies to make the agent for the group the agent for any subsidiary member that for any part of the consolidated return year is a partner in a partnership subject to the provisions of sections 6221 through 6234 of the Code (as originally enacted by the Tax Equity and Fiscal Responsibility Act of 1982 and subsequently amended) and the accompanying regulations (TEFRA partnership).

(B) Any subsidiary or any disregarded entity owned by a subsidiary that is designated as tax matters partner of a TEFRA partnership will act in its own name and perform its responsibilities under sections 6221 through 6234 and the accompanying regulations without requiring any action by the agent for the group (but see paragraph (d)(9) of this section regarding the mailing of a final partnership administrative adjustment to the agent for the group).

(C) The Commissioner may at any time communicate directly with a subsidiary or a disregarded entity owned by a subsidiary that is a partner in a TEFRA partnership whenever the Commissioner determines that such direct communication will facilitate the conduct of an examination, appeal or settlement with respect to the partnership.

(3) *Copy of notice of deficiency to entity that has ceased to be a member of the group.* A subsidiary that ceases to be a member of the group during or after a consolidated return year may file a written notice of that fact with the Commissioner and request a copy of any notice of deficiency with respect to the tax for a consolidated return year during which it was a member, or a copy of any notice and demand for payment of such deficiency, or both. Such filing does not limit the scope of the agency of the agent for the group provided for in this section. Any failure by the Commissioner to comply with such request does not limit the subsidiary's tax liability under § 1.1502–6.

(g) *Examples.* Unless otherwise indicated, all entities are domestic and are calendar year taxpayers. For none of the tax years at issue does the Commissioner exercise the authority under paragraph (f)(2) of this section to deal with any member separately. Any surviving entity in a merger is either a successor as described in paragraph (b)(1) of this section, or a default successor as described in (b)(4) of this section, as the case may be. The following examples illustrate the principles of this section:

Example 1. Disposition of all group members where the agent for the group remains the agent. As of January 1 of Year 1, P, a domestic corporation, is the common parent and agent for the P consolidated group, consisting of P and its two subsidiary corporations, S and S–1. P files consolidated returns for the P group in Years 1 and 2. On December 31 of Year 1, P sells all the stock of S–1 to X. On December 31 of Year 2, P distributes all the stock of S to P's shareholders. P files a separate return for Year 3. Although the consolidated group terminates after Year 2 and P is no longer the common parent nor the agent for the group in years after Year 2, P remains the agent for the P group for Years 1 and 2. For as long as P remains in existence, P is the agent for the P group under paragraph (a) of this section for Years 1 and 2.

Example 2. Acquisition of the agent for the group by another group where the agent for the group remains the agent. The facts are the same as in *Example 1,* except on January 1 of Year 3, all of the outstanding stock of P is acquired by Y, a domestic corporation that is the common parent and agent for the group of the Y consolidated group. P thereafter joins in the Y group consolidated return as a member of the Y group. Although P is a member of the Y group in Year 3 and subsequent periods, P remains the agent for the P group for Years 1 and 2. For as long as P remains in existence, P is the agent for the P group under paragraph (a) of this section for Years 1 and 2.

Example 3. Reverse triangular merger of the agent for the group where the agent for the group remains the agent. (i) As of January 1 of Year 1, P, a domestic corporation that is the common parent and agent for the P consolidated group consisting of P and its two subsidiary corporations, S and S–1. P files consolidated returns for the P group in Years 1 and 2. On March 1 of Year 3, W–1, a domestic subsidiary corporation of W, a domestic corporation, merges into P, in a reverse triangular merger described in section 368(a)(1)(A) and (a)(2)(E). P survives the merger with W–1. The transaction constitutes a reverse acquisition under § 1.1502–75(d)(3)(i) because P's shareholders receive more than 50 percent of W's stock in exchange for all of P's stock.

(ii) Because the transaction constitutes a reverse acquisition, the P group is treated as remaining in existence with W as its common parent and agent for the group. Under paragraph (a) of this section, P remains the agent for the P group for Years 1 and 2, even though the P group continues with W as its new common parent pursuant to § 1.1502–75(d)(3)(i). Before March 2 of Year 3, P is the agent for the P group for Year 3. Beginning on March 2 of Year 3, W becomes the agent for the P group with respect to all of Year 3 (including the period through March 1) and subsequent consolidated return years. Thus, for as long as P remains in existence, P is the agent for the P group under paragraph (a) of this section for Years 1 and 2.

Example 4. Reverse triangular merger of the agent for the group—subsequent spinoff of agent for the group where the agent for the group remains the agent. The facts are the same as in *Example 3,* except that on April 1 of Year 4, in a transaction unrelated to the March 1, Year 3 reverse acquisition, P distributes the stock of its subsidiaries S and S–1 to W, and W then distributes the stock of P to the W shareholders. Beginning on March 2 of Year 3, W becomes the agent for the P group with respect to Year 3 (including the period through March 1) and subsequent consolidated return years. Although P is no longer a member of the P group after the Year 4 spinoff, P remains the agent for the P group under paragraph (a) of this section for Years 1 and 2. For as long as P remains in existence, P is the agent for the P group under paragraph (a) of this section for Years 1 and 2.

Example 5. Qualified stock purchase and section 338 election where the agent for the group remains the agent. As of January 1 of Year 1, P, a domestic corporation, is the common parent and agent for the P consolidated group consisting of P and its two subsidiary corporations, S and S–1. P files consolidated returns for the P group in Years 1 and 2. On March 31 of Year 2, V, a domestic corporation, purchases the stock of P in a qualified stock purchase (within the meaning of section 338(d)(3)), and V makes a timely election pursuant to section 338(g)

with respect to P. Although section 338(a)(2) provides that P is treated as a new corporation as of the beginning of the day after the acquisition date for purposes of subtitle A, paragraph (c)(8) of this section provides that P's existence is not deemed to terminate for purposes of this section notwithstanding the general rule of section 338(a)(2). Therefore, new P remains the agent for the P group for Year 1 and the period ending March 31 of Year 2 (short Year 2) regardless of the election under section 338(g).

Example 6. Change in the agent for the group's Federal income tax classification to a partnership and the resulting partnership continues as the agent for the group. (i) P, a State M limited liability partnership with two partners, makes an initial entity classification election to be an association taxable as a corporation for Federal income tax purposes. P is the common parent and agent for the P consolidated group consisting of P and its two subsidiary corporations, S and S–1. P files consolidated returns for the P group in Years 1 through 5. On January 1 of Year 6, P elects pursuant to Treas. Reg. § 301.7701–3(c) to be treated as a partnership. P remains in existence under applicable law.

(ii) The P group terminates and P is no longer the common parent of a consolidated group after its election to be treated as a partnership for Federal income tax purposes. Because P remains in existence under applicable law, P is the agent for the P group under paragraph (a) of this section for Years 1 through 5. The results would be the same if P merged into a foreign partnership because the foreign partnership would be P's default successor and agent for the P group for Years 1 through 5. See paragraphs (b)(4) and (c)(1) of this section.

Example 7. Forward triangular merger of agent for the group—successor as default successor. As of January 1 of Year 1, P, a domestic corporation, is the common parent and agent for the P consolidated group consisting of P and its two subsidiary corporations, S and S–1. P files consolidated returns for the P group in Years 1 and 2. On January 1 of Year 3, P merges with and into Z–1 corporation, a subsidiary of Z corporation, in a forward triangular merger described in section 368(a)(1)(A) and (a)(2)(D). The transaction constitutes a reverse acquisition under § 1.1502–75(d)(3)(i) because P's shareholders receive more than 50 percent of Z's stock in exchange for all of P's stock. Z–1, the corporation that survives the merger and the successor of P, is the default successor for the P group for Years 1 and 2. Although Z is the new common parent and agent for the P group (which continues pursuant to § 1.1502–75(d)(3)(i)) for years after the merger, P may not designate Z, S or S–1 as the agent for Years 1 or 2 because Z–1 is P's default successor and the agent for the P group for Years 1 and 2. See paragraphs (b)(4) and (c)(1) of this section.

Example 8. Merger of the agent for the group into a disregarded entity in exchange for stock of owner in a transaction qualifying as a reorganization under section 368(a)(1)(F) where successor is the default successor. (i) As of January 1 of Year 1, P, a domestic corporation, is the common parent and agent for the P consolidated group consisting of P and its two subsidiary corporations, S and S–1. P files a consolidated return for the P group in Year 1. On January 1 of Year 2, the shareholders of P form Y, a State M corporation. On the same date, Y forms Y–1, a State M limited liability company that is a disregarded entity (within the meaning of paragraph (b)(3) of this section) for Federal income tax purposes, and P merges into Y–1. In the merger, the P shareholders receive all of the Y stock. For Federal income tax purposes, Y is treated as succeeding to P in a transaction qualifying under section 368(a)(1)(F), and the P group continues under Treas. Reg. § 1.1502–75(d)(2) with Y as the common parent and agent for the group for Year 2.

(ii) In Year 4, the IRS seeks to extend the period of limitations on assessment with respect to Year 1 of the P consolidated group. As a result of the January 1, Year 2 merger, Y–1 is P's default successor and the agent for the P group for Year 1. See paragraphs (b)(4) and (c)(1) of this section. Therefore, Y–1 is the only party that can sign the extension with respect to the P group for Year 1.

(iii) In Year 5, the IRS seeks to extend the period of limitations on assessment with respect to Year 1 of the P group and Year 2 of the Y group (formerly the P group). Y–1 remains as the default successor to P for Year 1 and therefore is the only party that can sign the extension with respect to the P group for Year 1. Furthermore, because the merger transaction qualified as a reorganization under section 368(a)(1)(F), the P group remains in existence with Y as the common parent. Therefore, Y is the agent for the group for Year 2 and is the only party that can sign the extension with respect to the Y group for that year. See paragraphs (a) and (c)(1) of this section.

Example 9. Designation of agent where there is no default successor. (i) P is a corporation formed under the laws of State X. Fifty percent of its stock is owned at all times by A, an individual, and 50 percent by BCD, a partnership. On January 1 of Year 1, P forms two subsidiary corporations, S and T. P files consolidated returns for the P group beginning in Year 1. On November 30 of Year 3, P dissolves under X law. Under X law, A and BCD are primarily liable for the Federal income tax liability of dissolved corporation P. State X law allows the officers of a dissolved corporation to perform certain actions incident to the winding up of its affairs after its dissolution, including the filing of tax returns.

(ii) Upon its dissolution, there is no default successor to P because there are two successors. Prior to its dissolution on November 30 of Year 3, P may designate an agent for the P group for Years 1 and 2 and the short taxable year ending on November 30 of Year 3, to be effective upon P's dissolution. P may designate S or T (because they are members of the former group) or BCD (because it is an entity that is a successor to P). P cannot designate A because A is not an entity. The officers of P cannot designate an agent for the P group after P dissolves on November 30 of Year 3, notwithstanding the winding up provisions of State X law. Accordingly, P should designate an agent prior to its dissolution to ensure that there is an agent for the group authorized to file the short Year 3 consolidated return. If P does not designate an agent prior to dissolution, the Commissioner may designate an agent from among S, T or BCD, upon their request or otherwise. If any of S, T, A or BCD realizes that P has dissolved without designating an agent for the group, it should request a designation of an agent by the Commissioner as soon as possible.

Example 10. Fraudulent conveyance of assets. As of January 1 of Year 1, P, a domestic corporation, is the common parent and agent for the P consolidated group consisting of P and its two subsidiary corporations, S and S–1. On March 15 of Year 2, P files a consolidated return that includes the income of S and S–1 for Year 1. On December 1 of Year 2, S–1 transfers assets having a fair market value of $ 100x to U in exchange for $10x. This transfer of assets for less than fair market value constitutes a fraudulent conveyance under applicable state law. On March 1 of Year 5, P executes a waiver extending to December 31 of Year 6 the period of limitations on assessment with respect to the group's Year 1 consolidated return. On February 1 of Year 6, the Commissioner issues a notice of deficiency to P asserting a deficiency of $ 30x for the P group's Year 1 consolidated tax liability. P does not file a petition for redetermination in the Tax Court, and the Commissioner makes a timely assessment against the P group. P, S and S–1 are all insolvent and are unable to pay the deficiency. On February 1 of Year 8, the Commissioner sends a notice of transferee liability to U, which does not file a petition in the Tax Court. On August 1 of Year 8, the Commissioner assesses the amount of the P group's deficiency against U. Under section 6901(c), the Commissioner may assess U's transferee liability within one year after the expiration of the period of limitations against the transferor S–1. By operation of section 6213(a) and 6503(a), the issuance of the notice of deficiency to P and the expiration of the 90-day period for filing a petition in the Tax Court have the effect of further extending by 150 days the P group's limitations period on assessment from the previously extended date of December 31 of Year 6 to May 30 of Year 7. Pursuant to paragraph (a) of this section, the waiver executed by P on March 1 of Year 5 to extend the period of limitations on assessment to December 31 of Year 6 and the further extension of the P group's limitations period to May 30 of Year 7 (by operation of sections 6213(a) and 6503(a)) have the derivative effect of extending the period of limitations on assessment of U's transferee liability to May 30 of Year 8. By operation of section 6901(f), the issuance of the notice of transferee liability to U and the expiration of the 90-day period for filing a petition in the Tax Court have the effect of further extending the limitations period on assessment of U's liability as a transferee by 150 days, from May 30 of Year 8 to October 27 of Year 8. Accordingly, the Commissioner may send a notice of transferee liability to U at any time on or before May 30 of Year 8 and assess the

unpaid liability against U at any time on or before October 27 of Year 8. The result would be the same even if S–1 ceased to exist before March 1 of Year 5, the date P executed the waiver.

Example 11. Consent to extend the statute of limitations for a partnership where a member of the consolidated group is a partner of such partnership subject to the provisions of sections 6221 through 6234 and the tax matters partner is not a member of the group. (i) P, a domestic corporation, is the common parent and agent for the P consolidated group consisting of P and its two subsidiary corporations, S and S–1. The P group has a November 30 fiscal year end and P files consolidated returns for the P group for the years ending November 30, Year 1 and November 30, Year 2. S–1 is a partner in the PRS partnership which is subject to the provisions of sections 6221 through 6234. PRS has a calendar year end and A, an individual, is the tax matters partner of the PRS partnership. PRS files a partnership return for the year ending December 31, Year 1. On January 10, Year 5, A, as the tax matters partner for the PRS partnership, executes a consent to extend the period for assessment of partnership items of PRS for all partners, and the Service co-executes the consent on the same day for the year ending December 31, Year 1.

(ii) A's consent to extend the statute of limitations for the partnership items of PRS partnership for the year ending December 31, Year 1, extends the statute of limitations with respect to the partnership items for all members of the P group, including P, S and S–1 for the consolidated return year ending November 30, Year 2. This is because S–1 is a partner in the PRS partnership for which A, the tax matters partner for the PRS partnership, consents to extend the statute of limitations for the year ending December 31, Year 1. However, under paragraph (f)(2)(iii), such agreement with respect to the statute of limitations for the PRS partnership for the year ending December 31, Year 1 does not obviate the need to obtain a consent from P, the agent for the P consolidated group, to extend the statute of limitations for the P consolidated group for the P group's consolidated return years ending November 30, Year 1 and November 30, Year 2 regarding any items other than partnership items or affected items of the PRS partnership.

Example 12. Contacting subsidiary member in order to facilitate the conduct of an examination, appeal or settlement where a member of the consolidated group is a partner of a partnership subject to the provisions of sections 6221 through 6234. (i) P, a domestic corporation, is the common parent and agent for the P consolidated group consisting of P and its two subsidiary corporations, S and S–1. The P group has a November 30 fiscal year end, and P files consolidated returns for the P group for the years ending November 30, Year 1 and November 30, Year 2. S–1 is a partner in the PRS partnership which is subject to the provisions of sections 6221 through 6234. PRS has a calendar year end and A, an individual, is the tax matters partner of the PRS partnership. PRS files a partnership return for the year ending December 31, Year 1. The Commissioner, on January 10, Year 4, in the course of an examination of the PRS partnership for the year ending December 31, Year 1, seeks to obtain information in the course of that examination in order to resolve the audit.

(ii) Because the direct contact with a subsidiary member of a consolidated group that is a partner in a partnership subject to the provisions under sections 6221 through 6234 may facilitate the conduct of an examination, appeal or settlement, the Commissioner, under paragraph (f)(2)(iii) of this section, may communicate directly with either S–1, P or A regarding the PRS partnership without breaking agency pursuant to paragraph (f)(2)(i) of this section. However, if the Commissioner were instead seeking to execute a settlement agreement with respect to S–1 as a partner with respect to its liability as a partner in PRS partnership, P would need to execute such settlement agreement for all members of the group including the partner subsidiary.

(i) [Reserved]

(j) *Cross-reference.* For further rules applicable to groups that include insolvent financial institutions, see § 301.6402–7 of this chapter.

(k) *Effective/applicability date.* The rules of this section apply to taxable years ending on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–13056 Filed 5–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Chapter X

RIN 1506–AB19

Financial Crimes Enforcement Network; Imposition of Special Measure Against JSC CredexBank as a Financial Institution of Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network, Treasury (''FinCEN''), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In a finding published elsewhere in this issue of the **Federal Register**, the Secretary of the Treasury, through his delegate, the Director of FinCEN, found that reasonable grounds exist for concluding that JSC CredexBank is a financial institution of primary money laundering concern pursuant to 31 U.S.C. 5318A. FinCEN is issuing this notice of proposed rulemaking to propose the imposition of two special measures against JSC CredexBank.

DATES: Written comments on the notice of proposed rulemaking must be submitted on or before July 30, 2012.

ADDRESSES: You may submit comments, identified by RIN 1506–AB19 by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include 1506–AB19 in the submission. Refer to Docket Number FINCEN–2012–0003.
- *Mail:* The Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include RIN 1506–AB19 in the body of the text. Please submit comments by one method only.
- Comments submitted in response to this NPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

Inspection of comments: Public comments received electronically or through the U.S. Postal Service sent in response to a notice and request for comment will be made available for public review as soon as possible on *http://www.regulations.gov.* Comments received may be physically inspected in the FinCEN reading room located in Vienna, Virginia. Reading room appointments are available weekdays (excluding holidays) between 10 a.m. and 3 p.m., by calling the Disclosure Officer at (703) 905–5034 (not a toll-free call).

FOR FUTHER INFORMATION CONTACT: The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (the USA PATRIOT Act), Public Law 107–56. Title III of the USA PATRIOT Act amends the anti-money laundering provisions of the Bank Secrecy Act (BSA), codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5332, to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism. Regulations implementing the BSA appear at 31 CFR chapter X. The authority of the Secretary of the Treasury (''the Secretary'') to administer the BSA and

its implementing regulations has been delegated to the Director of FinCEN.[1]

Section 311 of the USA PATRIOT Act (''section 311'') added section 5318A to the BSA, granting the Secretary the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transaction, or type of account is of ''primary money laundering concern,'' to require domestic financial institutions and financial agencies to take certain ''special measures'' against the entity of primary money laundering concern. Section 311 identifies factors for the Secretary to consider and Federal agencies to consult before the Secretary may conclude that a jurisdiction, institution, class of transaction, or type of account is of primary money laundering concern. The statute also provides similar procedures, *i.e.,* factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern.

Taken as a whole, section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. These options give the Secretary the authority to control and limit access to the U.S. financial system to any jurisdictions and institutions that pose money laundering threats. Through the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively monitor the respective jurisdictions, institutions, transactions, or accounts; and can protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that are of money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a financial institution operating outside the United States is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General. The Secretary is also required by section 311 to consider ''such information as the Secretary determines to be relevant, including the following potentially relevant factors[2]:

- The extent to which such financial institution is used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such financial institution is used for legitimate business purposes in the jurisdiction; and
- The extent to which the finding that the institution is of primary money laundering concern is sufficient to ensure, with respect to transactions involving the institution operating in the jurisdiction, that the purposes of the BSA continue to be fulfilled, and to guard against international money laundering and other financial crimes.

If the Secretary determines that reasonable grounds exist for concluding that a financial institution operating outside the United States is of primary money laundering concern, the Secretary must determine the appropriate special measure(s) to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed individually, jointly, in any combination, and in any sequence.[3] The Secretary's imposition of special measures requires additional consultations to be made and factors to be considered. The statute requires the Secretary to consult with appropriate Federal agencies and other interested parties[4] and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measures would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;
- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction; and
- The effect of the action on the United States national security and foreign policy.[5]

B. JSC CredexBank

In this rulemaking, FinCEN proposes to impose both the first special measure (31 U.S.C. 5318A(b)(1)) and the fifth special measure (31 U.S.C. 5318A(b)(5)) against JSC CredexBank (''Credex''). The first special measure imposes requirements with respect to recordkeeping and reporting of certain financial transactions and may be imposed by order prior to finalization of this proposed regulation, as explained in more detail below. The fifth special measure prohibits or conditions the opening or maintaining of correspondent or payable-through accounts for the identified institution by U.S. financial institutions and may be imposed only through the finalization of this proposed regulation.

Credex is a depository institution that is located and licensed in the Republic of Belarus and primarily services corporate entities.[6] Originally established on September 27, 2001, as Nordic Investment Bank Corporation by Ximex Executive Limited (''Ximex''),[7] [8] the bank changed its name to Northern Investment Bank on April 5, 2006, and then to the current name of Credex on February 12, 2007. Credex is 96.82% owned by Vicpart Holding SA, based in Fribourg City, Switzerland.[9] With 169 employees[10] and a total capitalization of approximately $19 million,[11] the bank currently ranks as the 22nd largest among 31 commercial banks in Belarus in total assets.[12] Credex has six domestic branches and one representative office in the Czech Republic.[13] While the majority of its correspondent banking relationships are with domestic banks, Credex maintains correspondent relationships with

[1] Therefore, references to the authority of the Secretary of the Treasury under section 311 of the USA PATRIOT Act apply equally to the Director of FinCEN.

[2] 31 U.S.C. 5318A(c)(2).

[3] Available special measures include requiring: (1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) collection of information relating to certain correspondent accounts; and (5) prohibition or conditions on the opening or maintaining of correspondent or payable through accounts. 31 U.S.C. 5318A(b)(l)–(5). For a complete discussion of the range of possible countermeasures, see 68 FR 18917 (April 17, 2003) (proposing special measures against Nauru).

[4] Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (''SEC''), the Commodity Futures Trading Commission (''CFTC''), the National Credit Union Administration (''NCUA''), and, in the sole discretion of the Secretary, ''such other agencies and interested parties as the Secretary may find to be appropriate.'' The consultation process must also include the Attorney General, if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions opening or maintaining correspondent account relationships with the designated jurisdiction.

[5] Classified information used in support of a section 311 finding and measure(s) may be submitted by Treasury to a reviewing court ex parte and in camera. See section 376 of the Intelligence Authorization Act for fiscal year 2004, Public Law 108–177 (amending 31 U.S.C. 5318A by adding new paragraph (f)).

[6] Bankers Almanac (2012).

[7] ''Belarus on a Roll,'' Business New Europe, July 22, 2009 (*http://www.businessneweurope.eu/story1701/Belarus_on_a_roll*).

[8] Bankers Almanac (2012).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

Russian, Latvian, German, and Austrian banks.[14] According to available public information, Credex does not appear to have any direct U.S. correspondent relationship.[15]

II. Imposition of Special Measures Against JSC CredexBank as a Financial Institution of Primary Money Laundering Concern

As a result of the finding on [INSERT DATE OF TREASURY FINDING], the Secretary, through his delegate, the Director of FinCEN, found that reasonable grounds exist for concluding that Credex is a financial institution of primary money laundering concern. Based upon that finding, the Director of FinCEN is authorized to impose one or more special measures. Following the required consultations and the consideration of all relevant factors discussed in the finding and in this notice of proposed rulemaking, the Secretary, through the Director of FinCEN, is proposing to impose the first and fifth special measures authorized by section 5318A(b).[16]

The first special measure authorizes the Secretary, through the Director of FinCEN, to require any domestic financial institution ''to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to'' a financial institution operating outside of the United States found to be of primary money laundering concern. The fifth special measure authorizes a prohibition against the opening or maintaining of correspondent accounts [17] by any domestic financial institution or agency for or on behalf of a financial institution found to be a primary money laundering concern.

FinCEN is imposing the first special measure in addition to the fifth special measure in this case because of the special circumstances and concerns raised by the activities of Credex. Specifically, the pervasive lack of transparency surrounding Credex—including its engagement in a disproportionately large volume of transactions for a bank of its size and its ownership and use by shell companies in a manner that obscures the purpose and ownership of funds moving through the United States—indicates a high degree of money laundering risk and vulnerability to other financial crimes. This lack of transparency and use of the bank by shell corporations is the reason why FinCEN proposes to employ the first special measure in this case. The imposition of the first special measure in this case will serve a number of functions. Information gathered through reports submitted by financial institutions pursuant to the first special measure will provide FinCEN and law enforcement with greater insight into transactions or attempted transactions related to Credex, including details regarding the underlying beneficial owners. This knowledge, in turn, could help FinCEN and law enforcement pierce the veil of the shell corporations behind which the true owners of the funds involved hide.

Under Section 311, FinCEN may impose the first special measure by order prior to the implementation of any finalized rule,[18] provided that any such order be issued with a NPRM relating to the imposition of the special measure and that such order may not remain in effect for more than 120 days absent the promulgation of a rule on or before the end of the 120-day period beginning on the date the order was issued.[19] The authority to issue such an order immediately upon finding that an institution is of primary money laundering concern is particularly important in addressing illicit finance risks associated with the identified financial institution that could continue posing a threat to the U.S. financial system while a proposed rule is under consideration.

Although the factual circumstances surrounding Credex could merit an immediate imposition of the first special measure, FinCEN has elected not to issue an order to this effect in this case. Taking into account the fact that this NPRM marks the inaugural use of the first special measure in a Section 311 action, FinCEN has decided not to implement the first special measure prior to the finalization of the proposed rule in order to provide financial institutions and other interested parties with an opportunity to comment on how the first special measure could be implemented in a manner that most effectively mitigates the risk posed by the identified institution to the U.S. financial system and enables the collection of useful information while minimizing the overall burden on U.S. financial institutions.

As such, FinCEN requests comment on the scope and practicability of the potential obligations under the first special measure, and in particular, any input on the feasibility of implementing the first special measure by order prior to a final rule or in the absence of a prohibition on opening or maintaining correspondent accounts with an identified institution as proposed under fifth special measure. FinCEN will consider such input not only in the context of assessing whether to finalize the proposed rule, but also in the event that it determines that it is necessary in a future Section 311 action to issue an order imposing the first special measure prior to the finalization of a rule.

A. Form of Records and Reports Under the First Special Measure

As to the form of records and reports required by the first special measure, Section 5318A(b)(1)(B) provides:

Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including—

(i) The identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

(ii) The legal capacity in which a participant in any transaction is acting;

(iii) The identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

(iv) A description of any transaction.

The Director of FinCEN determines that records and reports under the first special measure, if imposed, shall be made and retained as follows. The covered financial institution is required to take reasonable steps to collect and report to FinCEN the following information with respect to any transaction or attempted transaction related to Credex:

(i) The identity and address of the participants in a transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer;

(ii) The legal capacity in which Credex is acting with respect to the transaction or attempted transaction and, to the extent Credex is not acting on its own behalf, then the customer or other person on whose behalf Credex is acting;

(iii) The identity of the beneficial owner of the funds involved in any transaction or attempted transaction; and

[14] *Id.*

[15] *Id.*

[16] In connection with this action, FinCEN consulted with staff of the Federal functional regulators, the Department of Justice, and the Department of State, among others.

[17] For purposes of the proposed rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

[18] 31 U.S.C. 5318A(a)(2)(B).

[19] 31 U.S.C. 5318A(a)(3).

(iv) A description of the transaction or attempted transaction and its purpose. This information shall be reported to FinCEN within ten business days following the day when the covered financial institution engaged in the transaction or became aware of the attempted transaction.

B. Discussion of Section 311 Factors

A discussion of the section 311 factors relevant to imposing the first and fifth special measures follows.

1. Whether Similar Actions Have Been or Will Be Taken by Other Nations or Multilateral Groups Against Credex

Other countries or multilateral groups have not yet taken action similar to those proposed in this rulemaking that would: (1) Require domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to Credex; and (2) prohibit domestic financial institutions and agencies from opening or maintaining a correspondent account for or on behalf of Credex, and to require those domestic financial institutions and agencies to screen their correspondents in a manner that is reasonably designed to guard against indirect use by Credex, including access through the use of nested correspondent accounts held by Credex. FinCEN encourages other countries to take similar action based on the findings contained in this rulemaking.

2. Whether the Imposition of the First or Fifth Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

The first special measure sought to be imposed by this rulemaking would require domestic financial institutions and agencies to file reports concerning any transactions or attempted transactions related to Credex. Given the general recordkeeping and reporting obligations already in place, FinCEN does not expect incremental increase in the burden associated with these requirements to be significant. U.S. financial institutions generally apply some level of screening and (when required) reporting of their transactions and accounts, often through the use of commercially available software such as that used for compliance with the economic sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the Department of the Treasury. They are also required to have enhanced due diligence policies and procedures, which involve the collection of beneficial ownership information for certain types of correspondent accounts with certain foreign financial institutions. As explained in more detail in the section-by-section analysis below, financial institutions should be able to easily adapt these current screening and reporting procedures to comply with this special measure. Moreover, the number of transactions or attempted transactions for which the recordkeeping and reporting obligations apply is expected to be relatively limited because, according to available public information, Credex does not appear to have any direct U.S. correspondent relationships. Thus, the additional reporting and recordkeeping requirements that would be required by this rulemaking are not expected to create a significant competitive disadvantage for U.S. financial institutions.

The fifth special measure sought to be imposed by this rulemaking would prohibit covered financial institutions from opening and maintaining correspondent accounts for, or on behalf of, Credex. As a corollary to this measure, covered financial institutions also would be required to take reasonable steps to apply special due diligence, as set forth below, to all of their correspondent accounts to help ensure that no such account is being used indirectly to provide services to Credex. FinCEN does not expect the burden associated with these requirements to be significant, given its understanding that, according to available public information, no U.S. financial institutions currently maintain a correspondent account for Credex. There is a minimal burden involved in transmitting a one-time notice to all correspondent account holders concerning the prohibition on indirectly providing services to Credex. As noted above, U.S. financial institutions generally apply some level of transaction and account screening, often through the use of commercially available software. As explained in more detail in the section-by-section analysis below, financial institutions should, if necessary, be able to easily adapt their current screening procedures to support compliance with this special measure. Thus, the special due diligence that would be required by this rulemaking is not expected to impose a significant additional burden upon U.S. financial institutions.

3. The Extent to Which the Proposed Action or Timing of the Action Will Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities of Credex

This proposed rulemaking targets Credex specifically; it does not target a class of financial transactions (such as wire transfers) or a particular jurisdiction. Credex is not a major participant in the international payment system and is not relied upon by the international banking community for clearance or settlement services. Thus, the imposition of the first and fifth special measures against Credex will not have a significant adverse systemic impact on the international payment, clearance, and settlement system. In light of the reasons for imposing these special measures, FinCEN does not believe that it will impose an undue burden on legitimate business activities, and notes that the presence of many larger banks in Belarus will alleviate the burden on legitimate business activities within that jurisdiction.

4. The Effect of the Proposed Action on United States National Security and Foreign Policy

The additional recordkeeping and reporting requirements required by the first special measure would enhance the U.S. Government's understanding of the transactions engaged in by Credex and enhance transparency into Credex's activities of money laundering concern, which in turn would be utilized in efforts to detect and deter significant money laundering activity and other financial crimes. Such efforts would enhance national security, making it more difficult for terrorists and money launderers to access the substantial resources of the U.S. financial system.

The exclusion from the U.S. financial system of banks that serve as conduits for significant money laundering activity and other financial crimes required by the fifth special measure would similarly enhance national security by making it more difficult for terrorists and money launderers to access the substantial resources of the U.S. financial system.

More generally, the imposition of the first and fifth special measures would complement the U.S. Government's worldwide efforts to expose and disrupt international money laundering.

Therefore, pursuant to the finding that Credex is an institution of primary money laundering concern, and after conducting the required consultations and weighing the relevant factors, the Director of FinCEN is proposing to

impose the first and fifth special measures.

II. Section-by-Section Analysis for Imposition of First and Fifth Special Measures

A. 1010.658(a)—Definitions

1. JSC CredexBank

Section 1010.658(a)(1) of the proposed rule defines Credex to include all branches, offices, and subsidiaries of Credex operating in Belarus or in any jurisdiction. FinCEN will provide updated information, as it is available; however, covered financial institutions should take commercially reasonable measures to determine whether a customer is a branch, office, or subsidiary of Credex. FinCEN is not aware of any subsidiaries of Credex.

2. Correspondent Account

Section 1010.658(a)(2) of the proposed rule defines the term ''correspondent account'' by reference to the definition contained in 31 CFR 1010.605(c)(1)(ii). Section 1010.605(c)(1)(ii) defines a correspondent account to mean an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

In the case of a U.S. depository institution, this broad definition includes most types of banking relationships between a U.S. depository institution and a foreign bank that are established to provide regular services, dealings, and other financial transactions including a demand deposit, savings deposit, or other transaction or asset account, and a credit account or other extension of credit. We are using the same definition of ''account'' for purposes of this rule as was established for depository institutions in the final rule implementing section 312 of the USA PATRIOT Act.[20]

In the case of securities broker-dealers, futures commission merchants, introducing brokers-commodities, and investment companies that are open-end companies (mutual funds), we are also using the same definition of ''account'' for purposes of this rule as was established for these entities in the final rule implementing section 312 of the USA PATRIOT Act.[21]

3. Covered Financial Institution

Section 1010.658(a)(3) of the proposed rule defines ''covered financial institution'' with the same definition used in the final rule implementing section 312 of the USA PATRIOT Act,[22] which in general includes the following:

- An insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h));
- A commercial bank;
- An agency or branch of a foreign bank in the United States;
- A Federally insured credit union;
- A savings association;
- A corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611);
- A trust bank or trust company;
- A broker or dealer in securities;
- A futures commission merchant or an introducing broker-commodities; and a mutual fund.

4. Beneficial Owner

Section 1010.658(a)(4) of the proposed rule defines ''beneficial owner'' as an individual who has a level of control over, or entitlement to, the funds involved in the transaction that, as a practical matter, enables the individual, directly or indirectly, to control, manage or direct the funds. This definition derives from the definition used in the final rule implementing section 312 of the USA PATRIOT Act.[23]

5. Subsidiary

Section 1010.658(a)(5) of the proposed rule defines ''subsidiary'' as a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company. This definition means that the subsidiary is under the control of the owner of the majority interest.

B. 1010.658(b)—Requirements for Covered Financial Institutions With Regard to the First Special Measure

The proposed rule imposing the first special measure would require that covered financial institutions take reasonable steps to collect and report to FinCEN specified information regarding any transaction or attempted transaction related to Credex that the covered financial institution is requested to engage in after the imposition of the first special measure in order to increase the transparency regarding Credex's attempts to engage in transactions in or through the U.S. financial system. Transactions related to Credex would include, but are not limited to, those that are conducted or are attempted by Credex itself. This proposed rule would not alter or otherwise impact other regulatory obligations of the covered financial institution requiring the reporting of suspicious activity.

1. Reporting

(a) Identity of the Participants in a Transaction or Attempted Transaction

Section 1010.658(b)(1)(i) of the proposed rule imposing the first special measure would require covered financial institutions to report the identity and address of the participants in any transaction or attempted transaction related to Credex, including the identity of the originator and beneficiary of any funds transfer. This information would include any identifying information in the possession of the financial institution in the ordinary course of business, including the information required under 31 CFR § 1010.410(f) (generally known as the ''travel rule''), such as name, account number if used, address, the identity of the beneficiary's financial institution, or any other specific identifier of the recipient received with the transmittal order.

(b) Legal Capacity

Section 1010.658(b)(1)(ii) of the proposed rule imposing the first special measure would require covered financial institutions to report the legal capacity in which Credex and any customer of Credex is acting with respect to the transaction or attempted transaction. This information would include any identifying information collected by the financial institution in the ordinary course of business and may include identification of the roles of Credex or any of its customers in the transaction such as transmittor or recipient of a funds transfer or intermediary financial institutions involved in the payment chain associated with the transaction.

(c) Beneficial Owner of the Funds

Section 1010.658(b)(1)(ii) of the proposed rule imposing the first special measure would require covered financial institutions to report the identity of the beneficial owner of the funds involved in any transaction or attempted transaction related to Credex. Under existing FinCEN regulations, there are two limited situations where financial institutions are expressly obligated to obtain beneficial ownership information. Specifically, under the rules implementing Section 312 of the USA PATRIOT Act, certain ''covered financial institutions,'' [24] which include the same institutions covered by the

[20] *See* 31 CFR 1010.605(c)(2)(i).

[21] *See* 31 CFR 1010.605(c)(2)(ii)–(iv).

[22] *See* 31 CFR 1010.605(e)(1).

[23] *See* 31 CFR 1010.605(a).

[24] 31 CFR 1010.605(e)(1).

scope of this proposed regulation, must implement enhanced due diligence programs, including obtaining beneficial ownership information, in two situations: (i) Covered financial institutions that offer private banking accounts are required to take reasonable steps to identify the nominal and beneficial owners of such accounts;[25] and (ii) covered financial institutions that offer correspondent accounts for certain foreign financial institutions[26] are required to take reasonable steps to obtain information from the foreign financial institution about the identity of any person with authority to direct transactions through any correspondent account that is a payable-through account, and the sources and beneficial owner of funds or other assets in the payable-through account.[27] The requirement to report beneficial ownership of funds information about transactions or attempted transactions related to Credex can be satisfied by employing the same policies and procedures as are used for the regulatory obligations mentioned in (ii) above promulgated under Section 312 of the USA PATRIOT Act, and covered financial institutions should follow the same procedures for obtaining such beneficial ownership information as they would for those obligations. Collecting such information may require personal contact with the correspondent. Where the covered financial institution is unable to identify the beneficial owner of funds associated with a Credex-related transaction, it should consider the transaction to be one of primary money laundering concern and determine, based on identified risks, whether or not it should process the transaction.

(d) Description of the Transaction or Attempted Transaction and its Purpose

Section 1010.658(b)(1)(iii) of the proposed rule imposing the first special measure would require covered financial institutions to report a description of the transaction or attempted transaction and its purpose. The description would include additional details of the transaction, including amounts, and in particular, a general description of any underlying reason for the transaction or obligation which the financial transaction supports, such as the purchase of specific goods or services, initiation or repayment of a loan or other debt, settlement of a trade, transaction in foreign exchange, or other type of financial obligation, or other relevant information the covered financial institution may have available. To the extent a covered financial institution finds that it does not have sufficient information to enable it to report a description of the transaction and its purpose, it would be reasonable for the covered financial institution to inquire further (for example, with any applicable customer, respondent bank, or correspondent bank) to obtain additional information. In so doing, a covered financial institution should consider analogizing to procedures it would follow in fulfilling its obligation to determine whether a transaction should be reported as suspicious. Specifically, it should consider ''examining the available facts, including the background and possible purpose of the transaction'' in order to determine whether it is consistent with the type of transaction in which a particular customer would normally be expected to engage.[28]

2. Filing Requirements

Section 1010.658(b)(2) of the proposed rule imposing the first special measure would require covered financial institutions to make the reports required by Section 1010.658(b)(1) within ten business days following the day when the covered financial institution engaged in the transaction or became aware of the attempted transaction. By ensuring that FinCEN receives information shortly after a transaction is executed, the contemplated time period will enable FinCEN to more effectively monitor the ongoing activities of Credex, thereby enhancing transparency. This time period was specifically chosen because it will provide FinCEN with reporting more quickly than that required for suspicious activity reporting. FinCEN requests comment on whether ten days is sufficient time for covered financial institutions to obtain the required information or whether some other period of time, still less than that allowed for the filing of suspicious activity reports, is more appropriate.

A covered financial institution would additionally be required to take reasonable steps to identify any reportable transaction or attempted transaction, direct or indirect, related to Credex, to the extent that such use can be determined from transactional records maintained by the covered financial institution in the normal course of business. For example, a covered financial institution would be expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that on its face listed Credex as the originator's or beneficiary's financial institution, or otherwise referenced Credex in a manner detectable under the financial institution's normal screening processes. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC. Willful failure to provide timely, accurate, and complete information in such reporting may constitute a violation of these requirements subject to civil and criminal penalties under 31 U.S.C. 5321 and 5322.

FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions take reasonable steps to screen their transactions in order to identify any transaction or attempted transaction related to Credex.

C. 1010.658(c)—Requirements for Covered Financial Institutions With Regard to the Fifth Special Measure

The proposed imposition of the fifth special measure would prohibit covered financial institutions from establishing, maintaining, or managing in the United States any correspondent account for, or on behalf of, Credex. As a corollary to this prohibition, covered financial institutions would be required to apply special due diligence to their correspondent accounts to guard against their indirect use by Credex. At a minimum, that special due diligence must include two elements. First, a covered financial institution must notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to Credex that such correspondents may not provide Credex with access to the correspondent account maintained at the covered financial institution. Second, a covered financial institution must take reasonable steps to identify any indirect use of its correspondent accounts by Credex, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. A covered

[25] 31 CFR 1010.620(b)(1).

[26] These foreign financial institutions include foreign banks that operate under an offshore banking license; operate under a banking license issued by a country named as non-cooperative by an international body (such as the Financial Action Task Force (FATF)) of which the United States is a member; or operate under a banking license issued by country designated by the Treasury Secretary as warranting special measures. *See* 31 CFR 1010.610(c).

[27] 31 CFR 1010.610(b)(1)(iii)(A).

[28] See, e.g., 31 CFR 1020.320(a)(2)(iii).

financial institution should take a risk-based approach when deciding what, if any, additional due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by Credex, based on risk factors such as the type of services it offers and geographic locations of its correspondents.

1. Prohibition on Direct Use of Correspondent Accounts

Section 1010.658(c)(1) of the proposed rule imposing the fifth special measure prohibits all covered financial institutions from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, Credex. The prohibition would require all covered financial institutions to review their account records to ensure that they maintain no accounts directly for, or on behalf of, Credex.

2. Special Due Diligence of Correspondent Accounts to Prohibit Indirect Use

As a corollary to the prohibition on maintaining correspondent accounts directly for Credex, section 1010.658(c)(2) of the proposed rule imposing the fifth special measure requires a covered financial institution to apply special due diligence to its correspondent accounts [29] that is reasonably designed to guard against their indirect use by Credex. At a minimum, that special due diligence must include notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to Credex that such correspondents may not provide Credex with access to the correspondent account maintained at the covered financial institution. A covered financial institution would, for example, have knowledge that the correspondents provide access to Credex through transaction screening software. A covered financial institution may satisfy this requirement by transmitting the following notice to its correspondent account holders that it knows or has reason to know provide services to Credex:

Notice: Pursuant to U.S. regulations issued under section 311 of the USA PATRIOT Act, 31 CFR 1010.658, we are prohibited from establishing, maintaining, administering or managing a correspondent account for, or on behalf of, JSC CredexBank or any of its subsidiaries. The regulations also require us to notify you that you may not provide JSC CredexBank or any of its subsidiaries with access to the correspondent account you hold at our financial institution. If we become aware that JSC CredexBank or any of its subsidiaries is indirectly using the correspondent account you hold at our financial institution for transactions, we will be required to take appropriate steps to prevent such access, including terminating your account.

The purpose of the notice requirement is to help ensure cooperation from correspondent account holders in denying Credex access to the U.S. financial system. However, FinCEN does not require or expect a covered financial institution to obtain a certification from any of its correspondent account holders that indirect access will not be provided in order to comply with this notice requirement. Instead, methods of compliance with the notice requirement could include, for example, transmitting a one-time notice by mail, fax, or email to certain of the covered financial institution's correspondent account customers, informing them that they may not provide Credex with access to the covered financial institution's correspondent account, or including such information in the next regularly occurring transmittal from the covered financial institution to those correspondent account holders. FinCEN specifically solicits comments on the form and scope of the notice that would be required under the rule.

A covered financial institution also would be required to take reasonable steps to identify any indirect use of its correspondent accounts by Credex, to the extent that such indirect use can be determined from transactional records maintained by the covered financial institution in the normal course of business. For example, a covered financial institution would be expected to apply an appropriate screening mechanism to be able to identify a funds transfer order that on its face listed Credex as the financial institution of the originator or beneficiary, or otherwise referenced Credex in a manner detectable under the financial institution's normal screening processes. An appropriate screening mechanism could be the mechanism used by a covered financial institution to comply with various legal requirements, such as the commercially available software programs used to comply with the economic sanctions programs administered by OFAC. FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions take reasonable steps to screen their correspondent accounts in order to identify any indirect use of such accounts by Credex.

Notifying certain correspondent account holders and taking reasonable steps to identify any indirect use of its correspondent accounts by Credex in the manner discussed above are the minimum due diligence requirements under the proposed rule imposing the fifth special measure. Beyond these minimum steps, a covered financial institution should adopt a risk-based approach for determining what, if any, additional due diligence measures it should implement to guard against the indirect use of its correspondent accounts by Credex, based on risk factors such as the type of services it offers and the geographic locations of its correspondent account holders.

Under the proposed rule imposing the fifth special measure, a covered financial institution that obtains knowledge that a correspondent account is being used by a foreign bank to provide indirect access to Credex must take all appropriate steps to prevent such indirect access, including the notification of its correspondent account holder per section 1010.658(c)(2)(i)(A) and, where necessary, terminating the correspondent account. A covered financial institution may afford the foreign bank a reasonable opportunity to take corrective action prior to terminating the correspondent account. Should the foreign bank refuse to comply, or if the covered financial institution cannot obtain adequate assurances that the account will no longer be available to Credex, the covered financial institution must terminate the account within a commercially reasonable time. This means that the covered financial institution should not permit the foreign bank to establish any new positions or execute any transactions through the account, other than those necessary to close the account. A covered financial institution may reestablish an account closed under the proposed rule if it determines that the account will not be used to provide banking services indirectly to Credex. FinCEN specifically solicits comments on the requirement under the proposed rule that covered financial institutions prevent indirect access to Credex, once such indirect access is identified.

3. Reporting Not Required

Section 1010.658(c)(3) of the proposed rule imposing the fifth special measure clarifies that the rule does not impose any reporting requirement upon any covered financial institution that is

[29] Again, for purposes of the proposed rule, a correspondent account is defined as an account established to receive deposits from, or make payments or other disbursements on behalf of, a foreign bank, or handle other financial transactions related to the foreign bank.

not otherwise required by applicable law or regulation. A covered financial institution must, however, document its compliance with the requirement that it notify those correspondent account holders that the covered financial institution knows or has reason to know provide services to Credex, such correspondents may not provide Credex with access to the correspondent account maintained at the covered financial institution.

III. Request for Comments

FinCEN invites comments on all aspects of the proposals to impose the first and fifth special measures against Credex and specifically invites comments on the following matters:

1. The impact of the proposed special measures upon legitimate transactions with Credex involving, in particular, U.S. persons and entities; foreign persons, entities, and governments; and multilateral organizations doing legitimate business with persons or entities operating in Belarus.

First Special Measure

2. The form and scope of the reports to FinCEN required under the proposed rule to impose the first special measure;
3. The appropriate time within which a covered institution would be required to report to FinCEN;
4. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any reportable transactions by Credex;
5. The appropriate steps a covered financial institution should take once it identifies a transaction related to Credex; and
6. Whether a definition of ''attempted transaction'' needs to be included and what that definition should be.

Fifth Special Measure

7. The form and scope of the notice to certain correspondent account holders that would be required under the rule;
8. The appropriate scope of the proposed requirement for a covered financial institution to take reasonable steps to identify any indirect use of its correspondent accounts by Credex; and
9. The appropriate steps a covered financial institution should take once it identifies an indirect use of one of its correspondent accounts by Credex.

Possible Future Implementation of First Special Measure by Order

10. FinCEN has the authority, pursuant to 31 U.S.C. 5318A(b)(1), to impose the first special measure by order, without notice and comment, for up to 120 days prior to the implementation of a final rule imposing that special measure. FinCEN requests comment on the feasibility of so implementing the requirements of the first special measure by order prior to a final rule imposing the first special measure;
11. The feasibility of implementing an order imposing the first special measure in the absence of a prohibition on opening and maintaining correspondent accounts with the identified institution under the fifth special measure;
12. Whether the current definition of covered financial institutions would be appropriate if the first special measure were implemented by order; and
13. Whether there are any potential differences among the types of covered financial institutions that might make it more difficult for some to implement the order.

IV. Regulatory Flexibility Act

It is hereby certified that the proposed imposition of the first and fifth special measures would not have a significant economic impact on a substantial number of small entities.

On the basis of publicly available information, FinCEN understands that Credex currently maintains no correspondent accounts in the United States. Moreover, to the extent that a transaction related to Credex were to be processed through a U.S. financial institution, this would most likely involve the small subset of the largest financial institutions that actively engage in international transactions. Thus, the requirement to report transactions related to Credex under the first special measure would not have a significant impact on a substantial number of small entities. In addition, all U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence in order to comply with various legal requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC and existing suspicious activity reporting programs, can easily be modified to monitor for and report transactions related to Credex. Thus, any increase in the reporting burden that would be required by the imposition of the first special measure—*i.e.,* reporting of all transactions related to Credex on a timelier basis—would not impose a significant additional economic burden upon small U.S. financial institutions.

As noted above, FinCEN understands that Credex currently maintains no correspondent accounts in the United States. Thus, the prohibition on maintaining such accounts under the fifth special measure would not have a significant impact on a substantial number of small entities. In addition, all U.S. persons, including U.S. financial institutions, currently must exercise some degree of due diligence in order to comply with various legal requirements. The tools used for such purposes, including commercially available software used to comply with the economic sanctions programs administered by OFAC, can easily be modified to monitor for the use of correspondent accounts by Credex. Thus, the special due diligence that would be required by the imposition of the fifth special measure—*i.e.,* the one-time transmittal of notice to certain correspondent account holders and the screening of transactions to identify any indirect use of correspondent accounts—would not impose a significant additional economic burden upon small U.S. financial institutions.

FinCEN invites comments from members of the public who believe there will be a significant economic impact on small entities from the imposition of the first and fifth special measures on Credex.

V. Paperwork Reduction Act

The collection of information contained in this proposed rule is being submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (1506), Washington, DC 20503 (or by email to *oira_submission@omb.eop.gov* with a copy to FinCEN by mail or email at the addresses previously specified. Comments should be submitted by one method only. Comments on the collection of information should be received by July 30, 2012. In accordance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information as required by 31 CFR 1010.658 is presented to assist those persons wishing to comment on the information collection.

31 CFR 1010.658 is proposed imposing the first and fifth special measures under 31 U.S.C. 5318A. The Paperwork reduction act analysis for both follows.

The provisions in this proposed rule pertaining to the collection of information can be found in sections 1010.658(b)(1), 1010.658(c)(2)(i), and 1010.658(c)(3)(i). The information required to be reported by section 1010.658(b)(1) will be used by the U.S. Government to monitor the activities of the institution of primary money laundering concern. The notification requirement in section 1010.658(c)(2)(i) is intended to ensure cooperation from correspondent account holders in denying Credex access to the U.S. financial system. The information required to be maintained by section 1010.658(c)(3)(i) will be used by federal agencies and certain self-regulatory organizations to verify compliance by covered financial institutions with the provisions of 31 CFR 1010.658. The class of financial institutions affected by the notification requirement is identical to the class of financial institutions affected by the recordkeeping requirement. The collection of information is mandatory.

Description of Affected Financial Institutions: Banks, broker-dealers in securities, futures commission merchants and introducing brokers-commodities, and mutual funds.

Estimated Number of Affected Financial Institutions: 5,000.

Estimated Average Annual Burden Hours Per Affected Financial Institutions: The estimated average burden associated with the collection of information in this proposed rule is one hour per affected financial institution.

Estimated Total Annual Burden: 5,000 hours.

FinCEN specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information required to be maintained; (d) ways to minimize the burden of the required collection of information, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to report the information.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

VI. Executive Order 12866

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that the final rule is not a ''significant regulatory action'' for purposes of Executive Order 12866.

List of Subjects in 31 CFR Chapter X

Administrative practice and procedure, Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Foreign banking.

Authority and Issuance

For the reasons set forth in the preamble, Chapter X of title 31 of the Code of Federal Regulations is proposed to be amended as follows:

CHAPTER X—FINANCIAL CRIMES ENFORCEMENT NETWORK, DEPARTMENT OF THE TREASURY

1. The authority citation for Chapter X continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332 Title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Subpart F of Part Chapter X is proposed to be amended by adding new § 1010.658, as follows:

A. Under the undesignated center heading ''SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS'' to read as follows:

§ 1010.658 Special measures against the JSC CredexBank

(a) *Definitions.* For purposes of this section:

(1) *JSC CredexBank* means all branches, offices, and subsidiaries of JSC CredexBank operating in any jurisdiction.

(2) *Correspondent account* has the same meaning as provided in § 1010.605(c)(1)(ii).

(3) *Covered financial institution* has the same meaning as provided in § 1010.605(e)(1).

(4) *Beneficial Owner* means an individual who has a level of control over, or entitlement to, the funds involved in the transaction that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the funds.

(5) *Subsidiary* means a company of which more than 50 percent of the voting stock or analogous equity interest is owned by another company.

(b) *Reporting requirements for covered financial institutions* (1) *Reporting.* A covered financial institution is required to take reasonable steps to collect and report to FinCEN the following information with respect to any transaction or attempted transaction related to JSC CredexBank:

(i) The identity and address of the participants in a transaction or attempted transaction, including the identity of the originator and beneficiary of any funds transfer;

(ii) The legal capacity in which JSC CredexBank is acting with respect to the transaction or attempted transaction and, to the extent JSC CredexBank is not acting on its own behalf, then the customer or other person on whose behalf JSC CredexBank is acting;

(iii) The identity of the beneficial owner of the funds involved in any transaction or attempted transaction; and

(iv) A description of the transaction or attempted transaction and its purpose.

(2) *When to file.* A report required by paragraph (a) of this section shall be filed by the reporting financial institution within ten business days following the day when the covered financial institution engaged in the transaction or became aware of the attempted transaction.

(c) *Prohibition on accounts and due diligence requirements for covered financial institutions.*

(1) *Prohibition on direct use of correspondent accounts.* A covered financial institution shall terminate any correspondent account that is established, maintained, administered, or managed in the United States for, or on behalf of, JSC CredexBank.

(2) *Special due diligence of correspondent accounts to prohibit indirect use.* (i) A covered financial institution shall apply special due diligence to its correspondent accounts that is reasonably designed to guard against their indirect use by JSC CredexBank. At a minimum, that special due diligence must include:

(A) Notifying those correspondent account holders that the covered financial institution knows or has reason to know provide services to JSC CredexBank, that such correspondents may not provide JSC CredexBank with access to the correspondent account maintained at the covered financial institution; and

(B) Taking reasonable steps to identify any indirect use of its correspondent accounts by JSC CredexBank, to the

extent that such indirect use can be determined from transactional records maintained in the covered financial institution's normal course of business.

(ii) A covered financial institution shall take a risk-based approach when deciding what, if any, other due diligence measures it should adopt to guard against the indirect use of its correspondent accounts by JSC CredexBank.

(iii) A covered financial institution that obtains knowledge that a correspondent account is being used by the foreign bank to provide indirect access to JSC CredexBank, shall take all appropriate steps to prevent such indirect access, including the notification of its correspondent account holder under paragraph (b)(2)(i)(A) and, where necessary, terminating the correspondent account.

(3) *Recordkeeping and reporting.* (i) A covered financial institution is required to document its compliance with the notice requirement set forth in paragraph (b)(2)(i)(A) of this section.

(ii) Nothing in this subsection (c) shall require a covered financial institution to report any information not otherwise required to be reported by law or regulation.

Dated: May 22, 2012.

Peter S. Alvarado,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2012–12747 Filed 5–29–12; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0358]

RIN 1625–AA00

Safety Zone for Fifth Coast Guard District Fireworks Display Currituck Sound; Corolla, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the enforcement location of a safety zone for one specific recurring fireworks display in the Fifth Coast Guard District. This regulation applies to only one recurring fireworks event, held adjacent to the Currituck Sound, Corolla, North Carolina. The fireworks display previously originated from a barge but will this year originate from a location on land; the safety zone is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Currituck Sound, Corolla, NC, during the event.

DATES: Comments and related material must be received by the Coast Guard on or before June 14, 2012.

Compliance Dates: This proposed temporary rule would be effective from 5:30 p.m. on July 4, 2012, through 1 a.m. on July 5, 2012.

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email CWO3 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0358) in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

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 the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0358) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets

in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

B. Regulatory History and Information

This fireworks display event is regulated at 33 CFR 165.506, Table to § 165.506, section (d.) line 5. Last year the Town of Currituck relocated its fireworks launch location to a site on land. Accordingly a temporary rule amended the regulation listed at 33 CFR 165.506 last year and was published in 76 FR 31843. The Coast Guard plans to permanently amend the regulation at 33 CFR 165.506 at a later date to reflect this change.

C. Basis and Purpose

Recurring fireworks displays are frequently held on or adjacent to the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

The regulation listing annual fireworks displays within the Fifth Coast Guard District and safety zones locations is 33 CFR 165.506. The Table to § 165.506 identifies fireworks displays by COTP zone, with the COTP North Carolina zone listed in section ''(d.)'' of the Table.

The township of Corolla, North Carolina, sponsors an annual fireworks display held on July 4th over the waters of Currituck Sound at Corolla, North Carolina. The Table to § 165.506, at section (d.) event Number ''5'', describes the enforcement date and regulated location for this fireworks event.

The location listed in the Table has the fireworks display originating from a fireworks barge on Currituck Sound. However, this proposed rule changes the fireworks launch location on July 4, 2012, to a position on shore at latitude 36°22′23.8″ N longitude 075°49′56.3″ W.

A fleet of spectator vessels is anticipated to gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 165.506, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

D. Discussion of Proposed Rule

The Coast Guard proposes to temporarily suspend the regulation listed in Table to § 165.506, section (d.) event Number 5, and insert this temporary regulation at Table to § 165.506, at section (d.) as event Number ''14'', in order to reflect that the fireworks display will originate from a point on shore and therefore the regulated area is changed. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 165.506 or other provisions in § 165.506 shall be affected by this regulation.

The regulated area of this safety zone includes all water of the Currituck Sound within a 300 yards radius of latitude 36°22′23.8″ N longitude 075°49′56.3″ W.

This proposed safety zone would restrict general navigation in the regulated area during the fireworks event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event for the safety of participants and transiting vessels.

The enforcement period for this safety zone does not change from that enforcement period listed in § 165.506(d)5. Therefore, this safety zone would be enforced from 5:30 p.m. on July 4, 2012 through 1 a.m. on July 5, 2012.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

E. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule prevents traffic from transiting a portion of the Currituck Sound during the specified event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. Additionally, this rulemaking changes the regulated area for the Currituck Sound fireworks event for July 4, 2012 only and does not change the permanent regulated area that is published in 33 CFR 165.506, Table to § 165.506, section (d.) event Number 5. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the Currituck Sound where fireworks events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the fireworks display event permitted by Coast Guard Captain of the Port North Carolina. The Captain of the Port will ensure that small entities are able to operate in the regulated area when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This 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.

10. Protection of Children From Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the temporary change of regulation listed at 33 CFR 165.506 for the event listed in Table to § 165.506, section (d.) event Number 5. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend the Table to § 165.506 as follows:

a. Under ''(d) Coast Guard Sector North Carolina—COTP Zone,'' suspend entry 5.

b. Under, ''(d) Coast Guard Sector North Carolina—COTP Zone,'' add entry 14, to read as follows:

§ 165.506–T05–0358 Safety Zones; Fifth Coast Guard District Fireworks Displays, Currituck Sound, Corolla, NC.

* * * * *

(D) COAST GUARD SECTOR NORTH CAROLINA—COTP ZONE

Number	Date	Location	Regulated area
*	*	*	* * * *
14	July 4–5, 2012	Currituck Sound, Corolla, NC, Safety Zone.	All waters of the Currituck Sound within a 300 yard radius of the fireworks launch site in approximate position latitude 36°22′23.8″ N longitude 075°49′56.3″ W, located near Whale Head Bay.

* * * * *

Dated: May 14, 2012.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.

[FR Doc. 2012–12972 Filed 5–29–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO–P–2011–0016]

RIN 0651–AC78

Changes to Implement Micro Entity Status for Paying Patent Fees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing to amend the rules of practice in patent cases to implement the micro entity provision of the Leahy-Smith America Invents Act. Certain patent fees set or adjusted under the fee setting authority in the Leahy-Smith America Invents Act will be reduced by seventy-five percent for micro entities. The Office is proposing changes to the rules of practice to set out the procedures pertaining to claiming micro entity status, paying patent fees as a micro entity, notification of loss of micro entity status, and correction of payments of patent fees paid erroneously in the micro entity amount. In a separate rulemaking, the Office is in the process of proposing to set or adjust patent fees under the Leahy-Smith America Invents Act, including setting fees for micro entities with a seventy-five percent reduction.

DATES: *Comment Deadline Date:* Written comments must be received on or before July 30, 2012.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *micro_entity@uspto.gov.* Comments may also 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 may also 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 are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The 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), Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: The Leahy-Smith America Invents Act provides that: (1) The Office may set or adjust any patent fee, provided that the revenue generated by patent fees recovers only the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents (including administrative costs); and (2) most fees set or adjusted under this authority are reduced by fifty percent with respect to small entities and by seventy-five percent with respect to micro entities. The Leahy-Smith America Invents Act also adds a new section to Title 35 of the United States Code that defines a ''micro entity.'' The rules of practice currently have provisions pertaining to small entity status, as the patent laws provided a small entity discount prior to the Leahy-Smith America Invents Act. This notice proposes changes to the rules of practice to implement the ''micro entity'' provisions added by the Leahy-Smith America Invents Act.

Summary of Major Provisions: The Office proposes to add a provision to the rules of practice pertaining to micro entity status. The provision will set out the requirements to qualify as a micro entity tracking the micro entity provision of Section 10 of the Leahy-Smith America Invents Act. The provision will also set out procedures relating to micro entity status that largely track the provisions in 37 CFR 1.27 for small entity status. These new procedures pertain to claiming micro entity status, paying patent fees as a micro entity, notifying the Office of loss of micro entity status, and correcting payments of patent fees paid erroneously in the micro entity amount. The procedures for claiming micro entity status require the filing of a certification of entitlement to micro entity status. The Office is developing forms (paper and electronic) for use by members of the public to provide a certification of micro entity status. The procedures for paying fees as a micro entity provide that a micro entity certification need only be filed once in an application or patent, but that a fee may be paid in the micro entity amount only if the applicant or patentee is still entitled to micro entity status on the date the fee is paid. The procedures pertaining to notifying the Office of loss of micro entity status and correcting

payments of patent fees paid erroneously in the micro entity amount track the corresponding small entity provisions for notifying the Office of loss of small entity status and correcting payments of patent fees paid erroneously in the small entity amount.

Costs and Benefits: This rulemaking is not economically significant as that term is defined in Executive Order 12866 (Sept. 30, 1993).

Background: The Leahy-Smith America Invents Act was enacted into law on September 16, 2011. *See* Public Law 112–29, 125 Stat. 283 (2011). Section 10(a) of the Leahy-Smith America Invents Act provides that the Office may set or adjust by rule any patent fee established, authorized, or charged under title 35, United States Code, provided that fees only recover the aggregate estimated costs to the Office for processing, activities, services, and materials relating to patents (including administrative costs). *See* 125 Stat. at 316. Section 10(b) of the Leahy-Smith America Invents Act provides that ''the fees set or adjusted under [section 10(a)] for filing, searching, examining, issuing, appealing, and maintaining patent applications and patents shall be reduced by 50 percent with respect to the application of such fees to any small entity that qualifies for reduced fees under [35 U.S.C.] 41(h)(1) * * *, and shall be reduced by 75 percent with respect to the application of such fees to any micro entity as defined in [35 U.S.C.] 123.'' *See* 125 Stat. at 316–17. The patent laws provided in 35 U.S.C. 41(h) for small entities prior to the Leahy-Smith America Invents Act. Section 10(g) of the Leahy-Smith America Invents Act adds a new 35 U.S.C. 123 to define a ''micro entity.'' *See* 125 Stat. at 318–19.

35 U.S.C. 123(a) provides that the term ''micro entity'' means an applicant who makes a certification that the applicant: (1) Qualifies as a small entity as defined in 37 CFR 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and (4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census. *See* 125 Stat. at 318. 35 U.S.C. 123(a) provides one basis under which an applicant may establish micro entity status. 35 U.S.C. 123(d) (discussed subsequently) provides another basis under which an applicant may establish micro entity status.

The Office will indicate the income level that is three times the median household income for the calendar year most recently reported by the Bureau of the Census (the income threshold set forth in 35 U.S.C. 123(a)(3) and (a)(4)) on its Internet Web site, with its Independent Inventor resource information, and on the Office's certification of micro entity status (gross income basis) form (Form PTO/SB/15A). The Office will also make available resources to micro entities to help navigate the new micro entity procedures.

35 U.S.C. 123(b) provides that an applicant is not considered to be named on a previously filed application for purposes of 35 U.S.C. 123(a)(2) if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment. *See id.*

35 U.S.C. 123(c) provides that if an applicant's or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's or entity's gross income exceeds the threshold specified in 35 U.S.C. 123(a)(3) or (4). *See* 125 Stat. at 319.

35 U.S.C. 123(d) provides that a micro entity shall also include an applicant who certifies that: (1) The applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (2) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education. *See id.* As explained earlier, 35 U.S.C. 123(a) provides one basis under which an applicant may establish micro entity status, and 35 U.S.C. 123(d) provides another basis under which an applicant may establish micro entity status.

35 U.S.C. 123(e) provides that in addition to the limits imposed by this section, the Director may, in the Director's discretion, impose income limits, annual filing limits, or other limits on who may qualify as a micro entity pursuant to this section if the Director determines that such additional limits are reasonably necessary to avoid an undue impact on other patent applicants or owners or are otherwise reasonably necessary and appropriate. 35 U.S.C. 123(e) also provides that at least three months before any limits proposed to be implemented pursuant to 35 U.S.C. 123(e) take effect, the Director shall inform the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate of any such proposed limits. *See id.*

The micro entity provisions of 35 U.S.C. 123 are currently in effect. However, no patent fee is currently eligible for the seventy-five percent micro entity reduction as no patent fee has yet been set or adjusted under section 10 of the Leahy-Smith America Invents Act. The Office is in the process of proposing to set and adjust patent fees under section 10 of the Leahy-Smith America Invents Act in a separate rulemaking. The fees set or adjusted by the Office under section 10 of the Leahy-Smith America Invents Act for filing, searching, examining, issuing, appealing, and maintaining a patent application and patent will be reduced by: (1) Fifty percent for an applicant or patentee who establishes small (but not micro) entity status in the patent application or patent; and (2) seventy-five percent for an applicant or patentee who establishes micro entity status in the patent application or patent.

The Office plans to rely upon the applicant's certification of micro entity status (except where it conflicts with the information contained in the Office's records, such as where Office records indicate that the applicant is named as an inventor on more than four previously filed and unassigned nonprovisional patent applications) and will not require any additional documents from the applicant concerning the applicant's entitlement to claim micro entity status. This practice is similar to small entity practice where the Office generally does not question a claim of entitlement to

small entity status. *See* 37 CFR 1.27(f) and MPEP 509.03.

The Office does not plan to provide advisory opinions on whether a particular entity is entitled to claim micro entity status. *See* MPEP 509.03. The Office, however, is providing the following information concerning procedures for micro entity status under 35 U.S.C. 123:

If an application names more than one applicant, each applicant must meet the requirements of 35 U.S.C. 123(a) or (d) for the applicants to file a micro entity certification in the application. For example, it would not be appropriate to file a micro entity certification for the application in the following situations in which there is more than one applicant: (1) some but not all of the applicants qualify as micro entities under 35 U.S.C. 123(a) (*e.g.,* some applicants exceed the gross income levels; some applicants have more than four other nonprovisional applications; or some applicants have assigned, granted, or conveyed the application or are under an obligation to do so, to an entity that exceeds the gross income levels) and the institution of higher education provisions of 35 U.S.C. 123(d) are not applicable to the non-qualifying applicants; or (2) some but not all of the applicants meet the higher education provisions of 35 U.S.C. 123(d) and the micro entity provisions of 35 U.S.C. 123(a) are not applicable to the remaining applicants. Additionally, where there is more than one applicant, the income level requirement in 35 U.S.C. 123(a)(3) applies to each applicant's income separately (*i.e.,* the combined gross income of all of the applicants need not be below the income level in 35 U.S.C. 123(a)(3)). Further, if an applicant assigns or is obligated to assign the invention to more than one assignee (*e.g.,* half interest in the invention to two assignees), each of the assignees must meet the requirements in the micro entity standard (either by meeting the income limit specified in 35 U.S.C. 123(a)(4), or by being an institution of higher education under 35 U.S.C. 123(d)) for the applicant to claim micro entity status under 35 U.S.C. 123.

An ''institution of higher education'' as that term is used in 35 U.S.C. 123(d), is defined in the Higher Education Act of 1965 (20 U.S.C. 1001(a)). Section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001) provides that: ''For purposes of this chapter, other than subchapter IV, the term 'institution of higher education' means an educational institution in any State that—(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate, or persons who meet the requirements of section 1091(d)(3) of this title; (2) is legally authorized within such State to provide a program of education beyond secondary education; (3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree, or awards a degree that is acceptable for admission to a graduate or professional degree program, subject to review and approval by the Secretary; (4) is a public or other nonprofit institution; and (5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.'' Section 103 of the Higher Education Act of 1965 (20 U.S.C. 1003) provides ''the term 'State' includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States'' and that the Freely Associated States means the ''Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.''

The Office proposes to include in the rules of practice the requirements for micro entity status and procedures for claiming micro entity status, paying patent fees as a micro entity, notifying the Office of loss of micro entity status, and correcting payments of patent fees paid erroneously in the micro entity amount. The Office is also developing forms for use by members of the public to provide a certification of micro entity status. The procedures track the corresponding provisions in 37 CFR 1.27 and 1.28 for small entities, except where the small entity procedure is not appropriate for micro entity status under the provisions of 35 U.S.C. 123. For example, 35 U.S.C. 123 requires a certification as a condition of an applicant being considered a micro entity. Thus, the process in 37 CFR 1.27(c)(3) for establishing small entity status by payment of certain fees in the small entity amount cannot be made applicable to establishing micro entity status, and the process in 37 CFR 1.28(a) for a refund based upon subsequent establishment of small entity status is not applicable where there is subsequent establishment of micro entity status. In addition, 35 U.S.C. 123(a)(3) and (a)(4) require that the income level be met for the calendar year preceding the calendar year in which the applicable fee is being paid. Thus, the provision in 37 CFR 1.27(g)(1) that the applicant need only determine continued eligibility to small entity status for issue and maintenance fee payments, but can pay intervening fees at small entity rate without determining whether still entitled to small entity status, cannot be made applicable to payment of patent fees as a micro entity.

Discussion of Specific Rules

The following is a discussion of proposed amendments to Title 37 of the Code of Federal Regulations, Part 1.

Section 1.29: Section 1.29 is proposed to be added to implement procedures for claiming micro entity status.

Since 35 U.S.C. 123(a) through (d) specify the requirements to qualify as a micro entity, the provisions in §§ 1.29(a) through (d) will track the provisions of 35 U.S.C. 123(a) through (d). 35 U.S.C. 123 uses the term ''applicant'' throughout, which was virtually synonymous with ''inventor'' on September 16, 2011 (the date of enactment of the Leahy-Smith America Invents Act as well as the effective date of 35 U.S.C. 123). 35 U.S.C. 118, effective on September 16, 2012 (one year after the effective date of 35 U.S.C. 123), however, permits an application to be made by a person to whom the inventor has assigned or is under an obligation to assign the invention. In addition, a person who otherwise shows sufficient proprietary interest in the matter may make an application for patent on behalf of and as agent for the inventor. Thus, on and after September 16, 2012, 35 U.S.C. 118 will allow a person other than the inventor to file an application as the applicant if the inventor has assigned or is under an obligation to assign the invention, or if the person shows sufficient proprietary interest in the matter. As the terms ''applicant'' and ''inventor'' will no longer be virtually synonymous on and after September 16, 2012, the Office invites public comment on the issue of whether the term ''inventor'' should be used in place of ''applicant'' at any instance in the proposed § 1.29.

Section 1.29(a) implements the provisions of 35 U.S.C. 123(a). Section 1.29(a) provides that an applicant claiming micro entity status under 35

U.S.C. 123(a) must certify that the applicant: (1) Qualifies as a small entity as defined in § 1.27; (2) has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid; (3) did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and (4) has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

Section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)) provides that: ''[e]xcept as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items: (1) Compensation for services, including fees, commissions, fringe benefits, and similar items; (2) Gross income derived from business; (3) Gains derived from dealings in property; (4) Interest; (5) Rents; (6) Royalties; (7) Dividends; (8) Alimony and separate maintenance payments; (9) Annuities; (10) Income from life insurance and endowment contracts; (11) Pensions; (12) Income from discharge of indebtedness; (13) Distributive share of partnership gross income; (14) Income in respect of a decedent; and (15) Income from an interest in an estate or trust.'' The median household income for calendar year 2010 (the year most recently reported by the Bureau of the Census) was $49,445. *See Income, Poverty, and Health Insurance Coverage in the United States: 2010* at pages 5 and 33 (Table A–1) (Sept. 2011). Thus, the income level specified in §§ 1.29(a)(3) and (a)(4) (three times the median household income) is $148,335 for calendar year 2010.

Section 1.29(b) implements the provisions of 35 U.S.C. 123(b). Section 1.29(b) provides that an applicant is not considered to be named on a previously filed application for purposes of § 1.29(a)(2) if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.

Section 1.29(c) implements the provisions of 35 U.S.C. 123(c). Section 1.29(c) provides that if an applicant's or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's or entity's gross income exceeds the threshold specified in § 1.29(a)(3) or (a)(4). The Internal Revenue Service reports the average currency exchange rate (Yearly Average Currency Exchange Rates) on its Internet Web site (*http://www.irs.gov/businesses/small/international/article/0,,id=206089,00.html*).

Section 1.29(d) implements the provisions of 35 U.S.C. 123(d). Section 1.29(d) provides that an applicant claiming micro entity status under 35 U.S.C. 123(d) must certify that: (1) The applicant qualifies as a small entity as defined in § 1.27; and (2)(i) the applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or (ii) the applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education. To the extent that 35 U.S.C. 123(d) (unlike 35 U.S.C. 123(a)) does not expressly require that an applicant qualify as a small entity under § 1.27, the Office is invoking its authority under 35 U.S.C. 123(e) to expressly require that a party claiming micro entity status via 35 U.S.C. 123(d) qualify as a small entity under § 1.27. The legislative history of 35 U.S.C. 123 is clear that it is directed to a subset of small entities, namely, ''truly independent inventors.'' *See* H.R. Rep 112–98 at 50 (2011) (''[t]he Committee was made aware, however, that there is likely a benefit to describing—and then accommodating—a group of inventors who are even smaller [than small entities], in order to ensure that the USPTO can tailor its requirements, and its assistance, to the people with very little capital, and just a few inventions, as they are starting out. This section of the Act defines this even smaller group—the micro-entity—that includes only truly independent inventors''). Thus, permitting an applicant who does not qualify as a small entity to take advantage of the benefits of micro entity status via 35 U.S.C. 123(d) would be inconsistent with the purposes of micro entity provisions of 35 U.S.C. 123. The statute and its legislative history do not, for example, contemplate a for-profit, large entity applicant becoming a ''micro entity'' (and thus obtaining a 75 percent discount) merely by licensing or assigning some interest (even merely a nominal or miniscule interest) to an institution of higher education. Accordingly, the Office has determined that requiring all micro entities to qualify as small entities is reasonably necessary and appropriate to ensure that applicants who do not qualify as a small entity do not inappropriately attempt to take advantage of micro entity status.

Section 1.29(e) provides that small entity status must be asserted in compliance with § 1.27 in an application for micro entity status to be established in such application. Section 1.29(e) further provides that micro entity status must be established in an application in which small entity status is or has previously been asserted in compliance with § 1.27 by filing a certification in writing that complies with either § 1.29(a) or § 1.29(d) and that is signed in compliance with § 1.33(b). Section 1.29(e) also contains provisions for a micro entity that correspond to the provisions of § 1.27(c)(4) for a small entity. Section 1.29(e) provides that: (1) Status as a micro entity must be specifically established by an assertion in each related, continuing, and reissue application in which status is appropriate and desired; (2) status as a small or micro entity in one application or patent does not affect the status of any other application or patent, regardless of the relationship of the applications or patents; and (3) the refiling of an application under § 1.53 as a continuation, divisional, or continuation-in-part application (including a continued prosecution application under § 1.53(d)), or the filing of a reissue application, requires a new certification of entitlement to micro entity status for the continuing or reissue application.

Section 1.29(f) contains provisions for a micro entity that correspond to the provisions of § 1.27(d) for a small entity. Section 1.29(f) provides that a fee may be paid in the micro entity amount only if it is submitted with, or subsequent to, the submission of a certification of entitlement to micro entity status.

Section 1.29(g) contains provisions for a micro entity that correspond to the provisions of § 1.27(e) for a small entity.

Section 1.29(g) provides that a certification of entitlement to micro entity status need only be filed once in an application or patent, that micro entity status, once established, remains in effect until changed pursuant to § 1.29(i), but a fee may be paid in the micro entity amount only if status as a micro entity as defined in § 1.29(a) or (d) is appropriate on the date the fee is being paid. Thus, while an applicant is not required to provide a certification of entitlement to micro entity status with each fee payment, the applicant must still be entitled to micro entity status to pay a fee in the micro entity amount. For micro entity status under 35 U.S.C. 123(a), the applicant must determine that each applicant still meets the conditions of 35 U.S.C. 123(a) and § 1.29(a) to claim micro entity status (*e.g.,* that no applicant has had a change in gross income that exceeds the gross income threshold in 35 U.S.C. 123(a)(3) (a new determination must be made each year because gross income may change from year to year, and micro entity status is based upon gross income in the calendar year preceding the calendar year in which the applicable fee is being paid), that no applicant has made, or is obligated by contract or law to make, an assignment, grant, or conveyance to an entity not meeting the gross income threshold in 35 U.S.C. 123(a)(4), that no new applicant has been named in the application who does not meet the conditions specified in 35 U.S.C. 123(a) and § 1.29(a)). For micro entity status under 35 U.S.C. 123(d), the applicant must determine that each applicant still complies with 35 U.S.C. 123(d) and § 1.29(d) (*e.g.,* still obtains the majority of his or her income from an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)). Section 1.29(g) also provides that where an assignment of rights or an obligation to assign rights to other parties who are micro entities occurs subsequent to the filing of a certification of entitlement to micro entity status, a second certification of entitlement to micro entity status is not required.

Section 1.29(h) contains provisions for a micro entity that correspond to the provisions of § 1.27(f) for a small entity. Section 1.29(h) provides that prior to submitting a certification of entitlement to micro entity status in an application, including a related, continuing, or reissue application, a determination of such entitlement should be made pursuant to the requirements of § 1.29(a) or 1.29(d). Section 1.29(h) indicates that it should be determined that all parties holding rights in the invention qualify for micro entity status. Section 1.29(h) also indicates that the Office will generally not question certification of entitlement to micro entity status that is made in accordance with the requirements of § 1.29.

Section 1.29(i) contains provisions for a micro entity that correspond to the provisions of § 1.27(g)(2) for a small entity. Section 1.29(i) provides that notification of a loss of entitlement to micro entity status must be filed in the application or patent prior to paying, or at the time of paying, any fee after the date on which status as a micro entity as defined in § 1.29(a) or 1.29(d) is no longer appropriate. Section 1.29(k) provides for how to make such notification of loss of micro entity status. Also, the notification that micro entity status is no longer appropriate must be signed by a party identified in § 1.33(b). Payment of a fee in other than the micro entity amount is not sufficient notification that micro entity status is no longer appropriate. Once a notification of a loss of entitlement to micro entity status is filed in the application or patent, a written assertion of small entity status under § 1.27(c)(1) is required to obtain small entity status. Applicants will be expected to pay fees in the full (other than small entity) amount if a written assertion of small entity status is not submitted with the notification of loss of entitlement to micro entity status. The written assertion of small entity status under § 1.27(c)(1) may be submitted together with the notification of a loss of entitlement to micro entity status. In addition, a new certification of entitlement to micro entity status is required to again obtain micro entity status.

Section 1.29(j) contains provisions for a micro entity that correspond to the provisions of § 1.27(h) for a small entity. Section 1.29(j) provides that any attempt to fraudulently establish status as a micro entity, or pay fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office, and that establishing status as a micro entity, or paying fees as a micro entity, improperly, and with intent to deceive, shall be considered as a fraud practiced or attempted on the Office.

Section 1.29(k) contains provisions for a micro entity that correspond to the provisions of § 1.28(c) for a small entity. Section 1.28(c) permits an applicant or patentee to correct the erroneous payment of a patent fee in the small entity amount if status as a small entity was established in good faith, and fees as a small entity were paid in good faith. *See DH Tech. Inc.* v. *Synergystex Int'l Inc.,* 154 F.3d 1333 (Fed. Cir. 1998). Section 1.29(k) provides that if: (i) An applicant or patentee establishes micro entity status in an application or patent in good faith; (ii) the applicant or patentee pays fees as a micro entity in the application or patent in good faith; and (iii) applicant or patentee later discovers that such micro entity status either was established in error, or that the Office was not notified of a loss of entitlement to micro entity status as required by § 1.29(i) through error, the error will be excused upon compliance with the separate submission and itemization requirements of § 1.29(k)(1) and the deficiency payment requirement of § 1.29(k)(2).

Section 1.29(k)(1) provides that any paper submitted under § 1.29(k) must be limited to the deficiency payment (all fees paid in error) required for a single application or patent, and that where more than one application or patent is involved, separate submissions of deficiency payments (*e.g.,* checks) and itemizations are required for each application or patent. Section 1.29(k)(1) also provides that the paper must contain an itemization of the total deficiency payment and include the following information: (1) Each particular type of fee that was erroneously paid as a micro entity, (*e.g.,* basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a small or non-small entity; (2) the micro entity fee actually paid, and the date on which it was paid; (3) the deficiency owed amount (for each fee erroneously paid); and (4) the total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts as set forth in § 1.29(k)(2).

Section 1.29(k)(2) provides that the deficiency owed, resulting from the previous erroneous payment of micro entity fees, must be paid. The deficiency owed for each previous fee erroneously paid as a micro entity is the difference between the current fee amount for a small entity or other than a small entity, as applicable, on the date the deficiency is paid in full and the amount of the previous erroneous micro entity fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously and erroneously paid as a micro entity. This corresponds to the procedure for fee deficiency payments based upon the previous erroneous payment of patent fees in the small entity amount. *See* § 1.28(c)(2)(i) (''[t]he deficiency owed for each previous fee erroneously paid as a small entity is the difference between the current full fee amount (for other than a small entity) on the date the

deficiency is paid in full and the amount of the previous erroneous (small entity) fee payment'').

Section 1.29(k)(3) provides that if the requirements of §§ 1.29(k)(1) and (k)(2) are not complied with, such failure will either be treated at the option of the Office as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month non-extendable time period under § 1.136(a) to avoid the return of the fee deficiency payment.

Section 1.29(k)(4) provides that any deficiency payment (based on a previous erroneous payment of a micro entity fee) submitted under § 1.29(k) will be treated as a notification of a loss of entitlement to micro entity status under § 1.29(i).

Rulemaking Considerations

A. Administrative Procedure Act

This notice proposes to amend the rules of practice in patent cases to implement the micro entity provisions of the Leahy-Smith America Invents Act. The changes being proposed in this notice do not change the substantive criteria for entitlement to micro entity status (except possibly for requiring in 37 CFR 1.29(d)(1) that an applicant claim small entity status in compliance with 37 CFR 1.27 in order to claim micro entity status; see 35 U.S.C. 123(e)), but simply specify the procedures pertaining to claiming micro entity status, paying patent fees as a micro entity, notification of loss of micro entity status, and correction of payments of patent fees paid erroneously in the micro entity amount. Therefore, these proposed changes (except as discussed previously) involve rules of agency practice and procedure and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (DC Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 242, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive standard for reviewing claims); *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).

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law), except possibly for the proposal to require in § 1.29(d)(1) that an applicant claim small entity status in compliance with 37 CFR 1.27 in order to claim micro entity status. *See* 35 U.S.C. 123(e); *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 Office, however, is publishing this proposal for comment as it seeks the benefit of the public's views on the Office's proposed implementation of the micro entity provisions of the Leahy-Smith America Invents Act.

B. Regulatory Flexibility Act

For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This notice proposes changes to the rules of practice to allow a subset of small entities—*i.e.,* micro entities—to pay further reduced fees, namely, a seventy-five percent discount. The notice proposes procedures pertaining to claiming micro entity status, paying patent fees as a micro entity, notification of loss of micro entity status, and correction of payments of patent fees paid erroneously in the micro entity amount. This notice does not propose to change the criteria in 35 U.S.C. 123(a) or (d) for entitlement to file a certification of micro entity status (except possibly for requiring in 37 CFR 1.29(d)(1) that an applicant claim small entity status in compliance with 37 CFR 1.27 in order to claim micro entity status; see 35 U.S.C. 123(e)). The micro entity procedures proposed in this notice track to the extent feasible the corresponding small entity procedures under 37 CFR 1.27. Thus, the burden to all entities, including small entities, imposed by these rules is no greater than those imposed by the current regulations pertaining to claiming small entity status, paying patent fees as a small entity, notification of loss of small entity status, and correction of payments of patent fees paid erroneously in the small entity amount.

Requiring that an applicant claim small entity status in compliance with 37 CFR 1.27 in order to claim micro entity status under 37 CFR 1.29(d)(1) will not have a significant economic impact on a substantial number of small entities. The Office uses the Small Business Administration business size standard for the purpose of paying reduced patent fees in 13 CFR 121.802 as the size standard when conducting an analysis or making a certification under the Regulatory Flexibility Act for patent-related regulations. *See Business Size Standard for Purposes of United States Patent and Trademark Office Regulatory Flexibility Analysis for Patent-Related Regulations,* 71 FR 67109, 67109 (Nov. 20, 2006). A small entity for purposes of the Regulatory Flexibility Act analysis is a small entity for purposes of paying reduced patent fees. Therefore, requiring in 37 CFR 1.29(d)(1) that an entity claim small entity status in compliance with 37 CFR 1.27 in order to claim micro entity status will preclude only an applicant or patentee who is a large entity (*i.e.,* not a small entity) from claiming micro entity status.

The Office estimates that a minority percentage of small entity applications will be filed by paying micro entity fees under these proposed rules. Based upon the data in the Office's Patent Application Locating and Monitoring (PALM) system, of the approximately 2,498,000 nonprovisional patent applications (utility, plant, design, and reissue) and requests for continued examination filed in total over the last five fiscal years, small entity fees were paid in approximately 669,000 (26.8 percent). Thus, an average of approximately 500,000 nonprovisional patent applications and requests for continued examination have been filed each year for the last five fiscal years, with small entity fees being paid in approximately 134,000 of the nonprovisional patent applications and requests for continued examination filed each year.

As indicated above, this rule provides a procedure for small entities to attain a 75 percent reduction in fees as a micro entity, as provided by statute. The procedures for micro entity status track the existing procedures for small entity status. While the rule impacts the entire universe of small entity applications and patents, the rule is necessary to implementing a reduction in fees, which is entirely beneficial, and no other provision has an economic impact on the affected small entities.

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not effect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. 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 United States Patent and Trademark Office will submit a report containing the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. In addition, the United States Patent and Trademark Office will inform the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate of any proposed limits under 35 U.S.C. 123(e) at least three months before any limits proposed to be implemented pursuant to 35 U.S.C. 123(e) take effect.

The changes in this notice 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 notice is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes set forth in this notice 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.*

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. An applicant who wishes to claim micro entity status must submit a certification of micro entity status, preferably by using Form PTO/SB/15A (gross income basis) or Form PTO/SB/15B (institution of higher education basis). The Office of Management and Budget (OMB) has determined that, under 5 CFR 1320.3(h), Forms PTO/SB/15A and B do not collect ''information'' within the meaning of the Paperwork Reduction Act of 1995.

This proposed rulemaking, however, does involve information collection requirements (for fee deficiency payment based upon the previous erroneous payment of patent fees in the micro entity amount) which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). The collection of information involved in this notice has been submitted to OMB under OMB control number 0651–00xx. The proposed collection will be available at OMB's Information Collection Review Web site (*www.reginfo.gov/public/do/PRAMain*).

Title of Collection: Fee Deficiency Payments.

OMB Control Number: 0651–00xx.

Needs and Uses: This information collection is necessary so that patent applicants and patentees may pay the balance of fees due (*i.e.,* fee deficiency payment) when a fee was previously paid in error in a micro or small entity amount. The Office needs the information to be able to process and properly record a fee deficiency payment to avoid questions arising later either for the Office or for the applicant or patentees as to whether the proper fees have been paid in the application or patent.

Method of Collection: By mail, facsimile, hand delivery, or electronically to the Office.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 3,000 responses per year. The basis is that the Office receives approximately 2,250 fee deficiency payments annually arising out of small entity filings. For purposes of this calculation, it was estimated that up to 750 fee deficiency payments could be made annually arising out of micro entity filings.

Estimated Time per Response: The Office estimates that the responses in this collection will take the public 2 hours.

Estimated Total Annual Respondent Burden Hours: 6,000 hours per year.

Estimated Total Annual Respondent Cost Burden: $2,040,000 per year.

The Office is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Office, including whether the information will have practical utility; (2) evaluate the accuracy of the Office's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Please send comments on or before July 30, 2012 to Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA, 22313–1450, marked to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy. Comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Patent and Trademark Office.

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 in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

2. Section 1.29 is added to read as follows:

§ 1.29 Micro entity status.

(a) To establish micro entity status under this paragraph, the applicant must certify that the applicant:

(1) Qualifies as a small entity as defined in § 1.27;

(2) Has not been named as an inventor on more than four previously filed patent applications, other than applications filed in another country, provisional applications under 35 U.S.C. 111(b), or international applications for which the basic national fee under 35 U.S.C. 41(a) was not paid;

(3) Did not, in the calendar year preceding the calendar year in which the applicable fee is being paid, have a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986 (26 U.S.C. 61(a)), exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census; and

(4) Has not assigned, granted, or conveyed, and is not under an obligation by contract or law to assign, grant, or convey, a license or other ownership interest in the application concerned to an entity that, in the calendar year preceding the calendar year in which the applicable fee is being paid, had a gross income, as defined in section 61(a) of the Internal Revenue Code of 1986, exceeding three times the median household income for that preceding calendar year, as most recently reported by the Bureau of the Census.

(b) An applicant is not considered to be named on a previously filed application for purposes of paragraph (a)(2) of this section if the applicant has assigned, or is under an obligation by contract or law to assign, all ownership rights in the application as the result of the applicant's previous employment.

(c) If an applicant's or entity's gross income in the preceding calendar year is not in United States dollars, the average currency exchange rate, as reported by the Internal Revenue Service, during that calendar year shall be used to determine whether the applicant's or entity's gross income exceeds the threshold specified in paragraph (a)(3) or (a)(4) of this section.

(d) To establish micro entity status under this paragraph, the applicant must certify that:

(1) The applicant qualifies as a small entity as defined in § 1.27; and

(2)(i) The applicant's employer, from which the applicant obtains the majority of the applicant's income, is an institution of higher education as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)); or

(ii) The applicant has assigned, granted, conveyed, or is under an obligation by contract or law, to assign, grant, or convey, a license or other ownership interest in the particular applications to such an institution of higher education.

(e) Small entity status must be asserted in compliance with § 1.27 in an application for micro entity status to be established in such application. Micro entity status is established in an application in which small entity status is asserted in compliance with § 1.27 by filing a micro entity certification in writing of compliance with the requirements of either paragraph (a) or paragraph (d) of this section and is signed in compliance with § 1.33(b). Status as a micro entity must be specifically established in each related, continuing and reissue application in which status is appropriate and desired. Status as a micro entity in one application or patent does not affect the status of any other application or patent, regardless of the relationship of the applications or patents. The refiling of an application under § 1.53 as a continuation, divisional, or continuation-in-part application (including a continued prosecution application under § 1.53(d)), or the filing of a reissue application, requires a new certification of entitlement to micro entity status for the continuing or reissue application.

(f) A fee may be paid in the micro entity amount only if it is submitted with, or subsequent to, the submission of a certification of entitlement to micro entity status.

(g) A certification of entitlement to micro entity status need only be filed once in an application or patent. Micro entity status, once established, remains in effect until changed pursuant to paragraph (i) of this section, but a fee may be paid in the micro entity amount only if status as a micro entity as defined in paragraph (a) or (d) of this section is appropriate on the date the fee

is being paid. Where an assignment of rights or an obligation to assign rights to other parties who are micro entities occurs subsequent to the filing of a certification of entitlement to micro entity status, a second certification of entitlement to micro entity status is not required.

(h) Prior to submitting a certification of entitlement to micro entity status in an application, including a related, continuing, or reissue application, a determination of such entitlement should be made pursuant to the requirements of paragraph (a) or (d) of this section. It should be determined that all parties holding rights in the invention qualify for micro entity status. The Office will generally not question certification of entitlement to micro entity status that is made in accordance with the requirements of this section.

(i) Notification of a loss of entitlement to micro entity status must be filed in the application or patent prior to paying, or at the time of paying, any fee after the date on which status as a micro entity as defined in paragraph (a) or (d) of this section is no longer appropriate. The notification that micro entity status is no longer appropriate must be signed by a party identified in § 1.33(b). Payment of a fee in other than the micro entity amount is not sufficient notification that micro entity status is no longer appropriate. Once a notification of a loss of entitlement to micro entity status is filed in the application or patent, a written assertion of small entity status under § 1.27(c)(1) is required to obtain small entity status, and a new certification of entitlement to micro entity status is required to again obtain micro entity status.

(j) Any attempt to fraudulently establish status as a micro entity, or pay fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office. Improperly, and with intent to deceive, establishing status as a micro entity, or paying fees as a micro entity, shall be considered as a fraud practiced or attempted on the Office.

(k) If status as a micro entity is established in good faith in an application or patent, and fees as a micro entity are paid in good faith in the application or patent, and it is later discovered that such micro entity status either was established in error, or that the Office was not notified of a loss of entitlement to micro entity status as required by paragraph (i) of this section through error, the error will be excused upon compliance with the separate submission and itemization requirements of paragraph (k)(1) of this section and the deficiency payment requirement of paragraph (k)(2) of this section.

(1) Any paper submitted under this paragraph must be limited to the deficiency payment (all fees paid in error) required for a single application or patent. Where more than one application or patent is involved, separate submissions of deficiency payments are required for each application or patent (see § 1.4(b)). The paper must contain an itemization of the total deficiency payment for the single application or patent and include the following information:

(i) Each particular type of fee that was erroneously paid as a micro entity, (*e.g.,* basic statutory filing fee, two-month extension of time fee) along with the current fee amount for a small or non-small entity, as applicable;

(ii) The micro entity fee actually paid, and the date on which it was paid;

(iii) The deficiency owed amount (for each fee erroneously paid); and

(iv) The total deficiency payment owed, which is the sum or total of the individual deficiency owed amounts as set forth in paragraph (k)(2) of this section.

(2) The deficiency owed, resulting from the previous erroneous payment of micro entity fees, must be paid. The deficiency owed for each previous fee erroneously paid as a micro entity is the difference between the current fee amount for a small entity or non-small entity, as applicable, on the date the deficiency is paid in full and the amount of the previous erroneous micro entity fee payment. The total deficiency payment owed is the sum of the individual deficiency owed amounts for each fee amount previously and erroneously paid as a micro entity.

(3) If the requirements of paragraphs (k)(1) and (k)(2) of this section are not complied with, such failure will either be treated at the option of the Office as an authorization for the Office to process the deficiency payment and charge the processing fee set forth in § 1.17(i), or result in a requirement for compliance within a one-month time period that is not extendable under § 1.136(a) to avoid the return of the fee deficiency payment.

(4) Any deficiency payment (based on a previous erroneous payment of a micro entity fee) submitted under this paragraph will be treated as a notification of a loss of entitlement to micro entity status under paragraph (i) of this section, but payment of a deficiency based upon the difference between the current fee amount for a small entity and the amount of the previous erroneous micro entity fee payment will not be treated as an assertion of small entity status under § 1.27(c). Once a deficiency payment is submitted under this paragraph, a written assertion of small entity status under § 1.27(c)(1) is required to obtain small entity status.

Dated: May 23, 2012.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2012–12971 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 61

[Docket ID: FEMA–2011–0037]

RIN 1660–AA09 (Formerly 3067–AD02)

National Flood Insurance Program (NFIP); Insurance Coverage and Rates

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) concerning National Flood Insurance Program (NFIP) insurance premium rates for structures that have suffered multiple flood losses. The proposed rule would have required owners of such structures to pay a higher premium for flood insurance if they declined an offer of funding to eliminate or reduce future flood damage. FEMA is withdrawing the NPRM because it has been superseded by legislation.

DATES: The Notice of Proposed Rulemaking, published on August 5, 1999 (64 FR 42632), is withdrawn as of May 30, 2012.

ADDRESSES: The Notice of Proposed Rulemaking and this withdrawal notice are available online at *http://www.regulations.gov* under docket ID FEMA–2011–0037. Insert FEMA–2011–0037 in the ''Keyword'' box, and then click ''Search.'' The Docket is also available for inspection or copying at FEMA, 500 C Street SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Thomas Hayes, Federal Insurance and Mitigation Administration, DHS/FEMA, 1800 South Bell Street, Arlington, VA 20598–3020. Phone: (202) 646–3419. Facsimile: (202) 646–7970. Email: *Thomas.Hayes@dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 *et seq.,* authorizes FEMA to offer insurance against flood losses through the National Flood Insurance Program (NFIP). The NFIP allows FEMA to offer flood insurance at less-than-full-risk premium rates for older structures. This is because Congress recognized that in authorizing the NFIP there would be a trade-off: Participating local governments would adopt and enforce flood mitigation standards that make future construction resistant to future flood loss, but federally-backed flood insurance would be available for older structures built without the benefit of detailed flood risk information.

To implement the NFIP, FEMA has worked with communities to develop the kind of detailed flood risk information needed for flood mitigation efforts. This information is reflected in a community's Flood Insurance Rate Map (FIRM). Many properties built before the publication of a community's FIRM are at a greater risk of incurring flood loss because they were constructed prior to the availability of full flood risk information. These properties are discussed in FEMA's actuarial studies, which show that the owners of buildings insured under the NFIP that repetitively flood are not charged premiums that truly reflect the risk.

One of FEMA's highest priorities is to correct the problem of multiple flood losses to older structures (target repetitive loss buildings) insured under the NFIP. The Notice of Proposed Rulemaking (NPRM) defined target repetitive loss buildings as those with four or more losses, or with two or more flood losses cumulatively greater than the building's value. The NPRM proposed to apply full-risk premiums for flood insurance coverage to a target repetitive loss building, if an owner declined an offer of mitigation funding authorized by FEMA. Under the proposed rule, if the owner of a target repetitive flood loss building declined an offer of mitigation funding to relocate, elevate, or flood-proof the structure, then that owner would, upon the next policy renewal, have to pay full-risk premiums for flood insurance coverage under the NFIP.

II. Summary of Comments

FEMA received seven comments on the NPRM from private parties and interest groups. Generally, commenters supported the regulation. Some had concerns that it needed to include greater detail on important issues. Several commenters had reservations about the NPRM's possible effects on the mortgage industry. Specifically, they discussed the criteria banks use in issuing mortgages, such as a borrower's ability to insure the building, which they stressed is the collateral for the loan. If the insurance rate increases to the point where the borrower can no longer afford insurance, the collateral for the mortgage is at substantial risk and the mortgage is in jeopardy. This relationship to the requirements of the NPRM caused concern that the NPRM could destabilize the primary and secondary mortgage markets. Commenters also expressed the opinion that public notice, or at least notice to the mortgage holder, should be incorporated into the premium rate increase process. Finally, one commenter was concerned that the NPRM would be economically detrimental to homeowners who suffer from flood damages through no fault of their own.

III. Reason for Withdrawal

FEMA is withdrawing the NPRM because it has been superseded by the Bunning-Bereuter-Blumenauer Flood Insurance Reform Act of 2004 (the Act), Public Law 108–264, 118 Stat. 712, 42 U.S.C. 4001 note. The Act amended the National Flood Insurance Act of 1968 by authorizing increases to the flood insurance premium rates for building owners of repetitive loss who decline offers of mitigation funding (section 102 of the Act; 42 U.S.C. 4102a). FEMA promulgated a final rule implementing this amendment at 44 CFR part 79 on September 16, 2009 (74 FR 47471). Therefore, this NPRM is no longer necessary.

IV. Conclusion

FEMA is withdrawing the August 5, 1999 NPRM for the reasons stated in this notice.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–13017 Filed 5–29–12; 8:45 am]

BILLING CODE 9111–52–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 172, 173, and 176

[Docket No. PHMSA–2009–0241 (HM–242)]

RIN 2137–AE52

Hazardous Materials Regulations: Combustible Liquids

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Withdrawal of Advance Notice of Proposed Rulemaking (ANPRM) and denial of petitions P–1498, P–1531, and P–1536.

SUMMARY: On April 5, 2010, PHMSA issued an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** [75 FR 17111] under Docket No. PHMSA–2009–0241 (HM–242) soliciting comments on whether PHMSA should consider harmonization of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) applicable to the transportation of combustible liquids with the UN Recommendations, while maintaining an adequate level of safety, and posed a series of questions. The major issues being examined and addressed are: Safety (hazard communication and packaging integrity); International commerce (frustration/delay of international shipments in the port area); Increased burden on domestic industry (elimination of domestic combustible liquid exceptions); and Driver Eligibility (exception from placarding which would exempt seasonal workers from the Federal Motor Carrier Safety Administration's Commercial Driver's License (CDL) and Hazmat Endorsement requirements, and the Transportation Security Administration's (TSA) fingerprinting and background check provisions). PHMSA also addressed three petitions for rulemaking in the April 5 ANPRM; two suggesting that domestic requirements for the transportation of combustible liquids should be harmonized with International standards, and one suggesting that the HMR should include more expansive domestic exceptions for shipments of combustible liquids.

The issuance of this notice constitutes a decision by PHMSA to withdraw the April 5, 2010 ANPRM, and to deny the International Vessel Operators Dangerous Goods Association (IVODGA) petition, P–1498, the Dangerous Goods Advisory Council (DGAC) petition, P–

1531, and the U.S. Customer Harvesters, Inc. petition, P–1536.

ADDRESSES: For access to the docket to read background documents and comments received, go to *http://www.regulations.gov* at any time and insert ''PHMSA–2009–0241'' in the ''Keyword'' box, and then click ''Search.'' You may also view the docket online by visiting the Docket Management Facility, Ground Floor, Room W12–140, U.S. Department of Transportation, West Building, Routing Symbol M–30, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, and labor union, etc.). You may review the U.S. Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

FOR FURTHER INFORMATION CONTACT: Vincent Babich, Standards and Rulemaking Division, telephone (202) 366–8553, Office of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., 2nd Floor, Washington, DC 20590–0001.

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I. Background

A. Issues Prompting Advance Notice of Proposed Rulemaking

When packaged in non-bulk packagings, a material with a flash point of 38 °C (100 °F) or more but less than 60 °C (140 °F) may be reclassed as a combustible liquid under the HMR. A combustible liquid in a non-bulk packaging that is not a hazardous substance, hazardous waste, or a marine pollutant is not subject to HMR in domestic transportation, by highway or rail. However, these same materials are regulated as flammable liquids when transported by vessel, in accordance with the International Maritime Dangerous Goods (IMDG) Code and by aircraft, in accordance with the International Civil Aviation Organization's Technical Instructions (ICAO Technical Instructions).

When packaged in bulk packagings, a material with a flash point between 60 °C (140 °F) and 93 °C (200 °F) is regulated as a combustible liquid in domestic transportation. A combustible liquid in bulk packagings is only minimally regulated in domestic transportation, and allows a shipper to use a less expensive, non-specification bulk packaging, in addition to having only to comply with the requirements contained in 49 CFR 173.150. In addition, bulk shipments of a combustible liquid must be placarded with a COMBUSTIBLE placard. When combustible liquids are shipped internationally, the COMBUSTIBLE placard is not recognized overseas because there is no combustible liquid hazard class under the international standards. Subsequently, shipments prepared in accordance with the HMR may be frustrated by inspectors and enforcement personnel who are not familiar with the U.S. requirements. To avoid confusion and delay in port areas, shippers and carriers often remove the COMBUSTIBLE placard prior to placing the shipment on board a vessel for overseas shipment. Conversely, shipments originating overseas and bound for the United States must affix the COMBUSTIBLE placard prior to the shipment's movement out of the port area.

In addition, a combustible liquid that is not a hazardous substance, a hazardous waste, or a marine pollutant is not subject to HMR requirements if it is a mixture of one or more components that has a flash point at or above 93 °C (200 °F), comprises at least 99 percent of the volume of the mixture, and is not transported as a liquid at a temperature at or above its flash point. Also, a combustible liquid that does not sustain combustion is not subject to the requirements of the HMR as a combustible liquid. Either the test method specified in ASTM D 4206 or the procedure in appendix H of part 173 of the HMR may be used to determine if a material sustains combustion when heated under test conditions and exposed to an external source of flame.

Further, the classification system in the UN Recommendations has no combustible liquid category or hazard class. There is no provision in the UN Recommendations, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Aircraft (ICAO Technical Instructions), or the International Maritime Dangerous Goods (IMDG) Code for flammable liquids to be reclassed as combustible liquids. PHMSA recognizes that the HMR provisions for the transportation of combustible liquids may potentially be confusing to both domestic and international shippers and carriers of flammable and combustible liquid shipments. We have also received opinions that the lack of understanding or clarity of the U.S. regulations involving the transportation of combustible liquids may present a tangible safety concern, such as the mishandling or misidentification of these shipments in transportation, or the transportation of undeclared shipments.

B. Advance Notice of Proposed Rulemaking

On April 5, 2010, PHMSA issued an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** [75 FR 17111] under Docket No. PHMSA–2009–0241 (HM–242) soliciting comments on whether PHMSA should consider harmonization of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) applicable to the transportation of combustible liquids with the UN Recommendations, while maintaining an adequate level of safety, and provided a series of questions. In the ANPRM, we also indicated that we were considering amendments to the HMR as they apply to the transportation of combustible liquids. Specifically, we considered whether to harmonize the

domestic regulations applicable to the transportation of combustible liquids with international transportation standards. In addition, we indicated that we were examining ways to revise, clarify, or relax certain regulatory requirements to facilitate the transportation of these materials while maintaining an adequate level of safety. The intent of the ANPRM was to invite public comments on how to accomplish these goals, provide an opportunity for comment on amendments PHMSA was considering, and present a forum for the public to offer additional recommendations for the safe transportation of combustible liquids.

In response to the ANPRM, comments were received from chemical distributors; printing, painting, explosives, international airline pilots, solid waste, railroad, trucking, tank truck carriers, and custom harvesters trade associations and a state farm bureau; international and national firefighters associations; the State of Alaska DOT and Public Facilities; and several international and national private citizens. The majority of the commenters opposed harmonization and elimination of the combustible liquid classification, while expressing support for maintaining the non-bulk and bulk combustible liquid packaging exceptions for domestic transportation. In addition, many commenters expressed the belief that burdens on the domestic industry would be increased for certain non-bulk shipments, and that the deregulation of bulk shipments would compromise the safety of the public and emergency responders if the domestic combustible liquid provisions were harmonized with the international United Nations (UN) Recommendations.

Although PHMSA's primary focus is on the safe transportation of hazardous materials, one of our associated goals is to facilitate international commerce through harmonization with international standards, to the extent that harmonization does not compromise our safety objectives. Presently and formerly, some in the regulated industry have asserted that the exceptions in the HMR for combustible liquids create a variance between domestic and international transportation and increase the potential for non-compliance. This being both a safety and economic issue, PHMSA disagrees with those who advocate elimination of the combustible liquid class altogether, believing that a significant number of domestically-regulated materials pose risks in transportation that cannot be ignored.

Therefore, because most commenters opposed harmonization that would eliminate the combustible liquids hazard class altogether, thereby removing the combustible liquids exceptions in domestic transportation in the U.S., in addition to PHMSA's own economic analysis that implementation costs could be significant, we are denying the International Vessel Operators Dangerous Goods Association (IVODGA) petition, P–1498, the Dangerous Goods Advisory Council (DGAC) petition, P–1531, and the U.S. Customer Harvesters, Inc. petition, P–1536. Accordingly, issuance of this notice constitutes a decision by PHMSA to withdraw the April 5, 2010 ANPRM [75 FR 17111] published in the **Federal Register** under Docket No. PHMSA–2009–0241 (HM–242).

C. Petitions for Rulemaking

In the April 5, 2010 ANPRM, PHMSA also solicited comments on issues related to three petitions pertaining to the transportation of combustible liquids in both domestic and international commerce. The petitions are discussed below.

1. IVODGA Petition for Rulemaking

The International Vessel Operators Dangerous Goods Association (IVODGA), formerly VOHMA, submitted a petition for rulemaking [P–1498; PHMSA–2007–28238] concerning differing domestic and international requirements for the transportation of combustible liquids. The UN Recommendations do not include a definition or classification for combustible liquids. In its petition, IVODGA asserts:

(a) The display of a UN identification number for shipments that are not regulated internationally may ''confuse'' foreign inspectors, interlining carriers, foreign stowage planners, and intermodal feeder systems in other jurisdictions [who may delay forwarding the shipments until the confusion is resolved];

(b) These frustrated shipments not only impede commerce but also result in additional risks in the ports and terminals where they are held;

(c) emergency responders might also be confused by the UN identification number marking on the bulk packaging such as ''1263'' or ''1210'', which are the numbers assigned to flammable paint and flammable printing ink, respectively;

(d) Reclassed combustible liquid shipments ''find [their] way'' into international distribution ''unlabeled and unmarked'' with the result that they are undeclared as dangerous goods; and

(e) for materials with a flash point above 60 °C (140 °F) but below 93 °C (200 °F) authorize use of the proper shipping name ''Combustible liquid, n.o.s. [if hazard class modified to read ''combustible liquid'' and intended for rail or highway transportation only].

IVODGA notes that the differing domestic and international requirements for combustible liquids has resulted in conflicting and confusing hazard communication requirements with the result that international shipments may be frustrated as foreign authorities attempt to reconcile HMR hazard communication schemes with international regulations. For example, IVODGA said that many paints, inks, adhesives, solvents, and petroleum products have flash points between 60 °C (140 °F) and 93 °C (200 °F) and are offered for transportation as combustible liquids within the United States. However, the HMR permit such shipments to be described on a shipping paper and to display markings, labels, and placards in the same manner as shipments of flammable liquids with flash points of less than 60 °C (140 °F). when these shipments are destined for export [by vessel] to a jurisdiction outside the United States, because of the confusion, such shipments may be delayed until the confusion is resolved.

2. DGAC Petition for Rulemaking

The Dangerous Goods Advisory Council (DGAC) submitted a petition for rulemaking [P–1531; PHMSA–2008–0303] for amendment of the requirements for combustible liquids in bulk packagings in order to reduce port congestion and improve transportation efficiency in port areas. In its petition, DGAC asserts:

(a) The HMR requirements for high-flash-point combustible liquids (HFCL) are disruptive to the flow of goods in port areas and contribute to port congestion;

(b) The required markings and labels and/or placards (safety marks) that must be applied for purposes of U.S. domestic transport of an HFCL export shipment must be removed in the port area in order to bring the shipment into compliance with the requirements of the IMDG Code;

(c) Industry practice in transporting HFCL by vessel provides a higher level of safety than that afforded by the HMR, providing further justification for regulatory changes facilitating transport of HFCL transported by vessel;

(d) When HFCLs are transported by vessel [i.e., imported to the U.S.] they are transported in ISO portable tanks or Intermediate Bulk Containers (IBCs) conforming to the UN performance requirements (these packagings provide

considerable package integrity beyond that provided by the HMR requirements which permit HFCL to be transported in non-specification packagings); and

(e) DGAC further petitions PHMSA to relieve IBCs containing HFCL from currently required HMR safety mark requirements independent of whether they are being transported in international commerce.

The DGAC petition highlights many of the same issues identified by IVODGA, with a particular focus on problems encountered in international transportation for shipments of materials DGAC terms ''high flash point combustible liquids''—that is, combustible liquids with flash points between 60 °C (140 °F) and 93 °C (200 °F). DGAC suggests that the regulatory differences between the HMR and international regulatory requirements for these combustible liquids are disruptive to the flow of goods in port areas and contribute to port congestion. Imported bulk shipments of high flash point combustible liquids arriving in U.S. ports must be marked and placarded in accordance with HMR requirements. Similarly, the marks and placards that are applied to bulk shipments of combustible liquids for transportation in the U.S. must be removed in the port prior to export. DGAC estimates that export shipments are delayed for an average of three days awaiting removal of HMR-required marks and placards and import shipments are delayed an average of five days awaiting application of HMR-required marks and placards. To alleviate this problem, DGAC requests that PHMSA except HFCLs from all HMR requirements when transported in specification packages of less than 3,000 liters (793 gallons) capacity, or when in an ISO (UN) portable tank in international commerce.

3. U.S. Custom Harvesters, Inc.

U.S. Custom Harvesters, Inc. (Custom Harvesters) submitted a petition for rulemaking [P–1536; PHMSA–2009–0099] requesting modification of current requirements applicable to combustible liquids. In its petition, Custom Harvesters states that:

(a) A custom harvester has invested in the equipment (which includes grain harvesting combines, silage harvesters, grain trucks, tractors and grain carts) necessary to harvest 50% of the nation's wheat, 25% of the nation's corn, 50% of the nation's corn silage and 25% of the nation's cotton. Because of the tremendous cost of the equipment, it doesn't make sense for most farmers to invest in the harvesting equipment that will only be used one month of the year. Our industry replaces the farmer in the field during harvest;

(b) the custom harvesters' equipment has changed immensely over the past ten years. Custom harvesters have grown from using tandem axle trucks (which allows for the Class B CDL and a Restricted Class B Seasonal CDL license) to using tractor/trailer combinations which require the Class A CDL license. Under exemption 391.2, a Restricted Class B Seasonal CDL driver is allowed to transport hazardous materials limited to 1,000 gallons or less of diesel fuel. However, in order to legally drive the tractor/trailer combination, we are required to have Class A CDL drivers. The Restricted Class B Seasonal CDL driver is not required to take a written or driving test. The only requirement is to have a good driving record;

(c) custom harvesters hire seasonal truck drivers and combine operators, usually beginning in mid-May and lasting until November when the harvest has been completed. Most of the drivers hired do not have the Class A CDL license which is required for them to drive the tractor/trailer combinations. Once they are hired, the owner typically assists the truck drivers in obtaining the appropriate CDL licenses. The custom harvester hires seasonal drivers approximately two weeks prior to the beginning of harvest. Because the Hazardous Materials (hazmat) endorsement requires a 60–90 day wait period, the requirement of the hazmat endorsement to haul diesel fuel has created a great burden to our industry. It is not economically feasible for the custom harvester to hire its employees 60–90 days in advance of needing them. Additionally, many harvesters employ H2A workers. An H2A worker is currently allowed to obtain a nonresidential CDL, but is not lawfully able to obtain a hazmat endorsement;

(d) the harvesting equipment used requires 200+ gallons of diesel fuel per machine daily. Most custom harvesters have at least two or three machines and a tractor/grain cart combination. This combination of equipment would require up to 1,000 gallons of diesel fuel daily. The diesel fuel is hauled to the field to fill the harvesting equipment each day. In order to bring the fuel to the field, the diesel fuel is pumped from a pump at the local service station or farmer's COOP (just like it would be for a pickup truck or car) to a fuel tank that is mounted in a service vehicle. The distance to the farmer's field determines the distance the fuel is hauled, typically between 1 mile and 50 miles. The roads are always rural roads and highways. Once the fuel is unloaded into the harvest equipment, the fuel tank sits empty the rest of the day. At the end of the day, the service vehicle (and empty fuel tank) will be driven back to the town where the custom harvester is staying. (A harvester typically stays in one location for approximately two weeks.) Each morning, the refueling process will be repeated;

(e) the current limitation of the 119-gallon fuel tank puts a burden on the custom harvesting industry in more ways than one. First, the 119-gallon fuel tank requires the custom harvester to make several trips from the field to the fuel station each day just to fill each piece of harvesting equipment one time. Second, current requirements state the only persons who can legally drive the service vehicle down the road are those with hazmat endorsements. The custom harvesting business owner often ends up being the only person with the necessary endorsements due to time requirements for obtaining a hazmat endorsement. Having to drive the service vehicle limits the flexibility of the business owner, preventing him or her from driving other commercial vehicles in his or her fleet. When the harvesting job has been completed and the custom harvesting fleet is moved to the next location, the fuel tank on the service vehicle will be empty while moving on state and federal highways. The custom harvester will empty the fuel tank before moving to the next job location, eliminating the weight on the truck and preventing possible problems while on the road.

Currently, under the HMR, bulk shipments of combustible liquids must be placarded. In accordance with Federal Motor Carrier Safety Regulations (FMCSR) found at 49 CFR part 383, a hazmat endorsement is required for drivers of commercial motor vehicles that transport placarded shipments of hazardous materials. A hazmat endorsement on a CDL triggers the need to comply with the Department of Homeland Security's Transportation Security Administration's fingerprinting and background check. In its petition, the Custom Harvesters asks PHMSA to consider an exception from placarding for combustible liquids transported in bulk quantities that do not exceed 3,785 L (1,000 gallons) in a single packaging.

II. Summary of Comments to ANPRM

Approximately, one-hundred and forty (140) comments were received in response to the April 5, 2010 ANPRM on whether PHMSA should consider harmonization of the domestic regulations applicable to the transportation of combustible liquids with international transportation

standards. Generally, the majority of commenters oppose harmonization, indicating that many of its members utilize the exceptions provided in §§ 173.120(c) and 173.150(f) for reclassification and packaging of their products or material as combustible liquids in domestic transportation, and that any changes to these exceptions will negatively impact their industry. Approximately twenty-nine (29) of the comments addressed harmonizing domestic and international classification standards for combustible liquids. Of the 29 comments, approximately seventeen (17) of the commenters on this issue were opposed to harmonization of the domestic combustible liquids regulations with the international standards for classification of flammable liquids and would maintain the combustible liquids hazard class and packaging exceptions in domestic transportation in commerce. In contrast, approximately twelve (12) of the commenters support harmonization, and elimination of the combustible liquids classification and packaging exceptions.

Of the one-hundred and forty (140) comments, approximately one-hundred and eleven (111) of the commenters were custom harvesters and the Indiana Farm Bureau, and support the U.S. Custom Harvesters, Inc., petition. The Custom Harvesters only requested that PHMSA consider an exception for agribusiness (i.e., the operations and businesses that are associated with large-scale farming) from placarding combustible liquids transported in bulk quantities that do not exceed 3,785 L (1,000 gallons) in a single packaging. Many commenters stress the difficulty of hiring seasonal, foreign workers who may not be able to obtain a CDL with a hazmat endorsement in a timely fashion.

A. Examples of Comments Opposed to Harmonization and Granting Petitions P–1498 and P–1531

Commenters, such as the American Trucking Associations (ATA); American Petroleum Institute (API); Institute Makers of Explosives (IME); National Tank Truck Carriers (NTTC); National Fire Protection Association (NFPA); Association of Hazmat Shippers, Inc. (AHS); Utility Solid Waste Activities Group (USWAG); Dow Corning Corporation; Evonik Degussa Corporation; Association of American Railroads (AAR); Council on Safe Transportation of Hazardous Articles (COSTHA); State of Alaska, Department of Transportation and Public Facilities, and Mr. Owen Bruce Bugg, citizen, expressed opposition to harmonization of the domestic combustible liquids requirements with the international standards for flammable liquids.

NTTC expresses the belief that more information is needed to determine what the benefits would be of deregulating combustible liquids with a flash point above 60 °C (140 °F) and below 93 °C (200 °F). NTTC strongly asserts that the HMR should continue to allow Class 3 materials with a flash point between 38 °C (100 °F) and 60 °C (140 °F) to be reclassified and transported as combustible liquids, further states that this has been the practice for many years, and it is not aware of any negative impact on safety.

The API said that the loss of the reclassification exception for non-bulk combustibles would move a large segment of the supply & distribution industry from ''Not Regulated'' to ''Regulated Hazmat'' status. API states that it does not support deregulation (e.g., a complete harmonization of the 49 CFR with IMO/IMDG) of HFCLs being transported in bulk cargo tanks or rail cars. The HMR, though sometimes confusing, provide a practical framework to handle HFCLs such as gas oils, diesels, fuel oil, or heating oil with flash points that actually ''straddle'' the international threshold of flammable liquids 60 °C (140 °F). These regulations (HMR) allow for consistent hazard communications for petroleum fuel and other products with a similar range of flash point.

The ATA has significant concerns with the potential changes to the classification and regulation of combustible liquids. The ATA states that while it appreciates the benefits of a globally harmonized classification of flammable liquids, it believes that deregulation of combustible liquids could create certain safety risks. For example, certain bulk tank trucks utilize compressed air to unload. These compressors generate air pressure and may reach a temperature of 170 °F. As such operators should not use these compressors to unload certain flammable and combustible liquids. In the absence of effective hazard communication requirements, a safety risk could be created, as operators may not know whether it is safe to use compressed air for unloading. In addition, effective hazard communication is needed to ensure that tools used to repair valves and other appurtenances to containers used to transport combustible materials are ''non-sparking'' to reduce the risk of ignition.

The IME said that over 3.4 million metric tons of high explosives, blasting agents, and oxidizers are consumed annually in the U.S. IME member companies produce ninety-nine percent of these commodities. These products are used in every state and are distributed worldwide. IME states that the most widely-used commercial explosive product in the U.S. is ammonium nitrate/fuel oil (''ANFO''). The fuel oils most commonly used in ANFO mixtures are transported as reclassed combustibles. Accordingly, IME members are very concerned that PHMSA is considering eliminating the reclassification option in the HMR. FO in the range of 38 °C (100 °F) to 93 °C (200 °F) is blended from multiple sources with varying flash points (e.g., 2D diesel; 4, 5, 6 diesels; used oil, and the like) including deliveries that exceed 60 °C (140 °F). Ordinarily, this does not pose a problem for its operations because multi-purpose bulk trucks (''MBTs'') technology allows accommodating adjustments to be made at the jobsite where custom mixing of the explosive materials occurs. This flexibility also allows commercial explosives companies to purchase FO with a flash point slightly above 60 °C (140 °F) when it is more economical to do so. Because adjustments for viscosity (FO flash point is directly proportional to viscosity) can be made at the jobsite, there is no need to separate the storage of fuels according to flash point (<60 °C (140 °F) and >60 °C 140 °F)). However, if the exception is eliminated and FO with a flash point between 38 °C (100 °F) and 60 °C (140 °F) is designated flammable and is deregulated at flash points above 60 °C (140 °F), IME members would be forced to test every load of FO before it is transferred from storage to an MBT in order to determine the proper transport classification. This would require testing every time the FO tank is replenished. All FO can therefore be stored in a single above ground storage tank. However, IME said that an exception is FO with a flash point at the lower end of the range (e.g., <115 °F) that is used for operations in colder climates.

The AHS said that some history may provide helpful guidance. Before HM–102, flammable liquids were defined with a ceiling open-cup flash point of 80 °F. In that docket, in order to harmonize with then relatively-new OSHA regulations, the two agencies worked together to set the ceiling at 100 °F and to change the closed-cup flash point method. At no time was there a claim that materials having flash points above 80 °F had posed a safety problem in transportation in non-bulk packaging sizes. Nonetheless, for convenience and harmony, the ceiling

was raised to 100 °F. With the UN setting the international ceiling for Class 3 at 140 °F, DOT once again was faced with a harmonization issue. There was no history of safety problems with liquids in the 100–140 °F range in non-bulk packaging in the US, thus the basis for the exception now appearing in § 173.150(f). The facts remain unchanged. Transportation safety does not support imposing full Class 3 requirements on materials in ground transport in non-bulk packaging having a flash point above 100 °F. An enormous volume of materials, including paints and a variety of consumer products, falls within this range and the shippers and carriers of these materials have benefitted from this exception, without notable safety problems. AHS said, therefore, it believes it is critical for PHMSA to retain this exception.

The NFPA is concerned that adopting such a change in the domestic requirements for offering and transporting combustible liquids would negatively impact emergency response to incidents involving such materials. NFPA encourages PHMSA to retain the current requirements regarding classification and regulation for combustible liquids. NFPA recommends that PHMSA maintain the current requirements that include those combustible materials with flash point above 60 °C (140 °F) and below 93 °C (200 °F). NFPA states that this category of material is still capable of posing a fire or explosion hazard during transportation, especially if involved in an accident where other, more easily ignited materials are present. From the perspective of the emergency responder, any effort to deregulate combustible liquids represents a reduction in the current safety practices that protect and alert those responding to transportation incidents or other emergencies involving this class of hazardous material. Note that NFPA 30, Flammable and Combustible Liquids Code, has a category of liquid (Class IIIB) for those liquids with flash points equal to or greater than 93 °C (200 °F). This category presents much lower risk in a transportation accident.

Mr. Rich Sewell, State of Alaska, Department of Transportation and Public Facilities, Office of Statewide Aviation, states that many remote Alaskan communities receive fuel oil and diesel fuel by air cargo, and stresses this circumstance is particularly important as changes to the regulations governing the transportation of combustible liquids are considered. He further states that shipping of fuel by air cargo is common to rural Alaskan communities that sometimes encounter bitter cold during the winter, and that it is not over-stating the situation to say that lives depend on efficient distribution of fuel oil in rural Alaska. Mr. Sewell states that any changes to regulations that might increase the costs of fuel distribution in rural Alaska would be onerous and burdensome, where fuel in the past year has cost $8.50 per gallon in some rural communities, and asserts that power generation and heat are already very expensive in rural Alaska. In addition, he claims that most rural communities qualify as economically distressed. If any new rulemaking were to adversely affect fuel distribution in rural Alaska, Mr. Sewell urges an exception to the rules be made for the domestic transportation of combustible fuels in Alaska.

B. Examples of Comments in Support of Harmonization and Granting Petitions P–1498 and P–1531

Commenters, such as the URS Corporation; Airline Pilots Association International; Bayer Material Science; International Vessel Operators Dangerous Goods Association, Inc.; Dangerous Goods Advisory Council; Air Products and Chemicals, Inc.; Momentive performance materials; Phillip Jonckheere of the European Chemical Industry Council (CEFIC); Mr. Roy Boneham, New Alchemy Training and Consultancy Organization, United Kingdom; the International Association of Fire Chiefs; and Applied Industrial Technologies support harmonization of the domestic combustible liquids regulations with the international standards for flammable liquids.

URS Corporation said that it supports international harmonization and the deregulation of combustible liquids, and expresses the belief that the Combustible Liquid placard is too similar to the Flammable Liquid placard, resulting in confusion and rejection of bulk shipments in the international community. URS stated that the HMR should no longer continue to apply to materials with a flash point above 60 °C (140 °F) and below 93 °C (200 °F).

Mr. Phillip Jonckheere said that the European Chemical Industry Council (CEFIC) supports the harmonization of the domestic regulations (HMR) applicable to the transportation of combustible liquids with international transportation standards. Mr. Jonckheere stated that the existing deviation on classification, marking and, placarding creates a burden on international trade rather than improving safety.

Bayer Material Science supports deregulation of materials with a flash point above 60 °C (140 °F) and below 93 °C (200 °F). Bayer said a temperature of 60 °C (140 °F) is generally recognized as the highest ambient temperature a material will encounter during the course of transportation. Therefore, a combustible liquid will not encounter conditions that will meet or exceed its flash point. This also allows for harmonization with the international regulations. Bayer expresses the belief that there would be an added cost benefit in product development and logistics to be able to move products in this category with one consistent classification. Emergency responders would still review the Material Safety Data Sheet as well as established procedures for dealing with these materials whether or not it was marked combustible.

Air Products and Chemicals, Inc. is both a shipper and carrier of hazardous materials in both bulk and non-bulk packaging utilizing all modes of transportation. Air Products fully supports the move towards global harmonization of dangerous goods transport regulations and expresses the belief that doing so will result in reduced risk, greater efficiency, lower costs, fewer delays, and much less confusion.

Momentive performance materials said that for over a year, it has been shipping bulk packages of combustible liquids from Europe into Canada by vessel and then trucking them through Canada into the United States for delivery to various locations because certain shipping lines do not allow these bulk packages to display the [ID] number ''1993'' on either a placard or an orange panel. Essentially, the number ''1993'' represents Flammable Liquids in the IMDG code, and combustible liquids are not recognized by the IMDG Code as a Dangerous Good. Therefore, as a result of the higher costs of such shipments of bulk packages and logistical difficulties, Momentive believes that PHMSA should harmonize the bulk package transportation of combustible liquids with international transportation standards, by removing Section 173.120(b)(1) from Title 49 CFR. Momentive also states that this declassification would pose no significant risk to human health or the environment due to the simplification of shipping routes by highway, which will significantly reduce the distance over which such shipments travel.

Applied Industrial Technologies states that while PHMSA continues to comment on trying to be in Harmonization with the United Nations

Recommendations, it falls short by allowing the exception of ''Combustible Liquids'' and questions this practice. The commenter states that if this exception is eliminated; all ''Flammable Liquids'' would be regulated to the same standards, thereby allowing true Harmonization with the United Nations Recommendations. This would also eliminate any confusion with shipping domestically and internationally. The commenter further states that as a HazMat shipper with over twenty years of experience and providing training for its company, this aspect continues to be one of the most confusing parts of the HMR for its associates to learn.

DGAC said that the ''HMR requirements for high flash point combustible liquids (HFCLs) are disruptive to the flow of goods in port areas,'' costing between $300 to $500 for demurrage [the charge for detaining a ship beyond the time allowed for loading/unloading per container]. DGAC also stated that industry practice in transporting HFCL by vessel provides a higher level of safety than that afforded by the HMR; and that HFCLs should be excepted from all HMR requirements when transported in specification packages of less than 3,000 liters (793 gallons) capacity (the upper capacity limit for Intermediate Bulk Containers (IBCs)) or when in an ISO (UN) portable tank in international commerce.

C. Examples of Ambiguous Comments on Harmonization

Many of the comments supporting harmonization were ambiguous; some recommending retention of the non-bulk combustible liquids packaging exceptions, while others requested elimination of the bulk combustible liquids packaging exceptions, and vice versa. For example, DGAC states that the most significant benefit of deregulation of combustible liquids with a flash point above 60 °C (140 °F) and below 93 °C (200 °F) (hereafter referred to as high flash point combustible liquids or HFCLs) is that it would harmonize the HMR with the requirements used throughout the world, and in doing so, it would eliminate many of the frustrations that DGAC members experience in importing and exporting these materials. However, DGAC acknowledged that from the history of the combustible liquid requirements and considering that non-specification bulk packagings are authorized, it is clear the primary purpose of the existing combustible liquid requirements pertaining to high flash point combustible liquids is to alert emergency responders of the presence of a combustible liquid in the event of an incident. DGAC said that with this in mind the safety benefit of continuing to regulate HFCLs depends on the benefit derived from knowing a material involved in an incident is a combustible liquid.

The National Association of Chemical Distributors (NACD) said that although elimination of the reclassification exception would promote the desired objective of harmonization, level the playing field, eliminate confusion, and enhance safety, on the other hand, eliminating the reclassification exception would increase costs for some because it is more expensive to ship hazardous materials than non-hazardous materials, and could also potentially lead to negative safety implications. Further, deregulation of materials with a flash point above 60 °C (140 °F) and below 93 °C (200 °F) would result in more complete harmonization with international standards as these only regulate up to 60 °C (140 °F). This would minimize confusion in trade and commerce. However, NACD stated that the disadvantage is that this could result in complications for chemical distributors who receive regular visits from local fire officials. The NFPA has its own system of markings for various flashpoints, but generally follows DOT. In this case, the materials are NFPA Class III A Combustible Liquids. If these materials are not covered by the HMR and labeled accordingly, fire officials are likely to require NFPA labels on more packages because there would not be DOT hazardous materials markings to recognize. As well, NACD said those who currently ship these materials through areas such as tunnels that prohibit hazardous materials would have to avoid these areas and take alternative routes that could involve longer distances and conditions such as dangerous mountain passes.

The IAFC said it does not support Class 3 materials with flash points between 38 °C (100 °F) and 60 °C and (140 °F) to be reclassified and transported as combustible liquids. The IAFC stated that the primary benefit of not allowing a reclassification is to ensure all shipments of materials identified as flammable would continue to be identified as such because emergency response to flammable liquids versus combustible liquids may involve different fire and spill control tactics and agents, since combustible liquids are generally viewed as having a lower risk than a flammable liquid. By not taking the appropriate action for the material involved, the safety risk would increase. However, the IAFC said that materials with a flash point above 60 °C (140 °F) and below 93 °C (200 °F), also known as combustible liquids, have been subject to placard and label requirements for ease in identification and for the safety of emergency responders. IAFC asserted that while deregulation of those materials would decrease issues in international trade and ease the movement of those commodities, it would remove important warnings for emergency responders about the presence of combustible liquid. Further, the IAFC stated that while it appreciates the fact that these materials, in and of themselves, may pose a low risk due to their high flash point, there can be a significant risk factor in the event that these materials are exposed to a fire or other incident. Another consideration is whether or not such an exemption would increase security risk since these products can be used in combination with other products for the production of certain explosives such as ANFO (ammonium nitrate and fuel oil).

William J. Briner, Transportation Regulations Consultant, stated that the industry could adapt to the elimination of the combustible liquid classification and placard at a reasonable cost and with a reasonable amount of difficulty as long as the exceptions in § 173.150(f) are retained. These exceptions have proven over many years of use to be a safe means of transporting material with a flash point at or above 38 °C (100 °F) and at or below 60 °C (140 °F). Without the retention of the § 173.150 exceptions, a major disruption of the shipping operations of the Paint Industry and the Ag Chem industry would result.

Printing Industries of America (PIA) said it supports the deregulation of combustible liquids with high flash points as part of the effort to align the HMR with international standards. PIA states combustible liquids do not pose the same hazard as flammable liquids and therefore should not be subject to the same level of regulations. However, the PIA said the HMR should continue to permit Class 3 materials with flash points between 38 °C (100 °F) and 60 °C (140 °F) to be reclassed and transported as combustible liquids. PIA expresses the belief that removal of this exception will result in significant cost increases across the supply chain. Specifically, PIA is concerned that removing the domestic exception will cause printers, as offerors of hazardous materials in amounts that require placarding, to be subject to registration and security requirements.

American Coatings Association (ACA) supports the harmonization of regulatory requirements for materials with a flash point above 60 °C (140 °F)

and below 93 °C (200 °F); ACA expressed the belief that for this class of materials, the HMR should not apply. ACA said PHMSA could then harmonize the definition of flammable liquid with that of the international standards, thereby eliminating the confusion in the ports regarding these shipments of combustible liquids that carry Class 3 markings. However, ACA said that for those Class 3 materials with a flash point between 38 °C (100 °F) and 60 °C (140 °F), the option to reclassify and transport as a combustible liquid should be retained.

PPG Industries, Inc. recommend harmonization, unless upon evaluation PHMSA feels there is a reason to continue regulation of large packages of HFCLs, then consideration should be given to limiting regulation to cargo tanks and tank cars which are domestic packages. Recommend retaining LFCL exception option (non-bulk) because it provides significant regulatory relief, and DOT reporting system is already cluttered with the reporting of inconsequential coatings incidents for small packagings of flammable liquids with flash points less than 100 °F.

D. Examples of Comments in Support of Expanded Exceptions for Farm Operations or Agribusinesses and Granting Petition P–1536

The Indiana Farm Bureau Inc. supports petition P–1536 and said that given the changes in agricultural operations over the last few decades, its members believe that this change is warranted and necessary. In its comments, Indiana Farm Bureau states that tractors and combines now routinely have fuel tanks with a capacity well over 119 gallons. It is impractical for farm operations to transport quantities smaller than those needed to fully fill their tanks. Given that multiple implements may be used in the same field at any one time, it is not uncommon for quantities of fuel approaching or even exceeding 1,000 gallons to be needed to fill all the equipment at one time. Furthermore, 1,000 gallon fuel tender tanks are becoming more prevalent in the market and on farms. With the increasing size of farming operations and the resulting increased intensity of production in a small window for completion, farm-owner labor is often insufficient and supplemental labor through seasonal or temporary workers is often needed. The commenter further states that the regulations should recognize the necessity of these workers and the difficulty they may have in seeking a commercial driver's license with a hazmat endorsement in a timely manner.

In addition, the Indiana Farm Bureau Inc. states that for the sake of clarity in implementation, the regulations should be written so that they can be consistently applied across farming operations, regardless of how they are organized or whom they employ. As noted in the Custom Harvesters' petition, custom harvesters replace the farmer in the field during harvest. However, it is not only harvesting in which custom farming is done. Numerous farmers do some custom farming work for their neighbors, including but not limited to tillage, planting, spraying, and nutrient application. The members of the Indiana Farm Bureau Inc., support an expanded exception from placarding for transportation of combustible liquids in a quantity not to exceed 1,000 gallons, and that the change in the exception is needed to keep pace with agricultural production. Furthermore, its members are confident that the expanded exception will still maintain the necessary standards of safety needed to protect farm workers and the public.

Zeorian Harvesting & Trucking states that the HMR should provide an expanded exception for the current regulation for the transportation of combustible liquids to a threshold of 3,785 L (1,000 gallons), and that packaging, hazard communication and other requirements would be exempt, as they are now under the non-bulk packaging classification of 450 L (119 gallons). The commenter suggests that a brightly colored signage or labeling stating ''Combustible Liquid—Diesel Fuel'' could be placed on all visible sides of the fuel tank to allow emergency personnel and the general public knowledge of the type of liquid they are dealing with in case of an accident. The commenter asserts that the label would give more detail than the current ''1993'' placard, as not everyone knows what this means, and that anyone coming upon an accident in the agricultural areas of the nation will already know that an overturned service truck would more than likely have diesel fuel in the tank. The commenter expresses the belief a ''Combustible Liquid—Diesel Fuel'' label would verify this. Further, the commenter stated that the HMR could provide a ''sub'' classification for the class of materials identified as combustible liquids. This ''sub'' classification could be an agricultural classification which would provide the expanded exception of the transportation of combustible liquid to 3,785 L (1,000 gallons) and all packaging, hazard communication and other requirements would be exempt—as non-bulk packaging (450 L/119 gallons) currently is. The commenter concludes that such signage or labeling, ''Combustible Liquid—Diesel Fuel'' could be brightly colored and visible on all sides of the tank, and the costs would be minimal, i.e. the creation and costs involved in the signage, labeling or sticker.

Kent Braathen, currently Vice President of U.S. Custom Harvesters Inc., stated:

> I strongly support the expanded exception for domestic transportation involving U.S. Custom Harvesters ability to transport a threshold amount of combustible liquid DIESEL no more than 1000 GALLONS. In our 40 years of operation, we have never had a reportable amount of diesel spilled. We have always stressed safety when operating a vehicle transporting diesel and when filling the tanks on all equipment, including trucks. Our safety awareness has increased dramatically the past couple of years due to safety meetings being attended at U.S. Custom Harvesters meetings. The meetings have been conducted by personal [sic] from PHMSA which has been a tremendous help to all of us. With the exemption I would strongly encourage replacing the current placards with COMBUSTIBLE DIESEL in red lettering on a white background making it easily identifiable by emergency responders and those that are first on the scene of any accident. We are not asking for an exemption that we already do not have, currently we have the ability to haul up to 1000 gallons of diesel with a seasonal class B CDL, you can be 16 years of age with a clean driving record, NO HAZMAT training and obtain this for a 6-month period. Now 18 years after we were given this exemption, we all are required to have a CLASS A CDL which requires all of us to have extensive training, but the inability to haul up to 1000 gallons of diesel unless we obtain the hazmat endorsement. Most of us do not have our employees in place until 2 weeks to 1 month before our seasonal harvest begins making it impossible to obtain the hazmat in a timely manner. Others of us hire H2A workers which cannot even be considered for a hazmat.

Alan Darrel Lutz said that as a custom harvester, we require laborers to travel for weeks and sometimes months at a time. This leads us to hire H2A workers and as they have limited time here, getting a HazMat endorsement as well as a CDL is impossible and unreasonable. With the numerous equipment our industry requires, and fields being twenty or more miles away from any town (fuel station), we need to haul the fuel to use it. It is not feasible to drive to a gas station twice a day for Choppers and Combines to re-fuel. Further, Mr. Lutz states that if we are allowed to haul at least 1,000 gallons, without the need of a Hazardous Materials Endorsement, we would conserve fuel, and traffic

would be decreased along small two-lane highways. Not only does this allow for more conservation of fuel because of less running around, it reduces danger and risk to our help as well as other drivers. Less continuous travel back and forth on dangerous highways decreases the number of trucks on the road and therefore decreases the possibility of accidents. Please consider this change.

E. Examples of Comments Recommending No Action Until PHMSA Analyzes Flammable/Combustible Incident Data

Many commenters in support of and in opposition to harmonization both said that more analysis of incident data is necessary. DGAC said that in deciding whether to deregulate this group of materials entirely, it recommends that PHMSA undertake an in depth analysis of its incident data in deciding whether to continue to regulate materials with a flash point above 60 °C (140 °F) and below 93° C (200 °F). API strongly recommends PHMSA consider the actual risk severity and frequency of incidents involving combustibles in non-bulk packagings before proposing changes to existing regulations in response to the IVODGA petition.

The IAFC said it recognizes and appreciates that container markings can create significant issues for the industry as related to compliance with hazardous materials shipping regulations; however, IAFC said eliminating the markings will pose an increased risk to emergency responders by removing critical hazard information. The IAFC recognize that providing some limited relief for shipments of HFCLs of certain quantities may be reasonable and appropriate, but would recommend a risk analysis be conducted to determine the appropriate volumes that would be acceptable.

COSTHA's members believe PHMSA should take a close look at the number of incidents involving these materials. COSTHA stated that in reviewing the 5800.1 reports posted on PHMSA's Web site, approximately 100,000 incidents involving Class 3 materials have been reported since 1998. Of those, only 8% involved materials classified as combustible liquids (3.8% of the total were packed in non-bulk packaging). Further, 0.02% of the nearly 8,300 incidents resulted in 21 fatalities. None of the reported fatal incidents involved non-bulk packaged combustible liquids but instead was in bulk packaging. Industry has estimated the number of combustible liquid shipments may be as many as 10,000–20,000 per day, and that with over 12 years of reporting, assuming the lower estimate, that would equate to nearly 44 million shipments of combustible liquids.

IV. Summary of Commenters Responses to Specific Questions

A. Questions Raised in the ANPRM

PHMSA invited commenters to submit comments on a series of questions, based on the discussion of the issues raised in the preamble of the ANPRM. The questions are as follows:

1. Should the HMR continue to apply to materials with a flashpoint above 60 °C (140 °F) and below 93 °C (200 °F)? Should the HMR continue to permit Class 3 materials with flashpoints above 60 °C (140 °F) to be reclassed and transported as combustible liquids? What benefits would result from de-regulation of combustible liquids? What are the safety implications of such de-regulation? How would such de-regulation affect emergency response?

2. Should the HMR continue to permit Class 3 materials with flashpoints between 38 °C (100 °F) and 60 °C (140 °F) to be reclassed and transported as combustible liquids? What are the benefits of eliminating this reclassification exception? Would there be costs associated with eliminating this reclassification exception? What are the safety implications of eliminating the reclassification exception? How would elimination of the reclassification exception affect emergency response?

3. Should the HMR provide expanded exceptions for the transportation of combustible liquids? For example, should the HMR except combustible liquids below a certain threshold (e.g., not more than 1,893 L (500 gallons), 3000 L (793 gallons), 3,785 L (1000 gallons) or 13, 240 L (3500 gallons) from packaging, hazard communication, or other requirements? What are the potential impacts on hazard communication and emergency response notification of such changes?

4. Should the HMR include expanded exceptions for farm operations or agribusinesses? Should the HMR include expanded materials of trade exceptions for persons who transport combustible liquids? What are the potential impacts on hazard communication and emergency response notification of such changes? Are there additional exceptions that should be considered?

5. Should the HMR continue to permit combustible liquids to be described using shipping names and identification numbers applicable to Class 3 materials? Should PHMSA adopt a requirement for all combustible liquids to be described as ''Combustible liquid, n.o.s.''? For example, for hazardous materials in the § 172.101 HMT, such as Paint, Diesel fuel, Fuel oil, Kerosene, Turpentine, Methallyl alcohol, etc. What safety benefits would result from the use of shipping descriptions unique to combustible liquid materials? How would such a change affect emergency response?

6. Should the HMR provide for use of a unique combustible liquid marking (e.g., the words ''COMBUSTIBLE'' or ''COMBUSTIBLE LIQUID'' in red letters on a white background) in place of COMBUSTIBLE placards and other hazard communication for bulk shipments of combustible liquids? Should the HMR provide for use of the domestic identification number, NA1993, on bulk packages utilizing a combustible liquid marking? What are the potential impacts on hazard communication and emergency response notification of such a change? Are there other practical alternatives to use of COMBUSTIBLE placards for bulk shipments?

The commenters opposed to and in support of harmonization were both mostly opposed to: (1) Providing expanded exceptions for the transportation of combustible liquids, such as excepting combustible liquids below a certain threshold (e.g., not more than 1,893 L (500 gallons), 3,000 L (793 gallons), 3,785 L (1,000 gallons), or 13,249 L (3,500 gallons) from packaging, hazard communication, or other requirements; (2) expanded exceptions specifically for farm operations or agribusinesses; and 3) expanded materials of trade exceptions for persons who transport combustible liquids. Most of the commenters also do not support a requirement for all combustible liquids to be described as ''Combustible liquid, n.o.s.'', and recommend that the HMR require the use of shipping names that most appropriately and accurately describe the material being transported. Commenters believe that proper shipping names such as Kerosene, Turpentine, Diesel fuel, Paint, etc., provide much better information to emergency responders than does ''Combustible liquid, n.o.s.''

As well, except for U.S. Custom Harvesters' members, most commenters do not support providing for use of a unique combustible liquid marking (e.g., the words ''COMBUSTIBLE'' or ''COMBUSTIBLE LIQUID'') in place of COMBUSTIBLE placards and other hazard communication for bulk shipments of combustible liquids. The commenters also do not support the use of the domestic identification number, NA1993, on bulk packages displaying a combustible liquid marking. Most commenters believe that COMBUSTIBLE placards must be maintained to communicate these hazards to emergency response personnel. Commenters believe a new marking to communicate the presence of Combustible Liquids would only add to confusion, and would increase cost for retraining employees and personnel.

B. Commenters Recommendations Not Addressed in the ANPRM

1. Dangerous Goods Advisory Council (DGAC)—recommended a new marking for reclassed, non-bulk (LFCL; 100–140 °F) combustible liquids, which may end up on aircraft undeclared. DGAC recommends a

package marking that consists of a circle surrounding figures of an airplane and a vessel with a line through the figures to alert shippers, and vessel and airline acceptance personnel.

2. DGAC requests that PHMSA except HFCL from regulation when transported in specification packages of less than 3,000 L (793 gallons) capacity (the upper limit for intermediate bulk containers (IBCs)), or when in an ISO (UN) portable tank in international commerce.

3. DGAC further petitions PHMSA to relieve IBCs containing HFCL from currently required HMR safety mark requirements independent of whether they are being transported in international commerce.

4. American Coatings Association (ACA)—recommend PHMSA retain option to reclassify LFCL in non-bulk packagings because the impact of eliminating reclassification option would subject such shipments to tunnel & local hazmat restrictions. However, would eliminate requirements regulating HFCL in bulk packagings.

5. National Association of Chemical Distributors (NACD) and Printing Industries of America (PIA)—the disadvantage of eliminating C/L reclassification exception could result in complications for chemical distributors who receive regular visits from fire officials. Note: NFPA has its own system of markings for various flash points, but generally follow DOT (OSHA, too); that is, for ''NFPA Class IIIA Combustible liquids, NFPA/fire officials may require NFPA labels on such packages because there would be no DOT labels/markings to recognize. (See Chapter 4/NFPA ''30'' Classification of C/L and F/L).

6. American Petroleum Institute (API)—recommend other marking would mitigate undeclared C/L in non-bulk packaging (i.e., at risk packaging) as follows:

- ''Ground Transport Only''
- ''Not Authorized for Air or Marine Transport''

7. American Trucking Associations (ATA)—recommend that PHMSA work not only on changes to the domestic regulations, but also utilize its influence at the UN to potentially align the UN Recommendations with the HMR. ATA also expressed the belief that deregulation of C/L could create certain safety risks. For example, certain bulk tank trucks utilize compressed air to unload. These compressors generate air pressure and may reach a temperature of 170 °F. As such, operators should not use these compressors to unload certain F/L and C/L. In the absence of effective Hazcom requirements, a safety risk could be created, as operators may not know whether it is safe to use compressed air for unloading.

8. Institute Makers of Explosives (IME)—Ninety-five percent of water-based explosive products (emulsions, slurries, watergels) and blends (Explosive 1.5D blasting agents) are delivered to jobsites in bulk and a significant quantity of that material is transported in ''multi-purpose bulk trucks'' (''MBTS''). MBTs serve as mobile-work platforms that facilitate the off-loading of water-based explosive materials, ammonium nitrate/fuel oil materials (''ANFO''), of blends of the two directly into boreholes, which are equipped to mix AN and FO (and other materials) in a customized formulation appropriate to the conditions at a particular worksite; the frequent use of ANFO for blasting activity requires the transportation of combustible FO on MBTs.

Currently, MBTs are operated under Special Permits (''SPs''). If PHMSA were to eliminate the regulatory option for reclassed combustibles, all commercial explosives companies operating MBTs would be forced to seek a new SP or a modification of their existing SPs to request a specific exception from the ''flammable'' classification for the transportation of FO with flash points between 38 °C (100 °F) and 60 °C (140 °F). This action would be necessary because, under the HMR, flammable materials are incompatible with other hazardous materials transported on MBTs. This could be an addition of over 150 more SP applications that would add to this already daunting (serious backlog) workload.

9. Indiana Farm Bureau, Inc.—recommend applying placarding exception for 1,000 gallon capacity tanks not just to custom harvesting, but to custom farming. Numerous farmers do custom farming work for their neighbors, including but not limited to tillage, planting, spraying, and nutrient application. The Indiana Farm Bureau recommended, for the sake of clarity in implementation, the regulations should be written so that they can be consistently applied across farming operations, regardless of how they are organized or who they employ.

10. National Fire Protection Association (NFPA)—recommend PHMSA retain current requirements for those combustible materials with flash point above 60 °C (140 °F) and below 93 °C (200 °F) because this category of materials is still capable of posing a fire or explosion hazard during transportation, especially if involved in an accident where other, more easily ignited materials are present. NFPA believes that if some of the changes were adopted, they could impact label and other Hazcom provisions for this class of materials. NFPA noted that there is no discussion in this ANPRM regarding the pending OSHA rulemaking to amend its Hazard Communication Standard (HCS) in 29 CFR 1910.1200 by incorporation of the Globally Harmonized System (GHS). NFPA recommends that the rulemaking activities discussion in the ANPRM be reviewed and coordinated—both will have significant impacts on the emergency responder sector.

11. International Association of Fire Chiefs (IAFC)—recommend retaining requirement for HFCL. IAFC said that while deregulation of those materials would decrease issues in international trade and ease the movement of those commodities, it would remove important warnings for emergency responders about the presence of a combustible liquid. While IAFC appreciates the fact that these materials may pose a low risk due to their high flash point, there can be a significant risk factor in the event that these materials are exposed to a fire or other incident. Another consideration is whether or not such an exemption would increase security risk since these products can be used in combination with other products for production of certain explosives such as ANFO.

12. Association of American Railroads (AAR) is concerned about applying train placement and switching restrictions to hazardous materials that have not been previously subject to them, without a need to do so, would be counterproductive, from a safety and economic perspective.

Since none of these issues were raised or examined prior to, or in the April 5, 2010 ANPRM, and there has been no consideration or discussion given to these issues, PHMSA is not addressing these subjects in this notice, at this time.

V. Denial of Petitions P–1498, P–1531, and P–1536

Issue: Treatment of flammable liquids in the U.S. HMR is at variance with the UN Recommendations. In the U.S., flammable liquids may be reclassed as combustible liquids by the material's flash point—the temperature at which it emits an ignitable vapor and can catch fire. The lower the flash point, the higher the fire hazard. The two systems are comparable as follows, with the variance shaded:

Flash point	UN Recommendations	HMR (domestic ground shipments)
Below 100 °F	Flammable (Class 3)	Flammable (Class 3).
100–140 °F	Flammable (Class 3)	Flammable (Class 3), with option to reclassify as Combustible, non-bulk shipments excepted.
140–200 °F (a.k.a. High Flash Point Combustible Liquids, or HFCLs).	Unregulated	Combustible (bulk only), non-bulk shipments excepted.
Above 200 °F	Unregulated	Unregulated.

Two of the petitions claim there are inefficiencies in international trade due to frustration of shipments caused by intentional differences between the HMR and the UN Recommendations; and the third petition representing custom harvesters, a specialized industry, claims economic losses from the requirements placed on drivers of vehicles carrying bulk volumes of combustible materials, and requests relief from placarding for some agricultural tanks having a capacity of 1,000 gallons, claiming the delay due to FMCSA's CDL/hazmat endorsement provisions and TSA's background check for drivers required to have hazmat endorsements (HMEs) interferes with the efficiency of their business.

In accordance with 49 CFR 106.95, Petitions P–1498, P–1531, and P–1536 are denied for the following reasons:

A. Petitions P–1498 and P–1531

1. Harmonization of domestic regulations with the international standards for Class 3 (flammable liquids) materials with flash points between 38 °C (100 °F) and 60 °C (140 °F) would eliminate the domestic exception option for shippers to reclassify such materials as combustible liquids. Eliminating the combustible liquids hazard classification option could possibly result in many materials falling under the flammable liquids classification (UN) criteria and require use of more expensive, specification, non-bulk and bulk packagings as opposed to less expensive, non-specification, non-bulk and bulk packagings, currently allowed for combustible liquids. Shipments of non-bulk packagings of combustible liquids in domestic transportation are currently shipped unregulated. Potentially adopting UN classification criteria for Class 3 (flammable liquids) and eliminating the combustible liquids classification criteria in the U.S. would greatly impact costs and increase burdens on the regulated industry.

2. The safety of emergency responders could be compromised if bulk shipments of combustible liquids having a flash point of 60 °C (140 °F) and 93 °C (200 °F) moving in domestic transportation were to be shipped as unregulated, with no hazard warning labels or placards, markings, or shipping papers to assist emergency responders in case of an incident involving such materials. Many commenters agree, including the NFPA and the IAFC.

3. The cost of retraining shippers, carriers, and emergency response personnel, who are extremely familiar with the current system, would be increased. Generally, commenters agree that there would be an added cost in implementation if the combustible liquid reclassification option and the domestic exceptions were eliminated.

4. Costs are broadly attributable to new packaging, training, registration, and marking costs. The wide range of industries affected by combustible liquids in transportation is widespread enough to outweigh potential benefits to either regulatory option.

5. Under full-harmonization, non-specification tanks carrying reclassed combustible liquids would have to be replaced by specification tanks in the absence of the reclassification option. Commenters have noted that current practice is to move tanks from specification to non-specification service as they age and that requiring materials like asphalt to be carried in specification cargo tanks would make them unusable for other materials. Multiple commenters quoted a retail price for specification tanks at $75,000 to $80,000 each. Calls to Polar Tank for used tank prices yielded a range of $30,000 to $35,000 for specification tanks and $24,000 to $25,000 for non-specification tanks. The upper end of each of these ranges was used [see economic analyses on file in docket] due to an assumption that less-costly tanks were likely older and less appealing as a long-term investment.

This then means that the usual increment between a specification and non-specification tank is approximately $10,000. The number of tanks in use for shipping combustible liquids was determined by taking the U.S. Energy Information Administration's (EIA) reported figure for millions of barrels of fuel distillates transported through the U.S. per day, converting to gallons, and dividing that figure by the average assumed tank size (3,000 gallons) and the number of trips per day recorded by the most recent (2002) Vehicle Inventory and Use Survey (VIUS). This gives us an estimate of 12,100 cargo tanks that would require replacement. [Note that in HM–213D (the Wet lines rule), there is a standing estimate of 27,000 tank trucks operating in the U.S. just with undercarriage piping.] Therefore to upgrade all 12,100 cargo tanks at a cost of $10,000 each would cost carriers $121 million for a single upgrade. This assumes that used tanks will be widely available for the mass replacement of non-specification tanks by specification tanks; it is likely that a number of new tanks would be brought into service at a notably higher cost.

6. Non-bulk shipments would be another area of concern. Under the harmonization option, shippers of flammable liquids with a flash point of 60 °C (140 °F) or below would no longer have the option to reclassify them as combustible liquids, currently shipped unregulated. Such shipments would be required to be shipped in specification, non-bulk packagings. Although safety is maintained, shippers would be required to invest in more costly specification, non-bulk packagings to ship such materials as paint, ink, and adhesives.

7. Training and information would be required (at least one session of retraining) for all shippers, carriers, and emergency responders. (One commenter, Printing Industries of America, claimed to represent 10,000 companies which would require some form of training.) The overall cost would be substantial, with nearly 700,000 workers in the U.S. requiring updated training would cost $2.75 million per year or $27.5 million after 10 years; at 3% discount this is $23.3 million and at 7% discount this is $18.9 million. We can be certain there are also a number of large companies that would then be required to register annually and pay higher fees (not included in these figures) under harmonization. The ERG would have to be updated as well.

8. Under harmonization, many shippers/carriers would have to replace the COMBUSTIBLE placard with the FLAMMABLE placard. For the most part, four (4) square-on-point placards would be required. It is estimated that 80% of placards sold are removable vinyl or tag board, 10% are permanent vinyl, and 10% are durable aluminum. Therefore, replacement costs would be necessary. For 10,000 Cargo Tank Motor Vehicles (CTMVs), there would be four square-on-point placards required per tank. Private communication with J.J. Keller yielded estimates that 80% of placards sold are removable vinyl or tag board, 10% are permanent vinyl, and 10% are durable aluminum. At market prices, it would cost about $126,000 to replace them all.

In practice, most flammable liquids with a flash point at or above 100 °F to 200 °F may be reclassed and shipped as combustible liquids within the U.S. There is no international hazard class definition for ''combustible liquids.'' The combustible liquids provisions do not apply to transportation by aircraft or vessel, in most cases. The average new marking would thus likely cost around $3 on average. As with harmonization, for industry to replace a COMBUSTIBLE placard with a COMBUSTIBLE marking would require 40,000 units to be purchased, for a total of $120,000. A representative from J.J. Keller estimated that the cost to develop a new marking would likely be on the order of $4,000. The total would then be $124,000 for

the new marking. Again, we refrain from including replacement costs for these markings following the initial changeover. Note also that the use of a COMBUSTIBLE marking vs. a COMBUSTIBLE placard would be an optional provision.

9. Although both petitioners claim the variance delays shipments moving internationally because these shipments are placarded with COMBUSTIBLE placards, which are not recognized internationally, international commerce would not necessarily be expedited by deregulation. DGAC's estimated delay cost for one freight container was approximately $300 to $500. For comparison, Maersk, the world's largest container line does not levy demurrage (delay charges) for (twenty-foot equivalent unit (TEU)) export shipments waiting up to seven days or import shipments waiting up to four days. Beyond this ''free time,'' the charges average $100 per day for exports and $225 per day for imports. If placarding issues actually forced delays concomitant with DGAC's estimates, the cost would be nothing for exports and $225 for imports—for one day in excess of the ''free time'' granted.) Many commenters feel and PHMSA agrees that placing a non-recognized ''Combustible'' marking on international transport containers would not ultimately lead to a different outcome. Even so, this is a matter of shippers, carriers, and freight forwarders or agent's responsibility to be knowledgeable about and observant of, the regulations.

10. The requirements for shipping combustible liquids in the U.S. are less costly and adequate level of safety is maintained. Neither IVODGA nor DGAC presented any evidence for its claim that the U.S. regulations as are currently applied are responsible for undeclared shipments in international transport, much less that there has been any harm from these shipments leading to incidents. Commenters in support of harmonization did not provide documentation, specific information or data to support their contention that mishandling, misidentification, demurrage or delay, or undeclared combustible liquids shipments occurred and is a major factor compromising safety or in causing non-compliance.

B. Petition P–1536

Comments were solicited on whether the HMR should provide use of a unique COMBUSTIBLE marking in place of COMBUSTIBLE placards for the custom harvester industry who replaces the farmer in the fields at harvest time. The purpose is to exempt custom harvesters from placarding bulk tanks having a capacity of 1,000 gallons, which in turn exempt them from FMCSA's hazmat endorsement on a Commercial Driver's License (CDL). The petition is denied for the following reasons:

1. Except for custom harvesters, the majority of commenters on harmonization opposed expanded exceptions and particularly for farm operations or agribusinesses only.

2. On June 28, 2011, Senator Pat Roberts (KS) introduced Senate Bill S. 1288 to the 112th Congress (2011–2012), read twice and referred to the Committee on Commerce, Science, and Transportation. The Bill directs the Secretary of Transportation to exempt from the requirement to obtain a hazmat endorsement all Class A CDL holders who are custom harvesters, agricultural retailers, agricultural business employees, agricultural cooperative employees, or agricultural producers who operate a service vehicle with a fuel tank containing 3,785 liters (1,000 gallons) or less of diesel fuel if the tank is clearly marked with a placard reading ''Diesel Fuel.'' The Senate Bill has four (4) cosponsors.

3. On July 6, 2011, Representative Randy Neugebauer (TX), introduced to the 112th Congress (2011–2012), a related or identical House Bill (H.R. 2429) which was referred to the House Subcommittee on Transportation and Infrastructure. On July 7, 2011 the House Bill H.R. 2429 was referred to the Subcommittee on Highways and Transit. The House Bill has twelve (12) cosponsors.

4. The two (2) Bills (S. 1288 and H.R. 2429) introduced were aimed at increasing the amount of diesel fuel allowed to be hauled by agriculture sector employees—in some cases from 118 gallons to 1,000 gallons—without certain federal regulations applying. The two Bills are intended to help the agriculture industry to operate more efficiently. If passed, the legislation would allow the custom harvester and other agricultural related businesses to haul up to 1,000 gallons of diesel fuel in a bulk packaging without a hazmat endorsement on their Class A CDL. Since this issue would be addressed by the Federal Motor Carrier Safety Administration Regulations (FMCSR) governing Commercial Driver's Licenses, PHMSA believes it would be in the best interest of all parties involved, including the U.S. Custom Harvesters, Inc., to await the outcome of this legislation. Thus, CDL legislation would be subject to, and implemented by, the Department's Federal Motor Carrier Safety Administration's Federal Motor Carrier Safety Regulations (FMCSR).

5. Prior to publication of the April 5, 2010 notice, FMCSA denied a request from the U.S. Custom Harvesters, Inc., to conduct a pilot program where custom harvesters would transport diesel fuel in bulk packagings, but would be excepted from placarding under the HMR and thus from the hazmat endorsement on the CDL, which triggers a TSA background check. During this same period, PHMSA also denied a request from the U.S. Custom Harvesters, Inc., for a special permit to transport bulk shipments of diesel fuel without placarding. Basically, both agencies felt that neither should diminish nor weaken the other agency's rules or enforcement.

VI. Conclusion

Many commenters recommended analysis of incident data to determine whether a proposed rule would be warranted. In the April 5, 2010 ANPRM, OHMS staff solicited comments on two possible regulatory options that may address these requests, as follows:

1. Harmonize with the UN Recommendations, eliminating the Combustible liquids hazard class and the domestic exceptions for non-bulk and bulk shipments. This would directly address IVODGA and DGAC's concerns, but may not maintain an adequate level of safety involving these materials transported in domestic transportation.

2. Adopt a new marking for Combustible liquids, designed to pass through international customs facilities without inciting frustration while still communicating emergency information. This may address the Customer Harvesters' issue and potentially satisfy IVODGA and DGAC's concerns at the port.

PHMSA believes that each option has the potential to reduce the level of safety and neither is guaranteed to expedite commerce. Quantitative information on costs and benefits is difficult to come by; a partial cost analysis was conducted on elements of the regulatory options that could be enumerated based on ANPRM comments and further research. These figures will serve as a ''floor'' for the cost analysis, that is, actual costs would likely be higher but no lower than the numbers cited. The benefit-cost summary outlines the economic difficulties of pursuing either option; benefits are estimated generously and costs are estimated to the extent possible with limited information in order to illustrate the confidence with which we state that neither regulatory

option is cost-effective relative to current practice. The costs associated with implementing the petitions would far exceed the benefits. For access to the economic analysis go to *http://www.regulations.gov.*

In addition, from the perspective of the emergency responder, any effort to deregulate combustible liquids represents a reduction in the current safety practices that protect and alert those responding to transportation incidents or other emergencies involving this class of hazardous materials.

Issued in Washington, DC, on May 23, 2012, under authority delegated in 49 CFR part 106.

R. Ryan Posten,

Deputy Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2012–12958 Filed 5–29–12; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 196 and 198

[Docket ID PHMSA–2009–0192]

RIN 2137–AE43

Pipeline Safety: Pipeline Damage Prevention Programs

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA); DOT.

ACTION: Notice of proposed rulemaking; Extension of comment period.

SUMMARY: On April 2, 2012, PHMSA published a Notice of Proposed Rulemaking (NPRM) seeking to revise the Pipeline Safety Regulations to: establish criteria and procedures for determining the adequacy of state pipeline excavation damage prevention law enforcement programs; establish an administrative process for making adequacy determinations; establish the Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs; and establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised. PHMSA has received a request to extend the comment period to allow stakeholders more time to evaluate the NPRM. PHMSA has concurred in part with this request and has extended the comment period from June 1, 2012, to July 9, 2012.

DATES: The closing date for filing comments is extended to July 9, 2012.

ADDRESSES: Comments should reference Docket No. PHMSA–2009–0192 and may be submitted in the following ways:

- *E-Gov Web site: http://www.regulations.gov*. This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Management System: U.S. DOT, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the Docket No. PHMSA–2009–0192 at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*.

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For further information contact Sam Hall, Program Manager, PHMSA by email at *sam.hall@dot.gov* or by telephone at (804) 556–4678 or Larry White, Attorney Advisor, PHMSA by email at *lawrence.white@dot.gov* or by telephone at (202) 366–9093.

SUPPLEMENTARY INFORMATION: On April 2, 2012, PHMSA published a NPRM proposing to amend the Federal Pipeline Safety Regulations to establish criteria and procedures PHMSA will use to determine the adequacy of state pipeline excavation damage prevention law enforcement programs; establish an administrative process for states to contest notices of inadequacy from PHMSA should they elect to do so; establish the Federal requirements PHMSA will enforce in states with inadequate excavation damage prevention law enforcement programs; and establish the adjudication process for administrative enforcement proceedings against excavators where Federal authority is exercised. In the absence of regulations specifying the criteria that PHMSA will use to evaluate a state's excavation damage prevention law enforcement program, PHMSA would take no enforcement action.

On May 14, 2012, the National Utility Contractors Association (NUCA) requested that PHMSA extend the NPRM comment period deadline from June 1, 2012, to August 1, 2012, to give NUCA's members enough time to share the NPRM with their membership and chapters nationwide, and to collect their members' responses and comments for Docket submission.

PHMSA has concurred in part with NUCA's request and has extended the comment period from June 1, 2012, to July 9, 2012. This extension will provide sufficient additional time for commenters to submit their comments.

Issued in Washington, DC, on May 23, 2012.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2012–13025 Filed 5–29–12; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 77, No. 104

Wednesday, May 30, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. DA–12–01; AMS–DA–12–0001]

Notice of Request for Extension of a Currently Approved Information Collection for the Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension of a currently approved information collection for the Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products, and the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products.

DATES: Comments received by July 30, 2012 will be considered.

ADDRESSES: Interested persons are invited to submit comments concerning this information collection document. Comments should be submitted online at *www.regulations.gov* or sent to Susan M. Sausville, USDA/AMS/Dairy Programs, Dairy Standardization Branch, Room 2746–South Building, 1400 Independence Avenue SW., Washington, DC 20250–0230; Tel: (202) 720–9382, Fax: (202) 720–2643 or via email at *susan.sausville@ams.usda.gov*. All comments will be posted without change, including any personal information provided, online at *http://www.regulations.gov* and will be made available for public inspection at the above physical address during business hours.

FOR FURTHER INFORMATION CONTACT: Susan M. Sausville at the above physical address, by telephone (202) 720–9382, or by email at *susan.sausville@ams.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements Under Regulations Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products.

OMB Number: 0581–0126.

Expiration Date of Approval: November 30, 2012.

Type of Request: Extension of a currently approved information collection.

Abstract: The dairy grading program is a voluntary user fee program authorized under the Agricultural Marketing Act (AMA) of 1946 (7 U.S.C. 1621 *et seq.*). The regulations governing inspection and grading services of manufactured or processed dairy products are contained in 7 CFR part 58, while the regulations governing the certification of sanitary design and fabrication of equipment used in the slaughter, processing, and packaging of livestock and poultry products are contained in 7 CFR part 54. In order for a voluntary inspection program to perform satisfactorily, there must be written requirements and rules for both Government and industry. The information requested is used to identify the product offered for grading; to identify a request from a manufacturer of equipment used in dairy, meat or poultry industries for evaluation regarding sanitary design and construction; to identify and contact the party responsible for payment of the inspection, grading or equipment evaluation fee and expense; and to identify applicants who wish to be authorized for the display of official identification on product packaging materials, equipment, utensils, or on descriptive promotional materials.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .06 hours per response.

Respondents: Dairy product manufacturers, dairy equipment fabricators and meat and poultry processing equipment fabricators.

Estimated Number of Respondents: 400.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 364 hours.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 7 U.S.C. 1621–1627.

Dated: May 22, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–13064 Filed 5–29–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–ST–12–0010]

Notice of Request for Revision of a Currently Approved Collection Application for Plant Variety Protection Certification and Objective Description of Variety

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS's) intention to request approval from Office of Management and Budget (OMB) for an extension of and revision to the currently approved information collection ''Application for

Plant Variety Protection Certification and Objective Description of Variety.''

DATES: Comments on this notice must be received by July 30, 2012. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet via *www.regulations.gov.*

Additional Information or Comments: Contact Bernadette Thomas, Information Technology Specialist, Plant Variety Protection Office (PVPO), Science and Technology, AMS, Room 401, National Agricultural Library (NAL), 10301 Baltimore Avenue, Beltsville, MD 20705. Telephone (301) 504–5297 and Fax (301) 504–5291.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Application for Plant Variety Protection Certificate and Reporting Requirements under the Plant Variety Protection Act.

OMB Number: 0581–0055.

Expiration Date of Approval: November 30, 2012.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) was established ''To encourage the development of novel varieties of sexually reproduced plants and make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest.''

The PVPA is a voluntary user funded program which grants intellectual property rights protection to breeders of new, distinct, uniform, and stable seed reproduced and tuber propagated plant varieties. To obtain these rights the applicant must provide information which shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. Application forms, descriptive forms, and ownership forms are furnished to applicants to identify the information which is required to be furnished by the applicant in order to legally issue a certificate of protection (ownership). The certificate is based on claims of the breeder and cannot be issued on the basis of reports in publications not submitted by the applicant. Regulations implementing the PVPA appear at 7 CFR part 92.

Currently approved forms ST–470, Application for Plant Variety Protection Certificate, ST–470 A, Origin and Breeding History, ST–470 B, Statement of Distinctness, Form ST–470 series, Objective Description of Variety (Exhibit C), Form ST–470–E, Basis of Applicant's Ownership, are the basis by which the determination, by experts at PVPO, is made as to whether a new, distinct, uniform, and stable seed reproduced or tuber-propagated variety in fact exists and is entitled to protection.

The revised ST 470 application form has been revised to combine Exhibits A, B, and E into one form. The information received on applications, with certain exceptions, is required by law to remain confidential until the certificate is issued (7 U.S.C. 2426).

The information collection requirements in this request are essential to carry out the intent of the PVPA, to provide applicants with certificates of protection, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.23 hours per response.

Respondents: Businesses or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 76.

Estimated Number of Responses per Respondent: 30.

Estimated Total Annual Burden on Respondents: 2,839.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Bernadette Thomas, Information Technology Specialist, Plant Variety Protection Office, Room 401, NAL Building, 10301 Baltimore Avenue, Beltsville, MD 20705. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 22, 2012.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2012–13066 Filed 5–29–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0028]

Importation of Fresh Bananas From the Philippines Into the Continental United States; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that we have prepared an environmental assessment relative to our recent proposal to allow the importation of fresh bananas from the Philippines into the continental United States. The environmental assessment documents our review and analysis of environmental impacts associated with the proposed action. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 29, 2012.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS–2011–0028–0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0028, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

The proposed rule, environmental assessment, other supporting documents, and any comments we receive may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0028* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Jones, Regulatory

Coordination Specialist, PPQ, RPM, RCC, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 851–2289.

SUPPLEMENTARY INFORMATION:

Background

In a proposed rule [1] titled ''Importation of Fresh Bananas from the Philippines into the Continental United States'' and published in the **Federal Register** on April 16, 2012 (77 FR 22510–22514, Docket No. APHIS–2011–0028), we proposed to amend the regulations in 7 CFR part 319 to allow the importation of fresh bananas from the Philippines into the continental United States. We initiated this proposal in response to a request from the national plant protection organization (NPPO) of the Philippines.

To determine the potential pest risks inherent in allowing importation of fresh bananas from the Philippines, and to determine measures that might be effective in mitigating the pest risk, APHIS prepared a pest risk assessment and a risk management analysis. Based on the results of those studies, the proposed rule describes a systems approach under which bananas from the Philippines would have to be produced, packed, and transported in order to mitigate the potential risks associated with the importation. The systems approach is considered to be an appropriate safeguard to ensure that consignments of bananas from the Philippines would have a low likelihood of containing fruit with the potential to cause the introduction of a plant pest into the United States.

APHIS' review and analysis of the potential environmental impacts associated with allowing the importation of fresh bananas from the Philippines into the continental United States are documented in detail in an environmental assessment entitled ''Importation of Bananas (*Musa* spp.) from the Philippines into the Continental United States'' (April 2012). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment has been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 23rd day of May 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–13057 Filed 5–29–12; 8:45 am]

BILLING CODE 3410–34–P

[1] To view the proposed rule, the environmental assessment, and the pest risk assessment, go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2011–0028.*

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the West Sacramento, CA; Frankfort, IN; Indianapolis, IN; and Richmond, VA Areas; Request for Comments on the Official Agencies Servicing These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end on December 31, 2012. We are asking persons or governmental agencies interested in providing official services in the areas presently served by these agencies to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agencies: California-Agri Inspection Company, Ltd. (Cal-Agri); Frankfort Grain Inspection, Inc. (Frankfort); Indianapolis Grain Inspection and Weighing Service, Inc. (Indianapolis); and Virginia Department of Agriculture and Consumer Services (Virginia).

DATE: Applications and comments must be received by June 29, 2012.

ADDRESSES: Submit applications and comments concerning this notice using any of the following methods:

- *Applying for Designation on the Internet:* Use FGISOnline (*https://fgis.gipsa.usda.gov/default_home_FGIS.aspx*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISOnline customer number and USDA eAuthentication username and password prior to applying.
- *Submit Comments Using the Internet:* Go to Regulations.gov (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site.
- *Mail, Courier or Hand Delivery:* Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.
- *Fax:* Eric J. Jabs, 816–872–1258
- *Email: Eric.J.Jabs@usda.gov.*

Read Applications and Comments: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 79(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)). Under section 79(g) of the USGSA, designations of official agencies are effective for three years unless terminated by the Secretary, but may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Areas Open for Designation

Cal-Agri

Pursuant to Section 79(f)(2) of the USGSA, the following geographic area, in the State of California, is assigned to this official agency. Bounded on the North by the northern California State line east to the eastern California State line; Bounded on the East by the eastern California State line south to the southern San Bernardino County line; Bounded on the South by the southern San Bernardino and Orange County lines west to the western California State line; and Bounded on the West by the western California State line north to the northern California State line. California Agri's assigned geographic area does not include the export port locations inside California Agri's area which are serviced by GIPSA.

Frankfort

Pursuant to Section 79(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to this

official agency. Bounded on the North by the northern Fulton County line; Bounded on the East by the eastern Fulton County line south to State Route 19; State Route 19 south to State Route 114; State Route 114 southeast to the eastern Fulton and Miami County lines; the northern Grant County line east to County Highway 900E; County Highway 900E south to State Route 18; State Route 18 east to the Grant County line; the eastern and southern Grant County lines; the eastern Tipton County line; the eastern Hamilton County line south to State Route 32; Bounded on the South by State Route 32 west to the Boone County line; the eastern and southern Boone County lines; the southern Montgomery County line; and Bounded on the West by the western and northern Montgomery County lines; the western Clinton County line; the western Carroll County line north to State Route 25; State Route 25 northeast to Cass County; the western Cass and Fulton County lines.

Indianapolis

Pursuant to Section 79(f)(2) of the Act, the following geographic area, in the State of Indiana, is assigned to this official agency. Bartholomew; Brown; Hamilton, south of State Route 32; Hancock; Hendricks; Johnson; Madison, west of State Route 13 and south of State Route 132; Marion; Monroe; Morgan; and Shelby Counties.

Virginia

Pursuant to Section 79(f)(2) of the Act, the following geographic area, the entire State of Virginia, except those export port locations within the State, is assigned to this official agency.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic areas specified above under the provisions of section 79(f) of the USGSA and 7 CFR 800.196(d). Designation in the specified geographic areas is for the period beginning January 1, 2013 and ending December 31, 2015. To apply for designation or for more information, contact Eric J. Jabs at the address listed above or visit GIPSA's Web site at *http://www.gipsa.usda.gov.*

Request for Comments

We are publishing this notice to provide interested persons the opportunity to comment on the quality of services provided by the Cal-Agri, Frankfort, Indianapolis, and Virginia official agencies. In the designation process, we are particularly interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of the applicants. Submit all comments to Eric J. Jabs at the above address or at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–13018 Filed 5–29–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Topeka, KS; Cedar Rapids, IA; Minot, ND; and Cincinnati, OH Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: GIPSA is announcing the designation of Kansas Grain Inspection Service, Inc. (Kansas); Mid-Iowa Grain Inspection, Inc. (Mid-Iowa); Minot Grain Inspection, Inc. (Mid-Iowa); and Tri-State Grain Inspection Service, Inc. (Tri-State) to provide official services under the United States Grain Standards Act (USGSA), as amended.

DATES: *Effective Date:* July 1, 2012.

ADDRESSES: Eric J. Jabs, Chief, USDA, GIPSA, FGIS, QACD, QADB, 10383 North Ambassador Drive, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Eric J. Jabs, 816–659–8408 or *Eric.J.Jabs@usda.gov.*

Read Applications: All applications and comments will be available for public inspection at the office above during regular business hours (7 CFR 1.27(c)).

SUPPLEMENTARY INFORMATION: In the February 9, 2012 **Federal Register** (76 FR 6781), GIPSA requested applications for designation to provide official services in the geographic areas presently serviced by Kansas, Mid-Iowa, Minot, and Tri-State. Applications were due by March 12, 2012.

Topeka, KS; Cedar Rapids, IA; Minot, ND and Cincinnati, OH areas were the sole applicants for designation to provide official services in those areas. As a result, GIPSA did not ask for additional comments.

GIPSA evaluated all available information regarding the designation criteria in section 79(f) of the USGSA (7 U.S.C. 79(f)) and determined that the applicants Kansas, Mid-Iowa, Minot, and Tri-State are qualified to provide official services in the geographic area specified in the **Federal Register** on February 9, 2012. This designation action to provide official services in these specified areas is effective July 1, 2012 and terminates on June 30, 2015. Interested persons may obtain official services by contacting this agency at the following telephone numbers:

Official agency	Headquarters location and telephone	Designation start	Designation end
Kansas	Topeka, KS; (785) 233–7063	7/1/2012	6/30/2015
Mid-Iowa	Cedar Rapids, IA; (319) 363–0239	7/1/2012	6/30/2015
Minot	Minot, ND; (701) 838–1734	7/1/2012	6/30/2015
Tri-State	Cincinnati, OH; (513) 251–6571	7/1/2012	6/30/2015

Section 79(f) of the USGSA authorizes the Secretary to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79(f)).

Under section 79(g) of the USGSA, designations of official agencies are effective for no longer than three years unless terminated by the Secretary; however, designations may be renewed according to the criteria and procedures prescribed in section 79(f) of the USGSA.

Authority: 7 U.S.C. 71–87k.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–13019 Filed 5–29–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Procedures for Considering Requests and Comments From the Public for Textile and Apparel Safeguard Actions on Imports From Colombia

AGENCY: International Trade Administration (ITA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 30, 2012.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Robert Carrigg, Office of Textiles and Apparel, U.S. Department of Commerce, Telephone: 202–482–2573, Fax: 202–482–0858, Email: *Robert.Carrigg@trade.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title III, Subtitle B, Section 321 through Section 328 of the United States-Colombia Trade Promotion Agreement Implementation Act (the ''Act'') [Public Law 112–42] implements the textile and apparel safeguard provisions, provided for in Article 3.1 of the United States-Colombia Trade Promotion Agreement (the ''Agreement''). This safeguard mechanism applies when, as a result of the elimination of a customs duty under the Agreement, a Colombian textile or apparel article is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof to a U.S. industry producing a like or directly competitive article. In these circumstances, Article 3.1 permits the United States to increase duties on the imported article from Colombia to a level that does not exceed the lesser of the prevailing U.S. normal trade relations (NTR)/most-favored-nation (MFN) duty rate for the article or the U.S. NTR/MFN duty rate in effect on the day before the Agreement entered into force.

The Statement of Administrative Action accompanying the Act provides that the Committee for the Implementation of Textile Agreements (CITA) will issue procedures for requesting such safeguard measures, for making its determinations under Section 322(a) of the Act, and for providing relief under section 322(b) of the Act.

In Proclamation No. 8818 (77 FR 29519, May 18, 2012), the President delegated to CITA his authority under Subtitle B of Title III of the Act with respect to textile and apparel safeguard measures.

CITA must collect information in order to determine whether a domestic textile or apparel industry is being adversely impacted by imports of these products from Colombia, thereby allowing CITA to take corrective action to protect the viability of the domestic textile industry, subject to section 322(b) of the Act.

Pursuant to Section 321(a) of the Act and Section (9) of Presidential Proclamation 8818, an interested party in the U.S. domestic textile and apparel industry may file a request for a textile and apparel safeguard action with CITA. Consistent with longstanding CITA practice in considering textile safeguard actions, CITA will consider an interested party to be an entity (which may be a trade association, firm, certified or recognized union, or group of workers) that is representative of either: (A) A domestic producer or producers of an article that is like or directly competitive with the subject Colombian textile or apparel article; or (B) A domestic producer or producers of a component used in the production of an article that is like or directly competitive with the subject Colombian textile or apparel article.

In order for a request to be considered, the requester must provide the following information in support of a claim that a textile or apparel article from Colombia is being imported into the United States in such increased quantities, in absolute terms or relative to the domestic market for that article, and under such conditions as to cause serious damage or actual threat thereof, to a U.S. industry producing an article that is like, or directly competitive with, the imported article: (1) Name and description of the imported article concerned; (2) import data demonstrating that imports of an Colombian origin textile or apparel article that are like or directly competitive with the articles produced by the domestic industry concerned are increasing in absolute terms or relative to the domestic market for that article; (3) U.S. domestic production of the like or directly competitive articles of U.S. origin indicating the nature and extent of the serious damage or actual threat thereof, along with an affirmation that to the best of the requester's knowledge, the data represent substantially all of the domestic production of the like or directly competitive article(s) of U.S. origin; (4) imports from Colombia as a percentage of the domestic market of the like or directly competitive article; and (5) all data available to the requester showing changes in productivity, utilization of capacity, inventories, exports, wages, employment, domestic prices, profits, and investments, and any other information, relating to the existence of serious damage or actual threat thereof caused by imports from Colombia to the industry producing the like or directly competitive article that is the subject of the request. To the extent that such information is not available, the requester should provide best estimates and the basis therefore.

If CITA determines that the request provides the information necessary for it to be considered, CITA will publish a notice in the **Federal Register** seeking public comments regarding the request. The comment period shall be 30 calendar days. The notice will include a summary of the request. Any interested party may submit information to rebut, clarify, or correct public comments submitted by any interested party.

CITA will make a determination on any request it considers within 60 calendar days of the close of the comment period. If CITA is unable to make a determination within 60 calendar days, it will publish a notice in the **Federal Register**, including the date it will make a determination.

If a determination under Section 322(b) of the Act is affirmative, CITA may provide tariff relief to a U.S. industry to the extent necessary to remedy or prevent serious damage or actual threat thereof and to facilitate adjustment by the domestic industry to import competition. The import tariff relief is effective beginning on the date that CITA's affirmative determination is published in the **Federal Register**.

Entities submitting requests, responses or rebuttals to CITA may submit both a public and confidential version of their submissions. If the request is accepted, the public version

will be posted on the dedicated Colombia Trade Promotion Agreement textile safeguards section of the Office of Textile and Apparel (OTEXA) Web site. The confidential version of the requests, responses or rebuttals will not be shared with the public as it may contain business confidential information. Entities submitting responses or rebuttals may use the public version of the request as a basis for responses.

II. Method of Collection

When an interested party files a request for a textile and apparel safeguard action with CITA, ten copies of any such request must be provided in a paper format. If business confidential information is provided, two copies of a non-confidential version must also be provided.

III. Data

OMB Control Number: None.

Form Number(s): None.

Type of Review: Regular submission (new information collection).

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 6 (1 for Request; 5 for Comments).

Estimated Time per Response: 4 hours for a Request; and 4 hours for each Comment.

Estimated Total Annual Burden Hours: 24.

Estimated Total Annual Cost to Public: $960.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 23, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–12994 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–841]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from DuPont Teijin Films, Mitsubishi Polyester Film, Inc., SKC, Inc., and Toray Plastics (America), Inc. (collectively, petitioners), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET Film) from Brazil for the period November 1, 2010, through October 31, 2011. Based on petitioners' withdrawal of its request, we are now rescinding this administrative review.

DATES: *Effective Date:* May 30, 2012.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington DC 20230; telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2011, the Department published in the **Federal Register** a notice of initiation of an administrative review of the antidumping duty order on PET Film from Brazil for the period November 1, 2010 through October 31, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 82268 (December 30, 2011). This review covers Terphane, Inc. and Terphane, Ltda. Petitioners were the only party to request a review of these companies. On March 29, 2012, petitioners withdrew their request for an administrative review of Terphane, Inc. and Terphane, Ltda.

Scope of the Order

The products covered by this order are all gauges of raw, pre-treated, or primed PET film, whether extruded or co-extruded. Excluded are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer more than 0.00001 inches thick. Also excluded is roller transport cleaning film which has at least one of its surfaces modified by application of 0.5 micrometers of SBR latex. Tracing and drafting film is also excluded. PET film is classifiable under subheading 3920.62.00.90 of the Harmonized Tariff Schedule of the United States (HTSUS). While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of these orders is dispositive.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the publication of the notice of initiation of the requested review, or withdraws at a later date if the Department exercises its discretion to extend the time limit for withdrawing the request. Petitioners withdrew their request within the 90-day deadline, and no other party requested a review. Therefore, we are rescinding the review with respect to all companies.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notifications

This notice serves as a final reminder to importers for whom this review is being rescinded of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping

duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 14, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–13072 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–838]

Clad Steel Plate from Japan: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On February 1, 2012, the Department of Commerce (the Department) initiated the third sunset review of the antidumping duty order on clad steel plate from Japan, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). On the basis of a notice of intent to participate on behalf of the domestic interested party, and no response from respondent interested parties, the Department conducted an expedited (120-day) sunset review for this order pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to the continuation or recurrence of dumping.

DATES: *Effective Date:* May 30, 2012.

FOR FURTHER INFORMATION CONTACT: David Crespo, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3693.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2012, the Department published the notice of initiation of the third sunset review of the antidumping duty order on clad steel plate from Japan pursuant to section 751(c) of the Act. *See Initiation of Five-Year (Sunset) Review,* 77 FR 4995 (Feb. 1, 2012) (*Notice of Initiation*).

On February 15, 2012, the Department received a notice of intent to participate from ArcelorMittal USA, LLC (AMUSA), a domestic interested party, within the deadline specified in 19 CFR 351.218(d)(1)(i). The company claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of clad steel plate in the United States.

The Department received an adequate substantive response to the notice of initiation from AMUSA within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the order covered by this sunset review. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of the antidumping duty order on clad steel plate from Japan.

Scope of the Order

The scope of the order is all clad [1] steel plate of a width of 600 millimeters (mm) or more and a composite thickness of 4.5 mm or more. Clad steel plate is a rectangular finished steel mill product consisting of a layer of cladding material (usually stainless steel or nickel) which is metallurgically bonded to a base or backing of ferrous metal (usually carbon or low alloy steel) where the latter predominates by weight.

Stainless clad steel plate is manufactured to American Society for Testing and Materials (ASTM) specifications A263 (400 series stainless types) and A264 (300 series stainless types). Nickel and nickel-base alloy clad steel plate is manufactured to ASTM specification A265. These specifications are illustrative but not necessarily all-inclusive.

Clad steel plate within the scope of the order is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) 7210.90.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, entitled, ''Issues and Decision Memorandum for the Expedited Third Sunset Review of the Antidumping Duty Order on Clad Steel Plate from Japan,'' dated May 31, 2012 (Decision Memo), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file electronically via IA ACCESS in the Central Records Unit, Room 7046, of the main Department of Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic versions of the Decision Memo are identical in content.

Final Results of Review

We determine that revocation of the antidumping duty order on clad steel plate from Japan would be likely to lead to the continuation or recurrence of dumping at the following weighted-average dumping margins: [2]

[1] Cladding is the association of layers of metals of different colors or natures by molecular interpenetration of the surfaces in contact. This limited diffusion is characteristic of clad products and differentiates them from products metalized in other manners (*e.g.,* by normal electroplating). The various cladding processes include pouring molten cladding metal onto the basic metal followed by rolling; simple hot-rolling of the cladding metal to ensure efficient welding to the basic metal; any other method of deposition of superimposing of the cladding metal followed by any mechanical or thermal process to ensure welding (*e.g.,* electrocladding), in which the cladding metal (nickel, chromium, etc.) is applied to the basic metal by electroplating, molecular interpenetration of the surfaces in contact then being obtained by heat treatment at the appropriate temperature with subsequent cold rolling. *See* Harmonized Commodity Description and Coding System Explanatory Notes, Chapter 72, General Note (IV)(C)(2)(e).

[2] The Department assigned this margin of 118.53 percent in the less than fair value investigation on the basis of total adverse facts available using the rate contained in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Clad Steel Plate From Japan,* 61 FR 21158, 21159 (May 9, 1996).

Manufacturers/Exporters/Producers	Weighted-average dumping margin (percent)
The Japan Steel Company ...	118.53
All Others	118.53

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: May 22, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–13103 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB158

Marine Mammals; File No. 16580

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Shannon Atkinson, Ph.D., University of Alaska Fairbanks, 17101 Pt. Lena Loop Road, Juneau, AK 99801 has applied in due form for a permit to import, export, and receive marine mammal parts for scientific research.

DATES: Written, telefaxed, or email comments must be received on or before June 29, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16580 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301)713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on these applications would be appropriate.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The objectives of the proposed research are to examine reproductive, nutritional and stress physiology, and morphology in marine mammals. The applicant is requesting to receive and export samples of marine mammals taken by Alaskan Native subsistence hunters, and receive, and import/export specimens from foreign scientists in academic, federal, and state institutions involved in legally authorized marine mammal research. The applicant requests parts for all marine mammal species under NMFS jurisdiction. Marine mammal parts will be used incidentally for educational purposes. Import/export activities would occur world-wide. No live animals would be harassed or taken, lethally or otherwise, under the requested permit. The requested duration of the permit is 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding a copy of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 23, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13115 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC049

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; availability of tribal harvest plan evaluation and request for comment.

SUMMARY: Notice is hereby given that the Shoshone-Bannock Tribes have submitted a Tribal Resource Management Plan (Tribal Plan) to NMFS pursuant to the limitation on take prohibitions for actions conducted under Tribal Plans promulgated under the Endangered Species Act (ESA). The Tribal Plan specifies the management of ceremonial and subsistence fisheries in the Salmon River basin in the State of Idaho that potentially affect Snake River salmon and steelhead listed as threatened under the ESA. This document serves to notify the public of the availability for comment of the proposed evaluation of the Secretary of Commerce (Secretary) as to whether implementation of the Tribal Plan will appreciably reduce the likelihood of survival and recovery of Snake River salmon and steelhead.

This notice further advises the public of the availability for review of an Environmental Assessment of the effects of the NMFS determination on the subject Tribal Plan.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on June 29, 2012.

ADDRESSES: Written comments on the application should be addressed to the NMFS Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232, or faxed to 503–872–2737. Comments may be submitted by email. The mailbox address for providing email comments is: *TribalFisheries.nwr@noaa.gov.* Include in the subject line of the email comment the following identifier: Comments on Tribal fishery plan in Idaho.

FOR FURTHER INFORMATION CONTACT: Enrique Patiño, at phone number: (206) 526–4655, or email: *Enrique.Patino@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Snake River spring/summer.

Chinook salmon (*O. tshawytscha*): threatened, naturally produced and artificially propagated Snake River fall-run.

Steelhead (*O. mykiss*): threatened, naturally produced and artificially propagated Snake River basin.

Sockeye (*O. nerka*): endangered, naturally produced and artificially propagated Snake River.

The Shoshone-Bannock Tribes have submitted to NMFS a Tribal Plan describing the management of ceremonial and subsistence fisheries in the Salmon River basin in the State of Idaho. The objective of the Tribal Plan is to harvest spring Chinook salmon in a manner that does not appreciably reduce the likelihood of survival and recovery of the ESU. Impact levels on the listed spring Chinook salmon populations in the ESU are specified by a sliding-scale harvest rate schedule based on run size and escapement needs as described in the Tribal Plan. The Tribal Plan sets maximum harvest rates for each management unit or population based on its status, and assures that those rates or objectives are not exceeded. A variety of monitoring and evaluation tasks to be conducted by the Shoshone-Bannock Tribes is specified in the Tribal Plan to assess the abundance of spring Chinook salmon and to determine fishery effort and catch. A comprehensive review of the Tribal Plan to evaluate whether the fisheries and ESA-listed salmon and steelhead populations are performing as expected will be done within the proposed fishery season and at the end of the proposed season.

As required by the ESA 4(d) rule for Tribal Plans (65 FR 42481, July 10, 2000), the Secretary is seeking public comment on his pending determination as to whether the Tribal Plan for fisheries in the Salmon River of Idaho by the Shoshone-Bannock Tribes would appreciably reduce the likelihood of survival and recovery of the ESA-listed Snake River salmon and steelhead.

Under section 4(d) of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. NMFS has issued a final ESA 4(d) Rule for Tribal Plans adopting regulations necessary and advisable to harmonize statutory conservation requirements with tribal rights and the Federal trust responsibility to tribes (50 CFR 223.209).

This 4(d) Rule for Tribal Plans applies the prohibitions enumerated in section 9(a)(1) of the ESA. NMFS did not find it necessary and advisable to apply the take prohibitions described in section 9(a)(1)(B) and 9(a)(1)(C) to fishery harvest activities if the fisheries are managed in accordance with a Tribal Plan whose implementation has been determined by the Secretary to not appreciably reduce the likelihood of survival and recovery of the listed salmonids. As specified in the Tribal 4(d) Rule, before the Secretary makes a decision on the Tribal Plan, the public must have an opportunity to review and comment on the pending determination.

Authority

Under section 4 of the ESA, the Secretary is required to adopt such regulations as he deems necessary and advisable for the conservation of the species listed as threatened. The ESA Tribal 4(d) Rule (50 CFR 223.209) states that the ESA section 9 take prohibitions will not apply to Tribal Plans that will not appreciably reduce the likelihood of survival and recovery for the listed species.

Dated: May 23, 2012.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13117 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA874

Marine Mammals; File No. 15240

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to NMFS Pacific Islands Fisheries Science Center (PIFSC), 2570 Dole Street, Honolulu, Hawaii 96822 (Responsible Party: Frank A. Parrish, Ph.D.) to conduct research on cetaceans.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)944–2200; fax (808)973–2941.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Laura Morse, (301)427–8401.

SUPPLEMENTARY INFORMATION: On December 20, 2011, notice was published in the **Federal Register** (76 FR 78890) that a request for a permit to conduct cetacean research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 15240 authorizes the PIFSC to take 20 cetacean species, including six species listed as endangered [blue (*Balaenoptera musculus*), fin (*B. physalus*), sei (*B. borealis*), humpback (*Megaptera novaeangliae*), sperm (*Physeter macrocephalus*), and North Pacific right (*Eubalaena japonica*) whales] and one stock proposed to be listed as endangered, Hawaiian insular false killer whales (*Pseudorca crassidens*). Endangered Hawaiian monk seals [*Monachus schauinslandi*] may be harassed incidental to the cetacean research. The purpose of the research is to determine the abundance, distribution, stock structure, movement patterns, and ecological relationships of cetaceans occurring in U.S. and international waters of the Pacific Islands Region. The action area includes Hawaii, Palmyra, American Samoa,

Guam, the Commonwealth of the Northern Mariana Islands, Johnston Atoll, Kingman Reef, Howland Island, Baker Island, Jarvis Island, and Wake Island. Research methodologies include aerial and vessel surveys, behavioral observations, photo-identification, acoustic recordings, biopsy collection, and dart and suction cup tagging. Salvage and import/export of cetacean parts, specimens, and biological samples may also occur. The permit is valid through May 31, 2017.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on May 15, 2012.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 23, 2012.

Tammy C. Adams,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–13112 Filed 5–29–12; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), has submitted a public information collection request (ICR) entitled Understanding the Value of Service in Participant's Experience for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Scott Richardson, at (202) 606–6903 or email to *srichardson@cns.gov*. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on November 25, 2011. This comment period ended January 24, 2012. One public comment was received from this Notice, submitted by the Washington Commission for National & Community Service (''Commission''). The Commission recommended removing ''active duty'' from the survey question about veteran status, and CNCS removed ''active duty'' from the survey. The Commission questioned whether it was necessary to collect respondents' income and household size data. CNCS omitted these questions from the survey. The Commission recommended adding ''transfer of the Siegel Education Award to a family member'' as a possible motivation for Senior Corps volunteers to serve. CNCS added this to the survey. The Commission suggested clarifying the term ''supervisor/team leader'' in the survey. CNCS program offices provided accurate wording for supervisors and team leaders, and these were added to the survey.

Description: The Corporation is seeking approval of the Understanding the Value of Service in Participants' Experience survey, which is used by participants in and recent alumni of AmeriCorps and Senior Corps to describe their satisfaction with involvement in CNCS-supported service initiatives. CNCS wishes to understand participants' perspectives on the entry process, the service experience, and the impact of serving. The information will be used to better understand participants' satisfaction with CNCS programs and how various aspects of the service experience relate to participant satisfaction.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Understanding the Value of Service in Participants' Experience.

OMB Number: TBD.

Agency Number: None.

Affected Public: Current participants and recent alumni of AmeriCorps and Senior Corps programs.

Total Respondents: 300.

Frequency: One-time.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 100 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: May 23, 2012.

Marlene Zakai,

Deputy Chief of Staff for Management.

[FR Doc. 2012–13089 Filed 5–29–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 21, 2012, 6:00 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Administrative Issues
- Public Comments (15 minutes)
- Adjourn

Breaks Taken As Appropriate

Public Participation: The EM SSAB, Paducah, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Reinhard Knerr as soon as possible in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the telephone number listed above. Requests must be received as soon as possible prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments. The EM SSAB, Paducah, will hear public comments pertaining to its scope (clean-up standards and environmental restoration; waste management and disposition; stabilization and disposition of non-stockpile nuclear materials; excess facilities; future land use and long-term stewardship; risk assessment and management; and clean-up science and technology activities). Comments outside of the scope may be submitted via written statement as directed above.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.energy.gov/2011Meetings.html.*

Issued at Washington, DC, on May 22, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–13067 Filed 5–29–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 12–24–LNG, 12–27-NG, 12–35–LNG, et al.]

Notice of Orders Granting Authority to Import and Export Natural Gas and Liquefied Natural Gas During April 2012

AGENCY: Office of Fossil Energy, Department of Energy (DOE).

ACTION: Notice of orders.

	FE Docket Nos.
Prometheus Energy Group	12–24–LNG
The Dow Chemical Company	12–27–NG
Golden Pass LNG Terminal LLC.	12–35–LNG
NJR Energy Services Company.	12–14–NG
Shell Energy North America (US), L.P.	12–25–NG
Diamond Capital International, LLC.	12–33–NG
Phillips 66 Company	12–34–NG
Northwest Natural Gas Company.	12–41–NG
Sequent Energy Management, L.P.	12–29–NG
Socco, Inc.	12–30–NG
ENI USA Gas Marketing LLC	12–26–LNG
Power City Partners, L.P.	12–37–NG
BG Energy Merchants, LLC	12–38–NG
Virginia Power Energy Marketing, Inc.	12–39–NG
IGI Resources, Inc.	12–42–NG
Minnesota Energy Resources Corporation.	12–40–NG

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during April 2012, it issued Orders granting authority to import and export natural gas and liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fossil.energy.gov/programs/gasregulation/authorizations/Orders-2012.html.* They are also available for inspection and copying in the Office of Fossil Energy, Office of Natural Gas Regulatory Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 18, 2012.

John A. Anderson,

Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

APPENDIX

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	FE Docket No.	Authorization holder	Description of action
3082	04/05/12	12–24–LNG	Prometheus Energy Group	Order granting blanket authority to import/export LNG from/to Canada by truck.
3083	04/20/12	12–27–NG	The Dow Chemical Company	Order granting blanket authority to import/export natural gas from/to Canada/Mexico, and to import LNG from various international sources by vessel.
3084	04/20/12	12–35–LNG	Golden Pass LNG Terminal LLC.	Order granting blanket authority to import LNG from various international sources by vessel.
3085	04/23/12	12–14–NG	NJR Energy Services Company.	Order granting blanket authority to import/export natural gas from/to Canada.
3086	04/23/12	12–25–NG	Shell Energy North America (US), L.P.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico, to export LNG to Canada/Mexico by vessel and truck, and to import LNG from various international sources by vessel.

DOE/FE ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

Order No.	Date issued	FE Docket No.	Authorization holder	Description of action
3087	04/23/12	12–33–NG	Diamond Capital International, LLC.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico, to import LNG from various international sources by vessel, to import LNG from Canada/Mexico by truck, and to export LNG to Canada/Mexico by vessel and truck.
3088	04/23/12	12–34–NG	Phillips 66 Company	Order granting blanket authority to import natural gas from Canada.
3089	04/23/12	12–41–NG	Northwest Natural Gas Company.	Order granting blanket authority to import/export natural gas from/to Canada.
3090	04/26/12	12–29–NG	Sequent Energy Management, L.P.	Order granting blanket authority to import/export natural gas from/to Canada.
3091	04/26/12	12–30–NG	Socco, Inc.	Order granting blanket authority to import natural gas from Canada.
3092	04/30/12	12–26–LNG	ENI USA Gas Marketing LLC	Order granting blanket authority to import LNG from various international sources by vessel.
3093	04/30/12	12–37–NG	Power City Partners, L.P	Order granting blanket authority to import natural gas from Canada.
3094	04/30/12	12–38–NG	BG Energy Merchants, LLC	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.
3095	04/30/12	12–39–NG	Virginia Power Energy Marketing, Inc.	Order granting blanket authority to import/export natural gas from/to Canada.
3096	04/30/12	12–42–NG	IGI Resources, Inc	Order granting blanket authority to import/export natural gas from/to Canada.
3097	04/30/12	12–40–NG	Minnesota Energy Resources Corporation.	Order granting blanket authority to import/export natural gas from/to Canada/Mexico.

[FR Doc. 2012–13090 Filed 5–29–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Wind and Water Power Program

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

ACTION: Notice of public meeting.

SUMMARY: Programs with the U.S. Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) are required to undertake rigorous, objective peer review of their funded projects in order to ensure and enhance the management, relevance, effectiveness, and productivity of those projects. The 2012 Wind and Water Power Program, Wind Power Peer Review Meeting will review wind technology development and market acceleration and deployment projects from the Program's research and development portfolio. The 2012 Wind Power Peer Review Meeting will be held June 19 through June 21, 2012, in Alexandria, VA.

DATES: DOE will hold a public meeting on Tuesday, June 19, 2012, from 8:30 a.m. to 5:30 p.m.; Wednesday, June 20, 2012, from 8:30 a.m. to 5:30 p.m.; and Thursday, June 21, 2012, from 8:30 a.m. to 5:30 p.m. in Alexandria, VA. RSVP is required by June 1, 2012.

ADDRESSES: The public meeting will be held at the Hilton Alexandria Mark Center, 500 Seminary Road, Alexandria, VA 22311.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Higgins, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Telephone: (202) 287–5213. Email: *mark.higgins@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to:

- Review and evaluate the progress and accomplishments of the Wind and Water Power Program's wind technology development and market acceleration and deployment research projects funded in FY2010 through FY2012;
- Foster interactions among the national laboratories, industry, and academic institutions conducting research and development on behalf of the Program; and
- Review and evaluate the strategy and goals of the Wind Power Program;

Participants should limit information and comments to those based on personal experience, individual advice, information, or facts regarding this topic. It is not the object of this session to obtain any group position or consensus. Rather, this meeting is an opportunity for the peer reviewers to gain an individual understanding of the research and projects. To most effectively use the limited time, please refrain from passing judgment on another participant's recommendations or advice, and instead, concentrate on your individual experiences. Based upon the review of individual projects and the overall Wind Power Program research portfolio, a report will be compiled by DOE, which will be publically posted on the DOE Wind and Water Power Program Web site.

Public Participation: Principal Investigators, subject matter reviewers, Wind Power Program staff, and contract support staff will be in attendance. The event is open to the public based on space availability. Participants are encouraged to pre-register. Limited time for questions and answers are included for each project. Additionally, questions and/or comments may be submitted in writing during or after the meeting. Questions and comments should be directed to Mr. Mark Higgins via email at *mark.higgins@ee.doe.gov* or by telephone at (202) 287–5213.

Pre-Registration: To pre-register, please contact Ms. Stacey Young via email at *Stacey_Young@sra.com* or by telephone at 202–554–8480 Ext. 2924. Participants interested in attending should indicate the category or categories (technology development or market acceleration and deployment) you would like to observe, your name, company name or organization (if applicable), telephone number, and

email no later than the close of business on Friday, June 1, 2012. All Principal Investigators required to present at the meeting must pre-register. Additionally, all subject matter reviewers, Program staff, and support contract staff must pre-register.

Agenda: Presentations from industry, academia, and national laboratories will be time limited. Depending on the type of project, Principal Investigators will have anywhere from 15 to 60 minutes to present. Time is also allotted for question and answer sessions between the Principal Investigators and the subject matter reviewers.

Information on Services for Individuals with Disabilities: Individuals requiring special accommodations at the meeting, please contact Ms. Young no later than the close of business on June 1, 2012.

Minutes: A summary report of the meeting will be available for public review and printing at the DOE Wind Program Online Publication and Product Library at: *wind.energy.gov/publications.html.*

Issued in Washington, DC on May 24, 2012.

Mark Higgins,

Wind and Water Power Acting Program Manager, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2012–13102 Filed 5–29–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–460–000]

Perryville Gas Storage LLC; Notice of Amendment

Take notice that on May 11, 2012, Perryville Gas Storage LLC (Perryville), Three Riverway, Suite 1350, Houston, Texas 77056, filed in the above referenced docket an application under section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations for an order amending the certificate of public convenience and necessity issued in Docket No. CP09–418–000 and amended in CP11–159–000, to authorize Perryville to make certain changes to its certificated project. Perryville proposes to add one additional freshwater supply well located on its Leaching Facility Site so that the approved leaching rate can be achieved, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to J. Gordon Pennington, Attorney at Law, 1101 30th Street NW., Suite 500, Washington, DC 20007, at (202) 625–4330 or by email at *Pennington5@verzion.net.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit seven copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: May 29, 2012.

Dated: May 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13003 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications for Authorization To Abandon Facilities and Services and To Acquire Facilities by Merger

Steuben Gas Storage Company.	Docket No. CP12–465–000.
Arlington Gas Storage Company, LLC.	Docket No. CP12–466–000.

Take notice that on May 21, 2012, Steuben Gas Storage Company (Steuben), Two Brush Creek Boulevard, Kansas City, Missouri 64112, filed in Docket No. CP12–465–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations seeking authorization to abandon by merger into Arlington Storage Company, LLC (Arlington), Steuben's corporate parent, Steuben's interest in the Adrian Field Storage Facilities (Adrian Field) which Steuben operates pursuant to certificates of public convenience and necessity issued by the Commission. Steuben represents that Arlington will maintain service to Steuben's existing customers from and after the effective date of the merger.

Take further notice that also on May 21, 2012, Arlington Storage Company, LLC (Arlington), Two Brush Creek Boulevard, Kansas City, Missouri 64112, filed in Docket No. CP12–466–000 an application pursuant to section 7(c) of the NGA for authorization to acquire, own and operate the Adrian Field, currently owned and operated by Steuben, a wholly-owned subsidiary of Arlington. Arlington further seeks reaffirmation of Arlington's authorization to charge market based rates following its acquisition of the Adrian Field Storage Facility.

The above referenced applications are more fully set forth in the submissions from the applicants which are on file with the Commission and open to the public for inspection. These filings may also be viewed on the Web 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 documents. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to James F. Bowe, Jr., King & Spalding, 1700 Pennsylvania Avenue NW., Suite 200, Washington, DC 20006, 202–626–9601 (phone), 202–626–3737 (fax), *jbowe@kslaw.com* (email).

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: June 13, 2012.

Dated: May 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13027 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–23–001]

Hope Gas, Inc.; Notice of Baseline Filing

Take notice that on May 16, 2012, Hope Gas, Inc. (Hope Gas) submitted a revised baseline filing of their Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 (''NGPA''), as more fully described in the petition.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies

of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Thursday May 31, 2012.

Dated: May 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–12999 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER12–480–002.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 05–21 to be effective 6/1/2013.

Filed Date: 5/21/12.

Accession Number: 20120521–5155.

Comments Due: 5 p.m. ET 6/11/12.

Docket Numbers: ER12–1711–001.

Applicants: High Plains Ranch II, LLC.

Description: High Plains Ranch II, LLC submits tariff filing per 35.17(b): Supplement to Application for Market-Based Rate Authority to be effective 6/25/2012.

Filed Date: 5/22/12.

Accession Number: 20120522–5139.

Comments Due: 5 p.m. ET 6/12/12.

Docket Numbers: ER12–1823–000.

Applicants: Southern California Edison Company.

Description: 2009–2010 CWIP ROE Compliance Filing to be effective 6/1/2010.

Filed Date: 5/21/12.

Accession Number: 20120521–5152.

Comments Due: 5 p.m. ET 6/11/12.

Docket Numbers: ER12–1825–000.

Applicants: EDF Industrial Power Services (CA), LLC.

Description: EDF Industrial Power Services (CA), LLC submits tariff filing per 35.12: Market-based Rate Schedule to be effective 5/22/2012.

Filed Date: 5/22/12.

Accession Number: 20120522–5128.

Comments Due: 5 p.m. ET 6/12/12.

Docket Numbers: ER12–1826–000.

Applicants: Kansas City Power & Light Company.

Description: Kansas City Power & Light Company submits tariff filing per 35.13(a)(2)(iii: RS 136, Joint Operating Agreement (GMO) to be effective 7/21/2012.

Filed Date: 5/22/12.

Accession Number: 20120522–5136.

Comments Due: 5 p.m. ET 6/12/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES12–13–000.

Applicants: AEP Texas North Company.

Description: Second Supplemental Application under Section 204 of the Federal Power Act of AEP Texas North Company for Authorization to Issue Securities.

Filed Date: 5/22/12.

Accession Number: 20120522–5046.

Comments Due: 5 p.m. ET 6/1/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 22, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–13008 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR12–18–000]

Thrifty Propane, Inc. v. *Enterprise TE Products Pipeline Co., LLC;* Notice of Complaint

Take notice that on May 22, 2012, pursuant to section 15(7) of the Interstate Commerce Act, 49 U.S.C. app 15(7) and section 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Thrifty Propane, Inc. (Complainant) filed a formal complaint against Enterprise TE Products Pipeline Co., LLC (Respondent) alleging that the Respondent intends to make material changes to the operation of its pipeline (proposed closure of the Eagle Terminal) without seeking the authorization of the Commission.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 31, 2012.

Dated: May 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13000 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–70–000]

Unnamed Entity v. *California Independent System Operator Corp.;* Notice of Complaint

Take notice that on May 21, 2012, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, and Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR part 206, Unnamed Entity (Complainant) filed a formal complaint against California Independent System Operator Corp. (CAISO or Respondent) for the Respondent's decision to impose a penalty on the Complainant under section 37.6.2 of CAISO's tariff for allegedly providing untimely responses to certain CAISO Department of Market Monitoring (DMM) data requests.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 20, 2012.

Dated: May 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13004 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–62–000]

PPL Montana, LLC; Notice of Meeting

a. *Date and Time of Meeting:* Thursday, June 7, 2012 at 1:00 p.m. EDT.

b. *Place:* Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426, Room 3M–1.

c. *FERC Contact:* Gary Cohen, (202) 502–8321 or *gary.cohen@ferc.gov.*

d. *Purpose of Meeting:* Commission staff will meet with PPL Montana, LLC (PPL Montana) and the Confederated Salish and Kootenai Tribes to discuss issues related to PPL Montana's petition for a declaratory order concerning provisions of the license for Kerr Hydroelectric Project No. 5.

e. All interested parties are hereby invited to attend.

Dated: May 23, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13026 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13318–002]

Swan Lake North Hydro, LLC; Notice of Preliminary Permit Application Accepted For Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

On April 3, 2012, Swan Lake North Hydro, LLC, filed an application for a successive preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Swan Lake North Pumped Storage Hydroelectric Project (project) to be located near Klamath Falls in Klamath County, Oregon and Newell in Modoc County, California. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following new facilities: (1) Two 111-foot-high, 6,560-foot-long (east) and 5.990-foot-long (west) rockfill dams enclosing an upper reservoir; (2) an upper reservoir with a surface area of 215 acres and a storage capacity of 10,622 acre-feet at a maximum surface elevation of 5,491 feet above mean sea level (msl); (3) a 100-foot-high, 5,245-foot-long rockfill main dam and a 9-foot-high, 360-foot-long rockfill saddle dam enclosing a lower reservoir; (4) a lower reservoir with a surface area of 193 acres and a storage capacity of 11,583 acre-feet at a maximum surface elevation of 4,275 feet msl; (5) a 30-foot-diameter, 2,570-foot-long horizontal power tunnel; (6) a 30-foot-diameter, 1,200-foot-long vertical shaft; (7) a 30-foot-diameter, 1,000-foot-long high pressure steel-lined penstock branching into four 12.25-foot-diameter, 640-foot-long steel-lined penstocks going into the underground powerhouse: (8) an underground powerhouse with four 250-megawatt (MW) reversible pump-turbine units with a total installed capacity of 1,000 MW; (9) four 12.5-foot-diameter manifold branches that will combine into a single 26-foot-diameter, 5,000-foot-long, partially steel-lined and partially concrete-lined tailrace tunnel; (10) a tailrace inlet/outlet structure consisting of a concrete-lined approach channel, trash racks, and two vertically controlled slide gates; (11) a 30-foot-diameter, 3,600-foot-long access tunnel; (12) a permanent 24-foot-wide, 3.5-mile-long haul road; (13) approximately 33 miles of 500-kilovolt (kV) transmission line connecting to a terminal switchyard to be constructed adjacent to the existing California Oregon Transmission Project 500-kV line in California; and (14) appurtenant facilities. The project would be a closed-loop system using groundwater and would not use any existing surface body of water. The estimated annual generation of the project would be 2,630 gigawatt-hours.

Applicant Contact: Mr. Brent L. Smith, COO, Symbiotics LLC, 811 SW Naito Parkway, Ste. 120, Portland, OR 97204; phone: (503) 235–3424.

FERC Contact: Kelly Wolcott; phone: (202) 502–6480.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13318) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: May 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13001 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR12–17–001]

New Mexico Gas Company, Inc; Notice of Revised Statement of Operating Conditions

Take notice that on May 18, 2012, New Mexico Gas Company, Inc. (NMGC) submitted a revised Statement of Operating Conditions (SOC). NMGC is revising the SOC proposed as part of its rate petition it filed on March 2, 2012, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday May 25, 2012.

Dated: May 22, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–13002 Filed 5–29–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2010–0848; FRL–9350–7]

Notice of Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is publishing this Notice of Intent to Suspend affecting several pesticide products. This Notice is issued by EPA pursuant to section 3(c)(2)(B) of FIFRA. The Notice of Intent to Suspend was issued following the Agency's issuance of a Data Call-In Notice (DCI), which required the registrants of the affected pesticide products to take appropriate steps to secure certain data, and following the registrant's failure to submit those data or to take other appropriate steps to secure the required data. The subject data were determined to be required to maintain in effect the existing registrations of the affected products. Failure to comply with the data requirements of a DCI is a basis for suspension of the affected registration under section 3(c)(2)(B) of FIFRA.

DATES: The Notice of Intent to Suspend included in this **Federal Register** notice will become a final and effective suspension order automatically by operation of law 30 days after the date of the registrant's receipt of the mailed Notice of Intent to Suspend or on June 29, 2012 if the mailed Notice of Intent to Suspend is returned to the Administrator as undeliverable, if delivery is refused, or if the Administrator otherwise is unable to accomplish delivery to the registrant after making reasonable efforts to do so, unless during that time a timely and adequate request for a hearing is made by a person adversely affected by the Notice of Intent to Suspend or the registrant has satisfied the Administrator that the registrant has complied fully with the requirements that served as a basis for the Notice of Intent to Suspend. Unit IV explains what must be done to avoid suspension under this notice (i.e., how to request a hearing or how to comply fully with the requirements that served as a basis for the Notice of Intent to Suspend).

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone

number: (703) 308–9342; email address: *andreasen.jude@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2010–0848, is available either electronically through *http://www.regulations.gov* or in hard copy at the OPP Docket in the Environmental Protection Agency Docket Center (EPA/DC), located in EPA West, Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Registrant(s) Issued Notice of Intent to Suspend, Active Ingredient, Product(s) Affected, Date(s) Issued, Reason(s) Issued, and Data Requirement(s) Involved

The Notice of Intent to Suspend was sent via the U.S. Postal Service (USPS), return receipt requested, to the registrant(s) for the product(s) listed in Table 1 of this Unit.

TABLE 1—INFORMATION ABOUT ISSUED NOTICE(S) OF INTENT TO SUSPEND

Registrant affected	Active ingredient	EPA Registration number	Product name	Date EPA issued NOITS	Reason(s) issued *	Data requirements involved **
Fuller System, Inc	DDVP	1327–36	Fulex DDVP Fumigator	5/21/12	2,3	a
Fuller System, Inc	Permethrin	1327–42	Fulex Permethrin Fumigator	5/21/12	1,2,3	a, c
Value Gardens Supply, LLC	Naphthalene Acetic Acid	5887–169	Black Leaf Vitamin B1 Solution.	5/21/12	1,2,3	a, c
Foreign Domestic Chemicals Corp.	Rotenone	6458–5	Rotenone Resin for Manufacturing Use Only.	5/21/12	1,2,3	a, c
Foreign Domestic Chemicals Corp.	Rotenone	6458–6	Cube Powder	5/21/12	1,2,3	a, c
ARI	Piperonyl Butoxide	7754–51	ARI Yard & Patio Formula I	5/21/12	1,2,3	a, c
Athea Laboratories, Inc	Prometon	10088–55	Non-selective Herbicide #3	5/21/12	1,2,3	a, c
Athea Laboratories, Inc	Prometon	10088–83	Prometon 12.5% Herbicide Concentrate.	5/21/12	1,2,3	a, c
Amrep, Inc	Prometon	10807–146	Weed-a-cide Concentrate	5/21/12	1,2,3	a, c
Amrep, Inc	Prometon	10807–206	Misty Weed-a-cide CF	5/21/12	1,2,3	a, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297–1	Bio-Groom Flea & Tick Shampoo for Dogs & Cats.	5/21/12	1,2,3	a, b, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297–7	Bio-Groom Flea & Tick—14 Residual Spray with Lanolin Shampoo.	5/21/12	1,2,3	a, b, c
Brazos Associates, Agent for BioDerm Lab.	Permethrin	15297–9	Bio-Groom Lasting Residual Action Repel-35 Insect Control Spray.	5/21/12	2,3	a, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297–14	Bio-Groom Flea & Tick Pyrethrin Dip Conc. For Dogs & Cats.	5/21/12	1,2,3	a, b, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297–17	Bio-Groom Flea & Tick Pyrethrin Spray.	5/21/12	1,2,3	a, b, c
Brazos Associates, Agent for BioDerm Lab.	Pyrethrins	15297–19	Bio-Groom Ear Mite Treatment.	5/21/12	1,2,3	a, b, c
Drexel Chemical Company	Rotenone	19713–316	Drexel 7.4% Rotenone Wettable Powder.	5/21/12	3	a, c
Drexel Chemical Company	DDVP	19713–356	Best 4 Servis Brand DDVP 10 Pound Oil Solution.	5/21/12	2,3	a, c
Drexel Chemical Company	DDVP	19713–357	Best 4 Servis Brand DDVP Emulsifiable Spray.	5/21/12	3	a, c
Adams Technology Systems. Agent for Cardinal Laboratories, Inc.	Pyrethrins	29909–1	Rid Flea and Tick Shampoo Concentration for Dogs and Cats.	5/21/12	2,3	a, b, c
Adams Technology Systems. Agent for Cardinal Laboratories, Inc.	Pyrethrins	29909–2	Cardinal Flea and Tick Shampoo for Dogs and Cats.	5/21/12	2,3	a, b, c
Adams Technology Systems. Agent for Cardinal Laboratories, Inc.	Pyrethrins	29909–8	Cardinal Flea & Tick Spray for Dogs, Cats & Horses.	5/21/12	2,3	a, b, c

TABLE 1—INFORMATION ABOUT ISSUED NOTICE(S) OF INTENT TO SUSPEND—Continued

Registrant affected	Active ingredient	EPA Registration number	Product name	Date EPA issued NOITS	Reason(s) issued *	Data requirements involved **
Adams Technology Systems. Agent for Cardinal Laboratories, Inc.	Pyrethrins	29909–21	Cardinal Tick Terminator Flea & Tick Shampoo for Dogs & Cat.	5/21/12	2,3	a, b, c
Earth Science Products Corp.	Naphthalene Acetic Acid	43905–1	Wood's Rooting Compound	5/21/12	2,3	a, c
Premium Environmental Products, LLC.	Permethrin	71280–6	Migratol BP–1	5/21/12	1,2,3	a, c
Premium Environmental Products, LLC.	Permethrin	71280–7	Migratol BPX–002	5/21/12	1,2,3	a, c
Neogen Corporation	Piperonyl Butoxide	72726–1	Poridon Equine Insecticidal Pour-On.	5/21/12	2,3	a, c

* Reason(s) Issued: (1) failure to submit 90-day response; (2) failure to submit 8-month response; and (3) failure to submit any (or adequate) required data.
** Data Requirements Involved: (a) product chemistry; (b) product performance; (c) toxicology.

III. Basis for Issuance of Notice of Intent To Suspend

The affected registrant(s) failed to submit the required data or information or to take other appropriate steps to secure the required data. The subject data requirements for each affected product are summarized in Table 1 and are also specifically identified in EPA–HQ–OPP–2010–0848 in a document entitled *Appendix II—Requirement List.* Also included in the docket is *Appendix III—Explanatory Appendix,* which provides more detailed information about the reason(s) the Notice of Intent to Suspend was issued and pertinent background information and history. Each Notice of Intent to Suspend that was mailed to the affected registrant(s) included all of the referenced appendices that are pertinent to the particular Notice of Intent to Suspend. Instructions on accessing the docket are in Unit I.B.

IV. How to avoid suspension under this notice?

1. You may avoid suspension under this notice if you or another person adversely affected by this notice properly request a hearing within 30 days of your receipt of the Notice of Intent to Suspend by mail or, if you did not receive the notice that was sent to you via USPS first class mail return receipt requested, then within 30 days from the date of publication of this notice in the **Federal Register** (see **DATES**). If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164. Section 3(c)(2)(B) of FIFRA, however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, any allegations of errors or unfairness in any proceedings before an arbitrator, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding. Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75-day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product. A request for a hearing pursuant to this notice must:

- Include specific objections which pertain to the allowable issues which may be heard at the hearing.
- Identify the registrations for which a hearing is requested.
- Set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing.

If a hearing is requested by any person other than the registrant, that person must also state specifically why he/she asserts that he/she would be adversely affected by the suspension action described in this notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. An additional copy should be sent to the person who signed this notice. The request must be received by the Hearing Clerk by the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice, as set forth in the **DATES** section and in Unit IV.1., in order to be legally effective. The 30-day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30-day time limit will result in automatic suspension of your registration by operation of law and, under such circumstances, the suspension of the registration for your affected product will be final and effective at the close of business on the applicable 30th day deadline as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in the **DATES** section and in Unit IV.1., and will not be subject to further administrative review. The Agency's rules of practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the

Administrative Law Judges, the Office of the Environmental Appeals Board, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within the applicable 30 day deadline period as measured from your receipt of the Notice of Intent to Suspend by mail or publication of this notice in the **Federal Register**, as set forth in the **DATES** section and in Unit IV.1., the Agency determines that you have taken appropriate steps to comply with the FIFRA section 3(c)(2)(B) Data Call-In notice. In order to avoid suspension under this option, you must satisfactorily comply with Appendix II, which can be found in the Docket, for each product by submitting all required supporting data/information described in Appendix II and in the Explanatory Appendix (Appendix III) (both may be found in the Docket for this **Federal Register** notice and both are summarized in Table 1 of Unit II) to the following address (preferably by certified mail): Office of Pesticide Programs, Pesticide Re-evaluation Division, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001. For you to avoid automatic suspension under this notice, the Agency must also determine within the applicable 30-day deadline period that you have satisfied the requirements that are the bases of this notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product. The suspension of the registration of your company's product pursuant to this notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this notice. Such compliance may only be achieved by submission of the data/information described in Appendix II, which may be found in the Docket and which is summarized in Table 1 of Unit II.

V. Status of Products That Become Suspended

Your product will remain suspended until the Agency determines you are in compliance with the requirements which are the bases of this notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this notice, including all supplemental registrants of the product listed in Table 1 of Unit II., may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product listed in Table 1 of Unit II. in any manner which would have been unlawful prior to the suspension.

If the registration for your product listed in Table 1 of Unit II. is currently suspended as a result of failure to comply with another FIFRA section 3(c)(2)(B) Data Call-In Notice or section 4 Data Requirements notice, this notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

It is the responsibility of the basic registrant to notify all supplementary registered distributors of a basic registered product that this suspension action also applies to their supplementary registered products. The basic registrant may be held liable for violations committed by their distributors.

Any questions about the requirements and procedures set forth in this notice or in the subject FIFRA section 3(c)(2)(B) Data Call-In Notice, should be addressed to the person listed under **FOR FURTHER INFORMATION CONTACT**.

VI. What is the agency's authority for taking this action?

The Agency's authority for taking this action is contained in sections 3(c)(2)(B) and 6(f)(2) of FIFRA, 7 U.S.C. 136 *et seq.*

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 21, 2012.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2012–12922 Filed 5–29–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL—9679–1]

Notification of a Public Meeting and Public Teleconference of the Science Advisory Board (SAB); Perchlorate Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting and follow-up public teleconference of the SAB Perchlorate Advisory Panel to conduct an advisory activity related to the development of a maximum contaminant level goal (MCLG) for perchlorate.

DATES: The Perchlorate Advisory Panel face-to-face public meeting will be held on Wednesday July 18, 2012 from 9:00 a.m. to 5:00 p.m. (Eastern Time) and Thursday July 19, 2012 from 8:30 a.m. to 3:00 p.m. (Eastern Time). The follow-up teleconference will be held on Tuesday September 25, 2012 from 1 p.m. to 5p.m. (Eastern Time).

ADDRESSES: The Perchlorate Advisory Panel face-to-face public meeting will be held at The Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC 20037. The follow-up teleconference will take place via telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wants further information concerning the face-to-face public meeting or teleconference may contact Mr. Thomas Carpenter, Designated Federal Officer (DFO), via telephone at (202) 564–4885 or email at *carpenter.thomas@epa.gov.* General information concerning the SAB can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: The SAB was established pursuant to the Environmental Research, Development, and Demonstration Authorization Act, codified at 42 U.S.C. 4365 to provide independent scientific and technical advice to the EPA Administrator on the technical basis for EPA actions. The SAB Staff Office previously announced the formation of the Perchlorate Advisory Panel under the auspices of the SAB in the **Federal Register** on December 16, 2011 (76 FR 78256–

78257) and solicited nominations of experts to serve on this SAB panel. This SAB panel will provide advice, through the chartered SAB, to the Administrator related to the development of an MCLG for perchlorate. The Panel will discuss its advice at the public meeting on July 18–19, 2012 and will discuss its draft report on a subsequent public teleconference call on September 25, 1012.

Availability of Meeting Materials: Prior to the meeting, the review documents, agenda and other materials will be accessible through the calendar link on the blue navigation bar at *http://www.epa.gov/sab/.*

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Interested members of the public may submit relevant written or oral information on the topic of this advisory activity, and/or the group conducting the activity, for the SAB to consider during the advisory process. Input from the public to the SAB will have the most impact if it provides specific scientific or technical information or analysis for SAB committees to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO directly. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a face-to-face public meeting will be limited to five minutes. Parties interested in providing oral statements at the face-to-face meeting should contact Mr. Thomas Carpenter, DFO, in writing (preferably via email) at the contact information noted above by July 10, 2012 to be placed on the list of public speakers for the face-to-face meeting. Parties interested in providing oral statements at the follow-up teleconference should contact Mr. Carpenter by Wednesday September 19, 2012. *Written Statements:* Written statements for the face-to-face meeting should be supplied to the DFO via email at the contact information noted above by Tuesday, July 10, 2012 so that the information may be made available to the Panel members for their consideration. Written statements for the follow-up teleconference should be supplied to the DFO by Wednesday September 19, 2012. Written statements should be supplied in one of the following electronic formats: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format. It is the SAB Staff Office general policy to post written comments on the Web page for the advisory meeting or teleconference. Submitters are requested to provide an unsigned version of each document because the SAB Staff Office does not publish documents with signatures on its Web sites. Members of the public should be aware that their personal contact information, if included in any written comments, may be posted to the SAB Web site. Copyrighted material will not be posted without explicit permission of the copyright holder.

Accessibility: For information on access or services for individuals with disabilities, please contact Mr. Thomas Carpenter at (202) 564–4885 or *carpenter.thomas@epa.gov.* To request accommodation of a disability, please contact Mr. Carpenter preferably at least ten days prior to the face-to-face meeting or follow-up teleconference to give EPA as much time as possible to process your request.

Dated: May 23, 2012.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–13073 Filed 5–29–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT–IMPORT BANK OF THE U.S.

[Public Notice: 2012–0100]

Agency Information Collection Activities: Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: 30-Day Notice of Information Collection Submission for OMB Review.

Form Title: EIB 84–01 Joint Application for Working Capital Guarantee.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank) will be submitting the information collection titled EIB–SBA Form 84–1 Joint Application for Export Working Capital Guarantee to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

EIB–SBA Form 84–1 is the application for working capital loan guarantees provided by Ex-Im Bank and the Small Business Administration (SBA). This joint application provides Ex-Im Bank and SBA staff with the information necessary to determine if the application and transaction are eligible for Ex-Im Bank and SBA assistance. Specifically, this collection of information is necessary under Sec. 635(a)(1) of the Export Import Bank Act to determine eligibility of the applicant for Ex-Im Bank assistance or participation, and under Section 7(a)(14) of the Small Business Act (15 U.S.C. 636(a)(14)) to determine eligibility of the applicant for SBA financial assistance.

The application can be viewed at *www.exim.gov/pub/pending/EIB84-01.PDF.*

DATES: Comments should be received on or before June 29, 2012 to be assured of consideration.

ADDRESSES: Comments may be submitted through *www.regulations.gov* or written comments and/or suggestions regarding this information collection, especially the estimated public burden and associated response time, should be directed to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038 Attn: OMB 3048–0003.

FOR FURTHER INFORMATION CONTACT: Smaro Karakatsanis, Export Import Bank of the United States, 811 Vermont Ave. NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB–SBA Form 84–1 Joint Application for Export Working Capital Guarantee.

OMB Number: 3048–0003.

Type of Review: Regular.

Need and Use: This information will be used to determine if the applicant and transaction are eligible for Ex-Im Bank and SBA assistance.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

	Ex-Im Bank	SBA
Estimated respondents per year	606	177
Frequency of Responses	once per application for both programs	

	Ex-Im Bank	SBA
Estimated hours per response	* 2.5	* 2.5
Estimated annual burden hours	1,515	442.5
Total annual burden hours	1957.5	
Estimated annual cost	$45,829	$15,488
Total annual cost	$61,317	

* Hours.

The annual cost to respondents would therefore be $61,316.25.

	Ex-Im Bank	SBA
Reviewing time in hours	2	2
Responses per year	606	177
Review time per year	1,212	354
Average wages per hour	$30.25	$35.00
Average cost per year	$36,663	$12,390
Benefits and Overhead	28%	100%
Total Government Cost	$46,928	$24,780

The annual cost to the Government would be $71,708.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–13047 Filed 5–29–12; 8:45 am]

BILLING CODE 6690–01–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: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written comments should be submitted on or before June 29, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via fax 202–395–5167, or via email *Nicholas_A._Fraser@omb.eop.gov;* and to Cathy Williams, FCC, via email *PRA@fcc.gov* <mailto: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–xxxx.

Title: Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fourth Report and Order and Third Order on Reconsideration (''Fourth Report and Order''), MM Docket 99–25, MB Docket No. 07–172, RM–11338; Implementation of Application Caps.

Form Number: N/A.

Type of Review: New collection.

Respondents: Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 300 respondents; 300 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One-time reporting requirement.

Total Annual Burden: 600 hours.

Total Annual Costs: None.

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

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

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On March 19, 2012, the Commission adopted a Fourth Report and Order and Third Order on Reconsideration (''Fourth Report and Order''), FCC 12–29. In the Fourth Report and Order, the Commission adopts the national and market-specific caps proposed in the Third Further Notice, FCC 11–105, and requires parties with more than 50 pending applications and/or more than one pending application in the markets identified in Appendix A of the Fourth Report and Order (the top 150 Arbitron markets plus markets with more than 4 pending translator applications) to request the dismissal of applications to comply with these limits. Applicants may request such dismissal by filing a letter with the Commission (''Dismissal Letter'') identifying the applications they wish to be dismissed. In the event that an applicant does not timely comply with these dismissal procedures, the Commission staff will first apply the national cap, retaining on file the first 50 filed applications and dismissing those that were subsequently filed. The staff will then dismiss all but the first filed application in each of the markets identified in Appendix A.

OMB Control Number: 3060-xxxx.

Title: Creation of a Low Power Radio Service and Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Fourth Report and Order and Third Order on Reconsideration (''Fourth Report and Order''), MM Docket 99–25, MB Docket No. 07–172, RM–11338; Translator Amendments and Top 50 Market Preclusion Showings.

Form Number: N/A.

Type of Review: New collection.

Respondents: Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 500 respondents; 1,300 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 2,600 hours.

Total Annual Costs: None.

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

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

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: On March 19, 2012, the Commission adopted a Fourth Report and Order and Third Order on Reconsideration (''Fourth Report and Order''), FCC 12–29. It adopts the market-based dismissal policy proposed in the Third Further Notice, FCC 11–105, with certain modifications. Among other things, it gives all translator applicants a limited opportunity to amend their proposals. It holds that translator applicants in ''spectrum available'' markets may modify their proposals so long as they do not preclude any LPFM channel/point combination identified in the Bureau's study (''Spectrum Available Amendments''). It further holds that translator applicants with proposals in ''spectrum limited'' markets will be allowed to modify their proposals to eliminate their preclusive impact on any of the LPFM point/channel combinations that would be available within the grid if all translator window applications in that market were dismissed (''Spectrum Limited Amendments'') (''Spectrum Available Amendments'' and ''Spectrum Limited Amendments'' are collectively referred to herein as, ''Amendments''). In addition, any translator applicant in any top 50 spectrum limited market must demonstrate that its out-of-grid proposal would not preclude the only LPFM station licensing opportunity at that location (''Top 50 Market Preclusion Showing''). Specifically, it needs to demonstrate either that no LPFM station could be licensed at the proposed transmitter site or, if an LPFM station could be licensed at the site, that an additional channel remains available for a future LPFM station at the same site.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–12966 Filed 5–29–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. Comments are requested concerning whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before July 30, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0519.

Title: Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991, CG Docket No. 02–278.

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.

Number of Respondents and Responses: 50,151 respondents; 147,453,559 responses.

Estimated Time per Response: .004 hours (15 seconds) to 1 hour.

Frequency of Response: Recordkeeping requirement; Annual, on occasion and one-time reporting requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for the information collection requirements is found in the Telephone Consumer Protection Act of 1991 (TCPA), Public Law 102–243, December 20, 1991, 105 Stat. 2394, which added Section 227 of the Communications Act of 1934, [47 U.S.C. 227] Restrictions on the Use of Telephone Equipment.

Total Annual Burden: 712,140 hours.

Total Annual Cost: $3,989,700.

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 system of records notice (SORN), FCC/CGB–1, ''Informal Complaints and Inquiries.'' As required by the Privacy Act, 5 U.S.C. 552a, the Commission also published a SORN, FCC/CGB–1 ''Informal Complaints and Inquiries'', in the **Federal Register** on December 15, 2009 (74 FR 66356) which became effective on January 25, 2010. A system of records for the do-not-call registry was created by the Federal Trade Commission (FTC) under the Privacy Act. The FTC originally published a notice in the **Federal Register** describing the system. *See* 68 FR 37494, June 24, 2003. The FTC updated its system of records for the do-not-call registry in 2009. *See* 74 FR 17863, April 17, 2009.

Privacy Impact Assessment: Yes. The Privacy Impact Assessment (PIA) 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 made to the SORN.

Needs and Uses: The reporting requirements included under this OMB Control Number 3060–0519 enable the Commission to gather information regarding violations of Section 227 of the Communications Act, the Do-Not-Call Implementation Act (Do-Not-Call Act), and the Commission's implementing rules. If the information collection was not conducted, the Commission would be unable to track and enforce violations of Section 227 of the Communications Act, the Do-Not-Call Act, or the Commission's implementing rules. The Commission's implementing rules provide consumers with several options for avoiding most unwanted telephone solicitations.

The national do-not-call registry supplements the company-specific do-not-call rules for those consumers who wish to continue requesting that particular companies not call them. Any company that is asked by a consumer, including an existing customer, not to call again must honor that request for five (5) years.

A provision of the Commission's rules, however, allows consumers to give specific companies permission to call them through an express written agreement. Nonprofit organizations, companies with whom consumers have an established business relationship, and calls to persons with whom the telemarketer has a personal relationship are exempt from the ''do-not-call'' registry requirements.

On September 21, 2004, the Commission released the *Safe Harbor Order* establishing a limited safe harbor in which persons will not be liable for placing autodialed and prerecorded message calls to numbers ported from a wireline service within the previous 15 days. The Commission also amended its existing National Do-Not-Call Registry safe harbor to require telemarketers to scrub their lists against the Registry every 31 days.

On December 4, 2007, the Commission released the *DNC NPRM* seeking comment on its tentative conclusion that registrations with the Registry should be honored indefinitely, unless a number is disconnected or reassigned or the consumer cancels his registration.

On June 17, 2008, in accordance with the Do-Not-Call Improvement Act of 2007, the Commission revised its rules to minimize the inconvenience to consumers of having to re-register their preferences not to receive telemarketing calls and to further the underlying goal of the National Do-Not-Call Registry to protect consumer privacy rights. The Commission released a *Report and Order* in CG Docket No. 02–278, FCC 08–147, amending the Commission's rules under the Telephone Consumer Protection Act (TCPA) to require sellers and/or telemarketers to honor registrations with the National Do-Not-Call Registry so that registrations will not automatically expire based on the current five year registration period. Specifically, the Commission modified § 64.1200(c)(2) of its rules to require sellers and/or telemarketers to honor numbers registered on the Registry indefinitely or until the number is removed by the database administrator or the registration is cancelled by the consumer.

Most recently, on February 15, 2012, the Commission released a *Report and Order* in CG Docket No. 02–278, FCC 12–21, revising its rules to: (1) Require prior express written consent for all autodialed or prerecorded telemarketing calls to wireless numbers and for all prerecorded telemarketing calls to residential lines; (2) eliminate the established business relationship exception to the consent requirement for prerecorded telemarketing calls to residential lines; (3) require telemarketers to include an automated, interactive opt-out mechanism in all prerecorded telemarketing calls, to allow consumers more easily to opt out of future robocalls during a robocall itself; and (4) require telemarketers to comply with the 3% limit on abandoned calls during each calling campaign, in order to discourage intrusive calling campaigns.

Finally, the Commission also exempted from the Telephone Consumer Protection Act requirements prerecorded calls to residential lines made by health care-related entities governed by the Health Insurance Portability and Accountability Act of 1996.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–12965 Filed 5–29–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Privacy Act System of Records

AGENCY: Federal Communications Commission.

ACTION: Notice; one new Privacy Act system of records.

SUMMARY: Pursuant to subsection (e)(4) of the *Privacy Act of 1974,* as amended (5 U.S.C. 552a), the Federal Communications Commission (FCC or Commission) proposes to add a new system of records, FCC/OMD–30, ''FCC Visitors Database.'' The FCC's Security Operations Center (SOC) in the Office of Managing Director (OMD) will use the information contained in FCC/OMD–30 to cover the personally identifiable information (PII) that all visitors to the

FCC, including but not limited to U.S. citizens, permanent residents (*i.e.,* green card holders), and foreign nationals, must provide to the SOC to gain admittance to the FCC headquarters buildings and other FCC facilities.

DATES: In accordance with subsections (e)(4) and (e)(11) of the Privacy Act, as amended, any interested person may submit written comments concerning this new system of records on or before June 29, 2012. The Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act to review the system of records, and Congress may submit comments on or before July 9, 2012. The proposed new system of records will become effective on July 9, 2012 unless the FCC receives comments that require a contrary determination. The Commission will publish a document in the **Federal Register** notifying the public if any changes are necessary. As required by 5 U.S.C. 552a(r) of the Privacy Act, the FCC is submitting reports on this proposed new system to OMB and Congress.

ADDRESSES: Address comments to Leslie F. Smith, Privacy Analyst, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Leslie F. Smith, Performance Evaluation and Records Management (PERM), Room 1–C216, Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554, (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: As required by the *Privacy Act of 1974,* as amended, 5 U.S.C. 552a(e)(4) and (e)(11), this document sets forth notice of the proposed new system of records to be maintained by the FCC. This notice is a summary of the more detailed information about the proposed new system of records, which may be obtained or viewed pursuant to the contact and location information given above in the **ADDRESSES** section. The purpose for establishing this new system of records, FCC/OMD–30, ''FCC Visitors Database,'' is for the FCC's Security Operations Center (SOC) in the Office of Managing Director (OMD) to use this information to cover the personally identifiable information (PII) that all visitors to the FCC, including but not limited to U.S. citizens, permanent residents (*i.e.,* green card holders), and foreign nationals, must provide to the SOC to gain admittance to the FCC headquarters buildings and other FCC facilities.

This notice meets the requirement documenting the proposed new system of records that is to be added to the systems of records that the FCC maintains, and provides the public, OMB, and Congress with an opportunity to comment.

FCC/OMD–30

SYSTEM NAME:

FCC Visitors Database.

SECURITY CLASSIFICATION:

The FCC's Security Operations Center (SOC) has not assigned a security classification to this system of records.

SYSTEM LOCATION:

Office of the Managing Director (OMD), Security Operations Center (SOC), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554;

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records in this system include all visitors to the FCC. These individuals include, but are not limited to U.S. citizens, permanent residents (*i.e.,* green card holders), and foreign nationals.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records in the FCC Visitors Database include, but are not limited to the individual's first and last name, photographic identification (including but not limited to a driver's license, passport, or other types of photo identification), the authority issuing the photo identification, U.S. visa number, FCC point of contact, visitor signature, professional title, organizational affiliation, contact information for the visitor, including but not limited to wireline and wireless (cell) phone numbers, correspondence related to information required to obtain visitor entry to the FCC, and purpose(s) for visiting the FCC.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 6 U.S.C. 202; 8 U.S.C. 1103, 1158, 1201, 1324, 1357, 1360, 1365a, 1365b, 1372, 1379, 1732; Federal Information Security Act (Pub. L. 104–106, sec. 5113); Electronic Government Act (Pub. L. 104–347, sec. 203); and Federal Property and Administrative Act of 1949, as amended.

PURPOSE(S):

The purpose of the system is to cover the personally identifiable information (PII) that all visitors to the FCC, including but not limited to U.S. citizens, permanent residents (*i.e.,* green card holders), and foreign nationals, must provide to the FCC's Security Operations Center (SOC) to gain admittance to the FCC headquarters buildings and other FCC facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information about individuals in this system of records may routinely be disclosed under the following conditions:

1. Litigation by the Department of Justice—When: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the FCC or the Department of Justice (DOJ) has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ is therefore deemed by the FCC to be for a purpose compatible with the purpose for which the FCC collected the records;

2. Court or Adjudicative Body—In a proceeding when: (a) the FCC or any component thereof; (b) any employee of the FCC in his or her official capacity; (c) any employee of the FCC in his or her individual capacity where the Department of Justice (DOJ) has agreed to represent the employee; or (d) the United States Government is a party to litigation or has an interest in such litigation, and by careful review, the FCC determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the FCC to be for a purpose that is compatible with the purpose for which the FCC collected the records;

3. Law Enforcement and Investigation—Except as noted on Forms SF 85, 85–P, and 86, when a record on its face, or in conjunction with other records, indicates a violation or potential violation of a law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate public authority, whether Federal, State, local, tribal, or foreign, or otherwise responsible for enforcing, investigating, or prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any

enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving entity;

4. Government-wide Program Management and Oversight—When requested by the National Archives and Records Administration (NARA), the Government Accountability Office (GAO), and/or the General Services Administration (GSA) for the purpose of records management inspections conducted under authority of 44 U.S.C. §§ 2904 and 2906 (such disclosure(s)) shall not be used to make a determination about individuals); when the U.S. Department of Justice (DOJ) is contacted in order to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or when the Office of Management and Budget (OMB) is contacted in order to obtain that office's advice regarding obligations under the Privacy Act;

5. Congressional Inquiries—When requested by a Congressional office in response to an inquiry by an individual made to the Congressional office for the individual's own records;

6. Contract Services, Grants, or Cooperative Agreements—A record may be disclosed to FCC contractors, grantees, or volunteers who have been engaged to assist the FCC in the performance of a contract service, grant, cooperative agreement, or other activity related to this system of records and who need to have access to the records in order to perform their activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

7. Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by the Agency—Disclosure may be made to a Federal, State, local, or tribal government, or other public authority or entity maintaining civil, criminal, intelligence, national security, or other relevant enforcement records, or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to an investigation concerning the retention of an employee or other personnel action (other than hiring), the retention of a security clearance, the letting of a contract, or the issuance or retention of a grant or other benefit;

8. Employment, Clearances, Licensing, Contract, Grant, or other Benefits Decisions by other than the Agency—Disclosure may be made to a Federal, State, local, or tribal government, or other public authority or entity of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel or regulatory action;

9. National Security and Intelligence Matters—Disclosure of these records may be made to Federal, State, local agencies, or other appropriate entities or individuals, or through established liaison channels to selected foreign governments and international law enforcement organizations and agencies in order to enable a Federal agency or entity charged with, but not limited to national security and/or intelligence activities and related functions, to carry out these duties and responsibilities under the National Security Act of 1947, as amended, the CIA Act of 1949, as amended, Executive Order 12333 or any successor order, applicable to national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives;

10. Department of State, Department of Homeland Security, and other Federal Agencies—A record from this system may be disclosed, where appropriate, to the State Department, Department of Homeland Security (DHS), and/or other Federal agencies and entities charged with, but not limited to national security, law enforcement, immigration, intelligence, and related functions, activities, duties, and responsibilities, where there is an indication of a violation or potential violation of a law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to enforce, investigate, or prosecute violations, or to enforce or implement a statute, rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of the receiving Federal agency or entity;

11. Foreign Governments—A record from this system may be disclosed through the U.S. Department of State or the Department of Homeland Security (DHS) or other Federal security agencies, entities, or organizations or directly to the representative of such a foreign government or country, to the extent necessary to assist such a government or country in apprehending and/or returning a fugitive to a jurisdiction which seeks the individual's return, or to assist such a country in civil or criminal proceedings in which the United States or one of its officers or agencies has an interest; and

12. Breach Notification—A record from this system may be disclosed to appropriate agencies, entities, and persons when: (1) The Commission suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (2) the Commission has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Commission or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Commission's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

In each of these cases, the FCC will determine whether disclosure of the records is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information in the FCC Visitors Database includes paper document, files, and records that are stored in file cabinets in the Security Operations Center (SOC), and electronic records, files, and electronic records, files, and data that are stored in the FCC's computer network databases.

RETRIEVABILITY:

The information in the FCC Visitors Database may be retrieved by the name of the individual, driver's license number, U.S. passport number, foreign passport number, U.S. visa number, date of birth (DOB), and/or photo ID number.

SAFEGUARDS:

The paper documents, records, and files are maintained in file cabinets in the SOC's office suite. The file cabinets where these paper documents, files, and records are stored are controlled by on-site personnel when unlocked and locked when not in use. Access to the

SOC office suite is through a card-coded main door. Access to the file cabinets is restricted to authorized SOC supervisors, staff, and contractors, whose duties and responsibilities require use of the information.

The electronic records, files, and data are stored in the FCC computer network databases that are secured by limited access card readers. The computer servers themselves are password-protected. Access to the electronic files is restricted to authorized SOC supervisors, staff, and contractors, and to the Information Technology Center (ITC) staff and contractors, who maintain the FCC's computer network. Other FCC employees and contactors may be granted access on a ''need-to-know'' basis. The FCC's computer network databases are protected by the FCC's security protocols, which include controlled access, passwords, and other security features. A *PRIVACY WARNING NOTICE* appears on the monitor screen when records containing information on individuals are first displayed. Information resident on the SOC database servers is backed-up routinely onto magnetic media. Back-up tapes are stored on-site and at a secured, off-site location.

RETENTION AND DISPOSAL:

Records in the FCC Visitors Database are retained in accordance with General Records Schedule (GRS) 18, Item 17 approved by the National Archives and Records Administration (NARA). The records disposal is done in accordance with the Commission's disposal policies. Unless retained for specific, on-going security investigations, records of facility access are maintained for one year and then destroyed.

All other records relating to individuals are retained and disposed of in accordance with GRS 18, item 22a, approved by NARA. The records are disposed of in accordance with SOC disposal policies, as follows:

1. All returned day contractor cards will be reused on a daily basis.
2. Transaction data for all FCC Visitors Database cards will be stored using a secure medium and retained for one year in the SOC, which is locked and secured with an alarm system.

In accordance with Homeland Security Presidential Directive (HSPD–12), Personal Identity Verification (PIV) Cards are deactivated within eighteen (18) hours of notification of cardholder separation, loss of card, or expiration. The information on PIV Cards is maintained in accordance with GRS 11, Item 4. PIV Cards are destroyed by burning in an approved Federal burn-facility.

SYSTEM MANAGER(S) AND ADDRESS:

Security Operations Center (SOC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

NOTIFICATION PROCEDURE:

Security Operations Center (SOC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

RECORD ACCESS PROCEDURES:

Security Operations Center (SOC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

CONTESTING RECORD PROCEDURES:

Security Operations Center (SOC), Office of Managing Director (OMD), Federal Communications Commission (FCC), 445 12th Street SW., Washington, DC 20554.

RECORD SOURCE CATEGORIES:

The sources for information in this system are the visitors themselves and/or their agency or organizational sponsor(s) who have been invited to or have requested admittance to the FCC headquarters buildings and other FCC facilities for the visitors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Federal Communications Commission.

Marlene H. Dortch,

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

[FR Doc. 2012–12949 Filed 5–29–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection described below.

DATES: Comments must be submitted on or before July 30, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NYA–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Form Number: FDIC 7300/06.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 600.

Estimated Time per Response: 10 minutes.

Total Annual Burden: 100 hours.

General Description of Collection: Prior to an offer of employment, job applicants to the FDIC must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit person from becoming employed by or providing services to the FDIC.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be

collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 23rd day of May 2012.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2012–12944 Filed 5–29–12; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 13, 2012.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Schmidt Family Partnership, L.P., Spiro, Oklahoma; and Deborah Schmidt Barrett and Jason Tyler Barrett,* both of Fort Smith, Arkansas; to remain members of the Schmidt Family Group acting in concert and to retain control of Spiro Bancshares, Inc., and thereby indirectly retain control of Spiro State Bank, both in Spiro, Oklahoma.

Board of Governors of the Federal Reserve System, May 24, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–13014 Filed 5–29–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First State Bancorp, Inc. Employee Stock Ownership Plan,* Caruthersville, Missouri; to become a bank holding company by acquiring up to 40 percent of the voting shares of First State Bancorp, Inc., and thereby indirectly acquire voting shares of First State Bank and Trust Company, both in Caruthersville, Missouri.

Board of Governors of the Federal Reserve System, May 24, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–13013 Filed 5–29–12; 8:45 am]

BILLING CODE 6210–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

Hearing Procedures; Notice of Availability; Request for Comments

AGENCY: Financial Stability Oversight Council.

ACTION: Notice of availability; request for comments.

SUMMARY: The Financial Stability Oversight Council (Council) announces the availability of its hearing procedures (Council Hearing Procedures) for hearings conducted by the Council under Title I and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The Council invites comments to be submitted on the Council Hearing Procedures.

DATES: *Effective date:* May 22, 2012; Submit comments on or before: July 30, 2012.

ADDRESSES: Interested persons are invited to submit comments on all aspects of the Council Hearing Procedures. You may submit comments, identified by docket number FSOC–2012–0002, through the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Electronic Submission of Comments. Interested persons must submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public.

Public Inspection of Comments. Properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional Instructions. In general, comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: David L. Portilla, Senior Policy Advisor, Financial Stability Oversight Council, at (202) 622–1965; Amias Gerety, Deputy Assistant Secretary for the Financial Stability Oversight Council, at (202)

622–8716; or Thomas E. Scanlon, Senior Counsel, Department of the Treasury, Office of the General Counsel, at (202) 622–8170.

SUPPLEMENTARY INFORMATION: On May 22, 2012, the Council approved hearing procedures under sections 111, 113, 804, and 810 of the Dodd-Frank Act.[1] The Council Hearing Procedures govern the conduct of hearings before the Council in connection with proposed determinations and emergency waivers or modifications made pursuant to Title I and Title VIII of the Dodd-Frank Act.

On May 22, 2012, the Council posted the Council Hearing Procedures on its Web site, *http://www.fsoc.gov,* and on *http://www.regulations.gov,* and is requesting public comments on the Council Hearing Procedures.

In general, when the Council proposes the designation of a nonbank financial company or a financial market utility (''FMU'') under section 113(e) or section 804(c) of the Dodd-Frank Act, the Council must give the nonbank financial company or FMU notice and an opportunity to contest the proposed determination.[2] The Dodd-Frank Act does not set forth procedures for a hearing to contest the proposed determination. The Council has adopted the Council Hearing Procedures in order to provide procedures for a nonbank financial company or FMU that requests a hearing before the Council.

In order to further consider whether any provision should be modified, the Council seeks comment on all aspects of the Council Hearing Procedures. Comments may be submitted on or before July 30, 2012.

Dated: May 22, 2012.

Sam I. Valverde,

Acting Executive Secretary, Department of the Treasury.

[FR Doc. 2012–12963 Filed 5–29–12; 8:45 am]

BILLING CODE 4810–25–P

[1] 12 U.S.C. 5321, 5323, 5463, and 5469.

[2] 12 U.S.C. 5323(e)(1)–(2), 5463(c)(2).

GENERAL SERVICES ADMINISTRATION

[Notice–PBS–2012–02; Docket No. 2012–0002; Sequence 8]

Record of Decision for the Department of Homeland Security Headquarters Consolidation at St. Elizabeths Master Plan Amendment in Southeast, Washington, DC

AGENCY: General Services Administration (GSA), National Capital Region (NCR).

ACTION: Record of decision.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4347, the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and the GSA Public Buildings Service NEPA Desk Guide, dated October 1999, on May 17, 2012, GSA issued a Record of Decision (ROD) to the *DHS Headquarters Consolidation at St. Elizabeths Master Plan Amendment Final Environmental Impact Statement (EIS),* to implement alternatives for a new 750,000 gross square foot Federal Emergency Management Agency (FEMA) facility plus parking on the St. Elizabeths East Campus; improvements to the Martin Luther King, Jr. Avenue (MLK Avenue) in front of and south of the campus to Alabama Avenue; and improvements to the interchange of Malcolm X Avenue and I–295. The complete Record of Decision can be viewed on the project Web site *www.stelizabethsdevelopment.com.*

DATES: *Effective date:* May 30, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Denise Decker, NEPA Lead, General Services Administration, National Capital Region, at (202) 538–5643 or email *denise.decker@gsa.gov.*

SUPPLEMENTARY INFORMATION:

Decision: It is the decision of the Regional Commissioner and Regional Administrator of GSA, NCR, and in support of DHS, to approve the Master Plan Amendment ROD and thereby implement the Preferred Alternative for the FEMA facility, improvements to MLK Avenue and improvements to the interchange of Malcolm X Avenue and I–295.

Although GSA has selected a Preferred Alternative that includes implementation of improvements to I–295, it is a public facility under FHWA's and DDOT's jurisdiction and, as such, the final design will be coordinated with FHWA for their approval. FHWA and DDOT will also assume maintenance responsibilities of the publicly owned elements of the I–295/Malcolm X Avenue interchange and its associated transportation improvements outside of the St. Elizabeths Campus upon completion of construction activities. Similarly, MLK Avenue is under DDOT's jurisdiction, so the final design will be coordinated with DDOT for their approval. DDOT will continue to have maintenance responsibilities of these transportation improvements. Development of these alternatives will be guided by the Overall Development Phasing schedule included in the Master Plan Amendment.

This decision is based on information and analyses contained in the following:

- 2010 Draft Master Plan Amendment EIS
- 2012 Final Master Plan Amendment EIS
- 2012 St. Elizabeths TTR
- 2012 St. Elizabeths TMP
- Comments from Federal and state agencies, stakeholder organizations, members of the public, elected officials, and other information in the project administrative record.

Issued: May 17, 2012.

Cathleen Kronopolus,

Regional Commissioner.

Julia E. Hudson,

Regional Administrator, General Services Administration, National Capital Region.

Dated: May 23, 2012.

Dawud Abdur-Rahman,

Director, Planning and Management, Office of Planning and Design Quality, General Services Administration, Public Buildings Service, National Capital Region.

[FR Doc. 2012–13053 Filed 5–29–12; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Chronic Fatigue Syndrome Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the Chronic Fatigue Syndrome Advisory Committee (CFSAC) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on Wednesday, June 13, 2012 and Thursday, June 14, 2012 from 9:00 a.m. until 5:00 p.m.

ADDRESSES: Department of Health and Human Services; Hubert H. Humphrey Building; 200 Independence Avenue SW., Room 800, Washington, DC 20201. For a map and directions to the Hubert H. Humphrey building, please visit *http://www.hhs.gov/about/hhhmap.html.*

FOR FURTHER INFORMATION CONTACT: Nancy C. Lee, M.D., Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee, Department of Health and Human Services, 200 Independence Avenue SW., Room 712E, Washington, DC 20201. Any questions about meeting registration or public comment sign-up should be directed to

CFSAC:JUNE2012@seamon corporation.com. Direct other inquiries to *cfsac@hhs.gov*.

SUPPLEMENTARY INFORMATION: CFSAC was established on September 5, 2002 to advise, consult with, and make recommendations to the Secretary through the Assistant Secretary for Health, on a broad range of topics including: (1) The current state of knowledge and research on the epidemiology, etiologies, biomarkers, treatment, and risk factors relating to chronic fatigue syndrome (CFS), to identify potential opportunities in these areas; (2) the impact and implications of current and proposed diagnosis and treatment methods for CFS; (3) development and implementation of programs to inform the public, health care professionals, and the biomedical research communities about CFS; and (4) strategies to improve the quality of life for CFS patients.

The agenda for this meeting is being developed and will be posted on the CFSAC Web site, *http://www.hhs.gov/advcomcfs* when finalized. The meeting will be live-video streamed at *www.HHS.gov/Live* and archived through the CFSAC Web site: *www.hhs.gov/advocomcfs*. Listening-only audio via telephone will be available on both days. Call-in information will be posted on the CFSAC Web site.

Public attendance is welcome, but due to limited space advance registration is required. Individuals who plan to attend should register at the following link by June 8, 2012: *http://www.blsmeetings.net/CFSACJune2012*. Members of the media will also need to register. All attendees will be required to show government-issued picture identification for entry into the federal building. Attendees will receive a wrist band that must be worn the entire time. Security requires all non-federal employees to be escorted the entire time they are in the building. Upon leaving the building for any reason all persons will be required to follow the security steps mentioned above and receive a new wrist band.

Members of the public will have the opportunity to provide public comments at the meeting or via telephone. International calls cannot be accommodated. A separate sign-up process for requesting time for public comment must be completed by June 6, 2012 at the following link: *http://www.blsmeetings.net/CFSACPublicComment*. Individuals wishing to provide public comment must also submit an electronic copy of their testimony in advance to: *CFSACJUNE2012@seamon corporation.com* by Wednesday, June 6, 2012. We require that you email a document (5 pages or less) in MS WORD format that is single-spaced, 12 point font. Note: PDF files, hand-written notes and photographs will not be accepted. Requests for public comment and written testimony will not be accepted through the CFSAC mailbox. Also, the CFSAC mailbox will not respond to questions about specific public comment requests.

All public comment becomes part of the public record, available for viewing and posted on the CFSAC Web site. All testimony and printed material submitted for the meeting are part of the official meeting record and will be uploaded to the CFSAC Web site and made available for public inspection. Testimony and materials submitted should not include sensitive personal information, such as social security number, birthdates, driver's license number, state identification or foreign country equivalent, passport number, financial account number, or credit or debit card number. Sensitive health information, or non-public corporate or trade association information, such as trade secrets or other proprietary information should be excluded from any materials submitted. If you wish to remain anonymous the document must specify this.

We will confirm your time for public comment via email by June 11, 2012. Each speaker will be limited to five minutes per speaker; no exceptions will be made. We will give priority to individuals who have not provided public comment within the previous year.

Persons who wish to distribute printed materials to CFSAC members should submit one copy to Designated Federal Officer at *cfsac@hhs.gov,* prior to Wednesday, June 6, 2012. Submissions are limited to five typewritten pages.

Dated: May 17, 2012.

Nancy C. Lee,

Designated Federal Officer, Chronic Fatigue Syndrome Advisory Committee.

[FR Doc. 2012–13097 Filed 5–29–12; 8:45 am]

BILLING CODE 4150–42–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: 1309 Head Start Facilities Construction, Purchase and Major Renovations.

OMB No.: 0970–0193.

Description: The Head Start Bureau is proposing to renew, without changes, the information collections activities for the regulations in 45 CFR part 1309. The part contains the administrative requirements applicable to Head Start and Early Head Start grantees, when applying for funding to purchase, renovate or construct Head Start program facilities. The regulations ensure that standard business practices are applied when acquiring real property and that federal interest is preserved in properties acquired with public funds. The regulations further ensure compliance with all other federal statues applicable to the expenditure of federal funds when acquiring real property.

Respondents: Head Start and Early Head Start programs are delegate agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CFR Part 1309	200	1	41	8200

Estimated Total Annual Burden Hours: 8200.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title

of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–13029 Filed 5–29–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–D–0432]

Draft Guidance for Industry on Pathologic Complete Response in Neoadjuvant Treatment of High-Risk Early-Stage Breast Cancer: Use as an Endpoint To Support Accelerated Approval; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Pathologic Complete Response in Neoadjuvant Treatment of High-Risk Early-Stage Breast Cancer: Use as an Endpoint to Support Accelerated Approval.'' FDA's accelerated approval regulations permit approval of a new drug to treat a serious disease on the basis of an effect on a surrogate endpoint reasonably likely to predict the clinical benefit of the drug. This draft guidance is intended to assist applicants in designing trials to support marketing approval of drugs to treat breast cancer in the neoadjuvant (preoperative) setting using pathologic complete response (pCR) as a surrogate endpoint that could support approval under the accelerated approval regulations. Despite advances in systemic therapy of early-stage breast cancer over the past few decades, there remains a significant unmet medical need for certain high-risk or poor prognosis populations of early-stage breast cancer patients. This guidance is intended to encourage industry innovation and expedite the development of breakthrough therapies to treat high-risk early-stage breast cancer.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by July 30, 2012.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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

FOR FURTHER INFORMATION CONTACT: Tatiana Prowell, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5249, Silver Spring, MD 20993–0002, 301–796–2330.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Pathologic Complete Response in Neoadjuvant Treatment of High-Risk Early-Stage Breast Cancer: Use as an Endpoint to Support Accelerated Approval.'' Under the accelerated approval regulations (21 CFR part 314, subpart H, and 21 CFR part 601, subpart E), FDA may grant marketing approval for a new drug on the basis of adequate and well-controlled trials establishing that the drug has an effect on a surrogate endpoint that is reasonably likely to predict clinical benefit (e.g., an effect on survival or irreversible morbidity), provided that the applicant conducts additional trials after approval to verify and describe the predicted clinical benefit. This draft guidance is intended to assist applicants in designing trials to support marketing approval of drugs to treat breast cancer in the neoadjuvant (preoperative) setting using pCR as a surrogate endpoint that could support approval under the accelerated approval regulations. The guidance proposes a uniform definition of pCR for regulatory purposes. The guidance also advises on appropriate patient populations for inclusion and on the trial designs intended to verify the predicted clinical benefit associated with pCR to support conversion to full approval.

FDA recognizes that despite advances in adjuvant systemic therapy of breast cancer over the past few decades, there remains a significant unmet medical need for certain high-risk or poor prognosis populations of early-stage breast cancer patients. Developing highly effective new drugs for these populations is an FDA priority. In providing guidance on the use of pCR as a surrogate endpoint that could support accelerated approval in the neoadjuvant setting, FDA hopes to encourage industry innovation and expedite the development of breakthrough therapies to treat high-risk early-stage breast cancer.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the use of pCR in neoadjuvant treatment of high-risk early-stage breast cancer as an endpoint to support accelerated approval. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively. The collections of information for special protocol assessments have been approved under OMB control number 0910–0470.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. Identify comments with the

docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: May 15, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–12928 Filed 5–29–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Rabbit Polyclonal Antibody To Detect a Pro-Peptide Fragment of NSAID-Activated Gene (NAG–1)/GDF15, a Protein Associated With Cancer

Description of Technology: Chronic inflammation is clearly associated with an increase in the risk of cancer. Non-steroidal anti-inflammatory drugs (NSAIDs) are well documented as agents that inhibit tumor growth and with long-term use can prevent tumor development. NSAID-activated gene (NAG–1), a unique member of the TGF-beta superfamily, is highly induced by NSAIDs and numerous drugs and chemicals with anti-tumorigenic activities.

The protein product of NAG–1 is first formed into an immature peptide dimer that must be cut at a specific site before it can be secreted as a mature protein. Currently available antibodies can only detect either the immature form of NAG–1 or the secreted mature protein, but do not recognize the peptide fragment that remains when the immature dimer is cut to form the mature protein. Now available for the first time, the present new antibody recognizes this NAG–1 pro-peptide fragment.

Potential Commercial Applications: As a research tool to detect expression of the NAG–1/GDF15 cleavage fragment in cells and media from cultured cells.

Competitive Advantages: No other antibody is currently available to detect the NAG–1/GDF15 pro-peptide fragment.

Development Stage: In vitro data available

Inventor: Thomas Eling (NIEHS)

Intellectual Property: HHS Reference No. E–177–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Related Technology: HHS Reference No. E–093–2011/0—Transgenic mice expressing human GDF15/Nag-1/Mic-1

Licensing Contact: Patrick McCue, Ph.D.; 301–435–5560; *mccuepat@mail.nih.gov.*

Collaborative Research Opportunity: The NIEHS is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this antibody. For collaboration opportunities, please contact Elizabeth M. Denholm, Ph.D. at *denholme@niehs.nih.gov.*

Software for Automated Determination of Macromolecular Structure Using Cryo-Electron Microscopy

Description of Technology: Available for licensing is software for automated generation of density maps of macromolecular structures from series of 2D digital micrographs of frozen hydrated specimens collected using an electron microscope equipped with an ultra-cooled computerized stage. Series of images of biological specimens collected at different tilt angles relative to the electron beam are aligned to compensate for mechanical errors of the stage and combined to obtain 3D images (tomograms). Sub volumes containing a single macromolecular complex can be extracted from the 3D image of a protein solution, or suspension of viruses or cells. These individual sub-volumes of identical structures are aligned and averaged together to generate a density map of the macromolecular complex of interest.

Potential Commercial Applications:

- Macromolecular imaging
- Molecular interaction
- Molecular structure and reactivity

Competitive Advantages:

- Noise processing
- Algorithmic averaging

Development Stage: Prototype

Inventors: Mario Juan Borgnia, Alberto Bartesaghi, Sriram Subramaniam (all of NCI)

Publications:

1. Amat F, et al. Markov random field based automatic image alignment for electron tomography. J Struct Biol. 2008 Mar;161(3):260–75. [PMID 17855124]

2. Kremer JR, et al. Computer visualization of three-dimensional image data using IMOD. J Struct Biol. 1996 Jan–Feb;116(1):71–76. [PMID 8742726]

3. Mastronarde DN. Dual-axis tomography: an approach with alignment methods that preserve resolution. J Struct Biol. 1997 Dec;120(3):343–52. [PMID 9441937]

4. Bartesaghi A, et al. An energy-based three-dimensional segmentation approach for the quantitative interpretation of electron tomograms. IEEE Trans Image Process. 2005 Sep;14(9):1314–23. [PMID 16190467]

Intellectual Property: HHS Reference No. E–162–2012/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Michael Shmilovich; 301–435–5019; *mish@codon.nih.gov.*

Collaborative Research Opportunity: The NCI Laboratory of Cell Biology is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact John Hewes, Ph.D. at *hewesj@mail.nih.gov.*

Chimeric Antigen Receptors That Recognize Mesothelin for Cancer Immunotherapy

Description of Technology: Scientists at the National Institutes of Health (NIH) have developed chimeric antigen receptors (CARs) with high affinity for mesothelin to use as a promising immunotherapy to treat cancers, such as pancreatic cancer, ovarian cancer, and mesothelioma. Mesothelin is a protein cancer antigen with limited expression on normal cells that is overexpressed by

cancer cells. CARs are hybrid proteins consisting of an antibody portion that recognizes a cancer antigen, such as a mesothelin-specific antibody, fused to receptor signaling domains that serve to activate the CAR-expressing cell to kill tumor cells. Cells that express CARs, most notably T cells, are highly reactive against their specific tumor antigen in an MHC-unrestricted manner to generate an immune response that promotes robust tumor cell elimination when infused into cancer patients. The instant technology includes CAR constructs with one of three different mesothelin-specific antibody portions, including either the mouse-derived SS or SS1 antibody fragments or the human HN1 antibody fragment. Infusion of cells expressing these mesothelin-specific CARs into patients could prove to be a powerful new immunotherapeutic tool for treating various cancers that express mesothelin.

Potential Commercial Applications:

- Immunotherapeutics to treat and/or prevent the reoccurrence of cancers that overexpress mesothelin, including pancreatic cancer, ovarian cancer, and mesothelioma and other cancers with few effective treatment options.
- A personalized cancer treatment strategy for patients whose tumor cells express mesothelin whereby the patient's own T cells are isolated, engineered to express a mesothelin-specific CAR, and re-infused into the body to attack the tumor(s).
- Tools to diagnose the presence of mesothelin-expressing tumors in patients.

Competitive Advantages:

- Minimal side effects: Mesothelin is overexpressed on tumor cells. CARs specific for the mesothelin antigen they are expected to primarily target tumor cells, and thus, generate fewer side effects than other cancer treatment approaches.
- Successful track record: Immunotoxins containing the antibody portions of some of these CARs have shown promising results in clinical studies for cancer treatment.
- Cutting edge: With the advent of Provenge(R) and Yervoy(R), immunotherapy is now more widely accepted as a viable cancer treatment option.

Development Stage:

- Pre-clinical.
- Clinical.
- In vitro data available.

Inventors: Steven A. Feldman, Steven A. Rosenberg, Ira Pastan (all of NCI).

Intellectual Property: HHS Reference No. E–078–2012/0—U.S. Patent Application No. 61/614,612 filed 23 Mar 2012.

Related Technologies:

- HHS Reference No. E–002–1996/1.
- HHS Reference No. E–021–1998/0.
- HHS Reference No. E–139–1999/0.
- HHS Reference No. E–091–2009/0.
- HHS Reference Nos. E–093–1995/1,/2.

Licensing Contact: Samuel E. Bish, Ph.D.; 301–435–5282; *bishse@mail.nih.gov.*

Low-dose Cardiac Computed Tomography Method for Whole Heart Extracellular Volume

Description of Technology: Myocardial infarction and cardiomyopathies result in myocardial scar and diffuse fibrosis. Together these result in poor cardiac function. Myocardial scar is a specific target for therapy, but is difficult to identify. Cardiac Computed Tomography (CCT) struggles to identify large scars, and could not previously identify fibrosis. MRI is often used, but MRI is expensive and not widely available. We have developed a method to quantify both diffuse and focal myocardial scar by CCT using low radiation dose methods. Extracellular volume fraction (ECV) is the distribution of iodine in the scar relative to blood pool. ECV is abnormally elevated in scar. The new CCT technique involves (a) CCT data about the myocardium and blood pool is extracted (via a shape constrained graph cut technique), (b) an algorithm (Demons deformable registration) is applied to pre-contrast and low dose post-contrast image information, (c) the ECV value is computed. Along with coronary artery depiction on CCT, the ECV can be used to quantitatively measure myocardial scar and diffuse myocardial fibrosis for a complete depiction of the patient's myocardial status/health.

Potential Commercial Applications: Medical imaging

Competitive Advantages: Cardiac Computed Tomography is faster, more widely available and comparatively inexpensive versus Cardiac Magnetic Resonance Imaging.

Development Stage:

- Prototype
- Pre-clinical
- Clinical

Inventors: David Bluemke, Songtao Liu, Marcelo N. Nacif, Jianhua Yao, Christopher T. Sibley, Xinjian Chen, Ronald M. Summers (all of NIHCC)

Intellectual Property: HHS Reference No. E–267–2011/0

Licensing Contact: Tedd Fenn; 301–435–5031; *Tedd.Fenn@nih.gov*

Collaborative Research Opportunity: The NIH Clinical Center is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize Cardiac CT, Cardiac CTA, myocardial scar, myocardial fibrosis, coronary artery disease imaging. For collaboration opportunities, please contact Ken Rose, Ph.D. at *rosek@mail.nih.gov*.

Quantitative in Vivo Methods To Estimate the Conduction Time of Nerve Impulses in the Brain

Description of Technology: The axon diameter distribution (ADD) is an important anatomical feature of nerve fascicles both in normal and abnormal development. Axon diameter directly affects nerve function. It is well known that in myelinated axons, the conduction velocity is directly proportional to axon diameter. Moreover, it is hypothesized that in amyotrophic lateral sclerosis (ALS) large diameter axons are damaged selectively, while in autism, small-diameter axons are over-expressed. Despite its importance, the ADD within nerve fascicles has not been measurable in-vivo, and currently can only be assessed by invasive histological means. Previously, the NICHD inventors developed magnetic resonance imaging (MRI) methods to measure the ADD within nerve fascicles (e.g., by AxCaliber MRI). This invention extends from the inventor's prior work to AxCaliber MRI along with the non-invasive measurement of the arc-length of a nerve pathway (e.g., using DTI tractography), to estimate the mean conduction time of nerve impulses along that pathway, as well as other statistical moments of the conduction time distribution. This method could be used to diagnose abnormalities in nerve conduction in brain regions and providing a neuroanatomical basis for many cognitive and behavior disorders.

Potential Commercial Applications:

- Used to diagnose abnormalities in nerve conduction in brain regions
- Provides a neuroanatomical basis for many cognitive and behavior disorders
- A basic tool in neuroscience research to explore the dynamic functioning of the brain

Competitive Advantages:

- Diagnose a number of cognitive and behavioral abnormalities, disease and disorders [currently only assessed using psychological or psychiatric testing].
- A new quantitative imaging biomarker
- Used to understand and follow brain changes during normal aging and in Alzheimer's disease.
- Used to explain motor deficits in ALS disease.

• Provides way of classifying and understanding various neurological and neuropsychiatric conditions according to conduction delays.

Development Stage:

• Prototype
• Clinical
• In vivo data available (animal)
• In vivo data available (human)

Inventor: Peter J. Basser (NICHD)

Publications:

1. Assaf Y, et al. Ax-Caliber: a method for measuring axon diameter distribution from diffusion MRI. Magn Reson Med. 2008 Jun;59(6):1347–54. [PMID 18506799]

2. Barazany D, et al. In vivo measurement of axon diameter distribution in the corpus callosum of rat brain. Brain 2009 May;132(Pt 5):1210–20. [PMID 19403788]

Intellectual Property: HHS Reference No. E–226–2010/0—U.S. Provisional Application No. 61/535,851 filed 16 Sep 2011

Related Technology: HHS Reference No. E–079–2003/1—U.S. Patent Application No. 12/114,713 filed 02 May 2008

Licensing Contact: John Stansberry, Ph.D.; 301–435–5236; *stansbej@mail.nih.gov.*

Collaborative Research Opportunity: The NICHD is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize methods to estimate conduction time of nerve impulses in brain. For collaboration opportunities, please contact Charlotte McGuinness at *mcguinnc@mail.nih.gov.*

Simple, Quantitative Sensitive High-Throughput Antibody Detection for Lyme Disease

Description of Technology: This technology is for compositions and methods for diagnosis of Lyme disease. Currently, Lyme disease is diagnosed by clinical exam and a history of exposure to endemic regions. Although, laboratory tests may aid diagnosis, the best tests currently available are slow and labor intensive and require understanding of the test, and infection stage. A two-step antibody based test process is currently the recommended laboratory test. The first step is either an enzyme immunoassay (EIA), or an indirect immunofluorescence assay (IFA). If the first step is positive, a ''Western blot'' test is then performed. Because early intervention is critical to prevent neurological, rheumatological and cardiac damage from advanced infection, more sensitive, specific, simpler, high-throughput format laboratory diagnostics are needed. This technology uses a novel synthetic gene (VOVO) in a highly sensitive, specific and high-throughput Luciferase Immunoprecipitation Systems (LIPS) format. LIPS screening using VOVO offers an efficient and qualitative approach for serological screening of antibodies in Lyme disease in human and veterinary applications.

Potential Commercial Applications: Diagnostic for Lyme disease in human and veterinary applications.

Competitive Advantages: Higher efficiencies, High-throughput Format Qualitative

Development Stage:

• Early-stage
• Pre-clinical

Inventors: Peter D. Burbelo (NIDCR), Michael J. Iadarola (NIDCR), Adriana Marques (NIAID)

Publication: Burbelo PD, et al. Simple, quantitative, and highly sensitive antibody detection for Lyme disease. Clin Vaccine Immunol. 2010 Jun;17(6):904–9. [PMID: 20392886]

Intellectual Property: HHS Reference No. E–036–2010/1—PCT application PCT/US2011/027888 filed 10 Mar 2011

Licensing Contact: Tedd Fenn; 301–435–5031; Tedd.Fenn@nih.gov

Collaborative Research Opportunity: The NIDCR, Laboratory of Sensory Biology, Neurobiology and Pain Therapeutics Section, is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize this technology. For collaboration opportunities, please contact David Bradley, Ph.D. at *bradleyda@nidcr.nih.gov.*

Dated: May 23, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–13007 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neurodevelopment and Metabolism.

Date: June 14, 2012.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4811, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business Grant Applications: Immunology

Date: June 18, 2012.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street NW., Washington, DC 20037.

Contact Person: Stephen M. Nigida, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, 301–435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR 10–018: Accelerating the Pace of Drug Abuse Research Using Existing Epidemiology, Prevention, and Treatment Research Data.

Date: June 19, 2012.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: George Vogler, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3140, Bethesda, MD 20892, 301–435–0694, *voglergp@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Teen Relationship Violence.

Date: June 20, 2012.

Time: 2:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Monica Basco, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3220, MSC 7808, Bethesda, MD 20892, 301–496–7010, *bascoma@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical and

Integrative Cardiovascular Sciences Special Panel.

Date: June 22, 2012.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Lawrence E Boerboom, Ph.D., Chief, CVRS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PA09–206: Advanced Tools and Technologies for Cerebrospinal Fluid Shunts.

Date: June 22, 2012.

Time: 5:00 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Salt Lake City Downtown, 215 West South Temple, Salt Lake City, UT 84101.

Contact Person: Keith Crutcher, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, 301–435–1278, *crutcherka@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13116 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; HCS Collaboratory Coordinating Center (U54).

Date: July 9, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dale L. Birkle, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; HCS Collaboratory Pragmatic Trials (UH2/UH3).

Date: July 12, 2012.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Dale L. Birkle, Ph.D., Scientific Review Administrator, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 451–6570, *birkled@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: May 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13120 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Trauma and Burn Research Centers.

Date: June 22, 2012.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An18K, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS).

Dated: May 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13122 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group Biomedical Research and Research Training Review Subcommittee B.

Date: June 21, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington, DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An12H, Bethesda, MD 20892, 301–594–2886, *zacharya@nigms.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 22, 2012.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13123 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Understanding Mechanisms of Terminal Erythroid Maturation.

Date: June 18–19, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristin Goltry, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892, 301–435–0297, *goltrykl@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; K01, K02, K08 Career Development Awards.

Date: June 21–22, 2012.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Arlington Capital View Hotel, 2800 South Potomac Ave., Arlington, VA 22207.

Contact Person: Keith A. Mintzer, Ph.D., Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7186, Bethesda, MD 20892–7924, 301–435–0280, *mintzerk@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13121 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Initial Review Group; NHLBI Institutional Training Mechanism Review Committee.

Date: June 21–22, 2012.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Charles Joyce, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7196, Bethesda, MD 20892–7924, 301–435–0288, *cjoyce@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 23, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13118 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel DAP R25 Eppig Application.

Date: June 5, 2012.

Time: 11:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NHGRI Twinbrook Library, 5635 Fishers Lane, Room 4076, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 22, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–13114 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of PANVAC™ and Tumor Associated Antigens as Colorectal Cancer Vaccine

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR Part 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive patent license to practice the inventions embodied in the following U.S. Patents and Patent Applications to Bavarian Nordic Immunotherapeutics (''BNIT'') located in Mountain View, CA, USA.

Intellectual Property

Group I—Exclusive Licensed Patent Rights

1. U.S. Patent Application No. 60/061,589 filed October 10, 1997 as well as all issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0–US–01];
2. PCT Patent Application No. PCT/US1998/19794 filed September 22, 1998 as well as all issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0–PCT–02];
3. U.S. Patent No. 6,756,038 issued June 29, 2004 as well as issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0–US–07];
4. U.S. Patent No. 7,723,096 issued May 25, 2010 as well as continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–099–1996/0–US–08];
5. European Patent No. lOI7810 [HHS Ref. No. E–099–1996/0–EP–05], and all European contracting states in which this patent is validated;
6. European Patent Application No. 04011673.3 (now EP Patent No. 1447414) [HHS Ref. No. E–099–1996/0–EP–17], and all European contracting states in which this patent is validated, Japan Patent Application No. 2000–516030 (now JP Patent No. 4291508) [HHS Ref. No. E–099–1996/0–JP–06], and all continuations and divisional applications claiming priority to this application;
7. Australia Patent No. 745863 [HHS Ref. No. E–099–1996/0–AU–03], and all continuations and divisional applications claiming priority to this application;
8. Canada Patent No. 2308127 [HHS Ref. No. E–099–1996/0–CA–04], and all continuations and divisional applications claiming priority to this application;
9. PCT Patent Application No. PCT/US1992/03843 filed May 6, 1992 as well as all issued and pending foreign counterparts [HHS Ref. No. E–200–1990/2–PCT–01];
10. U.S. Patent No. 5,698,530 issued December 6, 1997 as well as issued and pending foreign counterparts [HHS Ref. No. E–200–1990/1–US–02];
11. Australian Patent No. 674492 issued April 22, 1997 [HHS Ref. No. E–200–1990/2–AU–02]; Europe Patent No. 0584266 issued September 3, 2003 [HHS Ref. No. E–200–1990/2–EP–04]; Japan Patent No. 3399943 issued February 21, 2003 [HHS Ref. No. E–200–1990/2–JP–05]; and Canada Patent No. 2102623 issued April 22, 2003 [HHS Ref. No. E–200–1990/2–CA–03];
12. U.S. Patent No. 6,001,349 issued 14 Dec. 1999 as well as issued and pending foreign counterparts [HHS Ref. No. E–200–1990/3–US–01];
13. U.S. Patent Application No. 60/519,354 filed November 12, 2003 as well as all issued and pending foreign counterparts [HHS Ref. No. E–087–2005/0–US–01];
14. U.S. Patent Application No. 10/579,025 filed May 11, 2006 as well as all continuation and divisional applications, and issued and pending foreign counterparts [E–0872005/0–US–03];
15. U.S. Patent Application No. 60/519,427 filed November 12, 2003 as well as all issued and pending foreign counterparts [HHS Ref. No. E–088–2005/0–US–01];
16. U.S. Patent Application No. 10/579,007 filed May 11, 2006 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–088–2005/0–US–03];
17. U.S. Patent Application No. 60/038,253 filed February 24, 1997 as well as all issued and pending foreign counterparts [HHS Ref. No. E–154–1998/0–US–01];
18. PCT Patent Application No. PCT/US1998/03693 filed February 24, 1998 as well as all issued and pending foreign counterparts [HHS Ref. No. E–154–1998/0–PCT–02];
19. U.S. Patent No. 7,118,738 issued October 10, 2006 as well as all continuations and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–154–1998/0–US–07];
20. PCT Patent Application No. PCT/US1995/12638 filed October 2, 1995 as well as all issued and pending foreign counterparts [HHS Ref. No. E–259–1994/2–PCT–01];
21. PCT Patent Application No. PCT/US1997/12203 filed July 15, 1997 as well as all issued and pending foreign counterparts [HHS Ref. No. E–259–1994/3–PCT–02];
22. U.S. Patent Application No. 08/686,280 filed July 25, 1996 as well as all issued and pending foreign counterparts [HHS Ref. No. E–259–1994/3–US–01];
23. U.S. Patent No. 7,410,644 issued August 12, 2008 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–259–1994/3–US–08];
24. PCT Patent Application No. PCT/US1995/12624 filed October 2, 1995 as well all issued and pending foreign counterparts [HHS Ref. No. E–260–1994/2–PCT–01];
25. U.S. Patent Nos. 6,893,869, 6,548,068 and 6,045,802 issued May 17, 2005, April 15, 2003 and April 4, 2000 respectively, as well as issued and pending foreign counterparts [HHS Ref. Nos. E–260–1994/1–US–03, US–02, US–01]; U.S. Patent No. 7,368,116 issued May 6, 2008 and U.S. Patent Application No. 12/112,819, as well as all continuation and divisional applications [HHS Ref. Nos. E–260–1994/1–US–04 and US–05];
26. Europe Patent Application No. 00102998.2 filed October 2, 1995, Europe Patent No. 0784483 issued November 29, 2001, Europe Patent Application No. 09013495.8 filed October 26, 2009, as well as all continuation, and divisional applications [HHS Ref. Nos. E–260–1994/2–EP–15, EP–16 and EP–27]; Japan Patent Application No. 512100/96 filed October 2, 1995; Japan Patent No. 4078319 issued February 8, 2008 [HHS Ref. No. E–260–1994/2–JP–25]; and Japan Patent No. 4160612 issued July 25, 2008, as well as all continuation and divisional applications; [HHS Ref. No. E–260–1994/2–JP–21, JP–25 and JP–26]; Australia Patent No. 688606 issued July 2, 1998 [HHS Ref. No. E–260–1994/2–AU–11]; Canada Patent No. 2201587 issued June 25, 2002 [HHS Ref. No. E–260–1994/2–CA–12];
27. U.S. Patent Application No. 60/211,717 filed June 15, 2000 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–187–2000/0–US–01];
28. PCT Patent Application No. PCT/US2001/19201 filed June 15, 2001 as well all issued and pending foreign counterparts [HHS Ref. No. E–187–2000/0–PCT–02];
29. Canada Patent Application No. 2,412,050 filed June 15, 2001 [HHS Ref. No. E–187–2000/0–CA–05]; Australia Patent No. 2001268452 issued

November 30, 2006 [HHS Ref. No. E–187–2000/0–AU–06]; Japan Patent Application No. 2002–510097 filed June 15, 2001 [HHS Ref. No. E–187–2000/0–JP–07]; Hong Kong Patent Application No. 03105975.5 filed June 15, 2001 [HHS Ref. No. E–187–2000/0–HK–08]; as well as all continuation and divisional applications;

30. U.S. Patent Application No. 60/776,506 filed February 24, 2006 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–104–2006/0–US–01];

31. PCT Patent Application No. PCT/US2007/004603 filed February 27, 2007 as well all issued and pending foreign counterparts [HHS Ref. No. E–104–2006/0–PCT–02];

32. U.S. Patent Application No. 12/280,534 filed February 21, 2007 [HHS Ref. No. E–104–2006/0–US–06]; Australia Patent Application No. 2007221255 filed February 21, 2007 [HHS Ref. No. E–104–2006/0–AU–03]; Europe Patent Application No. 07751371.1 filed February 21, 2007 [HHS Ref. No. E–104–2006/0–US–06]; filed February 21, 2007 [HHS Ref. No. E–104–2006/0–EP–05]; Canada Patent Application No. 2642994 filed February 21, 2007 [HHS Ref. No. E–104–2006/0–CA–04]; as well as all continuation and divisional applications.

33. U.S. Patent Application No. 60/904,236 filed February 28, 2007 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–074–2007/0–US–01];

34. PCT Patent Application No. PCT/US2008/055185 filed February 28, 2008 as well all issued and pending foreign counterparts [HHS Ref. No. E–074–2007/0–PCT–02];

35. U.S. Patent Application No. 12/528,796 filed August 26, 2009 [HHS Ref. No. E–074–2007/0–US–07]; Australia Patent Application No. 2008221383 filed February 27, 2008 [HHS Ref. No. E–074–2007/0–AU–03]; Europe Patent Application No. 08743578.0 filed February 27, 2008 [HHS Ref. No. E–074–2007/0–EP–05]; Canada Patent Application No. 2,678,404 filed February 27, 2008 [HHS Ref. No. E–074–2007/0–CA–04]; Japan Patent Application No. not yet assigned filed February 27, 2008 [HHS Ref. No. E–074–2007/0–JP–06] as well as all continuation, divisional and pending foreign counterpart applications.

Group II—Nonexclusive Licensed Patent Rights

1. U.S. Patent Application No. 60/111,582 filed December 9, 1998 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–256–1998/0–US–01];

2. PCT Patent Application No. PCT/US1999/26866 filed November 12, 1999 as well all issued and pending foreign counterparts [HHS Ref. No. E–256–1998/0–PCT–02];

3. U.S. Patent No. 6,969,609 issued November 29, 2005; U.S. Patent No. 7,211,432 issued May 1, 2007; U.S. Patent Application No. 11/723,666 filed March 21, 2007; as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–256–1998/0, 1];

4. U.S. Patent Application No. 60/448,591 filed February 20, 2003 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–028–2007/0–US–01];

5. PCT Patent Application No. PCT/US2004/005077 filed February 20, 2004 as well all issued and pending foreign counterparts [HHS Ref. No. E–028–2007/0–PCT–02];

6. U.S. Patent Application Nos. 60/448,591 and 10/543,944 filed February 20, 2003 and February 20, 2004 respectively, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–028–2007/0];

7. PCT Patent Application No. PCT/US1998/003032 filed September 2, 1998 as well all issued and pending foreign counterparts [HHS Ref. No. E–134–2007/0–PCT–02];

8. U.S. Patent No. 6,699,475 issued March 2, 2004, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–134–2007/0];

9. PCT Patent Application No. PCT/US1989/03701 filed August 25, 1989 as well all issued and pending foreign counterparts [HHS Ref. No. E–135–2007/0–PCT–02];

10. U.S. Patent No. 5,093,258 issued March 3, 1992, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–135–2007/0];

11. PCT Patent Application No. PCT/US1989/02486 filed June 7, 1989 as well all issued and pending foreign counterparts [HHS Ref. No. E–136–2007/0–PCT–02];

12. U.S. Patent Application No. 07/205,189 filed June 10, 1988, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–136–2007];

13. U.S. Patent Application No. 60/625,321 filed November 5, 2004 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–138–2007/0–US–01];

14. PCT Patent Application No. PCT/US2005/040170 filed November 4, 2005 as well all issued and pending foreign counterparts [HHS Ref. No. E–138–2007/0–PCT–02];

15. U.S. Patent Application No. 60/625,321 filed November 5, 2004, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–138–2007];

16. U.S. Patent Application No. 60/678,329 filed May 5, 2005 as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–139–2007/0–US–01];

17. PCT Patent Application No. PCT/US2006/017765 filed May 5, 2006 as well all issued and pending foreign counterparts [HHS Ref. No. E–139–2007/0–PCT–02];

18. U.S. Patent Application No. 60/678,329 filed May 5, 2005, as well as all continuation and divisional applications, and issued and pending foreign counterparts [HHS Ref. No. E–139–2007/0]; and

The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory may be worldwide and the field of use may be limited to the use of Licensed Patent Rights for development of therapeutics for human colorectal cancer in all geographic territories.'' For the avoidance of doubt, delivery formulations shall specifically exclude canary poxvirus vectors, NYVAC, non-viral eukaryotic expression vectors and recombinant yeast vectors.''

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 29, 2012 will be considered.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the patent application, inquiries, and comments relating to the contemplated exclusive license should be directed to: Sabarni K. Chatterjee, Ph.D., M.B.A. Licensing and Patenting Manager, Cancer Branch, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5587; Facsimile: (301) 435–4013; Email: *chatterjeesa@od.nih.gov.*

SUPPLEMENTARY INFORMATION: Cancer immunotherapy is a recent approach where tumor associated antigens (TAAs), which are primarily expressed in human tumor cells, and not expressed or minimally expressed in normal tissues, are employed to generate a tumor-specific immune response. Specifically, these antigens serve as targets for the host immune system and elicit responses that result in tumor destruction.

The initiation of an effective T-cell immune response to antigens requires two signals. The first one is antigen-specific via the peptide/major histocompatibility complex and the second or ''costimulatory'' signal is required for cytokine production, proliferation, and other aspects of T-cell activation.

The patents and patent applications describe a vaccine technology, TRICOM, in conjunction with tumor associated antigens (TAAs). The TRICOM technology employs avirulent poxviruses to present a combination of costimulatory signaling molecules with tumor-associated antigens (TAAs) to activate T-cells and break the immune systems tolerance towards cancer cells. This is achieved using recombinant poxvirus DNA vectors that encode both T-cell costimulatory molecules and TAAs. The combination of the three (3) costimulatory molecules B7.1, ICAM–1 and LFA–3, hence the name TRICOM, has been shown to have more than the additive effect of each costimulatory molecule when used individually to optimally activate both CD4+ and CD8+ T cells. When a TRICOM based vaccine expressing TAAs is administered it greatly enhances the immune response against the malignant cells expressing those TAAs. The addition of the two well-known TAAs, carcinoembryonic antigen (CEA) and MUC–1 to the TRICOM vector results in the PANVAC vaccine, which is used in a prime and boost vaccine strategy. It is well established that the over-expression of these two (2) TAAs are associated with the presence of a variety of carcinomas; including colorectal cancer and therefore PANVAC can potentially be an effective cancer vaccine for colorectal cancer. Additionally, new tumor associated antigens can also be used with TRICOM to develop novel vaccines. For example, Brachyury, well known for its role in developmental cell biology and recently been implicated in tumor cell invasion and metastasis, has been shown to be aberrantly expressed in several tumors including colorectal tumors. As a result, Brachyury is being used as a tumor associated antigen along with TRICOM and has potential as a cancer immunotherapeutic vaccine for the treatment of several tumors including colorectal cancer.

The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR Part 404.7. The prospective exclusive license may be granted unless within thirty (30) days from the date of this published notice, the NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR Part 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 23, 2012.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2012–13006 Filed 5–29–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Baseline Assessment for Security Enhancement (BASE) Program for Public Transportation Systems

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on a new Information Collection Request (ICR) abstracted below that we will submit to the Office of Management and Budget (OMB) for approval in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. This voluntary collection allows TSA to conduct transportation security-related assessments during site visits with security and operating officials of transit agencies.

DATES: Send your comments by July 30, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Susan Perkins at the above address, or by telephone (571) 227–3398.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Purpose of Data Collection

Approximately 6,000 transit service providers, commuter railroads, and long distance passenger railroad providers operate in the United States.[1] Mass transit and passenger rail systems provide transportation services through buses, rail transit, commuter rail, long-distance rail, and other, less common types of service (cable cars, inclined planes, funiculars, and automated guideway systems). These systems can also include ''demand response services'' for seniors and persons with disabilities, as well as vanpool/rideshare programs and taxi services operated under contract with a public transportation agency.

TSA is required to ''assess the security of each surface transportation mode and evaluate the effectiveness and efficiency of current Federal Government surface transportation

[1] TSA, ''Transportation Sector-Specific Plan Mass Transit Modal Annex'', page 4 (May 2007).

security initiatives.'' E.O. 13416, sec. 3(a) (Dec. 5, 2006). While many transit systems have security and emergency response plans or protocols in place, no single database exists, nor is there a consistent approach to evaluating the extent to which security programs are in place across public transportation systems.

TSA developed the Baseline Assessment for Security Enhancement (BASE) program for public transportation systems to evaluate the status of security and emergency response programs throughout the nation.[2] In particular, a BASE review assesses the security measures of public transportation systems and gathers data used by TSA to address its responsibilities, such as evaluating ''effectiveness and efficiency of current Federal Government surface transportation security initiatives'' and developing modal specific annexes to the Transportation Systems Sector Specific Plan that include ''an identification of existing security guidelines and requirements and any security gaps * * *'' E.O. 13416, sec. 3(c)(i). Reflecting its risk-based prioritization, TSA primarily conducts BASE reviews on the top 100 transit systems in the country, as identified by the Federal Transit Administration (FTA).[3]

Description of Data Collection

TSA's Surface Transportation Security Inspectors (STSIs) conduct BASE reviews during site visits with security and operating officials of transit and passenger rail systems. The STSIs capture and document relevant information using a standardized electronic checklist. Advance coordination and planning ensures the efficiency of the assessment process. As part of this, transit and passenger rail systems may also obtain a checklist in advance from TSA and conduct self-assessments of their security readiness. All BASE reviews are done on a voluntary basis.

The BASE checklist guides the collection of information and encompasses review of security plans, programs, and procedures employed by transit and passenger rail systems in implementing the recommended TSA/FTA Security and Emergency Management Action Items for Transit Agencies (Action Items).[4] During a review, STSIs collect information from the review of transit and passenger rail system documents, plans, and procedures; interviews with appropriate public transportation agency personnel, to gain process insight; and system observations prompted by questions raised during the document review and interview stages. TSA subject matter experts can then analyze this information. If information in completed assessments meets the requirements of 49 CFR parts 15 and 1520, which would mean that disclosure of the information would be detrimental to the security of transportation, TSA will designate and mark the data as ''Sensitive Security Information,'' and protect it in accordance with the requirements set forth in those regulations.

Use of Results

A BASE review evaluates a public transportation agency's security program components using a two-phased approach: (1) Field collection of information, and (2) analysis/evaluation of collected information. The information collected by TSA through BASE reviews strengthens the security of transit and passenger rail systems by supporting security program development (including grant programs), and the analysis/evaluation provides a consistent road map for transit and passenger rail systems to address security and emergency program vulnerabilities. In addition, a public transportation system that undergoes a BASE assessment review is provided with a report of results that can be used by the system to identify and prioritize vulnerabilities to enhance security.

Specifically, the information collected will be used as follows:

1. To develop a baseline understanding of a public transportation agency's security and emergency management processes, procedures, policies, programs, and activities against security requirements and recommended security practices published by TSA and FTA.

2. To enhance a public transportation agency's overall security posture through collaborative review and discussion of existing security activities, identification of areas of potential weakness or vulnerability, and development of remedial recommendations and courses of action.

3. To identify programs and protocols implemented by a public transportation agency that represent an ''effective'' or ''smart'' security practice warranting sharing with the transit and passenger rail community as a whole to foster general enhancement of security in the mass transit and passenger rail mode.

4. To inform TSA's development of security strategies, priorities, and programs for the most effective application of available resources, including funds distributed under the Transit Security Grant Program, to enhance security in the Nation's transit and passenger rail systems.

While TSA has not set a limit on the number of public transportation system BASE program reviews to conduct, TSA estimates it will conduct approximately 100 public transportation system BASE reviews on an annual basis and does not intend to conduct more than one BASE review per transit or passenger rail system in a single year. The total hour burden dedicated to the assessment and collection of security-related documents for review varies depending upon the size of the system and scope of its security program and activities. The hours estimated represent a sampling of BASE reviews completed in 2010. The sampling was derived from 15 public transportation agencies varying in size from small to large. Actual inspection hours were utilized in the sampling. TSA estimates that the hour burden per public transportation agency to engage its security and/or operating officials with inspectors in the interactive BASE program review process is approximately 18 hours for a small public transportation agency, approximately 144 hours for a large public transportation agency, and approximately 46 hours for a moderately-sized agency. Thus, the total annual hour burden for the BASE program review (140 agencies identified) is estimated on the low end of 2520 hours (140 x 18 = 2520) annually and the high end of 6440 hours (140 x 46 = 6440) annually. This number will most likely increase as additional public transportation agencies volunteer to participate.

Issued in Arlington, Virginia, on May 23, 2012.

Susan Perkins,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–12959 Filed 5–29–12; 8:45 am]

BILLING CODE 9110–05–P

[2] A separate program within TSA also conducts BASE reviews to assess security measures related to highway transportation, notice of which will be published separately in the **Federal Register**.

[3] A current list of the top 100 transit systems can be viewed on the National Transit Database Web site at *http://www.ntdprogram.gov/ntdprogram/.*

[4] Action Items are available for download at *http://www.tsa.gov/assets/pdf/mass_transit_action_items.pdf.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–34]

Notice of Submission of Proposed Information Collection to OMB; Office of Native American Programs (ONAP) Training and Technical Assistance; Notice of Funding Availability (NOFA)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department of Housing and Urban Development Appropriations Act, as approved on November 18, 2011 (Pub. L. 112–55, 125 Stat. 552) authorizes HUD to award training and technical assistance contracts on a competitive basis. HUD intends to competitively award training and technical assistance contracts to national and regional nonprofit and for profit entities with demonstrated experience and expertise in the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). The purpose of the ONAP Training and Technical Assistance program is to improve the quality and quantity of low-income housing in Native American, Alaska Native, and native Hawaiian communities, as funded by Indian Housing Block Grants (IHBG) and Native Hawaiian Housing Block Grants (NHHBG) and authorized by NAHASDA. The regulations for the IHBG program are at 24 CFR part 1000, and for the NHHBG program at 24 CFR part 1006. Successful applicants will have demonstrated training and technical assistance experience and expertise in NAHASDA; low-income housing development, inspection, maintenance, modernization, and operation; admissions and occupancy; procurement; financial and fiscal management; program income; governance and organizational development; leveraged financing, including Low Income Housing Tax Credits; healthy home environments, including mold and air quality issues; homebuyer education; crime prevention; youth activities, including Boys and Girls Clubs; and other topics responsive to low-income housing issues in native communities. Training and technical assistance services will be provided onsite and remotely, on a one-on-one and classroom basis. Respondents to the NOFA will be required to submit a single proposal regardless of the number of programs or areas of expertise for which they offer to provide training and technical assistance. Factors for award include Factor 1: Capacity and Experience, Factor 2: Soundness of Approach, Factor 3: Leveraging, and Factor 4: Achieving Results and Program Evaluation. Narratives addressing Factors 1–4 must be formatted so that the total number of pages submitted is equal to or no more than 25 single-sided pages. The one-page application summary, organizational chart, budget discussion, and required forms are not included in the 25 page limit. Required forms include HUD–2880 (Applicant/Recipient Disclosure Update), HUD–2993 (Acknowledgement of Application Receipt), HUD–96011 (HUD Facsimile Transmittal), SF–424 (Application for Federal Assistance), and SF–LLL (Disclosure of Lobbying Activities). Applicants must submit their applications electronically to Grants.Gov or request a waiver from HUD. HUD expects to receive 25 applications and select ten awardees to enter in 24-month cooperative agreements, with a 12-month option period.

DATES: *Comments Due Date:* June 29, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.epo.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Office of Native American Programs (ONAP) Training and Technical Assistance Notice of Funding Availability (NOFA).

OMB Approval Number: 2577–New.

Form Numbers: HUD–2880, HUD–96011, HUD–2993.

Description of the Need for the Information and Its Proposed Use: The Department of Housing and Urban Development Appropriations Act, as approved on November 18, 2011 (Pub. L. 112–55, 125 Stat. 552) authorizes HUD to award training and technical assistance contracts on a competitive basis. HUD intends to competitively award training and technical assistance contracts to national and regional nonprofit and for profit entities with demonstrated experience and expertise in the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). The purpose of the ONAP Training and Technical Assistance program is to improve the quality and quantity of low-income housing in Native American, Alaska Native, and native Hawaiian communities, as funded by Indian Housing Block Grants (IHBG) and Native Hawaiian Housing Block Grants (NHHBG) and authorized by NAHASDA. The regulations for the IHBG program are at 24 CFR part 1000, and for the NHHBG program at 24 CFR part 1006. Successful applicants will have demonstrated training and technical assistance experience and expertise in NAHASDA; low-income housing development, inspection, maintenance, modernization, and operation; admissions and occupancy; procurement; financial and fiscal management; program income; governance and organizational development; leveraged financing, including Low Income Housing Tax Credits; healthy home environments, including mold and air quality issues;

homebuyer education; crime prevention; youth activities, including Boys and Girls Clubs; and other topics responsive to low-income housing issues in native communities. Training and technical assistance services will be provided onsite and remotely, on a one-on-one and classroom basis. Respondents to the NOFA will be required to submit a single proposal regardless of the number of programs or areas of expertise for which they offer to provide training and technical assistance. Factors for award include Factor 1: Capacity and Experience, Factor 2: Soundness of Approach, Factor 3: Leveraging, and Factor 4: Achieving Results and Program Evaluation. Narratives addressing Factors 1–4 must be formatted so that the total number of pages submitted is equal to or no more than 25 single-sided pages. The one-page application summary, organizational chart, budget discussion, and required forms are not included in the 25 page limit. Required forms include HUD–2880 (Applicant/Recipient Disclosure Update), HUD–2993 (Acknowledgement of Application Receipt), HUD–96011 (HUD Facsimile Transmittal), SF–424 (Application for Federal Assistance), and SF–LLL (Disclosure of Lobbying Activities). Applicants must submit their applications electronically to Grants.Gov or request a waiver from HUD. HUD expects to receive 25 applications and select ten awardees to enter in 24-month cooperative agreements, with a 12-month option period.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of applicants is 25, responding once a year, for a total reporting burden of 1,500 hours. The estimated number of awardees is 10, the frequency of response is four times per year; and the total reporting burden is estimated at 1,830 hours.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 23, 2012.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–13091 Filed 5–29–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2012–N116: FXES11130300000D2–123–FF03E00000]

Iris Lacustris (Dwarf Lake Iris); Draft Recovery Plan for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces availability for public review of the draft recovery plan for the *Iris lacustris* (dwarf lake iris), a species that is federally listed as threatened under the Endangered Species Act of 1973 (Act), as amended. The species grows along the northern shorelines of Lakes Michigan and Huron, in the U.S. States of Wisconsin and Michigan and in Ontario, Canada. The purpose of the recovery plan is to recover this species in order that it can be removed from the list of Endangered and Threatened Plants. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before June 29, 2012.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, 2651 Coolidge Road, Suite 101, East Lansing, MI 48823 (telephone 517–351–2555) or by accessing the Web site: *http://midwest.fws.gov/Endangered.*

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Hosler, at the above address and telephone. TTY users may contact Ms. Hosler through the Federal Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Recovery Program

Restoring an endangered or threatened animal or plant to the point where it is again a secure self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the federally listed threatened and endangered species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for reclassification and delisting, and provide estimates of the time and costs for implementing the recovery measures needed.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires public notice and opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into consideration in the course of implementing approved recovery plans.

Dwarf Lake Iris

The dwarf lake iris was listed as threatened on October 28, 1988 (via a final rule published on September 28, 1988; 53 FR 37972), under the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.). The species grows along the northern shorelines of Lakes Michigan and Huron, in the U.S. States of Wisconsin and Michigan and in Ontario, Canada. Of 165 known occurrences, many lie on private property where awareness of the species' presence and significance is limited. Direct loss of plants and habitat is continuing and is expected to accelerate due to people's high demand of shoreline properties for development and recreation.

Dwarf lake iris typically grows in shallow soil over moist calcareous sands, gravel, and beach rubble. Sunlight is one of the most critical factors to the growth and reproduction of the species, and partly shaded or sheltered forest edges are optimal for sexual reproduction. Some form of disturbance is also required to maintain the forest openings that provide these partial shade conditions. The species is most often associated with shoreline coniferous forests dominated by northern white cedar and balsam fir. The principal limiting factor for dwarf lake iris is the availability of this suitable shoreline habitat.

Recovery Criteria

The dwarf lake iris will be considered for delisting when the likelihood of the species becoming threatened in the foreseeable future has been eliminated by the achievement of three criteria:

Criterion 1

The species has a 95 percent probability of persistence within the next 20 years, based on data obtained

from accepted standardized monitoring methods and on population viability analysis. In order to meet this criterion, the following must be verified:

1.a. There is a sufficient number and geographical distribution of element occurrences required to ensure long-term persistence, and

1.b. Each element occurrence needed to ensure a 95-percent probability of persistence within the next 20 years must meet a minimum viable population size and exhibit an increasing or stable population trend over a 10-year period.

Criterion 2

Management plans have been developed and are being implemented to protect and manage the habitat associated with the element occurrences identified in Criterion 1.b.

Criterion 3

A plan to provide public outreach and education for dwarf lake iris has been developed and is being implemented. Additional detail on these delisting criteria is available in the draft recovery plan.

The above three criteria will be met through the following actions: (1) Protect occurrences; (2) Manage and restore habitat; (3) Inventory and monitor known sites; (4) Conduct population viability analysis; (5) Develop an education program about dwarf lake iris, other federally listed shoreline species, natural communities, and their protection and management; (6) Improve understanding of baseline dwarf lake iris ecology; and (7) Review and track recovery progress.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan. All comments received by the date specified will be considered prior to approval of the plan. Written comments and materials regarding the plan should be sent to the Field Supervisor, Ecological Services Field Office (see **ADDRESSES**). Comments received will be available for public inspection by appointment during normal business hours.

Availability of Public 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 10, 2012.

Thomas O. Melius,

Regional Director, U. S. Fish & Wildlife Service, Midwest Region.

[FR Doc. 2012–13046 Filed 5–29–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–2011–N223; FF06R06000–FXRS1265066CCP0S2–123]

Final Comprehensive Conservation Plan for the Bowdoin National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce that our Final Comprehensive Conservation Plan (Plan) and finding of no significant impact (FONSI) for the Bowdoin National Wildlife Refuge Complex (refuge complex) is available. This final Plan describes how the Service intends to manage this refuge complex for the next 15 years.

ADDRESSES: A copy of the Plan may be obtained by writing to U.S. Fish and Wildlife Service, Division of Refuge Planning, P.O. Box 25486, Denver Federal Center, Denver, CO 80225; or by download from *http://mountain-prairie.fws.gov/planning.*

FOR FURTHER INFORMATION CONTACT: Laura King, (406) 644–2211, ext. 210 (phone); (406) 644–2661 (fax); or *bowdoin@fws.gov* (email).

SUPPLEMENTARY INFORMATION: The 84,724-acre Bowdoin National Wildlife Refuge Complex is part of the National Wildlife Refuge System. It is located in the mixed-grass prairie region of north-central Montana, within an area known as the prairie pothole region. The refuge complex oversees management of five national wildlife refuges: Bowdoin National Wildlife Refuge and four unstaffed satellite refuges—Black Coulee, Creedman Coulee, Hewitt Lake, and Lake Thibadeau National Wildlife Refuges. In addition, the refuge complex also manages the four-county Bowdoin Wetland Management District (district), which has nine waterfowl production areas in Blaine, Hill, Phillips, and Valley. While the five national wildlife refuges and the wetland management district were established under different authorities, they all have the overriding purpose of providing migration, nesting, resting, and feeding habitat for migratory birds in their wetlands and uplands. The four satellite refuges have both fee-title and private lands within their boundaries. The private lands are encumbered by refuge and flowage easements giving the Service the right to impound water, control the uses that occur on that water, and control any hunting and trapping. Access to these privately owned areas is by landowner permission only.

The refuge complex provides opportunities for the public to enjoy compatible wildlife-dependent public-use activities including hunting, limited fishing, wildlife observation, photography, environmental education, and interpretation. A full-time staff of five and various temporary employees manage and study refuge habitats and maintain visitor facilities. Domestic livestock grazing, prescribed fire, and haying are the primary management tools used to maintain and enhance upland habitats. Water level manipulation is used to improve wetland habitats and invasive and non-native plant species are controlled and eradicated. Large, intact, native prairie communities can still be found throughout the refuge complex providing nesting habitat for over 29 species of resident and migratory birds. Native grazers such as pronghorn, white-tailed deer, and mule deer browse and graze the uplands. Four wetland classes are found on the refuge complex: Temporary, seasonal, semipermanent, and permanent. These wetland classes are either freshwater or saline. There are more than 10,000 acres of wetlands in the refuge complex. These wetlands have a diverse distribution of sizes, types, locations, and associations. As part of the central flyway, this concentration of wetlands attracts thousands of migrating shorebirds and waterfowl to the refuge complex.

Approximately 25,000 people visit the refuge complex annually. A 15-mile interpreted auto tour route and nature trail on the Bowdoin National Wildlife Refuge are two of the most popular activities. Fishing is only open on McNeil Slough and Beaver Creek WPAs. The remaining complex waters do not support a sport fishery due high salinity levels or shallow water depth. Excluding Holm WPA, the remaining complex is open to limited hunting of waterfowl and upland game birds. The four satellite refuges (with landowner permission) and remaining eight WPAs

are also open to big game hunting, subject to State regulations and seasons.

The draft Plan and environmental assessment (EA) was made available to the public for review and comment following the announcement in the **Federal Register** on June 22, 2011 (76 FR 36571–36571). The public was given until July 25, 2011, to comment and a public meeting was held in Malta on June 29, 2011. More than 20 individuals and groups provided written comments and appropriate changes were made to the final plan. The draft CCP and final EA included the analyses of three different sets of alternatives including three alternatives for managing the refuge complex, two alternatives to evaluate the divestiture of Lake Thibadeau, and five alternatives for addressing the salinity and blowing salts issue on Bowdoin National Wildlife Refuge. The Region 6 Regional Director selected Alternative B for overall refuge management and the proposed divestiture of Lake Thibadeau and Alternative 4 for addressing the salinity and blowing salts issue. These preferred alternatives will serve as the final plan.

The final plan identifies goals, objectives, and strategies that describe the future management of the Bowdoin National Wildlife Refuge Complex. Alternative B for Lake Thibadeau National Wildlife Refuge recommends divestiture. The Service owns less than 1 percent of the lands within the 3,868-acre approved acquisition boundary; the remaining area is private lands encumbered by refuge and flowage easements. These easements give the Service the right to manage the impoundments and the uses that occur on that water and to control hunting and trapping, but these easements do not prohibit development, grazing, or agricultural uses. Due to upstream development in the watershed, the impoundments do not receive adequate water supplies and are often dry enough to be farmed; the surrounding upland areas are also farmed or heavily grazed.

This loss or lack of habitat has resulted in the Service's recommendation to divest this refuge. For the remaining refuge complex lands, Alternative B proposes to conserve natural resources by restoring, protecting, and enhancing native mixed-grass prairie and maintaining high-quality wetland habitat for target migratory and resident birds. Invasive and nonnative plants that are causing habitat losses and fragmentation would be controlled or eradicated, including Russian olive trees. Research would be conducted to control crested wheatgrass and restore treated areas. Enhanced wetlands would be managed to mimic natural conditions for wetland-dependent migratory.

Visitor services programs would be enhanced, providing additional opportunities for staff- and volunteer-led. A sanctuary area would be created for waterfowl on the east side of the Bowdoin National Wildlife Refuge closing this area to all foot traffic during the hunting season. A new wildlife observation site would be added on the auto tour route. The Service would work with the State to determine the feasibility of offering a big game hunt at Bowdoin Refuge. The success of all of these additional efforts and programs would depend on added staff, research, and monitoring programs, including additional funding, infrastructure, and new and expanded partnerships.

Alternative 4 was chosen as the preferred alternative for addressing the salinity and blowing salts issue, improving plant and animal diversity. An underground injection well, possibly more than 6,000 feet, would be used to force saline water deep into the ground. An annual withdrawal of 800 acre-feet of water would be required to maintain the salt balance, assuming all water and salt inputs remained consistent with past inputs. Once the salinity objective of 7,000 mg/L was met and water in Lake Bowdoin met all applicable water quality standards, modifications to the lake's infrastructure would be evaluated to determine the best way to re-create a flow-through system that maximized the effects of natural flooding. If natural flooding did not occur or more water to be supplied from the Milk River was not granted, the injection well could be used periodically to maintain salinity at an acceptable level. It is estimated that it will take 10–20 years to achieve the salinity and water quality objectives. Throughout this process, the Service will also work with partners to determine how to best minimize salt inputs into the refuge.

The Service is furnishing this notice to advise other agencies and the public of the availability of the final Plan, to provide information on the desired conditions for the refuge complex and to detail how the Service will implement management strategies. Based on the review and evaluation of the information contained in the EA, the Regional Director has determined that implementation of the Final Plan does not constitute a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act. Therefore, an Environmental Impact Statement will not be prepared.

Dated: December 23, 2011.

Noreen Walsh,

Deputy Regional Director.

Editorial Note: This document was received at the Office of the Federal Register on May 24, 2012.

[FR Doc. 2012–13011 Filed 5–29–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Ione Band of Miwok Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Acting Assistant Secretary—Indian Affairs made a final agency determination to acquire 228.04 acres of land into trust for the Ione Band of Miwok Indians of California on May 24, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1 and is published to comply with the requirements of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On May 24, 2012, the Acting Assistant Secretary—Indian Affairs decided to accept 228.04 acres of land into trust for the Ione Band of Miwok Indians of California under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465.

The land referred to herein is situated in the unincorporated area, County of Amador, State of California and is described as follows:

Real property in the unincorporated area of the County of Amador, State of California, described as follows:

APN: 008–110–009

ALL THOSE PORTIONS OF SECTIONS 14 AND 15, BOTH TOWNSHIP 7 NORTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN, SHOWN ON THAT CERTAIN RECORD OF SURVEY OF THE AREA OCCUPIED BY EVERETT AND GLENN FANCHER, FILED JUNE 15, 1982 IN BOOK 35 OF MAPS AND PLATS, AT PAGES 94 AND 95, IN THE OFFICE OF THE COUNTY RECORDER, AMADOR COUNTY, CALIFORNIA.

SAID LAND HERETOFORE BEING DESCRIBED AS:

(A) ALL THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 7 NORTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN, THAT LIES EAST OF THE COUNTY ROAD RUNNING FROM PLYMOUTH TO DRYTOWN VIA THE CENTRAL HOUSE, AS SAID ROAD EXISTED APRIL 11, 1896, BEING THE DATE OF THE DEED FROM M. BUTLER, ET UX, TO THOMAS BOYSON, RECORDED APRIL 18, 1896 IN BOOK 13 OF DEEDS, PAGE 120, RECORDS OF AMADOR COUNTY.

EXCEPT ALL THAT PORTION THEREOF DESCRIBED IN DEED FROM EVERETT FANCHER, ET AL, TO THE STATE OF CALIFORNIA RECORDED AUGUST 11, 1969, IN BOOK 186, PAGE 202, OFFICIAL RECORDS OF AMADOR COUNTY.

EXCEPT AND TOGETHER WITH ALL THAT REAL PROPERTY MORE PARTICULARLY REFERRED TO IN THAT CERTAIN BOUNDARY LINE AGREEMENT BY AND BETWEEN NORMAN V. WHEELER, ET UX, AND EVERETT FANCHER, ET AL, RECORDED JANUARY 4, 1989 IN BOOK 560, PAGE 28, OFFICIAL RECORDS OF AMADOR COUNTY.

(B) LOTS 8 AND 10 AND THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 7 NORTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN.

EXCEPT AND TOGETHER WITH ALL THAT REAL PROPERTY MORE PARTICULARLY REFERRED TO IN THAT CERTAIN BOUNDARY LINE AGREEMENT BY AND BETWEEN RONALD G. MATULICH, ET UX, AND EVELYN JEAN SMITH, ET AL, RECORDED JANUARY 27, 1999, INSTRUMENT NO. 1999–000877, OFFICIAL RECORDS OF AMADOR COUNTY.

(C) THE PIONEER QUARTZ MINE, BEING LOT 87 OF SECTION 14, TOWNSHIP 7 NORTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN.

(D) GOVERNMENT LOT 93 IN SECTION 14, TOWNSHIP 7 NORTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN, BEING ALSO KNOWN AS THE ''FORTY-NINE GOLD QUARTZ MINE''.

EXCEPT AND TOGETHER WITH ALL THAT REAL PROPERTY MORE PARTICULARLY REFERRED TO IN THAT CERTAIN BOUNDARY LINE AGREEMENT BY AND BETWEEN RONALD G. MATULICH, ET UX, AND EVELYN JEAN SMITH, ET AL, RECORDED JANUARY 27, 1999, INSTRUMENT NO. 1999–000877M, OFFICIAL RECORDS OF AMADOR COUNTY.

APN: 010–200–004 and 010–200–003

PARCEL ONE:

PARCEL 5 AND 6 OF PARCEL MAP NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF, FILED FOR RECORD ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

PARCEL TWO:

AN EASEMENT FOR INGRESS AND EGRESS OVER THOSE AREAS SHOWN AND DESIGNATED AS VILLAGE DRIVE AND LOT A ON PARCEL MAP NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF, FILED FOR RECORD ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

APN: 010–200–008

PARCEL ONE:

PARCEL 1 OF PARCEL MAP NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORDS ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

PARCEL TWO:

A NON-EXCLUSIVE EASEMENT FOR DRIVEWAY, PARKING AND LANDSCAPING PURPOSES OVER THE WESTERLY 185 FEET, MORE OR LESS, OF LOT 2 OF PARCEL MAP NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORD ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

APN: 010–200–009

PARCEL 2 OF PARCEL MAP NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORD ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

APN: 008–110–021

THE GOVERNOR BRADFORD QUARTZ MINE, DESIGNATED BY THE U.S. SURVEYOR GENERAL AS MINERAL SURVEY NO. 5031, EMBRACING A PORTION OF SECTION 14, TOWNSHIP 7 NORTH, RANGE 10 EAST.

APN: 008–110–022

THE NEW LONDON QUARTZ MINE, MINERAL ENTRY NO. 276, DESIGNATED BY THE SURVEYOR GENERAL AS LOT NO. 60 EMBRACING A PORTION OF THE SOUTHEAST QUARTER OF SECTION 11 AND THE NORTHWEST QUARTER OF SECTION 14, IN TOWNSHIP 7 NORTH, RANGE 10 EAST, M.D.M., IN THE PLYMOUTH MINING DISTRICT, AMADOR COUNTY, CALIFORNIA, AND MORE PARTICULARLY DESCRIBED IN PATENT THEREOF FROM THE UNITED STATES OF AMERICA TO JEREMIAH GREEN ET AL, DATED DECEMBER 9, 1875 AND RECORDED DECEMBER 18, 1883 IN VOLUME A OF QUARTZ MINERAL PATENTS, PAGE 113, AMADOR COUNTY RECORDS, TO WHICH PATENT AS SO RECORDED, REFERENCE IS HEREBY MADE FOR A MORE PARTICULARLY DESCRIPTION OF SAID QUARTZ MINE.

EXCEPTING THEREFROM THE NORTHERN ⅔ THEREOF, HERETOFORE SOLD BY W.P. DETERT ET AL TO CALIFORNIA EXPLORATION COMPANY, LTD., BY DEED RECORDED IN VOLUME 37 OF DEEDS, PAGE 161, AMADOR COUNTY RECODS, ALSO ALL THAT PORTION IN THE NEW LONDON QUARTZ MINE MILLSITE, MORE PARTICULARLY DESCRIBED IN THE CORRECTED DECREE OF DISTRIBUTION IN THE MATTER OF THE ESTATE OF BENJAMIN F. TAYLOR, DECEASED, RECORDED APRIL 23, 1919, IN BOOK 2 OF DECREE OF DISTRIBUTION AT PAGES 458–460 INCLUSIVE, AMADOR COUNTY RECORDS.

EXCEPTING AND PRESERVING THEREFROM ALL MINERALS AND MINERAL DEPOSITS LYING BELOW A DEPTH OF 100' FROM THE SURFACE OF SAID LANDS AND WITHOUT RIGHTS OF SURFACE ENTRY THEREON, SUBJECT, HOWEVER, TO GRANTEES RIGHTS TO CONTINUING SUBJACENT SUPPORT OF BOTH LAND AND IMPROVEMENTS NOW EXISTING OR HEREAFTER CONSTRUCTED.

APN: 008–110–026

PARCEL ONE:

THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 14, TOWNSHIP 7 NORTH, RANGE 10 EST, MDB&M.

PARCEL TWO:

ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE COUNTY OF AMADOR, STATE OF CALIFORNIA, PARTICULARLY DESCRIBED AS FOLLOWS:

A PARCEL OF LAND SITUATED IN THE COUNTY OF AMADOR, STATE OF CALIFORNIA, BEING A PORTION OF SECTION 11, TOWNSHIP 7 NORTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN, BEING ALSO A PORTION OF THAT CERTAIN PARCEL OF LAND DELINEATED AND DESIGNATED ''ELLA DERANIA PROPERTY 33.26 ACRES +'' UPON THAT CERTAIN OFFICIAL MAP ENTITLED RECORD OF SURVEY PROPERTY OF ELLA DERANIA RECORDED IN THE OFFICE OF THE RECORDER OF AMADOR COUNTY ON JANUARY 18, 1967 IN BOOK 13 MAPS AND PLATS AT PAGE 24, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING A PK NAIL IN CONCRETE AT A FENCE CORNER, SAID POINT MARKING THE SOUTHWEST CORNER OF SAID ELLA DERANIA PARCEL OF LAND FROM WHICH POINT THE SOUTHWEST CORNER OF SAID SECTION 11 BEARS SOUTH 89 DEGREES 37 MINUTES 18 SECONDS WEST 241.60 FEET DISTANT; THENCE, FROM SAID POINT OF BEGINNING ALONG THE SOUTH LINE OF SAID ELLA DERANIA PARCEL OF LAND, BEING ALSO THE SOUTH LINE OF SAID SECTION 11, NORTH 89 DEGREES 37 MINUTES 18 SECONDS EAST 1078.32 FEET TO A ⅞ INCH STEEL PIN MARKING THE WEST 1/16 SECTION CORNER OF SECTIONS 11 & 14, TOWNSHIP 7 NORTH, RANGE 10 EAST, MOUNT DIABLO MERIDIAN; THENCE NORTH 89 DEGREES 09 MINUTES 17 SECONDS EAST 281.31 FEET TO A SIMILAR STEEL PIN MARKING THE SOUTHEAST CORNER OF SAID ELLA DERANIA PARCEL OF LAND, THENCE ALONG THE EAST LINE OF SAID ELLA DERANIA PARCEL OF LAND, NORTH 00 DEGREES 13 MINUTES 27 SECONDS WEST 700.78 FEET TO A ⅝ INCH REBAR WITH ALUMINUM CAP (STAMPED CAL GEOMETRICS & L.S. 3850) MONUMENT; THENCE LEAVING LAST SAID EAST LINE NORTH 88 DEGREES 52 MINUTES 00 SECONDS WEST 721.26 FEET TO A POINT UNDER WATER IN A SMALL RESERVOIR, (SAID POINT IS REFERENCED BY TWO SIMILAR ⅝ INCH REBAR WITH ALUMINUM CAP MONUMENTS, (1) BEARS SOUTH 88 DEGREES 52 MINUTES 00 SECONDS EAST 397.25 FEET AND (2) BEARS NORTH 08 DEGREES 40 MINUTES 59 SECONDS EAST 50.91 FEET); THENCE NORTH 08 DEGREES 40 MINUTES 59 SECONDS EAST 152.58 FEET TO A SIMILAR ⅝ INCH REBAR AND ALUMINUM CAP MONUMENT SET AT FENCE CORNER; THENCE NORTH 88 DEGREES 52 MINUTES 00 SECONDS WEST 240.80 FEET TO A ¾ INCH PIPE AT A FENCE CORNER; THENCE SOUTH 18 DEGREES 26 MINUTES 10 SECONDS WEST 579.49 FEET TO A ¾ INCH STEEL ROD AT A FENCE CORNER; THENCE NORTH 89 DEGREES 20 MINUTES 00 SECONDS WEST 86.23 FEET TO A 6 INCH DIAMETER IRON PIPE AT A FENCE CORNER; THENCE SOUTH 23 DEGREES 57 MINUTES 11 SECONDS WEST 364.29 FEET TO THE POINT OF BEGINNING.

SAID PARCELS OF LAND ARE ALSO SHOWN AS ''SARMENTO 60.00 ACRES COMBINES'' ON ''RECORD OF SURVEY BOUNDARY LINE ADJUSTMENT FOR ELLA DERANIA AND SARMENTO'', FILED FOR RECORD JANUARY 26, 1986 IN BOOK 40 OF MAPS AT PAGE 10.

PARCEL THREE:

AN EASEMENT FOR INGRESS AND EGRESS AS DESCRIBED IN EASEMENT DEED EXECUTED BY PETER C. DERANIA, ET AL., TO THOMAS J. SARMENTO, ET UX., RECORDED FEBRUARY 23, 1984 IN BOOK 441 PAGE 476 OF AMADOR COUNTY OFFICIAL RECORDS AND WHICH IS SUBJECT TO THE SAME CONDITIONS AS CONTAINED IN SAID EASEMENT DEED.

APN: 010–200–006; 010–200–007 AND 010–200–010

PARCEL ONE:

PARCEL 3 AND PARCEL 8, AS SHOWN AND DESIGNATED ON PARCEL MAP NO. 2290 FOR NORMAN V. AND BARBARA L. WHEELER, FILED FOR RECORD JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, PAGE 29, RECORDS OF AMADOR COUNTY, CALIFORNIA.

PARCEL TWO:

A NON–EXCLUSIVE RIGHT OF WAY FOR INGRESS TO AND EGRESS FROM THE PARCEL HEREIN DESCRIBED OVER AN EXISTING ROADWAY LEADING FROM CALIFORNIA STATE HIGHWAY SIGN ROUTE 49 TO LANDS HEREIN DESCRIBED.

PARCEL THREE:

AN EASEMENT FOR DRIVEWAY, PARKING AND LANDSCAPING PURPOSED OVER AND ACROSS THE WESTERLY 185 FEET, MORE OR LESS, OF LOT 2 AS SHOWN ON SAID SUBDIVISION MAP, THE SAME BEING THAT PORTION OF SAID LOT 2 WHICH LIES DUE SOUTH OF THE SOUTHEASTERLY BOUNDARY OF SAID LOT 1.

PARCEL FOUR:

PARCEL 9 OF PARCEL MAP NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORD ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

PARCEL FIVE:

A NON–EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THOSE AREAS SHOWN AND DESIGNATED AS VILLAGE DRIVE AND LOT A ON PARCEL MAP NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORD ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

APN: 010–200–011

PARCEL ONE:

PARCEL 7 OF PARCEL MAP NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORD ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

PARCEL TWO:

A NON–EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS OVER THOSE AREAS SHOWN AND DESIGNATED AS VILLAGE DRIVE AND LOT A ON PARCEL MAPS NO. 2290, ACCORDING TO THE OFFICIAL MAP THEREOF FILED FOR RECORD ON JANUARY 11, 1989 IN BOOK 43 OF MAPS AND PLATS, AT PAGE 29, AMADOR COUNTY RECORDS.

Dated: May 24, 2012.

Donald E. Laverdure,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–13084 Filed 5–25–12; 4:15 pm]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT–06000–01–L10200000–PG0000]

Notice of Public Meeting; Central Montana Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Central Montana Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be June 20 and 21, 2012.

The June 20 meeting will begin at 10 a.m. with a 30-minute public comment period and will adjourn at 5:30 p.m.

The June 21 meeting will begin at 8 a.m.; with a 30-minute public comment period beginning at 10 a.m.; and will adjourn at 3:00 p.m.

ADDRESSES: The meetings will in the Great Northern Hotel at 2 S. 1st Street East, in Malta, Montana.

FOR FURTHER INFORMATION CONTACT: Gary L. ''Stan'' Benes, Central Montana District Manager, Lewistown Field Office, 920 NE Main, Lewistown, Montana 59457, (406) 538–1900, *gary_benes@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–677–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This 15-member council advises the Secretary of the Interior on a variety of management issues associated with public land management in Montana. During these meetings the council will participate in/discuss/act upon these topics/activities: A roundtable discussion among council members and the BLM; the Judith Moccasin travel plan; the Charles M. Russell National Wildlife Refuge conservation plan; the Gilmore cabin rental; one-time commercial river permits; a Greater Sage-Grouse update; activities surrounding the Homesteading Acts; Judith River and Arrow Creek reserved water rights; district managers' updates; fire program updates; and a presentation led by the RAC's Category III.

All RAC meetings are open to the public. The public may present written comments to the RAC. Each formal RAC 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.

Gary L. ''Stan'' Benes,

Lewistown District Manager.

[FR Doc. 2012–13042 Filed 5–29–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–923–1310–FI; WYW177172]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW177172, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of the Mineral Leasing Act of 1920, as amended, the Bureau of Land Management (BLM) received a petition for reinstatement from Ridgeland Wyoming Inc. for competitive oil and gas lease WYW177172 for land in Converse County, Wyoming. The petition was filed on time and was accompanied by all the rentals due since the date the lease terminated under the law.

FOR FURTHER INFORMATION CONTACT: BLM, Julie L. Weaver, Chief, Fluid Minerals Adjudication, at 307–775–6176. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10 per acre or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $159 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the BLM is proposing to reinstate lease WYW177172 effective September 1, 2011, under the original terms and conditions of the lease and the increased rental and royalty rates cited above. The BLM has not issued a valid lease to any other interest affecting the lands.

Carmen E. Lovett,

Land Law Examiner.

[FR Doc. 2012–12975 Filed 5–29–12; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–ACAD–0507–10276; 1700–SZM]

Notice of June 4, 2012, Meeting for Acadia National Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Meeting Notice.

SUMMARY: This notice sets the date of the June 4, 2012, meeting of the Acadia National Park Advisory Commission.

DATES: The public meeting of the Advisory Commission will be held on Monday, June 4, 2012, at 1:00 p.m. (Eastern).

Location: The meeting will be held at Headquarters, Acadia National Park, Bar Harbor, Maine 04609.

Agenda

The June 4, 2012, Commission meeting will consist of the following:

1. Committee reports:

—Land Conservation
—Park Use
—Science and Education
—Historic

2. Old Business.
3. Superintendent's Report.
4. Chairman's Report.
5. Public Comments.

FOR FURTHER INFORMATION CONTACT: Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone (207) 288–3338.

SUPPLEMENTARY INFORMATION: An unusual combination of circumstances in the preparation, approval, and transmission of this notice has resulted in the publication of this notice less than 15 days before the date of the meeting. The National Park Service has made extraordinary efforts to provide notification to all Commission members and to the public. The meeting is open to the public. Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we

cannot guarantee that we will be able to do so.

Dated: May 22, 2012.

Bernard C. Fagan,

Chief, Office of Policy.

[FR Doc. 2012–13107 Filed 5–29–12; 8:45 am]

BILLING CODE 4310–2N–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2898]

Certain Electronic Imaging Devices; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Electronic Imaging Devices,* DN 2898; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of FlashPoint Technology, Inc. on May 23, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain electronic imaging devices. The complaint names as respondents HTC Corporation of Taiwan; HTC America, Inc. of WA; Pantech Co., Ltd. of Korea; Pantech Wireless, Inc. of GA; and Huawei Technologies Co., Ltd. of China.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2898'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

Issued: May 24, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–13075 Filed 5–29–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Docket No. 2897]

Certain Rubber Resins and Processes for Manufacturing Same; Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Rubber Resins and Processes for Manufacturing Same,* DN 2897; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing under section 210.8(b) of the Commission's Rules of

Practice and Procedure (19 CFR 210.8(b)).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to section 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of SI Group, Inc., on May 21, 2012. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain rubber resins and processes for manufacturing same. The complaint names as respondents Sino Legend (Zhangjiagang) Chemical Co., Ltd. of China; Sino Legend Holding Group, Inc. of British Virgin Islands; Sino Legend Holding Group Limited of Hong Kong; HongKong Sino Legend Group Ltd. of Hong Kong; Red Avenue Chemical Co., Ltd. of British Virgin Islands; Ning Zhang of Canada; Quanhai Yang of China; and Shanghai Lunsai International Trading Company of China.

Proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five (5) pages in length, inclusive of attachments, on any public interest issues raised by the complaint or section 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) Identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) Indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 2897'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.
Issued: May 22, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–13077 Filed 5–29–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–836]

Certain Consumer Electronics and Display Devices and Products Containing Same Determination Not To Review Initial Determination To Amend Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 3) to amend the complaint and notice of investigation to add allegations of infringement of U.S. Patent No. 8,144,158; to correct the name of respondent Sony Ericsson Mobile Communications AB to Sony Mobile Communications AB; to correct the name of respondent Sony Ericsson Mobile Communications, Inc. to Sony Mobile Communications (USA), Inc.; and to correct the name of licensee Motorola Mobility Holdings, Inc. to Motorola Mobility, Inc.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's

electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 10, 2012, based on a complaint filed by Graphics Properties Holdings, Inc. of New Rochelle, New York (''GPH''). 77 FR 21584 (April 10, 2012). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain consumer electronics and display devices and products containing the same by reason of infringement of U.S. Patent Nos. 6,650,327; 6,816,145; and 5,717,881. The original notice of investigation named numerous respondents, including Sony Ericsson Mobile Communications AB and Sony Ericsson Mobile Communications, Inc.

On April 17, 2012, GPH filed an unopposed motion to amend the complaint and notice of investigation to add allegations of infringement of U.S. Patent No. 8,144,158 (''the '158 patent''); to correct the name of respondent Sony Ericsson Mobile Communications AB to Sony Mobile Communications AB; to correct the name of respondent Sony Ericsson Mobile Communications, Inc. to Sony Mobile Communications (USA), Inc.; and to correct the name of GPH's licensee Motorola Mobility Holdings, Inc. to Motorola Mobility, Inc.

On April 24, 2012, the ALJ issued the subject ID (Order No. 3) granting the motion to amend the complaint and notice of investigation. No petitions for review of the ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h)(3) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)(3)).

Issued: May 23, 2012.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–13080 Filed 5–29–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–350 and 731–TA–616 and 618 (Third Review)]

Corrosion-Resistant Carbon Steel Flat Products From Germany and Korea; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on corrosion-resistant carbon steel flat products from Korea and the antidumping duty orders on corrosion-resistant carbon steel flat products from Germany and Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* May 21, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 9, 2012, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (77 FR 24221, April 23, 2012). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on October 12, 2012, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on November 1, 2012, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 25, 2012. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference

to be held at 9:30 a.m. on October 29, 2012, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is October 23, 2012. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is November 13, 2012; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before November 13, 2012. On December 19, 2012, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 21, 2012, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E–Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 23, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–13078 Filed 5–29–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Blasting Operations and Use of Explosives Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Blasting Operations and Use of Explosives Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before June 29, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Blasting and Use of Explosives Standard at 29 CFR part 1926, subpart U specifies a number of paperwork requirements designed to protect covered employees working with and around blasting operations. Inventories of explosives must be maintained to ensure employer and blaster accountability for explosives.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a Federal collection of information that does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0217. The current OMB approval is scheduled to expire on June 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on February 17, 2012 (77 FR 9703).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0172. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Blasting Operations and Use of Explosives Standard.

OMB Control Number: 1218–0217.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 160.

Total Estimated Number of Responses: 166.

Total Estimated Annual Burden Hours: 1,294.

Total Estimated Annual Other Costs Burden: $0.

Dated: May 22, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–13052 Filed 5–29–12; 8:45 a.m]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for 1205–0179: Unemployment Compensation for Federal Employees Handbook No. 391, Extension Without Change

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data about Unemployment Compensation for Federal Employees which expires August 31, 2012.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 30, 2012.

ADDRESSES: Submit written comments to Scott Gibbons, Office of Unemployment Insurance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3008 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *gibbons.scott@dol.gov*. A copy of the proposed information collection request (ICR) can be obtained by contacting Mr. Gibbons.

SUPPLEMENTARY INFORMATION:

I. Background

Chapter 5 U.S.C. 8506 states that ''Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements, or to the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter.'' The information shall include the findings of the employing agency concerning:

(1) Whether or not the Federal employee has performed Federal service;

(2) The periods of Federal Service;

(3) The amount of Federal wages; and

(4) The reasons for termination of Federal service.

The law (5 U.S.C. 8501, et seq.) requires State Workforce Agencies (SWA's) to administer the Unemployment Compensation for Federal Employees (UCFE) program in accordance with the same terms and provisions of the paying State's unemployment insurance law which apply to unemployed claimants who worked in the private sector. SWA's must be able to obtain certain information (wage, separation data) about each claimant filing claims for UCFE benefits to enable them to determine his/her eligibility for benefits. The Department of Labor has prescribed forms to enable SWAs to obtain this necessary information from the individual's Federal employing agency. Each of these forms is essential to the UCFE claims process and the frequency of use varies depending upon the circumstances involved. The UCFE forms are: ETA–931, ETA–931A, ETA–933, ETA–934, and ETA–935.

II. Review Focus

The Department is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without change.

Title: Unemployment Compensation for Federal Employees Handbook No. 391.

OMB Number: 1205–0179.

Affected Public: State Workforce Agency.

Form(s): ETA 931 and 931A, ETA 933, ETA 934, and ETA 935.

Total Annual Respondents: 53.

Total Annual Burden Cost for Respondents: 0.

Form	Annual frequency	Total responses	Average time per response (in minutes)	Burden (in hours)
ETA–931	1	77,000	5	6,416
ETA–931A	1	24,000	5	2,000
ETA–935	1	38,500	9	5,775
ETA–933	1	3,850	5	320
ETA–934	1	7,700	4	513
Totals	5	151,050	.....	15,024

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: Signed in Washington, DC, on this 22nd day of May, 2012.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2012–13036 Filed 5–29–12; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice, Training and Employment Guidance Letter (TEGL).

SUMMARY: ETA is publishing for public information, notice of issuance and availability of TEGL No. 10–11, signed by Jane Oates, Assistant Secretary for Employment and Training on November 18, 2011, which assists State Workforce Agencies or agencies designated by governors as ''Cooperating State Agencies'' (CSAs) (also jointly referred to as ''states'') in implementing the provisions of the TAAEA enacted on October 21, 2011. The TAAEA amends the Trade Adjustment Assistance (TAA) program, restoring (with some exceptions) the expanded certification criteria and benefits and services provided under the Trade and Globalization Adjustment Act of 2009.

FOR FURTHER INFORMATION CONTACT: Frankie Russell, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–4716, Washington, DC 20210. Telephone: (202) 693–3517 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

The complete text of this guidance document is provided in this notice. In addition, it is available on the ETA Advisory Web site at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9853.

ADVISORY: Training and Employment Guidance Letter No. 10–11

To: ALL STATE WORKFORCE AGENCIES
ALL STATE WORKFORCE LIAISONS
ALL ONE–STOP CENTER SYSTEMS LEADS
STATE WORKFORCE ADMINISTRATORS
STATE AND LOCAL WORKFORCE BOARD CHAIRS AND DIRECTORS
STATE LABOR COMMISSIONERS

FROM: JANE OATES
ASSISTANT SECRETARY

SUBJECT: *Operating Instructions for Implementing the Amendments to the Trade Act of 1974—Enacted by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA).*

1. PURPOSE. To assist State Workforce Agencies or agencies designated by Governors as ''Cooperating State Agencies'' (CSAs) (also jointly referred to as ''states'') implement the provisions of the TAAEA enacted on October 21, 2011. The TAAEA amends the Trade Adjustment Assistance (TAA) program (2011 Amendments), restoring (with some exceptions) the expanded certification criteria and benefits and services provided under the Trade and Globalization Adjustment Act of 2009 (2009 Amendments).

2. REFERENCES. Chapter 2 of Title II of the Trade Act of 1974, as amended (Pub. L. 93–618) (1974 Act and, as amended, Trade Act); Trade Adjustment Assistance Reform Act of 2002, Division A, Title I, Subtitle A of the Trade Act of 2002 (Pub. L. 107–210), as amended by the Miscellaneous Trade and Technical Corrections Act of 2004, (Pub. L. 108–429); Trade and Globalization Adjustment Assistance Act of 2009, Division B, Title I, Subtitle 1 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5); Omnibus Trade Act of 2010 (Pub. L. 111–344) (Omnibus Trade Act); Trade Adjustment Assistance Extension Act of 2011 (Pub. L. 112–40); 20 CFR part 617; 20 CFR part 618; 29 CFR part 90; TEGL No. 11–02, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and its Changes 1; 2, and 3; TEGL No. 2–03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002, and its Changes;* TEGL No. 22–08, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, and its Change 1;* TEGL No. 16–10, *Instructions for Phasing Out Changes to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, and its Change 1; TEGL No. 15–10, Increasing Credential, Degree, and Certificate Attainment by Participants of the Public Workforce System;* and TEGL No. 08–11, *Availability of Equitable Tolling of Deadlines for Workers Covered Under Trade Adjustment Assistance (TAA) Certifications.*

3. DEFINITIONS.

1. 2002 Amendments means the Trade Act of 1974, Pub. L. No. 93–618, as amended by the Trade Adjustment Assistance Reform Act of 2002, Pub. L. No. 107–210 and the Miscellaneous Trade and Technical Corrections Act of 2004, Pub. L. No. 108–429.

2. 2002 Program means the TAA program under the 2002 Amendments.

3. 2009 Amendments means the Trade Act of 1974, as amended by the Trade and Globalization Adjustment Assistance Act of 2009 (TGAAA).

4. 2009 Program means the TAA program under the 2009 Amendments.

5. 2011 Amendments means the Trade Act, as amended by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA).

6. 2011 Program means the TAA program under the 2011 Amendments.

7. ATAA means the Demonstration Project for Alternative Trade Adjustment Assistance for Older Workers, under Section 246 of the 2002 Act, as in effect on May 17, 2009, the day before the effective date of the 2009 Act, and during the period from February 13, 2011 through October 20, 2011.

8. RTAA means Reemployment Trade Adjustment Assistance, under Section 246 of either the 2009 Act or the 2011 Act, depending on the context of the discussion.

4. BACKGROUND. The TAA for Workers Program (TAA program) was first established at the U.S. Department of Labor (Department) under chapter 2 of title II of the Trade Act of 1974 (1974 Act). The TAA program has a two-step process for workers to obtain program benefits. First, a group of workers, or other specified entities, must file a petition for certification of eligibility to apply for TAA benefits and services with Office of Trade Adjustment Assistance (OTAA) in the Department's Employment and Training Administration (ETA) and the state in which the workers' firm is located. A petition will be certified by a Certifying Officer in OTAA after finding that the statutory criteria that test whether the group of workers was adversely affected by international trade have been met. Second, workers who are part of a group covered under a certified petition may apply individually to a state for TAA benefits and services.

States administer the TAA program as agents of the Secretary of Labor (Secretary) through a state agency or agencies designated as the CSA in an agreement between the Governor and the Secretary (the Governor-Secretary Agreement). The CSA is responsible for both the determination of worker eligibility to receive TAA, and the provision of benefits and services to TAA-eligible workers.

The 2002 Amendments

The 1974 Act has been amended numerous times. The Trade Adjustment Assistance Reform Act of 2002 reauthorized and expanded the scope of the TAA program and increased benefit amounts, repealed the North American Free Trade Agreement Transitional Adjustment Assistance (NAFTA–TAA) program, added to the TAA program in 1993 to provide benefits to workers who lost their jobs because of trade with Mexico and Canada after NAFTA, created the Health Coverage Tax Credit (HCTC), and initiated a pilot program for Alternative Trade Adjustment Assistance for older workers (ATAA program).

The NAFTA–TAA program was no longer necessary because the 2002 Amendments extended the same favorable TAA coverage to workers who lost their jobs because of shifts in production to other countries with which the United States had trade agreements or treaties or where there was also a likelihood of increased imports, as NAFTA–TAA had provided to workers who lost their jobs because of shifts in production to Mexico and Canada. Adversely affected secondary workers, whose layoffs could be attributed to trade impacts demonstrated by TAA certifications of workers for companies for whom their firms were suppliers or downstream producers, also were covered under these amendments. The 2002 Program applied to workers covered under petitions filed on or after November 4, 2002.

The operation of the TAA program for workers covered by petitions filed on or after November 4, 2002 and before May 18, 2009 is governed by TEGL No. 11–02, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and Changes 1, 2, and 3; and TEGL No. 2–03, Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATM) for Older Workers Program—Established by the Trade Adjustment Assistance Reform Act of 2002, and Changes 1 and 2.* The provisions of the longstanding TAA regulations codified at 20 CFR part 617 that were not affected by program changes in 2002 also have continued to apply to the TAA program and workers covered under the 2002 Amendments.

The 2009 Amendments

The TGAAA reauthorized the TAA program through December 31, 2010, and again expanded its scope to cover additional categories of Trade-Affected Workers, increased benefit amounts, and added employment and case management services to the categories of TAA benefits. The Older Workers Program no longer was a pilot program and was renamed the RTAA program. Workers no longer had to choose between receiving ATAA or the training benefit. Part-time training could be approved for all Trade-Affected Workers, and Trade-Affected Workers could enroll in TAA-approved training before separation from employment. The 2009 Amendments, applied to workers covered under petitions filed on or after May 18, 2009, through December 31, 2010.

The Omnibus Trade Act amended the TGAAA to provide a six-week extension of the December 31, 2010 termination date of the program in effect under the 2009 Amendments (the 2009 Program), and the resumption of the program in effect before the 2009 Amendments (the 2002 Program). As described in TEGL No. 16–10, Change 1, the application of the 2009 Amendments ended (or ''sunset'') on February 12, 2011. The expanded TAA group eligibility and certification requirements available under the 2009 Amendments continued to apply to petitions received on or before 11:59 p.m. EST on Monday, February 14, 2011, which was the next business day after February 12, 2011, a Saturday.

TEGL No. 22–08, *Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade and Globalization Adjustment Assistance Act of 2009, and its Change 1, continue to govern the delivery of benefits to workers covered under the 2009 Program. TEGL No. 11–02, Operating Instructions for Implementing the Amendments to the Trade Act of 1974 Enacted by the Trade Act of 2002, and its Changes 1, 2, and 3;* and TEGL No. 2–03, *Interim Operating Instructions for Implementing the Alternative Trade Adjustment Assistance (ATAA) for Older Workers Program Established by the Trade Adjustment Assistance Reform Act of 2002, and its Change 1,* continue to govern the delivery of benefits to workers covered by petitions filed on or after November 4, 2002 and before May 18, 2009, and where identified in Section A.2.4 below, the delivery of benefits to workers covered under petitions numbered TA–W–80,000–80,999.

The Secretary's regulations codified at 20 CFR part 617 continue to apply to the delivery of benefits under the 2002 Program and the 2009 Program to the extent that the applicable law did not supersede those regulatory requirements, as explained in the TEGLs and other guidance documents that apply to the respective programs. To the same extent, 29 CFR part 90 continues to apply to the certification process for all TAA petitions. The regulatory requirement of merit based staffing of the TAA program, codified at 20 CFR 618.890, continues to apply to state administration.

5. OPERATING INSTRUCTIONS. The operating instructions contained in this TEGL are issued to states as guidance provided by the Department, through ETA, in its role as the principal of the TAA program. The states, as agents of the Secretary, may not vary from the

operating instructions in this document without prior approval from ETA. The operating instructions in this document constitute the controlling guidance for the states in implementing and administering the 2011 Amendments. These operating instructions only address changes to the TAA program made by the 2011 Amendments.

A. APPLICATION OF THE 2011 AMENDMENTS

The sections below describe how the 2011 Amendments apply to three distinct cohorts of workers: workers covered by petitions filed before February 13, 2011, with petition numbers below TA–W–80,000; workers covered by petitions filed after February 13, 2011 and before October 21, 2011, with petition numbers ranging from TA–W–80,000–80,999; and workers covered by petitions filed on or after October 21, 2011, with petition numbers beginning with TA–W–81,000.

Note that nothing in the 2011 Amendments or these operating instructions affect the benefits and services available to workers covered under petitions certified under the 2009 Act, or workers covered under petitions filed before May 18, 2009 and certified under the 2002 Act.

A.1. Petitions filed before February 13, 2011

Statute: Section 23 l (a)(2) of the TAAEA reads:

(2) PETITIONS FILED BEFORE FEBRUARY 13, 2011.— A worker certified as eligible to apply for trade adjustment assistance pursuant to a petition filed under section 221 of the Trade Act of 1974—

(A) on or after May 18, 2009, and on or before February 12, 2011, shall continue to be eligible to apply for and receive benefits under the provisions of chapter 2 of title II of such Act, as in effect on February 12, 2011; or

(B) before May 18, 2009, shall continue to be eligible to apply for and receive benefits under the provisions of chapter 2 of title II of such Act, as in effect on May 17, 2009.

Administration: The TAAEA does not change the benefits and services available to workers covered by certifications of petitions filed before February 13, 2011, which ETA interpreted in TEGL No. 16–10 Change 1, to mean petitions received on or before 11:59 p.m. EST (Monday) February 14, 2011, the next business day after February 12, 2011, a Saturday. These workers are and will continue to be served as described below:

i. Workers covered by certifications of petitions filed on or before May 17, 2009, identified by a petition number lower than TA–W–70,000. These workers are subject to the provisions of the 2002 Amendments, as implemented in TEGL No. 11–02 and Changes 1, 2, and 3; TEGL No. 2–03, and Change 1; as well as the applicable provisions of the regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90.

ii. Workers covered by petitions filed on or after May 18, 2009, and on or before February 14, 2011, identified by petition numbers between TA–W–70,000 and TA–W–79,999. These workers are subject to the provisions of the 2009 Amendments as implemented in TEGL No. 22–08 and Change 1; TEGL 16–10 and its Change 1; as well as the applicable provisions of the regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90.

A.2 Petitions filed between February 13, 2011 and October 21, 2011

Several provisions of the TAAEA address workers covered by certifications of petitions filed after February 13, 2011 (actually, February 14, 2011, as explained in Section A.1, above,) and before the Enactment Date, October 21, 20l1. These workers are covered by petitions with numbers ranging from TA–W–80,000–80,999.

A.2.1 Certification Requirements for Petitions under Investigation on October 21, 2011

Statute: Section 231(a)(l)(A) of the TAAEA of 2011 reads:

(A) CERTIFICATIONS OF WORKERS NOT CERTIFIED BEFORE DATE OF ENACTMENT—

(i) CRITERIA IF A DETERMINATION HAS NOT BEEN MADE—if, as of the date of the enactment of this Act, the Secretary of Labor has not made a determination with respect to whether to certify a group of workers as eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974 pursuant to a petition described in clause (ii), the Secretary shall make that determination based on the requirements of section 222 of the Trade Act of 1974, as in effect on such date of enactment.

Administration: The 2011 Amendments provide that, for any petition filed after February 13, 2011 (February 14, 2011) and on or before October 21, 2011 (petitions with numbers ranging from TA–W–80,000–80,999), for which an investigation is still pending, a determination will be issued based on the group eligibility provisions of the 2011 Act. OTAA's investigation of these petitions under the provisions of the 2011 Act does not require any action on the part of the petitioners or the state.

A.2.2 Reconsideration of Determinations Issued Before October 21, 2011, Denying Certification of Petitions

Statute: Section 231 (a)(l)(ii) of the TAAEA reads:

(ii) RECONSIDERATION OF DENIALS OF CERTIFICATIONS -before the date of the enactment of this Act, the Secretary made a determination not to certify a group of workers as eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974 pursuant to a petition described in clause (iii), the Secretary shall—

(I) reconsider that determination; and

(II) if the group of workers meets the requirements of section 222 of the Trade Act of 1974, as in effect on such date of enactment, certify the group of workers as eligible to apply for adjustment assistance.

Administration: The 2011 Amendments require OTAA to reopen investigations of any petitions filed after February 13, 2011 (February 14, 2011) and on or before October 21, 2011, identified by a petition number between TA–W–80,000 and 80,999, that resulted in a denial of a certification by OTAA before October 21, 2011. This includes petitions that were denied after reconsideration before October 21, 2011 or were under a reconsideration investigation on or before October 21, 2011. This action is necessary to determine worker group eligibility under the new provisions of the 2011 Act. A list of the petitions for which OTAA has reopened investigations has been posted on the Web site at *www.dolela.gov/tradeact/pdf/80000Denials.pdf.*

Neither states nor petitioners need take any action to reopen these investigations. OTAA will investigate and decide these petitions based on the group eligibility criteria of the 2011 Amendments. Workers covered under certifications of these petitions will be eligible for benefits and services under either the 2002 Program or the 2011 Program if they are receiving benefits under the 2002 Program before December 19, 2011, as explained below in sections A.2.3.1–A.2.4.1. There are no changes to the appeal procedures applicable to determinations denying certification of these petitions.

A.2.2.1 Workers Denied Group Eligibility to Apply for ATAA

No separate group eligibility certification is required for a worker to apply for RTAA under the 2011 Amendments. Therefore, OTAA does

not need to reopen investigations of petitions in the range of TA–W–80,000–80,999 where the worker group was certified for TAA, but denied group eligibility to apply for ATAA. In these cases, workers covered under certifications of petitions numbered TA–W–80,000–80,999, who are eligible for benefits under the 2011 Program (as described in paragraphs A.2.3), will automatically be eligible to apply for RTAA beginning, as explained in Section A.2.3, below, on December 20, 2011.

A.2.3 Program Benefits for Workers Covered Under Certifications of Petitions Numbered TA–W–80,000-80,999

Statute: Section 231(a)(1)(B) of the TAAEA of 2011 reads:

(B) ELIGIBILITY FOR BENEFITS.—

(i) IN GENERAL.—Except as provided in clause (ii), a worker certified as eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974 pursuant to a petition described in subparagraph (A)(iii) shall be eligible, on and after the date that is 60 days after the date of the enactment of this Act, to receive benefits only under the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on such date of enactment.

Section 231 (a)(1)(A)(iii), referred to above as ''subparagraph (A)(iii),'' reads:

(iii) Petition Described—A petition described in this clause is a petition for a certification of eligibility for a group of workers filed under section 221 of the Trade Act of 1974 on or after February 13, 2011, and before the date of the enactment of this Act.

Administration: In general, the benefits and services available under the 2011 Amendments will be available beginning on December 20, 2011, the date that is 60 days after October 21, 2011, to workers covered under certifications of petitions numbered TA–W–80,000–80,999.

A.2.3.1 2002 Program Benefits Available Between October 21, 2011 and December 20, 2011

Until December 20, 2011, workers covered under certifications of petitions numbered TA–W–80,000–80,999 will be eligible to apply for only the benefits and services available under the 2002 Program. The state must notify these workers that if they begin receiving benefits services available under the 2002 Program before that date, they will be given a choice to switch to the 2011 Program after December 20, 2011, as discussed in section A.2.4.

A.2.3.2 2011 Program Benefits Available on or After December 20, 2011

Workers covered under certifications of petitions numbered TA–W–80,000–80,999 who first apply for benefits and services on or after December 20, 2011, (the end of the 60-day period following enactment of the 2011 Amendments), are only eligible to apply for the benefits and services available under the 2011 Program. States must provide these workers timely notice that they are eligible to apply for the 2011 Program benefits and services.

A.2.3.3 Notice of 2011 Program Benefits Available on or After December 20, 2011, to Adversely Affected Incumbent Workers

Training is a benefit available to ''adversely affected incumbent workers'' under both the 2009 Program and the 2011 Program. TEGL No. 22–08, section D.2. defines ''adversely affected incumbent worker'' and explains the benefits available to these workers. Certifications of petitions numbered TA–W–80,000–80,999 issued before October 21, 2011, do not include adversely affected incumbent workers because those certifications were made under the 2002 Amendments that were in effect at the time of certification. Under the 2011 Amendments, adversely affected incumbent workers become eligible for training as provided under the 2009 Amendments, beginning 60 days after enactment as discussed in paragraphs 2.3.and 2.4. The training benefit for adversely affected incumbent workers is explained in TEGL No. 22–08, sections D.2.2–D.2.4. Adversely affected incumbent workers also are eligible for part time training, as discussed in TEGL No. 22–08, section D.2.5.

OTAA will not amend these certifications issued before October 21, 2011, to expressly include adversely affected incumbent workers. However, states must contact the employers of workers covered by certifications of petitions in the 80,000–80,999 series, obtain an expanded list of workers in the worker group who are threatened with separation but have not been separated from employment, determine which workers are adversely affected incumbent workers, and provide information to them about the availability of the training benefit under the 2011Amendments beginning on December 20, 2011.

A.2.3.4 Notice of 2011 Program Benefits Available After December 20, 2011 to Older Workers

RTAA is a benefit available to older workers under the 2011 Program. States must automatically review determinations denying a worker covered under a certification of a petition numbered TA–W–80,000–80,999 individual eligibility for ATAA. If the denial was based on an eligibility criterion that does not apply to eligibility for RTAA (e.g., did not obtain full time employment by the 26th week after separation), then the state must notify the worker that the option to apply for benefits under the RTAA program may be available, as discussed in paragraph A.2.4 of this TEGL if the worker is receiving TAA benefits and services. States may provide information to the worker in a separate notice.

A.2.4 Workers Receiving Benefits under the 2002 Program Continue to Receive Benefits under the 2002 Program Unless They Elect to Change

A.2.4.1 Workers Eligible to Choose the 2002 Program or the 2011 Program

Statute: Section 231(a)(1)(B)(ii) of the TAAEA of 2011 reads:

(ii) ELECTION FOR WORKERS RECEIVING BENEFITS ON THE 60TH DAY AFTER ENACTMENT.—

(1) IN GENERAL.—A worker certified as eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974 pursuant to a petition described in subparagraph (A)(iii) who is receiving benefits under chapter 2 of title II of the Trade Act of 1974 as of the date that is 60 days after the date of the enactment of this Act may, not later than the date that is 150 days after such date of enactment, make a one-time election, to receive benefits pursuant to—

(aa) the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on such date of enactment; or

(bb) the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on February 13, 2011.

Administration: Beginning on December 20, 2011, workers who are covered under the certification of a petition numbered TA–W–80,000–80,999 and have not received benefits or services under the 2002 program as of this date will automatically become eligible for the 2011 Program, as described in paragraph 2.3. These workers will not be eligible for the 2002 Program.

For the 90-day period beginning on December 20, 2011, workers who are covered under the certification of a

petition filed after February 13, 2011 (February 14, 2011) and on or before October 21, 2011, and are ''receiving TAA benefits'' (as defined below) on December 20, 2011, are eligible to choose to continue in the 2002 Program, or move to the 2011 Program, as described further below. These workers have a one-time opportunity, beginning on day 60 (December 20, 2011) and continuing through day 150 (March 19, 2011) after the Enactment Date (October 21, 2011), to choose coverage under either the 2002 Program or the 2011 Program.

Therefore, workers eligible to choose must make this choice on or after December 20, 2011, and no later than March 19, 2012. Unless they make the choice discussed in this paragraph within the statutory time period, workers who are covered by petitions numbered TA–W–80,000–80,999 who have received benefits under the 2002 Program will continue to receive benefits under the 2002 Program.

The requirement that such workers must be offered a choice between the 2002 Program and the 2011 Program means that states must offer workers who have received a first TAA-funded benefit or service before the 60th day after the Enactment Date the choice of continuing with their existing 2002 Program benefits and services, or changing to the 2011 Program level of benefits and services. States must determine whether a worker ''is receiving benefits under chapter 2 of title II of the Trade Act of 1974 as of the 60th day after enactment,'' which is December 20, 2011.

A worker is ''receiving TAA benefits'' under one or more of the following circumstances:

1. *Training Waiver:* A training waiver is in effect for the worker on December 20, 2011; or

2. *Training:* The worker has an approved training plan and is enrolled in training, participating in training, or has completed training by December 20, 2011; or

3. *Job Search and Relocation Allowances:* The worker has been approved for a job search or relocation allowance, even if the payment has not yet occurred on or before December 20, 2011; or

4. *Trade Readjustment Allowances (TRA) and ATAA:* The worker has received a payment of either TRA or ATAA for a week before, or for the week that includes, December 20, 2011.

Workers who fall into this category will be allowed to exercise a one-time election to either continue to receive benefits and services under the 2002 Program; or choose to apply for benefits and services available under the 2011 Program. States are required to notify eligible TAA enrollees of this one time election option and document their choice of program in a document, which must be retained in the worker's case file. States must provide workers with information on the benefits and services available under the 2002 Program and the 2011 Program and make available counseling services to discuss the pros and cons of each option as it applies to the worker's individual situation.

States must develop an internal process to track under which program the worker is being served. This may include adding a suffix to the certification number in state case management systems to identify a worker who originally began receiving benefits and services under the 2002 Amendments, and later elected to begin receiving benefits and services under the 2011 Amendments.

Note that, HCTC is not a TAA-funded benefit and, under the 2002 Program, neither were employment and case management services. Therefore, workers who have received only HCTC or initial employment and case management services through the One-Stop system, and who have not received one or more of the benefits and services listed above, will not be eligible to choose to receive benefits and services under the 2002 Program. These workers will automatically receive benefits under the 2011 Program.

A.2.4.2 Workers Who Elect to Receive Benefits Under the 2011 Program Computation of Maximum Benefits

Statute: Section 231(a)(1)(B)(ii)(III) of the TAAEA reads:

(III) COMPUTATION OF MAXIMUM BENEFITS—Benefits received by a worker described in subclause (I) under chapter 2 of title II of the Trade Act of 1974, as in effect on February 13, 2011, before the worker makes the election described in that subclause shall be included in any determination of the maximum benefits for which the worker is eligible under the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on the date of the enactment of this Act, or as in effect on February 13, 2011, whichever is applicable after the election of the worker under subclause (I).

Administration: Workers who elect to receive benefits under the 2011 Program on or after December 20, 2011 and before March 20, 2012, will transition from the 2002 Program to the 2011 Program beginning with the first week following the date on which the state documents that the worker made the choice. Any benefits or services received by the worker before the choice apply toward the maximum benefits the worker may receive under the 2011 Amendments. In particular, this includes both weeks of TRA and weeks of training received.

In general, for workers receiving benefits under the 2002 Program who have not enrolled in training and choose to move to the 2011 Program, the applicable training enrollment deadlines will be those described in TEGL No. 22–08. Such workers who were approved for a waiver of the training requirement under the 2002 Act based on Recall, Marketable Skills, or Retirement, who choose to move to the 2011 Program will no longer be eligible for that waiver. States must revoke those waivers, after the choice is made and the worker must be enrolled in training to continue to be eligible for TRA (or the state must issue a waiver under one of the reasons allowable under the 2011 Amendments).

For workers whose waiver was revoked, the applicable deadline for training enrollment is the later of: the last day of the 26th weeks after the worker's most recent total separation or the last day of the 26th week after the date of the certification, or the Monday of the first week occurring 30 days after the date on which the state revoked the waiver, as described in TEGL No. 22–08.

When applicable, states must amend training plans of workers who have enrolled in training and choose to move to the 2011 Program to establish benchmarks necessary for states to determine whether those workers are eligible for Completion TRA, as described below in section C.3.

A.2.4.3 Eligible Workers Who Fail to Make an Election between December 20, 2011 and before March 19, 2012, Continue in the 2002 Program

Statute: Section 231(a)(2)(B)(ii)(II) of the TAAEA reads:

(II) EFFECT OF FAILURE TO MAKE ELECTION—A worker described in subclause (I) who does not make the election described in that subclause on or before the date that is 150 days after the date of the enactment of this Act shall be eligible to receive benefits only under the provisions of chapter 2 of title II of the Trade Act of 1974, as in effect on February 13, 2011.

Administration: The window for exercising this one-time choice option closes on March 19, 2012, the date that is 150 days after enactment, and eligible workers who fail to make this choice will continue to receive benefits and services under the provisions in the 2002 Amendments. As appropriate, a worker who appeals the denial of a

benefit under the 2011 Program based on a state's alleged failure to provide timely or complete notice of the choice option and deadline, may assert that equitable tolling applies to that deadline. TEGL No. 08–11 provides guidance on the application of the equitable tolling principle to TAA deadlines. The application of equitable tolling'—as described in TEGL No. 08–11, applies to this deadline even though it was not named in the TEGL because it was not in effect on the date on which ETA issued the TEGL.

A.3 Petitions filed after October 21, 2011

A.3.1 2011 Program Benefits Available to Workers Covered by Certifications of Petitions filed on or after October 21, 2011

Statute: Section 201(b) of the TAAEA reads:

(b) APPLICABILITY OF CERTAIN PROVISIONS—Except as otherwise provided in this subtitle, the provisions of chapters 2 through 6 of Title 1 of the Trade Act of 1974, as in effect on February 12, 2011 and as amended by this subtitle, shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to petitions for certification filed under chapters 2, 3, or 6 of title II of the Trade Act of 1974 on or after such date of enactment.

Administration: Workers covered by certifications of petitions filed on or after October 21, 2011, are subject only to the provisions of the 2011 Amendments. OTAA has begun a new TA–W numbering series for petitions filed under the 2011 Amendments, beginning with TA–W 81,000. Workers covered by petitions filed on or after October 21, 2011, identified by a petition number greater than TA–W–81,000 are subject to the provisions of the 2011 Amendments, as implemented in these Operating Instructions, as well as regulations codified at 20 CFR parts 617 and 618, and 29 CFR part 90, to the extent that those regulations have not been superseded by the 2011 Amendments.

A.3.2 Extended Impact Date for Certifications of Petitions Filed Within 90 Days of October 21, 2011

Statute: Section 231(a)(3) of the Trade TAAEA reads:

(3) QUALIFYING SEPARATIONS WITH RESPECT TO PETITIONS FILED WITHIN 90 DAYS OF DATE OF ENACTMENT—Section 223(b) of the Trade Act of 1974, as in effect on the date of the enactment of this Act, shall be applied and administered by substituting ''before February 13, 2010'' for ''more than one year before the date of the petition on which such certification was granted'' for purposes of determining whether a worker is eligible to apply for adjustment assistance pursuant to a petition filed under section 221 of the Trade Act of 1974 on or after the date of the enactment of this Act, and on or before the date that is 90 days after such date of enactment.

Administration: In general, certifications cover workers separated from employment up to one year before the date of the petition. This date is known as the ''impact date'' of the certification. The 2011 Amendments provide that all certifications of petitions filed within 90 days of the date of enactment of the 2011 Amendments, which is January 19, 2012, include workers separated on or after February 13, 2010, instead of the one-year impact date that applies to certifications of all other petitions.

For example, since the date of enactment is October 21, 2011, if the date of the petition is January l, 2012, which is fewer than 90 days after October 21, 2011, a certification of that petition will cover workers separated on or after February 13, 2010. When a petition dated more than 90 days after the date of enactment (January 19, 2012) is certified, the one-year impact date will apply, and the certification will no longer cover workers separated more than one year before the petition date.

The determination documents certifying petitions clearly identify the impact date and expiration date for each certification, and will use the impact date of February 13, 2010, where appropriate. This means that workers covered by certifications of petitions filed between October 21, 2011, and January 19, 2012, will have an earlier impact date than certifications of petitions dated between February 14, 2011 and October 20, 2011. This could cause confusion and complaints when workers who were denied eligibility for TAA because they were laid off more than a year before the date of the petition, learn that there are other workers who were laid off more than a year before the date of the petition, who were determined to be eligible. States should be prepared to explain that this difference in treatment was directed by the statute.

B. GROUP ELIGIBILITY

The TAAEA generally restores the group eligibility requirements available under the 2009 Amendments, except that workers in a public agency are not eligible for certification. For more information on group eligibility benefits under the 2009 Amendments, see Section B of TEGL No. 22–08, pages A–4 through A–14. Except as noted, the provisions of Section B below apply to determinations made under the 2011 Amendments. Note that Section B.2. of TEGL No. 22–08 does not apply under the 2011 Amendments.

Statute: Section 211(a)(1) of the TAAEA amends Section 222 of the Trade Act of 1974 (19 U.S.C. § 2272), Group Eligibility Requirements by striking subsection (b), Adversely Affected Workers in Public Agencies. Section 211(b) of the TAAEA amends Section 247 of the Trade Act of 1974 (19 U.S.C. § 2319) to redefine the term ''Firm'' in paragraph (3)(A), by striking ''service sector firm, or public agency'' and inserting ''or service sector firm'' and to strike the definition of ''public agency.''

Administration: Worker group coverage under the 2011 Act is restored to the coverage provided under the 2009 Act, with the exception of coverage for workers in public agencies. Trade-Affected Workers may include workers in firms that produce articles and workers in service sector firms, based on:

1. increased imports of like or directly competitive articles or services; or
2. increased imports of a finished article for which the workers' firm produces component parts or supplies services; or
3. increased imports of articles directly incorporating foreign components that are like or directly competitive with the component parts made by U.S. workers; or
4. shifts in production of articles or supply of services to any foreign country; or
5. workers in firms that supply component parts or services to firms with TAA-certified workers or perform additional, value-added production processes to firms with TAA-certified workers; or
6. workers in firms identified in International Trade Commission ''injury'' determinations.

The 2011 Amendments also eliminate separate group eligibility for Alternative Trade Adjustment Assistance, as RTAA is a benefit available to all eligible workers aged 50 and over covered under the TAA certification. See section H. below. Worker group coverage provisions are effective immediately.

C. CHANGES TO TRADE READJUSTMENT ALLOWANCES (TRA)

The Trade Adjustment Assistance Extension Act of 2011 generally restores

the TRA benefits and eligibility available under the 2009 Amendments, but makes important changes. The maximum number of weeks of income support for workers in the 2002 Program is 130; 156 weeks for workers in the 2009 Program, and 130 weeks for workers in the 2011 Program. However, the eligibility requirements for the weeks of TRA available under the 2002 Program and the 2011 Program are different and those differences are explained below, along with the differences in TRA available under the 2009 Program. Note: Meeting training benchmarks is an eligibility requirement for Completion TRA, as explained below in section C.3.1.

For more information on TRA benefits under the 2009 Amendments, see Section C of TEGL No. 22–08, pages A–14 through A–30, and its Change 1. Except as noted below, the provisions of Section C apply to workers served under the 2011 Amendments. Note: that sections C.3, C.5.1, and C.5.2 change significantly under the Trade Adjustment Assistance Extension Act of 2011.

C.l. Elimination of Remedial TRA

The eligibility period for the receipt of TRA is not extended for weeks of participation in remedial or prerequisite training (as it was under the 2009 Amendments), and the 26 weeks of TRA referred to as Remedial TRA is no longer payable.

Statute: Section 213 of the TAAEA amends Section 233 of the Trade Act of 1974 (19 U.S.C. § 2293), Limitations on Trade Readjustment Allowances, by replacing the language in subsection (f) authorizing Remedial TRA for workers in training including remedial and/or prerequisite coursework with language authorizing Completion on TRA, Section 213(f) appears below under section C.3.

Administration: The TAAEA eliminates Remedial TRA as a ''category'' of TRA, although remedial and prerequisite training should continue to be part of an approved training plan where appropriate. However, the inclusion of remedial and prerequisite training in a worker's training plan will no longer result in the worker's eligibility for up to 26 additional weeks of TRA.

Workers covered under certifications of petitions numbered TA–W–80,000–80,999, who have been approved for Remedial TRA as part of their approved training plan under the 2002 Program, will continue to be eligible for such payments if they do not exercise their choice to change to the 2011 Program, as discussed above in section A.2.4.

C.2 Reductions in Weeks of Additional TRA

The TAAEA changes the maximum number of Additional TRA weeks payable to 65, a reduction from the maximum of 78 weeks payable under the 2009 Amendments. Additionally, the maximum of 65 weeks of payments are payable over a period of 78 weeks, a reduction from the 91-week eligibility period under the 2009 Amendments.

Statute: Section 213 of the TAAEA amends Section 233(a)(3) of the Trade Act to read:

(3) Notwithstanding paragraph (I), in order to assist the adversely affected worker to complete a training program approved for the worker under section 236, and in accordance with regulations prescribed by the Secretary, payments may be made as trade readjustment allowances for up to 65 additional weeks in the 78-week period that—

(A) follows the last week of entitlement to trade readjustment allowances otherwise payable under this chapter; or

(B) begins with the first week of such training, if such training begins after the last week described in subparagraph (A). Payments for such additional weeks may be made only for weeks in such 78-week period during which the individual is participating in such training.

Administration: A maximum of 65 weeks of Additional TRA are payable over a 78-consecutive calendar week eligibility period. This 78-week eligibility period follows the last week of entitlement to Basic TRA or begins with the first week of TAA-approved training, if that training begins after the last week of the exhaustion of Basic TRA. The other eligibility provisions for Additional TRA contained in the 2009 Amendments apply. These provisions are discussed in TEGL No. 22–08, section C.5.2.

C.3 Availability of Completion TRA

The TAAEA establishes a new category of TRA, referred to here as ''Completion TRA,'' to provide up to 13 more weeks of income support for a worker who has exhausted the maximum 65 weeks of Additional TRA and requires a longer period of income support to complete an approved training program. Workers eligible for Completion TRA must have met training benchmarks described in paragraph C.3.1.

Statute: Section 213 of the TAAEA amends the section 233(f) of the Trade Act to read:

(f) PAYMENT OF TRADE READJUSTMENT ALLOWANCES TO COMPLETE TRAINING—Notwithstanding any other provision of this section, in order to assist an adversely affected worker to complete training approved for the worker under section 236 that leads to the completion of a degree or industry-recognized credential, payments may be made as trade readjustment allowances for not more than 13 weeks within such period of eligibility as the Secretary may prescribe to account for a break in training or for justifiable cause that follows the last week for which the worker is otherwise entitled to a trade readjustment allowance under this chapter if—

(1) payment of the trade readjustment allowance for not more than 13 weeks is necessary for the worker to complete the training;

(2) the worker participates in training in each such week; and

(3) the worker—

(A) has substantially met the performance benchmarks established as part of the training approved for the worker;

(B) is expected to continue to make progress toward the completion of the training; and

(C) will complete the training during that period of eligibility.

Administration: Under the 2011 Amendments, in addition to Basic TRA and Additional TRA, up to 13 weeks of Completion TRA may be payable to assist a worker to complete training that leads to a degree or industry-recognized credential. Assuming a worker meets the other TRA eligibility requirements, the worker qualifies for up to 13 weeks of Completion TRA where all of the following five criteria are met:

1. The requested weeks are necessary for the worker to complete a training program that leads to completion of a degree or industry-recognized credential, as described in TEGL No. 15–10; and
2. The worker is participating in training in each such week; and
3. The worker has substantially met the performance benchmarks established in the approved training plan (see section C.3.l); and
4. The worker is expected to continue to make progress toward the completion of the approved training; and
5. The worker will be able to complete the training during the period authorized for receipt of Completion TRA (see section C.3.2).

These requirements are applied at the time the state approves payment for a week of Completion TRA. If, during the period in which a worker is eligible to receive Completion TRA, the worker ceases to meet any of the five conditions

listed above, the state may no longer pay Completion TRA. For example, if a worker has been meeting training benchmarks and was expected to complete training within the established period, but at the point of payment of week 5, there is an indication that training will not be completed within the established period, Completion TRA payments will cease. However, weeks of Completion TRA previously paid based on information that was correct at the time of payment are properly paid, and therefore, states must not treat them as overpayments.

C.3.1 Training Benchmarks to Meet Completion TRA Eligibility Requirements

To implement Completion TRA under the 2011 Amendments, a state must establish training benchmarks for a worker when the worker enrolls in training to be able to monitor the worker's progress toward completing the approved training within the 130-week maximum duration of training, as described below in section D. The worker must substantially meet benchmarks to receive Completion TRA, therefore, benchmarks must be included in all but short-term training plans. These benchmarks must be flexible enough to allow for some variability (e.g., a single course failure or missed week of attendance should not make the worker ineligible), and both practical and measurable enough to allow administration across a broad spectrum of training scenarios and state environments.

These benchmarks are related to, but differ from, the requirement that a worker ''participate in training'' as a condition of eligibility for TRA. ''Participation in training'' merely requires that a worker must attend scheduled classes, required events or otherwise follow the rules of the training program in accordance with the requirements documented by the training institution, while benchmarks measure satisfactory progress of the worker who is participating in training.

In order to determine that the worker has ''substantially met the performance benchmarks established in the approved training plan'' states must evaluate satisfactory progress against only the following two benchmarks at intervals of no more than 60 days, beginning with the start of the training plan, to determine whether the worker is:

1. maintaining satisfactory academic standing (e.g., not on probation or determined to be ''at risk'' by the instructor or training institution), and

2. on schedule to complete training within the timeframe identified in the approved training plan.

For this review, a state may request the training vendor to provide documentation of the worker's satisfactory progress. The case manager may attest to the worker's satisfactory progress after consultation with the vendor and the worker. The state may request that the worker provide documentation of the worker's satisfactory progress towards meeting the training benchmarks from the vendor, such as through instructor attestations.

Regardless of the mechanisms used, the training benchmarks must be described in the worker's Individual Employment Plan.

Upon one substandard review of the established benchmarks, the worker will be given a warning, while two substandard reviews must result in a modification to the training plan, or the worker will no longer be eligible for Completion TRA. In this way, the training benchmarks may be used to provide early intervention that will provide the opportunity to determine whether the training plan in place is appropriate for the individual or would be prudent to revise.

In cases where a state denies payment of Completion TRA because the worker has not made satisfactory progress towards completing benchmarks, a worker may appeal the determination through the same appeal process available when other claims for TRA are denied.

C.3.2 Completion TRA Eligibility Period Established by the Secretary

The amended section 233(f) of the Trade Act gives the Secretary discretion to establish the eligibility period within which the 13 weeks of Completion TRA are payable and training must be completed in order to meet the Completion TRA eligibility requirements. In order to account for breaks in training, the Secretary has determined that the eligibility period for Completion TRA will be the 20-week period beginning with the first week in which a worker files a claim for Completion TRA.

''Justifiable cause,'' as used in section 233(f) of the Trade Act, is interpreted as having the same meaning as used in section 233(h) of the Act. That section provides for the extension of the eligibility periods for basic and additional TRA when the Secretary determines there is ''justifiable cause.'' Accordingly, the definition of ''justifiable cause'' for section 233(h) in TEGL No. 22–08, section C.6.2, applies to section 233(f). ''Justifiable cause'' means circumstances beyond the worker's control. Examples of justifiable cause for extending the Completion TRA eligibility period include situations where the provider changes the requirements of a training program while the program is in progress, where a course or courses are cancelled, and where required courses are not offered in accordance with the originally anticipated schedule, and the state is unable to identify an alternative that will allow for completion of the training program within the 20 week period. However, an extension will not increase the maximum number of payable Completion TRA weeks above 13.

C.3.3 Completion TRA Eligibility for Workers Choosing the 2011 Program

Workers covered under certifications of petitions filed after February 13, 2011 (February 14, 2011), and on or before October 21, 2011, who receive benefits and services under the 2002 program until December 20, 2011, and who choose to change to the 2011 Program, as discussed in paragraph A.2.3 above. The same requirements for Completion TRA that apply to workers covered under certifications of petitions filed after the date of enactment will apply to these workers.

Accordingly, where a worker changes to the 2011 Program, the state must take prompt action to review the training plan already in place for that worker. Unless the approved plan is for very short-term training, such as a 3-month certificate program, the state must amend that plan to establish benchmarks to determine the worker's satisfactory progress towards meeting those benchmarks for the worker to receive the maximum 13 weeks of Completion TRA.

C.4 Maximum Number of Weeks of TRA

The maximum number of weeks of TRA for which a worker may be eligible includes the maximum number of weeks payable for Basic TRA, Additional TRA and Completion TRA, or 130 weeks. Basic TRA is payable for up to 52 weeks following separation, minus any weeks of unemployment insurance (UI) to which the worker was entitled (or would have been entitled if the worker had applied) in the first benefit period, to workers who completed or are enrolled in or participating in TAA -approved training, or are covered under one of the remaining training waivers.

Following Basic TRA eligibility, up to 65 weeks of Additional TRA is payable in the 78-week period that follows the

last week of entitlement to Basic TRA or beginning with the first week of approved training if the training begins after the last week of entitlement to Basic TRA. Additional TRA remains payable to only those trade-affected workers actually participating in TAA-approved training. With the addition of Completion TRA, workers who meet the eligibility requirements discussed in C.3.1 and who are actually participating in TAA-approved training may receive up to another 13 weeks of TRA, bringing the total maximum number of weeks of TRA payable to 130 weeks.

C.5. Reduction in Types of Waivers of the Training Requirement

Basic TRA is only payable if a worker is enrolled in TAA-approved training, is participating in TAA-approved training, has received a waiver of the requirement to participate in TAAapproved training, or has completed TAA-approved training. Under both the 2002 Amendments and the 2009 Amendments, a state may issue a waiver of the training requirement for Basic TRA after determining that training is not feasible or appropriate for the worker for the following six reasons:

(1) Recall.—The worker has been notified that the worker will be recalled by the firm from which the separation occurred.

(2) Marketable Skills.—

(i) In General.—The worker possesses marketable skills for suitable employment (as determined pursuant to an assessment of the worker, which may include the profiling system under section 303(j) of the Social Security Act (42 US.C.503(j)), carried out in accordance with guidelines issued by the Secretary) and there is a reasonable expectation of employment at equivalent wages in the foreseeable future.

(ii) Marketable Skills Defined.—For purposes of clause (i), the term 'marketable skills' may include the possession of a postgraduate degree from an institution of higher education (as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) or an equivalent institution, or the possession of an equivalent postgraduate certification in a specialized field.

(3) Retirement.—The worker is within 2 years of meeting all requirements for entitlement to either—

(i) old-age insurance benefits under title 11 of the Social Security Act (42 U.S.C. 401 et. seq.) (except for application therefore); or

(ii) a private pension sponsored by an employer or labor organization.

(4) Health.—The worker is unable to participate in training due to the health of the worker, except that this basis for a waiver does not exempt a worker from the availability for work, active search for work, or refusal to accept work requirements under Federal or State unemployment compensation laws.

(5) Enrollment Unavailable.—The first available enrollment date for the worker's approved training is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined under guidelines issued by the Secretary.

(6) Training Not Available.—Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2302), and employers), no suitable training for the worker is available at reasonable cost, or no training funds are available.

Under the 2011 Amendments, states may no longer issue waivers on the grounds of: 1) Recall, 2) Marketable Skills, or 3) Retirement. The three remaining grounds for which states can issue waivers are: L) Health, 2) Enrollment Not Available, and 3) Training Not Available.

Statute: Section 212(a) of the TAAEA amends section 231(c) of the Trade Act of 1974 (19 U.S.C. § 2291), Waivers of Training Requirements, to read:

(C) WAIVERS OF TRAINING REQUIREMENTS.—

(1) ISSUANCE OF WAIVERS.—The Secretary may issue a written statement to an adversely affected worker waiving the requirement to be enrolled in training described in subsection (a)(5)(A) if the Secretary determines that it is not feasible or appropriate for the worker, because of one or more of the following reasons:

(A) HEALTH.—The worker is unable to participate in training due to the health of the worker, except that a waiver under this subparagraph shall not be construed to exempt a worker from requirements relating to the availability for work, active search for work, or refusal to accept work under Federal or State unemployment compensation laws.

(B) ENROLLMENT UNAVAILABLE.—The first available enrollment date for the approved training of the worker is within 60 days after the date of the determination made under this paragraph, or, if later, there are extenuating circumstances for the delay in enrollment, as determined pursuant to guidelines issued by the Secretary.

(C) TRAINING NOT AVAILABLE.—Training approved by the Secretary is not reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 3 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2302), and employers), no training that is suitable for the worker is available at a reasonable cost, or no training funds are available.

Administration: Basic TRA is only payable if an individual is enrolled in TAA-approved training, participating in TAA-approved training, has received a waiver of the requirement to participate in training, or has completed TAA-approved training.

A state may not grant a worker a waiver of the training requirement for Basic TRA on the basis of three of the six alternative criteria in effect under the 2002 Amendments and 2009 Amendments and described in TEGL No. 11–02, section D.3 and TEGL No. 22–08, section, section C.3 of Attachment A, respectively: Recall, Marketable Skills, or Retirement. A state may continue to issue waivers available under the remaining criteria established under the 2002 Amendments: Health of the Worker, Enrollment Not Available, and Training Not Available. Therefore, workers who meet the requirements of these waiver provisions, as described in TEGL No. 11–02, section D.3, may still be eligible for Basic TRA without enrolling in training.

C.6. Establishment of a Federal Good Cause Provision for Waiving Certain Time Limits

The TAAEA establishes a new Federal ''good cause'' provision that allows for a waiver for good cause of deadlines relating to time limitations on filing an application for TRA or enrolling in training. This provision supersedes the state good cause provision applicable to these deadlines under the 2009 Amendments, as described in section C.7 of TEGL No. 22–08.

Statute: Section 212(b) of the TAAEA amends section 234(b) of the Trade Act of 1974 (19 U.S.C. § 2294) to read:

(b) Special Rule on Good Cause for Waiver of Time Limits or Late Filing of Claims.—The Secretary shall establish procedures and criteria that allow for a waiver for good cause of the time limitations with respect to an application for a trade readjustment allowance or enrollment in training under this chapter.

Administration: Under the 2011 Amendments, states must waive the time limitations with respect to an application for a trade readjustment allowance or enrollment in training at any time after making a determination that there is good cause for issuing a waiver, in accordance with the federal standard. The federal standard requires states to consider the following factors, if relevant, before waiving these time limitations. These factors are:

1. Whether the worker acted in the manner that a reasonably prudent person would have acted under the same or similar circumstances.
2. Whether the worker received timely notice of the need to act before the deadline passed.
3. Whether there were factors outside the control of the worker that prevented the worker from taking timely action to meet the deadline.
4. Whether the worker's efforts to seek an extension of time by promptly notifying the state were sufficient.
5. Whether the worker was physically unable to take timely action to meet the deadline.
6. Whether the worker's failure to meet the deadline was because of the employer warning, instructing or coercing the worker in any way that prevented the worker's timely filing of an application for TRA or to enroll in training.
7. Whether the worker's failure to meet the deadline was because the worker reasonably relied on misleading, incomplete, or erroneous advice provided by the state.
8. Whether the worker's failure to meet the deadline was because the state failed to perform its affirmative duty to provide advice reasonably necessary for the protection of the worker's entitlement to TRA.
9. Whether there were other compelling reasons or circumstances which would prevent a reasonable person under the circumstances presented from meeting a deadline for filing an application for TRA or enrolling in training including:

- neglect, a mistake, or an administrative error by the state;
- illness or injury of the worker or any member of the worker's immediate family;
- the unavailability of mail service for a worker in a remote area;
- a natural catastrophe such as an earthquake or a fire or flood;
- an employer's failure or undue delay in providing documentation, including instructions, a determination or notice or pertinent and important information;
- compelling personal affairs or problems that could not reasonably be postponed such as an appearance in court or an administrative hearing or proceeding, substantial business matters, attending a funeral, or relocation to another residence or area;
- the state failed to effectively communicate in the worker's native language and the worker has limited understanding of English;
- loss or unavailability of records due to a fire, flood, theft or similar reason.

Adequate documentation of the availability of the records includes a police, fire or insurance report, containing the date of the occurrence and the extent of the loss or damage.

In cases where the cause of the worker's failure to meet the deadline for applying for TRA or enrolling in training was the worker's own negligence, carelessness, or procrastination, a state may not find that good cause exists to allow the state to waive these time limitations.

D. TRAINING

The TAAEA generally restores the provisions of the 2009 Amendments on training, including the availability of pre-separation and part-time training, but makes important changes, as explained below. For more information on training under the 2009 Program, see TEGL No. 22–08, section D. Please note changes to the guidance in sections D.1 and D.4 of TEGL No. 22–08, as explained below; however, all other paragraphs in section D, continue to apply.

D.1. Establishing Training Benchmarks

States must establish benchmarks at the beginning of the worker's training program, where the approved training program will extend beyond the duration of available Basic and Additional TRA, in order to establish eligibility for Completion TRA. In order to ensure workers have access to Completion TRA, if needed, States must establish benchmarks in all but very short-term training, such as a 3-month certificate program, because the establishment of benchmarks is a useful practice, which may be required later in the worker's training if unanticipated circumstances arise. Inclusion of benchmarks in the training plan should be considered when the training plan is initially established, and, in the unusual event that benchmarks are not included in the initial plan, any time the plan is amended.

D.2. Length of Training

The 2011 Amendments do not include a specific limitation on the length of an approvable training program for a Trade-Affected Worker. However, 20 CFR 617.22(f)(2) limits the maximum length of approvable training to 104 weeks (during which training is conducted), so that a training program would not extend too far beyond the worker's TRA. In this respect, the 2011 Act does not change the Trade Act. However, consistent with TEGL No. 11–02 and TEGL No. 22–08, we interpret the 2011 Amendments as allowing the maximum length of an approvable training program to match the maximum number of payable weeks of income support (UI plus TRA), or 130 weeks during which training is conducted.

This limitation aligns the maximum durations of training and income support, and reflects the fact that for most workers, the availability of income support is critical to the ability of the worker to complete a training program. However, most workers will not have a full 130 weeks of income support available at the beginning of training; rather most workers will have used some weeks of income support, such as 26 weeks or more of unemployment insurance, before the first week in which training occurs. We interpret the 2011 Amendments as permitting approval of training extending beyond the weeks of TRA available to the individual worker, as described in section D.5.1 of TEGL No. 22–08. However, the appropriate length of training will depend on individual circumstances, and Completion TRA is only available to workers whose training program will be completed within the eligibility period established in Section C.3.2 above.

D.3. Cap on Funding for TAA Training, Other Benefits and Services, and Administration

The annual cap on funds available to states under section 236 of the Trade Act is $575 million for FY 2012 and FY 2013, and is a prorated portion of this amount for the first quarter of FY 2014. Effective FY 2012, however, the 2011 Amendments provide that funding for job search allowances, relocation allowances, case management and employment services, and state administration of these benefits, as well as training, are included under that cap. While this change reduces the amount of funding available for training, it allows states flexibility to use the available funds to provide the best mix of services and benefits for Trade-Affected Workers in their respective states.

Statute: Section 214(a) of the TAAEA amends section 236(a)(2)(A) of the

Trade Act of 1974 (19 U.S.C. § 2296) to read:

(2)(A) The total amount of funds available to carry out this section and sections 235, 237, and 238 shall not exceed—

(i) $575,000,000 for each of fiscal years 2012 and 2013; and

(ii) $143,750,000 for the 3-month period beginning on October 1, 2013 and ending on December 31, 2013.

Statute: Section 214(c) of the TAAEA amends section 245 of the Trade Act of 1974 (19 U.S.C. § 2317) to read:

(c) REALLOTMENT OF FUNDS.—

(1) IN GENERAL.—The Secretary may—

(A) reallot funds that were allotted to any State to carry out sections 235 through 238 and that remain unobligated by the State during the second or third fiscal year after the fiscal year in which the funds were provided to the State, and

(B) provide such realloted funds to States to carry out sections 235 through 238 in accordance with procedures established by the Secretary.

Administration: A state's allocation of its portion of the funds available under the $575 million cap in funding for training, job search allowances, relocation allowances, employment and case management services, and associated administration costs is subject to two conditions. Under section 235A, quoted below in section G, not more than 10 percent of a state's allocation may be used for administration, and at least 5 percent must be used to provide case management and employment services. Therefore, a state may use more than 5 percent of its allocation to provide case management and employment services if it determines that greater funds are needed to provide such services to adversely affected workers in its state.

In addition, the 2011 Amendments provide authority for ETA to recapture unexpended TAA funds from states that have not fully used their funding in the second and third year, and reallocate those funds to states with a demonstrated pattern of need.

Further clarification about funding changes will be provided in guidance on the FY 2012 funding allocation.

E. JOB SEARCH ALLOWANCES

The 2011 Amendments may significantly change a state's administration of job search allowances. The statutory changes provide greater flexibility to states by allowing them to decide whether to offer workers the opportunity to apply for job search allowances, in accordance with the amounts of allowance and maximum payment conditions described in the section below. The 2011 Amendments do not restore the level of job search allowances under the 2009 Amendments, but set the level as no more than the level of job search allowances under the 2002 Amendments. However, the provisions of 20 CFR 617.30 through 617.35 continue to apply to the delivery of these allowances.

Statute: Section 214(d)(1) of the TAAEA amends section 237(a) of the Trade Act of 1974 (19 U.S.C. § 2297) to read:

(a) JOB SEARCH ALLOWANCEAUTHORIZED.—

(1) IN GENERAL.–Each State may use funds made available to the State to carry out sections 235 through 238 to allow an adversely affected worker covered by a certification issued under subchapter A of this chapter to file an application with the Secretary for payment of a job search allowance.

Statute: Section 214(d)(2) of the TAAEA amends section 237(b) of the Trade Act of 1974 (19 U.S.C. § 2297) to read:

(h) AMOUNT OF ALLOWANCE.—

(1) IN GENERAL.—Any allowance granted under subsection (a) shall provide reimbursement to the worker of not more than 90 percent of the necessary job search expenses of the worker as prescribed by the Secretary in regulations.

(2) MAXIMUM ALLLOWANCE.—Reimbursement under this subsection may not exceed $1,250 for any worker.

Statute: Section 214(d)(3) of the TAAEA amends section 237(c) of the Trade Act of 1974 (19 U.S.C. § 2297) to read:

(c) EXCEPTION.—Notwithstanding subsection (b), a State may reimburse any adversely affected worker for necessary expenses incurred by the worker in participating in a job search program approved by the Secretary.

Administration: Job search allowances are no longer entitlements for workers who meet the eligibility requirements. Instead, states have discretion to decide whether to offer job search allowances as a benefit for workers served under the 2011 Program. In addition, states will no longer receive separate funds for job search allowances, but will receive one allocation that may be used for training, job search allowances, relocation allowances, case management and employment services, and associated administration costs.

The 2011 Amendments retain the discretion of the Secretary to prescribe regulations for the reimbursement of the cost of necessary job search expenses, but provides that the amount of the allowance may reimburse the worker for ''not more than 90 percent'' of such expenses. The regulations governing the administration of job search allowances published at 20 CFR 617.30 through 617.35 remain in effect until such time as they are amended through notice and comment rulemaking to address the statutory change in section 237(c) of ''90 percent'' to ''not more than 90 percent.''

Section 617.35(a) provides for the computation of the amount of a job search allowance as ''90 percent of the total costs including each of the following allowable transportation and subsistence items'' enumerated in that regulation. Because that regulation is not inconsistent with the 2011 Amendments, it will continue to apply to job search allowances issued under the 2011 Program where states choose to offer them as a benefit. However, because the 2011 Amendments provide a higher maximum reimbursement amount for a job search allowance, the ''$800'' in section 617.34(b) is interpreted to be ''$1,250'' Note that job search allowances remain an entitlement for workers served under the 2002 Program or the 2009 Program.

F. RELOCATION ALLOWANCES

The 2011 Amendments may significantly change a state's administration of relocation allowances. The statutory changes provide greater flexibility to states by allowing them to decide whether to offer workers the opportunity to apply for relocation allowances, in accordance with the amounts of allowance and maximum payment conditions described in the section below. The 2011 Amendments do not restore the level of relocation allowances of the 2009 Amendments, but set the level as no more than the level of relocation allowances under the 2002 Amendments. However, the provisions of 20 CFR 617.40 through 617.48 continue to apply to the delivery of these allowances.

Statute: Section 214(e)(1) of the TAAEA amends section 238(a) of the Trade Act of 1974 (19 U.S.C. § 2298) to read:

(a) RELOCATION ALLOWANCE AUTHORIZED.—

(1) IN GENERAL.—Each State may use funds made available to the State to carry out sections 235 through 238 to allow an adversely affected worker covered by a certification issued under subchapter A of this chapter to file an application for a relocation allowance with the Secretary, and the Secretary may grant the relocation allowance, subject to the terms and conditions of this section.

Statute: Section 214(e)(2) of the TAAEA amends section 238(b) of the Trade Act of 1974 (19 U.S.C. § 2298) to read:

(b) AMOUNT OF ALLOWANCE.—Any relocation allowance granted to a worker under subsection (a) shall include—

(1) not more than 90 percent of the reasonable and necessary expenses (including, but not limited to, subsistence and transportation expenses at levels not exceeding those allowable under section 236(b) (1) and (2) specified in regulations prescribed by the Secretary), incurred in transporting the worker, the worker's family, and household effects; and

(2) a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,250.

Administration: Relocation allowances are no longer entitlements for workers who meet the eligibility requirements. Instead, states have discretion on whether to offer relocation allowances as a benefit for workers served under the 2011 Program. In addition, states will no longer receive separate funds for relocation allowances, but will receive one allocation that may be used for training, job search allowances, relocation allowances, case management and employment services, and associated administration costs.

The 2011 Amendments retain the discretion of the Secretary to prescribe regulations for the reimbursement of the cost of necessary expenses, but provide that the amount of the allowance may reimburse the worker for ''not more than 90 percent'' of such expenses and a lump sum equivalent to 3 times the worker's average weekly wage, up to a maximum payment of $1,250. The regulations governing the administration of relocation allowances published at 20 CFR 617.40 through 617.48 remain in effect until such time as they are amended through notice and comment rulemaking to address the statutory change in section 237(c) of ''90 percent'' to ''not more than 90 percent.''

Sections 617.45 through 617.48 provide for the computation of the amount of a relocation allowance as 90 percent of allowable items reduced by any amount the individual is entitled to be paid or reimbursed for such expenses from any other source, and defines the items allowable, the computation of the travel allowance, and the computation of the moving allowance. Because those regulations are not inconsistent with the 2011 Amendments, they will continue to apply to relocation allowances issued under the 2011 Program where states choose to offer them as a benefit.

However, because the 2011 Amendments provide a higher maximum reimbursement amount for a relocation allowance, the ''$800'' in section 617.45(a)(3) is interpreted to be ''$1,250'' Note that relocation allowances remain an entitlement for workers being served under the 2002 Program or the 2009 Program.

G. EMPLOYMENT AND CASE MANAGEMENT SERVICES

The TAAEA restores the employment and case management service provisions of section 235A of the 2009 Amendments, except for funding for this entitlement as discussed in section D above. The 2011 Amendments apply to TAA funds only, and not to funds available to states under the WIA, or the Wagner-Peyser Act, which also may be used to provide employment and case management services to adversely affected workers in accordance with WTA regulations. For additional information on employment and case management service under the 2009 Amendments, see TEGL No. 22–08, section G. Except as noted below, the provisions of section G apply to workers served under the 2011 Amendments. Note that section G.2 changes as described below.

Statute: Section 214(b) of the TAAEA amends section 235A of the Trade Act of 1974 (19 U.S.C. § 2295a) to read:

Of the funds made available to a State to carry out sections 235 through 238 for a fiscal year, the State shall use—

(1) not more than 10 percent for the administration of the trade adjustment assistance for workers program under this chapter, including for—

(A) processing waivers of training requirements under section 231;

(B) collecting, validating, and reporting data required under this chapter; and

(C) providing reemployment trade adjustment assistance under section 246; and

(2) not less than 5 percent for employment and case management services under section 235.

Administration: States are once again required to make employment and case management services available to adversely affected workers and adversely affected incumbent workers. These services may be provided using TAA funds or through agreements with partner programs. However, states will no longer receive separate funds for employment and case management services, but will receive one allocation that may be used for training, job search allowances, relocation allowances, employment and case management services, and associated administration costs. States may use the funds provided to provide case management services to meet the needs of Trade-Affected Workers.

Note that the 2011 Amendments require that states spend at least 5 percent of the funds received for these purposes to provide employment and case management services. The additional $350,000 in separate case management funding for each state available under the 2009 Amendments has been eliminated.

H. REEMPLOYMENT TRADE ADJUSTMENT ASSISTANCE (RTAA) PROVISIONS

The TAAEA restores RTAA, a wage supplement option available to older workers. However the TAAEA changed the benefit levels and income limit. RTAA provides income support to eligible workers over the age of 50 who find jobs that pay lower wages than the job from which they were separated. RTAA subsidizes a portion of the wage difference between their new wages and their old wages. Changes to RTAA under the 2011 Amendments are explained below. For additional information on RTAA under the 2009 Amendments, see TEGL No. 11–02, Section H. Except as noted below, the provisions of Section H apply to workers served under the 2011 Amendments. Note that Sections H.3 and H.5 change as described below.

Under the 2011 Amendments, the maximum benefit amount is up to $10,000, paid over a period of up to two years. To be eligible for RTAA, a worker must earn less $50,000 in annual salary when reemployed, and must meet other eligibility criteria that also applied to ATAA applicants.

Statute: Section 215 of the TAAEA reads:

(a) IN GENERAL.—section 246(a) of the Trade Act of 1974 (19 US.C. 2318(a)) is amended—

(1) in paragraph (3)(B)(ii), by striking ''$55,000'' and inserting ''$50,000''; and

(2) in paragraph (5)—

(A) in subparagraph (A)(i), by striking ''$12,000'' and inserting ''$10,000''; and

(B) in subparagraph (B)(i), by striking ''$12,000 ''and inserting ''$10,000''.

Administration: The TAAEA reinstates the structure of the RTAA program under the 2009 Program, but at the income eligibility limit and maximum benefit amount of the ATAA program. Under the 2011 Amendments, the new employment that qualifies the worker for RTAA must not pay more than $50,000 annually. Under the 2011 Amendments, the maximum benefit

amount is up to $10,000, paid over up to two years.

Under the 2011 Amendments, RTAA does not require a separate group certification and workers may receive training while receiving this benefit, as explained in TEGL No. 22–08 and its Change 1.

I. STATE OPERATIONS

The TAAEA reinstates the State Operations provisions explained in TEGL No. 22–08, Section II, including the alien verification requirements and the requirement to implement control measures. The TAAEA changes the performance measures and reporting requirements; however, those changes do not go into effect until FY 2013. ETA will issue further instructions to states to allow ample time for programming these changes before October 1, 2012.

J. HEALTH COVERAGE TAX CREDIT (HCTC)

Subtitle B of the TAAEA retroactively reinstates a number of HCTC enhancements that were available to workers under the 2009 Program, and increases the credit rate from 65 percent under the 2002 Program to 72.5 percent reimbursement of health insurance costs for eligible participants. This HCTC is retroactive to February 13, 2011 for workers who were eligible during that time period, and payment for monthly premiums going forward will apply to coverage months beginning with the month 30 days after enactment of the 2011 Amendments.

These changes apply to all eligible workers, regardless of whether they are being served under the 2002 Program, the 2009 Program, or the 2011 Program, including workers who choose to switch from the 2002 Program to the 2011 Program and those who remain in the 2002 Program. For additional information on HCTC provisions under the 2009 Program, see UIPL No. 21–09 and *http://www.irs.gov/individuals/article/0,,id=187948,00.html.*

Administration: The Internal Revenue Service administers the HCTC, which helps ''eligible TAA recipients'' and ''eligible alternative TAA recipients'' and other eligible workers and their families pay for their qualified health insurance premiums. ''Eligible alternative TAA recipients'' includes ATAA recipients and RTAA recipients. The TAAEA restores the ''Special Rule'' as described in UIPL No. 21–09 that expands the definition of an ''eligible TAA recipient.'' An eligible TAA recipient continues to be a worker who receives Trade Readjustment Allowances (TRA) for any day of a month (and the next subsequent month) or who would receive TRA but for the fact that s/he has not exhausted UI entitlement, and is potentially eligible for HCTC for that month.

The restored special rule expands that definition to also include: 1) a worker who is in a break in approved training that exceeds 30 days, and the break falls within the period for receiving TRA provided under the section 233 of the Trade Act; or, 2) who is receiving UI for any day of such month and would be eligible to receive TRA (except that s/he has not exhausted UI) for such month, without regard to the enrollment in training requirements.

In operating the 2011 Program, states should apply the instructions in UIPL No. 21–09 for identifying ''eligible TAA recipients.'' In addition, the TAAEA restores the continued qualification of family members after certain events as provided under the 2009 Program. Finally, the TAAEA also restores Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits for TAA eligible workers provided under the 2009 Program.

5. Action Requested. The operating instructions contained in this TEGL are issued to states as guidance provided by the Department, through ETA, in its role as the principal of the TAA program. The states, as agents of the Secretary, may not vary from the operating instructions in this document without prior approval from ETA. The operating instructions in this document constitute the controlling guidance for the states in implementing and administering the 2011 Amendments. These operating instructions only address changes to the TAA program made by the 2011 Amendments.

6. Financial Reporting. ETA will provide additional guidance to states about the financial reporting requirements under the TAAEA, including clarifications for the ETA '9130.

7. Sunset Provisions. The 2011 Amendments sunset on December 31, 2013, after which date the 2011 Amendments will no longer apply to the Trade Act and the provisions of the 2002 Amendments, with three provisions of the 2011 Amendments listed below, will apply. The ''reverted TAA program'' established under the sunset provisions of the TAAEA, is authorized to be in effect from January 1, 2014, through December 31, 2014.

Administration: The reverted TAA program retains the following provisions of the 2011 Amendments:

- Retains the elimination of training waivers based on recall, marketable skills, and requirement.
- Retains the elimination of the additional 26 weeks of TRA for workers participating in prerequisite or remedial training.
- Retains the authority for the Secretary to provide up to 13 weeks of additional TRA, (Completion TRA) to qualifying workers.

ETA will issue instructions to implement the reverted TAA program, as necessary.

8. Paperwork Reduction Act (PRA) Statement. The information collections referenced in this TEGL have been approved by the OMB under Control Number 1205–0342, expires 01/31/2013 and 1205–0392, expires 04/30/2013. According to the PRA, no persons are required to respond to a collection of information unless such collection displays a valid OMB Control Number. 44 U.S.C. 3507. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, Employment and Training Administration, Office of Trade Adjustment Assistance, 200 Constitution Avenue, NW., Room N 5428, Washington, DC 20210 and reference OMB Control Number 1205–0342 or 12050392.

9. Action Requested. States will inform all appropriate staff of the contents of these instructions.

10. Inquiries. Please direct all inquiries to the appropriate Regional Office.

Dated: Signed in Washington, DC, on this 21st day of May, 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–13037 Filed 5–29–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a ''Certification of Non-Relocation and Market and Capacity Information Report'' (Form 4279–2) for the following:

Applicant/Location: Conva-Rest Warren Hall, Inc.

Principal Product/Purpose: The loan, guarantee, or grant application is to build a new 22,600 square foot, sixty bed skilled nursing facility and a 3,600 square foot maintenance building in Picayune, Mississippi. The NAICS industry code for this enterprise is: 623110 (nursing care facilities).

DATES: All interested parties may submit comments in writing no later than June 13, 2012.

Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room S–4231, Washington, DC 20210; or email *Dais.Anthony@dol.gov;* or transmit via fax (202) 693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or, (b) an increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC, this 23rd day of May 2012.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2012–13038 Filed 5–29–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL COUNCIL ON DISABILITY

Notice of Sunshine Act Meetings

TIME AND DATES: The Members of the National Council on Disability (NCD) will hold a quarterly meeting on Wednesday, June 6, 2012, 9:00 a.m.–12:00 p.m., PST; and on Thursday, June 7, 2012, 9:00 a.m.–5:00 p.m., PST.

PLACE: The meeting will occur in-person at the University of California Los Angeles (UCLA) Faculty Center in the Hacienda, 405 Hilgard Avenue, Los Angeles, CA 90095. Interested parties may join the meeting in person or may join the phone line in a listening-only capacity (with the exception of the public comment period) using the following call-in number: 1–888–428–9506; Passcode: 2078042. If asked, the conference call leader's name is Aaron Bishop.

MATTERS TO BE CONSIDERED: The Council will receive updates from the Council's standing committees and will discuss the topic of subminimum wage. The public comment period will take place from 3:30 p.m.–4:00 p.m., PST. Any individuals interested in providing public comment will be asked to provide their names and their organizational affiliations, if applicable, and to limit their comments to three minutes. Those individuals who plan to provide public comment may also send their comments in writing to Lawrence Carter-Long, Public Affairs Specialist, at *lcarterlong@ncd.gov*, using the subject line of ''Public Comment.''

CONTACT PERSON FOR MORE INFORMATION: Anne Sommers, NCD, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (V), 202–272–2074 (TTY).

ACCOMMODATIONS: Those who plan to attend and require accommodations should notify NCD as soon as possible to allow time to make arrangements.

Dated: May 25, 2012.

Aaron Bishop,

Executive Director.

[FR Doc. 2012–13153 Filed 5–25–12; 11:15 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173)

Dates/Time: June 19, 2012, 1:00 p.m.–6:00 p.m.; June 20, 2012, 9:00 a.m.–3:00 p.m.

Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Arlington, VA 22230.

To help facilitate your entry into the building, contact the individual listed below. Your request to attend this meeting must be received by email (*kmack@nsf.gov*) on or prior to June 12, 2012.

Type of Meeting: Open.

Contact Person: Dr. Kelly Mack, Program Officer and CEOSE Executive Secretary, Division of Human Resource Development, Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone Number: (703) 292–8575 *kmack@nsf.gov*.

Minutes: Meeting minutes and other information may be obtained from the Executive Secretary at the above address or the Web site at *http://www.nsf.gov/od/ceose/index.jsp*.

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Tuesday, June 19, 2012

Opening Statement by the CEOSE Chair

Feature Presentation:

- Broadening Participation Programs and Initiatives in the Geosciences Directorate: Dr. Tim Kileen (Assistant Director, GEO, NSF).

Discussions and Reports:

- Concurrence on the minutes of the CEOSE February 28–29, 2012 meeting;
- Report of CEOSE Executive Officer meeting with Dr. Suresh;
- Report of CEOSE liaisons to NSF Directorate Committees on NSF Advisory Committee Meetings;
- CEOSE 2011–12 Biennial Report to Congress;
- Discussion with Dr. Subra Suresh, Director, NSF.

Wednesday, June 20, 2012

Opening Statement by the CEOSE Chair

Feature Presentation:

- NSF Executive Liaison Report: Dr. Wanda Ward (Senior Advisor, NSF);
- Implementation of Merit Review Criteria: Dr. Joanne Tornow (Deputy Assistant Director, SBE, NSF);

• Novel Approaches to Broadening Participation: Dr. Ashanti Johnson (Executive Director, Institute for Broadening Participation);

• Broadening Participation in STEM–Resource Network/Broadening Participation Research: Dr. Muriel Poston (Division Director, HRD, EHR, NSF).

Dated: May 23, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–12955 Filed 5–29–12; 8:45 am]

BILLING CODE 7555–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting Notice, Regular Board of Directors Meeting

TIME & DATE: 2:00 p.m., Wednesday, June 6, 2012.

PLACE: 1325 G Street NW., Suite 800, Boardroom,Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary, (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call to Order

II. Presentation to Former Chairman Curry

III. Approval of the Regular Board of Director Meeting Minutes

IV. Approval of the Audit Committee Meeting Minutes

V. Approval of the Finance, Budget and Program Committee Meeting Minutes

VI. Approval of the Corporate Administration Committee Meeting Minutes

VII. Executive Session

VIII. Board Elections and Appointments

IX. Community Housing Capital & NeighborWorks Capital

X. DC Lease Update

XI. Financial Report

XII. National Foreclosure Mitigation Counseling (NFMC)

XIII. Management Report

XIV. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2012–13180 Filed 5–25–12; 11:15 am]

BILLING CODE 7570–02–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0121]

Portable Gauge Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is revising its licensing guidance for portable gauge licensees. The NRC is requesting public comment on NUREG–1556, Volume 1, Revision 2, ''Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Portable Gauge Licenses.'' The document has been updated to include safety culture, security of radioactive materials, protection of sensitive information, a revised appendix on training for portable gauge users, and changes in regulatory policies and practices. This document is intended for use by applicants, licensees, and the NRC staff and will also be available to Agreement States.

DATES: Submit comments by June 29, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0121. You may submit comments by the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0121. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

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

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

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

FOR FURTHER INFORMATION CONTACT: Tomas Herrera, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7138; email: *Tomas.Herrera@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0121 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by the following methods:

• *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0121.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The NUREG–1556, Volume 1, Revision 2, is under ADAMS Accession Number ML12139A008. The document will also be posted on the NRC's public Web site on the: (1) ''Consolidated Guidance About Materials Licenses (NUREG–1556)'' page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/*; and (2) ''Draft NUREG–Series Publications for Comment'' page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/docs4comment.html.*

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

B. Submitting Comments

Please include Docket ID NRC–2012–0121 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

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

ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

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

II. Specific Questions for Public Comment

The NRC welcomes comments on all aspects of this draft NUREG and is especially interested in receiving comments on the examples and pictures used in Appendix G, ''Operation, Emergency, and Security Procedures,'' to demonstrate the security requirements in Title 10 of the Code of Federal Regulations (10 CFR) 30.34(i). The NRC would like comments on the following questions regarding the examples and pictures in Appendix G:

1. Do the examples for two independent physical controls provide helpful guidance to licensees? Please provide information to support your response.

2. Are the pictures in the appendix helpful in demonstrating how to secure a portable gauge in a vehicle? Please provide information to support your response.

Dated at Rockville, Maryland, this 22nd day of May 2012.

For the Nuclear Regulatory Commission.

Brian J. McDermott,

Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2012–13045 Filed 5–29–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Notice of Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of May 28, June 4, 11, 18, 25, July 2, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 28, 2012

Friday, June 1, 2012

8:30 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting) (Contact: Rani Franovich, 301–415–1868).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of June 4, 2012—Tentative

Thursday, June 7, 2012

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting), (Contact: Tanny Santos, 301–415–7270).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of June 11, 2012—Tentative

Friday, June 15, 2012

9:30 a.m. Joint Meeting of the Federal Energy Regulatory Commission (FERC) and the Nuclear Regulatory Commission (NRC) on Grid Reliability (Public Meeting). To be held at FERC Headquarters, 888 First Street NE., Washington, DC, (Contact: Jim Andersen, 301–415–3565).

This meeting will be webcast live at the Web address—*www.ferc.gov*.

Week of June 18, 2012—Tentative

There are no meetings scheduled for the week of June 18, 2012.

Week of June 25, 2012—Tentative

There are no meetings scheduled for the week of June 25, 2012.

Week of July 2, 2012—Tentative

There are no meetings scheduled for the week of July 2, 2012.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: May 24, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–13192 Filed 5–25–12; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–397; NRC–2010–0029]

Energy Northwest, Columbia Generating Station; Record of Decision and Issuance of Renewed Facility Operating License for an Additional 20-Year Period

AGENCY: Nuclear Regulatory Commission.

ACTION: License renewal application; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued renewed facility operating license No. NPF–21 to Energy Northwest (the licensee), the operator of the Columbia Generating Station (Columbia). Renewed facility operating license No. NPF–21 authorizes operation of Columbia by the licensee at reactor core power levels not in excess of 3,486 megawatts thermal in accordance with the provisions of the Columbia renewed operating license and its technical specifications. This also serves as the record of decision for the renewal of facility operating license No. NPF–21, consistent with the NRC's regulations.

ADDRESSES: Please refer to Docket ID NRC–2010–0029 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2010–0029. Address questions about NRC dockets to Carol

Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced.

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

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Cunanan, Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3897; email: *Arthur.Cunanan@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

Notice is hereby given that the NRC has issued renewed facility operating license No. NPF–21 to Energy Northwest, the operator of Columbia. Renewed facility operating license No. NPF–21 authorizes operation of Columbia by the licensee at reactor core power levels not in excess of 3,486 megawatts thermal in accordance with the provisions of the Columbia renewed operating license and its technical specifications.

The notice also serves as the record of decision for the renewal of facility operating license No. NPF–21, consistent with Title 10 of the Code of Federal Regulations (10 CFR) 51.103. As discussed in the final supplemental environmental impact statement for Columbia, Supplement 47 to NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants (GEIS) Regarding Columbia Generating Station,'' dated April 2012 (ADAMS Accession Nos. ML12096A334 and ML12096A336), the Commission has considered a range of reasonable alternatives that included: (1) Natural gas-fired combined cycle (NGCC); (2) new nuclear; (3) combination alternative (NGCC), hydroelectric, wind, and conservation and efficiency); (4) offsite new nuclear and NGCC; (5) coal-fired power; (6) energy conservation and energy efficiency; (7) purchased power; (8) solar power; (9) wind power; (10) biomass waste; (11) hydroelectric power; (12) ocean wave and current energy; (13) geothermal power; (14) municipal solid waste; (15) biofuels; (16) oil-fired power; (17) fuel cells; (18) delayed retirement; and (19) the no-action alternative. The factors considered in the record of decision can be found in the final supplemental environmental impact statement for Columbia.

Columbia is a boiling-water reactor located in Benton County, Richland, Washington. The application for the renewed license, ''Columbia Generating Station License Renewal Application,'' dated January 2012 (ADAMS Accession No. ML100250656), complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in the license. Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on March 11, 2010 (75 FR 11576).

For further details with respect to this action, see: (1) Energy Northwest's license renewal application for Columbia Generating Station dated January 19, 2010, as supplemented by letters dated through April 23, 2012; (2) the Commission's safety evaluation report NUREG–2123, ''Safety Evaluation Report Related to the License Renewal of Columbia Generating Station,'' dated May 2012 (ADAMS Accession Nos. ML12139A300 and ML12139A302); (3) the licensee's Final Safety Analysis Report; and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 47), for the Columbia Generating Station, published April 2012.

Dated at Rockville, Maryland, this 22nd day of May, 2012.

For the Nuclear Regulatory Commission.

Dennis Morey,

Chief, Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–13041 Filed 5–29–12; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2012–30 and CP2012–31; Order No. 1352]

Product List Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into two additional Global Expedited Package Services 3 contracts. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* May 30, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

On May 21, 2012, the Postal Service filed a notice announcing that it intends to enter into two additional Global Expedited Package Services 3 (GEPS 3) contracts.[1] The Postal Service states that the instant contracts are functionally equivalent to the contract filed in Docket No. CP2010–71 (GEPS 3 baseline agreement) and are supported by Governors' Decision No. 08–7 attached to the notice and originally filed in Docket No. CP2008–5. *Id.* at 1–4, Attachment 3. The notice explains that Order No. 503 authorized functionally equivalent agreements to be included in the GEPS 3 product, provided that these agreements meet the requirements of 39 U.S.C. 3633. *Id.* at 2.

The instant contracts. The Postal Service filed the two instant contracts pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the instant contracts are in accordance with Order No. 503. *Id.* at 2. For each contract, the Postal Service will notify the mailer of the effective date within 30

[1] Notice of United States Postal Service of Filing Two Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreements and Application for Non-Public Treatment of Materials Filed Under Seal, May 21, 2012 (Notice).

days after all necessary regulatory approvals have been received (Effective Date). The instant contracts will remain in effect for 1 calendar year after the Effective Date, unless either party terminates the agreement. The contracts may be terminated, among other instances, upon 30 days written notification by either party. *Id.,* Attachment 1A at 6; Attachment 1B at 6–7.

In support of its notice, the Postal Service filed four attachments as follows:

- Attachment 1A—a redacted copy of the first instant contract;
- Attachment 1B—a redacted copy of the second instant contract;
- Attachment 2A—a certified statement required by 39 CFR 3015.5(c)(2) for the first instant contract;
- Attachment 2B—a certified statement required by 39 CFR 3015.5(c)(2) for the second instant contract;
- Attachment 3—a copy of Governors' Decision No. 08–7, which establishes prices and classifications for Global Expedited Package Services Contracts;
- Attachment 4—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents filed under seal.

The notice sets forth reasons why the instant contracts are functionally equivalent to the GEPS 3 baseline agreement. It states that the instant contracts differ from the GEPS 3 baseline agreement in several ways pertaining to the revisions or clarifications of terms, *e.g.,* revised options for tendering the mail, minimum revenue commitment, customs and export requirements, an exception of Flat Rate items from the definition of qualifying mail, and an additional article concerning Intellectual Property, Co-Branding, and Licensing. *Id.* at 4–6. It asserts that ''[b]ecause the agreements incorporate the same cost attributes and methodology, the relevant characteristics of these two GEPS contracts are similar, if not the same, as the relevant characteristics of previously filed contracts.'' *Id.* at 4.

The Postal Service concludes that its filing demonstrates that the instant contracts comply with the requirements of 39 U.S.C. 3633 and are functionally equivalent to the GEPS 3 baseline agreement. Therefore, it requests that the instant contracts be included within the GEPS 3 contract product. *Id.* at 6.

II. Notice of Filings

The notice filed in each of these dockets is identical. In it, the Postal Service seeks to add two additional GEPS 3 contracts to the GEPS 3 product. The contracts should have been filed in separate dockets. In the future, when it files multiple contracts concerning the same product, the Postal Service must file separate notices (in separate dockets) for each contract. This process ensures transparency and facilitates the Commission review.

The Commission establishes Docket No. CP2012–30 for consideration of matters related to the contract attached to the Postal Service's notice as Attachment 1A, and Docket No. CP2012–31 for consideration of matters related to the contract attached to the Postal Service's notice as Attachment 1B.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than May 30, 2012. The public portions of these filings can be accessed via the Commission's Web site, *http://www.prc.gov*.

The Commission appoints Natalie Rea Ward to serve as Public Representative in Docket Nos. CP2012–30 and CP2012–31.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2012–30 for consideration of matters related to the contract attached to the Postal Service's notice as Attachment 1A.
2. The Commission establishes Docket No. CP2012–31 for consideration of matters related to the contract attached to the Postal Service's notice as Attachment 1B.
3. Comments by interested persons in these proceedings are due no later than May 30, 2012.
4. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in Docket No. CP2012–30.
5. Pursuant to 39 U.S.C. 505, Natalie Rea Ward is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in Docket No. CP2012–31.
6. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–13083 Filed 5–29–12; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) the practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to the RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if the RRB and OIRA receive them within 30 days of the publication date.

1. *Title and Purpose of Information Collection:* Employer's Quarterly Report of Contributions Under the RUIA; OMB 3220–0012.

Under Section 8 of the Railroad Unemployment Insurance Act (RUIA), as amended by the Railroad Unemployment Improvement Act of 1988 (Pub. L. 100–647), the RRB determines the amount of an employer's contribution, primarily on the basis of the RUIA benefits paid, both unemployment and sickness, to the employees of the railroad employer. These experienced-based contributions take into account the frequency, volume, and duration of the employees' unemployment and sickness benefits. Each employer's contribution rate includes a component for administrative expenses as well as a component to cover costs shared by all employers. The regulations prescribing the manner and conditions for remitting the contributions and for adjusting overpayments or underpayments of contributions are contained in 20 CFR part 345. RRB Form DC–1, Employer's Quarterly Report of Contributions Under the Railroad Unemployment Insurance Act, is used by railroad employers to report and remit their quarterly contributions to the RRB. Employers can use either the manual version of the

form or its Internet equivalent. One response is requested quarterly of each respondent and completion is mandatory.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (76 FR 16870 on March 22, 2012) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Employer's Quarterly Report of Contributions Under the RUIA.

OMB Control Number: 3220–0012.

Form(s) submitted: DC–1.

Type of request: Extension without change of a currently approved collection.

Affected public: Private Sector: Businesses or other for-profits.

Abstract: Railroad employers are required to make contributions to the Railroad Unemployment Insurance fund quarterly or annually equal to a percentage of the creditable compensation paid to each employee. The information furnished on the report accompanying the remittance is used to determine correctness of the amount paid.

Changes proposed: The RRB proposes no changes to Form DC–1.

The burden estimate for the ICR is as follows:

Form No.	Annual responses	Time (minutes)	Burden (hours)
DC–1 (Manual)	1,235	25	515
DC–1 (Internet)	1,365	25	569
Total	2,600	.....	1,084

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*.

Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Charles.Mierzwa@RRB.GOV* and to the OMB Desk Officer for the RRB, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2012–13040 Filed 5–29–12; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Application for Survivor Death Benefits; OMB 3220–0031.

Under Section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow(er)s, children, and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee only if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depends on whether the deceased employee was ''insured'' under the RRA at the time of death. If the deceased employee was not insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The requirements for applying for benefits are prescribed in 20 CFR parts 217, 219, and 234.

The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for. To collect the information, the RRB uses Forms AA–11a, *Designation for Change of Beneficiary for Residual Lump-Sum;* AA–21, *Application for Lump-Sum Death Payment and Annuities Unpaid at Death;* AA–21cert, *Application Summary and Certification;* G–131, *Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment;* and G–273a, *Funeral Director's Statement of Burial Charges.* One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes no changes to any of the forms in the information collection.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

[The estimated annual respondent burden is as follows]

Form No.	Annual responses	Time (minutes)	Burden (hours)
AA–11a	100	10	17
AA–21cert (with assistance)	4,500	20	1,500
AA–21 (without assistance)	300	40	200
G–131	600	5	50
G–273a	5,000	10	833
Total	10,500	.....	2,600

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Dana Hickman at (312) 751–4981 or *Dana.Hickman@RRB.GOV*. Comments regarding the information collection should be addressed to Charles Mierzwa, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or emailed to *Charles.Mierzwa@RRB.GOV*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Chief of Information Resources Management.

[FR Doc. 2012–13043 Filed 5–29–12; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 23c–1, SEC File No. 270–253, OMB Control No. 3235–0260.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 23c–1 (17 CFR 270.23c–1) under the Investment Company Act of 1940 (15 U.S.C. 80a), among other things, permits a closed-end fund to repurchase its securities for cash if in addition to the other requirements set forth in the rule: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the asset coverage per unit of the security to be purchased is disclosed to the seller or his agent; and (iii) if the security is a stock, the fund has, within the preceding six months, informed stockholders of its intention to purchase stock. Commission staff estimates that approximately 29 closed-end funds rely on Rule 23c–1 annually to undertake approximately 261 repurchases of their securities. Commission staff estimates that, on average, a fund spends 2.5 hours to comply with the paperwork requirements listed above each time it undertakes a security repurchase under the rule. Commission staff thus estimates the total annual burden of the rule's paperwork requirements is 653 hours.

In addition, the fund must file with the Commission a copy of any written solicitation to purchase securities given by or on behalf of the fund to 10 or more persons. The copy must be filed as an exhibit to Form N–CSR (17 CFR 249.331 and 274.128). The burden associated with filing Form N–CSR is addressed in the submission related to that form.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Complying with the collection of information requirements of the rule is mandatory. The filings that the rule requires to be made with the Commission are available to the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: May 23, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–12998 Filed 5–29–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, May 31, 2012 at 2:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Walter, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, May 31, 2012 will be:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: May 24, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–13151 Filed 5–25–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67045; File No. SR–NYSEArca–2012–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of iShares Strategic Beta U.S. Large Cap Fund and iShares Strategic Beta U.S. Small Cap Fund Under NYSE Arca Equities Rule 8.600

May 23, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on May 14, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): iShares Strategic Beta U.S. Large Cap Fund and iShares Strategic Beta U.S. Small Cap Fund. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares:[3] iShares Strategic Beta U.S. Large Cap Fund and iShares Strategic Beta U.S. Small Cap Fund (each, a ''Fund'' and, collectively, ''Funds'').[4] The Shares of each Fund will be offered by iShares U.S. ETF Trust (''Trust''), which is organized as a Delaware statutory trust and is registered with the Commission as an open-end management investment company.[5] The Funds will be managed by BlackRock Fund Advisors (''BFA'' or ''Adviser''), an indirect wholly-owned subsidiary of BlackRock, Inc. BlackRock Investments, LLC (''Distributor'') will be the principal underwriter and distributor of the Funds' Shares. State Street Bank and Trust Company (''Administrator,'' ''Custodian,'' or ''Transfer Agent'') will serve as administrator, custodian, and transfer agent for the Funds.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio. Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio.[6] Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. The Adviser is affiliated with multiple broker-dealers and has implemented a ''fire wall'' with respect to such broker-dealers regarding access to information concerning the composition and/or changes to the Funds' portfolios. In the event (a) the Adviser or any sub-adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

iShares Strategic Beta U.S. Large Cap Fund

According to the Large Cap Registration Statement, the iShares Strategic Beta U.S. Large Cap Fund will seek long-term capital appreciation. The Fund will seek to achieve its investment objective by investing, under normal circumstances,[7] at least 80% of its net assets in U.S. exchange-listed and traded equity securities of large-capitalization issuers. The Fund will seek to maintain strategic exposure to U.S. large-capitalization stocks with targeted investment characteristics. BFA

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing and trading of Dent Tactical ETF); and 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving listing and trading of Cambria Global Tactical ETF).

[5] The Trust is registered under the 1940 Act. On, December 21, 2011, the Trust filed with the Commission Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the (i) iShares Strategic Beta U.S. Large Cap Fund (File Nos. 333–178677 and 811–22649) (''Large Cap Registration Statement''), and (ii) iShares Strategic Beta U.S. Small Cap Fund (File Nos. 333–178675 and 811–22649) (''Small Cap Registration Statement'' and, together with the Large Cap Registration Statement, ''Registration Statements''). The description of the operation of the Trust and the Funds herein is based, in part, on the Registration Statements. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the1940 Act. *See* Investment Company Act Release No. 29571 (File No. 812–13601) (''Exemptive Order'').

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''under normal circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

will utilize a proprietary investment process to assemble an investment portfolio from a defined group of stocks that seeks to emphasize companies within the group that exhibit certain quantitative investment characteristics, such as higher quality earnings, low relative valuation, and smaller relative market capitalization, and de-emphasize companies that lack such characteristics. The investment process is intended to provide an increased exposure to securities of companies with higher quality earnings, lower relative valuations, and smaller relative market capitalizations than would a fund that seeks to replicate the performance of a broad U.S. large-capitalization stock index. Companies in the universe of U.S. large capitalization securities represent various sectors of the U.S. large capitalization market.

The Fund's proprietary investment process will begin with the selection of securities representing a defined investable universe of stocks of U.S. large-capitalization issuers. The universe is then subjected to rules-based screens designed to exclude securities with very low trading volume or very low prices. The stocks will then be scored based on their exposure to quantitative metrics such as leverage, return on equity, price to book ratio, and capitalization. BFA will assemble a portfolio emphasizing those stocks with high relative exposure to the desired investment characteristics, while seeking to remain diversified by industry.

iShares Strategic Beta U.S. Small Cap Fund

According to the Small Cap Registration Statement, the iShares Strategic Beta U.S. Small Cap Fund seeks long-term capital appreciation. The Fund will seek to achieve its investment objective by investing, under normal circumstances, at least 80% of its net assets in U.S. exchange-listed and traded equity securities of small-capitalization issuers. The Fund will seek to maintain strategic exposure to U.S. small-capitalization stocks with targeted investment characteristics. BFA will utilize a proprietary investment process to assemble an investment portfolio from a defined group of stocks that seeks to emphasize companies within the group that exhibit certain quantitative investment characteristics, such as higher quality earnings, low relative valuation, and smaller relative market capitalization, and de-emphasize companies that lack such characteristics. The investment process is intended to provide an increased exposure to securities of companies with higher quality earnings, lower relative valuations, and smaller relative market capitalizations than would a fund that seeks to replicate the performance of a broad U.S. small-capitalization stock index. Companies in the universe of U.S. small capitalization securities represent various sectors of the U.S. small capitalization market.

The Fund's proprietary investment process will begin with securities representing a defined investable universe of stocks of U.S. small-capitalization issuers. The universe will then be subjected to rules-based screens designed to exclude securities with very low trading volume or very low prices. The stocks are then scored based on their exposure to quantitative metrics such as leverage, return on equity, price to book ratio, and capitalization. BFA will assemble a portfolio emphasizing those stocks with high relative exposure to the desired investment characteristics, while seeking to remain diversified by industry.

With respect to each of the Funds, no less than 80% of the equity securities held by the respective Fund will be listed and traded on a U.S. national securities exchange.[8]

Other Investments

While each Fund, under normal circumstances, will invest at least 80% of its net assets in their respective investments, each Fund may directly invest in certain other investments, as described below. The Funds may temporarily depart from their normal investment process,[9] provided that the alternative, in the opinion of BFA, is consistent with a Fund's investment objective and is in the best interest of a Fund. However, BFA will not seek to actively time market movements.

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities. *E*ach Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of a Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.[10]

The Funds may invest in repurchase and reverse repurchase agreements. A repurchase agreement is an instrument under which the purchaser (*i.e.,* a Fund) acquires the security and the seller agrees, at the time of the sale, to repurchase the security at a mutually agreed upon time and price, thereby determining the yield during the purchaser's holding period. Reverse repurchase agreements involve the sale of securities with an agreement to repurchase the securities at an agreed-upon price, date, and interest payment, and have the characteristics of borrowing.

The Funds may invest in other short-term instruments, including money market instruments, on an ongoing basis to provide liquidity or for other reasons. Money market instruments are generally short-term investments that may include but are not limited to: (i) Shares of money market funds (including those advised by BFA or otherwise affiliated with BFA); (ii) obligations issued or guaranteed by the U.S. government, its agencies, or instrumentalities (including government-sponsored enterprises); (iii) negotiable certificates of deposit (''CDs''), bankers' acceptances, fixed-time deposits, and other obligations of U.S. and non-U.S. banks (including non-U.S. branches) and similar institutions; (iv) commercial paper rated, at the date of purchase, ''Prime-1'' by Moody's® Investors Service, Inc., ''F–1'' by Fitch Inc., or ''A–1'' by Standard & Poor's® (''S&P®''), or if unrated, of comparable quality as determined by BFA; (v) non-

[8] *See* note 22, *infra.*

[9] Circumstances under which the Funds may temporarily depart from their normal investment process include, but are not limited to, extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[10] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14618 (March 18, 2008), footnote 34. *See also* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding ''Restricted Securities''); and Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); and Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

convertible corporate debt securities (*e.g.,* bonds and debentures) with remaining maturities at the date of purchase of not more than 397 days and that satisfy the rating requirements set forth in Rule 2a–7 under the 1940 Act; and (vi) short-term U.S. dollar-denominated obligations of non-U.S. banks (including U.S. branches) that, in the opinion of BFA, are of comparable quality to obligations of U.S. banks which may be purchased by the Funds. Any of these instruments may be purchased on a current or forward-settled basis. Time deposits are non-negotiable deposits maintained in banking institutions for specified periods of time at stated interest rates.

A Fund may invest a small portion of its net assets in tracking stocks, which primarily will be U.S. exchange-listed. A tracking stock is a separate class of common stock whose value is linked to a specific business unit or operating division within a larger company and is designed to ''track'' the performance of such business unit or division. The tracking stock may pay dividends to shareholders independent of the parent company. The parent company, rather than the business unit or division, generally is the issuer of tracking stock. However, holders of the tracking stock may not have the same rights as holders of the company's common stock.

Each Fund will be classified as a ''diversified'' investment company under the 1940 Act.[11]

The Funds will not purchase the securities of issuers conducting their principal business activity in the same industry if, immediately after the purchase and as a result thereof, the value of a Fund's investments in that industry would equal or exceed 25% of the current value of a Fund's total assets, provided that this restriction does not limit a Fund's: (i) Investments in securities of other investment companies, (ii) investments in securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, or (iii) investments in repurchase agreements collateralized by U.S. government securities.[12]

The Funds intend to qualify for and to elect treatment as a separate regulated investment company (''RIC'') under Subchapter M of the Internal Revenue Code.[13]

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Funds will be in compliance with Rule 10A–3 under the Exchange Act,[14] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), will be made available to all market participants at the same time.

In accordance with the Exemptive Order, the Funds will not invest in options, futures, or swaps. The Funds may invest in currency forwards for hedging and trade settlement purposes.[15] Each Fund's investments will be consistent with its respective investment objective and will not be used to enhance leverage.

The Funds will not invest in non-U.S.-registered equity securities.

Creation and Redemption of Shares

According to the Registration Statements, the Funds will issue and redeem Shares on a continuous basis at the NAV only in large specified numbers of Shares called a ''Creation Unit.''

The consideration for purchase of Creation Units of each Fund generally will consist of the in-kind deposit of a designated portfolio of securities (including any portion of such securities for which cash may be substituted) (*i.e.,* ''Deposit Securities''), and the ''Cash Component'' computed as described below. Together, the Deposit Securities and the Cash Component constitute the ''Fund Deposit,'' which will be applicable (subject to possible amendment or correction) to creation requests received in proper form. The Fund Deposit represents the minimum initial and subsequent investment amount for a Creation Unit of the respective Fund.

The Cash Component will be an amount equal to the difference between the NAV of the respective Shares (per Creation Unit) and the ''Deposit Amount,'' which will be an amount equal to the market value of the Deposit Securities, and serve to compensate for any differences between the NAV per Creation Unit and the Deposit Amount. Each Fund currently will offer Creation Units for in-kind deposits but reserves the right to utilize a ''cash'' option in lieu of some or all of the applicable Deposit Securities for creation of Shares.

BFA will make available through the National Securities Clearing Corporation (''NSCC'') on each business day, prior to the opening of business on the Exchange, the list of names and the required number or par value of each Deposit Security and the amount of the Cash Component to be included in the current Fund Deposit (based on information as of the end of the previous business day) for each Fund.

Creation Units may be purchased only by or through a Depository Trust Company (''DTC'') participant that has entered into an Authorized Participant Agreement (as described in the Registration Statements) with the Distributor (''Authorized Participant''). Except as noted below, all creation orders must be placed for one or more Creation Units and must be received by the Distributor in proper form no later than the closing time of the regular trading session of the Exchange (normally 4:00 p.m., Eastern time) in each case on the date such order is placed in order for creation of Creation Units to be effected based on the NAV of Shares of the respective Fund as next

[11] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

[12] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[13] 26 U.S.C. 851 *et seq.* According to the Registration Statements, in order to be taxable as a RIC, a Fund must distribute annually to its shareholders at least 90% of its net investment income (generally net investment income plus the excess of net short-term capital gains over net long-term capital losses) and at least 90% of its net tax exempt interest income, for each tax year, if any, to its shareholders (''Distribution Requirement'') and also must meet several additional requirements. Among these requirements are the following: (i) At least 90% of the Fund's gross income each taxable year must be derived from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to its business of investing in such stock, securities or currencies, and net income derived from an interest in qualified publicly traded partnerships; (ii) at the end of each fiscal quarter of the Fund's taxable year, at least 50% of the market value of its total assets must be represented by cash and cash items, U.S. government securities, securities of other RICs and other securities, with such other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or more than 10% of the outstanding voting securities of such issuer; and (iii) at the end of each fiscal quarter of the Fund's taxable year, not more than 25% of the value of its total assets is invested in the securities (other than U.S. government securities or securities of other RICs) of any one issuer or the securities of two or more issuers engaged in the same, similar, or related trades or businesses if the Fund owns at least 20% of the voting power of such issuers, or the securities of one or more qualified publicly traded partnerships.

[14] 17 CFR 240.10A–3.

[15] A forward currency contract is an obligation to purchase or sell a specific currency at a future date, which may be any fixed number of days from the date of the contract agreed upon by the parties, at a price set at the time of the contract.

determined on such date after receipt of the order in proper form.

Shares of each Fund may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by the Distributor and only on a business day. BFA will make available through the NSCC, prior to the opening of business on the Exchange on each business day, the designated portfolio of securities (including any portion of such securities for which cash may be substituted) that will be applicable (subject to possible amendment or correction) to redemption requests received in proper form on that day (''Fund Securities''). Fund Securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Units.

Unless cash redemptions are available or specified for the respective Fund, the redemption proceeds for a Creation Unit generally will consist of a specified amount of cash, Fund Securities, plus additional cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after the receipt of a request in proper form, and the value of the specified amount of cash and Fund Securities, less a redemption transaction fee. Each Fund currently will redeem Shares for Fund Securities, but each Fund reserves the right to utilize a ''cash'' option for redemption of Shares.

Redemption requests for Creation Units of the Funds must be submitted to the Distributor by or through an Authorized Participant no later than 4:00 p.m. Eastern time on any business day, in order to receive that day's NAV.

Detailed descriptions of the Funds, procedures for creating and redeeming Shares, transaction fees and expenses, dividends, distributions, taxes, risks, and reports to be distributed to beneficial owners of the Shares can be found in the Registration Statements or on the Web site for the Funds (*www.iShares.com*), as applicable.

Determination of Net Asset Value

According to the Registration Statements, the NAV of the Funds normally will be determined once each business day, generally as of the regularly scheduled close of business of the New York Stock Exchange (''NYSE'') (normally 4:00 p.m., Eastern time) on each day that the NYSE is open for trading, based on prices at the time of closing provided that (a) any Fund assets or liabilities denominated in currencies other than the U.S. dollar are translated into U.S. dollars at the prevailing market rates on the date of valuation as quoted by one or more data service providers, and (b) U.S. fixed-income assets may be valued as of the announced closing time for trading in fixed-income instruments in a particular market or exchange. The NAV of the Funds will be calculated by dividing the value of the net assets of each Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of outstanding shares of a Fund, generally rounded to the nearest cent.

The value of the securities and other assets held by the Funds, and their liabilities, will be determined pursuant to valuation policies and procedures approved by the Trust's Board of Trustees (''Board''). The Funds' assets and liabilities will be valued primarily on the basis of market quotations.

Equity investments will be valued at market value, which is generally determined using the last reported official closing price or last trading price on the exchange or market on which the security is primarily traded at the time of valuation.

Generally, trading in U.S. government securities, money market instruments, and certain fixed-income securities is substantially completed each day at various times prior to the close of business on the NYSE. The values of such securities used in computing the NAV of each Fund will be determined as of such times.

When market quotations are not readily available or are believed by BFA to be unreliable, the Funds' investments will be valued at fair value.[16] Fair value determinations will be made by BFA in accordance with policies and procedures approved by the Trust's Board. BFA may conclude that a market quotation is not readily available or is unreliable if a security or other asset or liability does not have a price source due to its lack of liquidity, if a market quotation differs significantly from recent price quotations or otherwise no longer appears to reflect fair value, where the security or other asset or liability is thinly traded, or where there is a significant event subsequent to the most recent market quotation. A ''significant event'' is an event that, in the judgment of BFA, is likely to cause a material change to the closing market price of the asset or liability held by a Fund.

Availability of Information

The Funds' Web site (*www.iShares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Funds that may be downloaded. The Funds' Web site will include additional quantitative information updated on a daily basis, including, for the Funds, (1) the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[17] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day.[18]

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Funds the following information on the Funds' Web site: ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for a Fund's Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via NSCC. The basket will represent one Creation Unit of each Fund.

Investors can also obtain the Trust's Statement of Additional Information

[16] According to the Registration Statements, fair value represents a good faith approximation of the value of an asset or liability. The fair value of an asset or liability held by a Fund is the amount a Fund might reasonably expect to receive from the current sale of that asset or the cost to extinguish that liability in an arm's-length transaction. Valuing a Fund's investments using fair value pricing will result in prices that may differ from current market valuations and that may not be the price at which those investments could have been sold during the period in which the particular fair values were used.

[17] The Bid/Ask Price of the Funds' Shares will be determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Funds' NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

[18] Under accounting procedures followed by the Funds, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

(''SAI''), the Funds' Shareholder Reports, and the Trust's Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov.* Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Indicative Optimized Portfolio Value (''IOPV''),[19] which is the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600 (c)(3), will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors.[20] The dissemination of the IOPV, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Funds on a daily basis and to provide a close estimate of that value throughout the trading day. The intra-day, closing, and settlement prices or other values of the portfolio securities, currency forwards, and other Fund investments are also generally readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services, such as Bloomberg or Reuters.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statements. All terms relating to the Funds that are referred to, but not defined in, this proposed rule change are defined in the Registration Statements.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds.[21] Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Funds; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of a Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. Eastern time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG, including all U.S. national securities exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement.[22]

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IOPV will not be calculated or publicly disseminated; (4) how information regarding the IOPV is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Funds will be subject to various fees and expenses described in the Registration Statements. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern time each trading day.

[19] According to the Registration Statements, the IOPV will be based on the current value of the securities and/or cash required to be deposited in exchange for a Creation Unit. The IOPV will not necessarily reflect the precise composition of the current portfolio of securities held by the Fund at a particular point in time or the best possible valuation of the current portfolio. Therefore, the IOPV should not be viewed as a ''real-time'' update of the Fund's NAV, which is computed only once a day. The IOPV will be generally determined by using both current market quotations and/or price quotations obtained from broker-dealers that may trade in the portfolio securities held by the Fund.

[20] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IOPVs published on CTA or other data feeds.

[21] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[22] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Funds may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [23] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Adviser has implemented a ''fire wall'' with respect to its affiliated broker-dealers regarding access to information concerning the composition and/or changes to the Funds' portfolios. The Exchange may obtain information via ISG from other exchanges that are members of ISG, including all U.S. national securities exchanges, or with which the Exchange has entered into a comprehensive surveillance sharing agreement. No less than 80% of the equity securities held by the Funds will be listed and traded on a U.S. national securities exchange.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Funds and the Shares, thereby promoting market transparency. Moreover, the IOPV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Core Trading Session. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Funds will disclose on their Web site the Disclosed Portfolio that will form the basis for the Funds' calculation of NAV at the end of the business day. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services, and quotation and last-sale information will be available via the CTA high-speed line. The Web site for the Funds will include a form of the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable, and trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Funds may be halted. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Funds' holdings, the IOPV, the Disclosed Portfolio, and quotation and last-sale information for the Shares. The Funds will be similar in their investment objective and guidelines, scope, and operation to many existing, listed index-based exchange-traded funds (''ETFs'') and will provide exposures similar to those provided by existing ETFs, mutual funds, and closed-end funds. The proposed rule change would benefit investors by providing them with additional choice of transparent and tradeable products.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–44. 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

[23] 15 U.S.C. 78f(b)(5).

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–44 and should be submitted on or before June 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–12996 Filed 5–29–12; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67046; File No. SR–BX–2012–031]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the Fees Under Rule 7003(b) and Adopt a New Equities Regulatory Fee

May 23, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 16, 2012 NASDAQ OMX BX, Inc. (''BX'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to eliminate the fees under Rule 7003(b) and replace them with a new Equities Regulatory Fee. The Exchange will implement the fee effective June 1, 2012.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

7003. Regulatory, Registration and Processing Fees

(a) No change.

(b) [The following fees will be collected via the Web CRD registration system for the registration of associated persons of Exchange members:

(1) $60 for each initial Form U4 filed for the registration of a representative or principal. This fee shall be waived for initial registrations occurring between January 1, 2009 and October 1, 2009.

(2) $40 for each registration U4 transfer or re-licensing of a representative or principal. This fee shall be waived for transfers or re-licensings occurring between January 1, 2009 and October 1, 2009.

(3) $50 annually for each of the member's registered representatives and principals for system processing. This fee shall be waived for the period from January 1, 2009 until such time as the Exchange submits a proposed rule change to reinstate it.]

The Equities Regulatory Fee is a fee assessed to member firms to offset the cost of regulating member firms' activity on the Exchange. The fee is assessed on a member firm annually based on historical daily average orders entered on the Exchange in the prior calendar year by a member firm, according to the following table:

Daily order tiers	Annual equities regulatory fee	Pro-rated equities regulatory fee (7 months)
> = 50,000 orders	$4,000	$2,333
> = 1,000 orders, but < 50,000 orders	2,500	1,458
< 1,000 orders	0	0

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to eliminate the fees found under Rule 7003(b) (''Registration Fees'') and adopt a new Equities Regulatory Fee. Currently, the Exchange assesses a member firm the following Registration Fees: $60 fee for each initial Form U4 filed for the registration of a representative or principal; $40 fee for each registration U4 transfer or re-licensing of a representative or principal; and $50 for each of the member firm's registered representatives and principals for system processing (this fee is currently waived). The Exchange is proposing to eliminate these fees and introduce a new Equities Regulatory Fee (''ERF''), which is a tier-based fee assessed annually at the beginning of the calendar year that covers, in part, the regulatory costs of the Exchange. The ERF uses a member firm's historical average daily orders entered on the Exchange over the prior calendar year as a measure of the member's expected current year's Exchange activity.

Registration Fees, as well as other membership fees collected by the Exchange, are intended to cover a portion of the cost of the Exchange's regulatory program. The Exchange's regulatory program consists of, among other things, surveillance, analysis and investigation of trading occurring on the Exchange conducted by the NASDAQ OMX Group's Market Watch group. The Exchange also has certain fixed costs associated with running its regulatory program. In addition to the costs incurred by the regulatory program effectuated by the Exchange, it also incurs regulatory costs associated with a regulatory services agreement with the Financial Industry Regulatory Authority, Inc. (''FINRA''), whereby FINRA performs certain regulatory functions on behalf of the Exchange for a fee.[3]

Exchange rules require that every qualified registered representative and principal of a member firm be registered with, and approved by, the Exchange.[4] The Exchange believes that Registration

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Rule 1001.

[4] Rule 1030 series.

Fees are no longer the best means to assess regulatory fees because they are based on the number of registered associated persons of Exchange members. The Exchange has found that the number of registered associated persons employed by a member firm is not the most accurate measure of regulatory cost incurred by the Exchange. Specifically, the regulatory effort expended by the Exchange is largely related to the number of orders entered into the Exchange, and is not necessarily commensurate with the total number of registered associated persons employed by a member firm. In this regard, the Exchange notes that member firms must comply with, among other things, the order protection requirements of Regulation NMS,[5] which effectively means that an order of a registered representative's customer will not necessarily be executed on BX, but rather on a venue at which it will receive the best price for its customer. As a consequence of the current Registration Fee structure, a majority of these fees are paid by member firms with comparatively large groups of registered representatives that do not necessarily trade on the Exchange, and therefore are not a significant part of the regulatory expense incurred by the Exchange. Notwithstanding, under the current Registration Fee structure, such member firms are assessed greater regulatory fees as compared to a member firm with few registered representatives, but a large number of orders (and therefore greater regulatory cost) entered into the Exchange.

The proposed ERF is designed to more closely allocate the regulatory expenses incurred by the Exchange to the member firms responsible for those expenses. In lieu of assessing fees based on the number of Exchange-registered associated persons, the Exchange is proposing to assess a fee on the number of orders entered into the Exchange by a member firm. The Exchange will assess the ERF annually at the beginning of the calendar year based on a member firm's historical average daily orders entered into the Exchange over the prior calendar year.[6] The Exchange is using a member firm's average daily orders entered into the Exchange in the prior calendar year as a measure of such firm's anticipated order activity in the current year. The Exchange believes that using such a measure will more closely tie the member firm's Exchange order activity in the current year to the projected regulatory costs incurred by the Exchange for such member's Exchange activity in that same year. The ERF is tiered so that member firms that enter what is essentially an immaterial number of orders into the Exchange will not be assessed an ERF. Member firms that qualify under the mid-level tier of the ERF will be assessed a fee of $2,500 annually, and member firms that qualify for the top tier of the ERF will be assessed $4,000 annually. The Exchange selected the tiers so that an approximately equal number of member firms would fall under each tier. Member firms that fall under the first tier represent a relatively small regulatory cost to the Exchange, the sum of which is covered by other regulatory fees paid by these members. The Exchange allocated the total of fees assessed annually under the current Registration Fees among the remaining two tiers so that the fees collected would closely approximate the Registration Fees assessed annually, with the member firms that fall under the top tier paying a larger fee than those under the mid-level tier. As such, the Exchange believes that the order-based tier structure of the ERF is a more fair allocation of fees assessed for regulatory expenses. Because the Exchange is implementing the ERF mid-calendar year, it will prorate the annual fee for each member firm from June 1, 2012 through December 31, 2012 and use the average daily order for calendar year 2011 for purposes of calculating its ERF obligation for calendar year 2012.

As noted above, the Exchange believes that the ERF is a better means of allocating the regulatory costs incurred by the Exchange than the current Registration Fees, and it does not anticipate the ERF will result in an increase or decrease in total fees assessed to cover regulatory costs. Rather, the Exchange believes that the ERF will result in a more equitable allocation of the fees assessed for this purpose. In this regard, the Exchange will evaluate annually, at the close of the calendar year, the amount of revenue collected from the ERF to ensure that the fees collected are commensurate with the projected needs of the Exchange's regulatory program as represented by the regulatory costs incurred during that year. If the Exchange determines regulatory revenues would exceed regulatory costs, it would adjust the ERF to bring the fees in line with such costs and use the adjusted ERF in the calculation of member firm fees due in the next annual ERF assessment.[7] If the Exchange determines that the fees collected under the ERF are commensurate with regulatory costs, the Exchange would not adjust the ERF.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. The Exchange believes that the new ERF is a more equitable allocation of fees as compared to the current Registration Fees, in that the ERF is tied to the use of, and hence regulatory cost incurred by, the Exchange. The Exchange determined to have three tiers under the ERF, with each tier representing a near equal number of Exchange member firms. In selecting the proposed fees under each of the tiers of the ERF, the Exchange first analyzed the distribution of Registration Fees among member firms in comparison to the distribution among member firms under various potential fees under the tiers of the ERF. The Exchange elected to assess the ERF based on the proposed tiers because the Exchange found these tiers to correlate the closest to the regulatory costs incurred by the Exchange, as offset by the other regulatory fees collected. In this regard, the Exchange notes that certain member firms that have historical average daily orders of less than 1,000 are not assessed a fee under proposed Rule 7003(b) because such members [sic] firms represent a much smaller regulatory cost to the Exchange relative to member firms that enter a greater number of orders and the sum of such costs is generally met by other regulatory fees assessed these member firms.[9] As the goal of the ERF is to more

[5] 17 CFR 242.600, et seq.

[6] The calculation of a member firm's average daily orders in any given calendar year is based only on the trading days during the year that it was a member of the Exchange. For example, if a member firm was approved by the Exchange on October 10, 2013, only the trading days from that date through the end of the year would be used for purposes of calculating the firm's average daily orders, which would be done in early 2014.

[7] The Exchange will conduct and complete this assessment in January of each year. If an adjustment to the ERF is warranted, the Exchange would submit a proposed rule change to the Commission to amend the ERF fee schedule. Shortly thereafter, the Exchange would assess the ERF on its member firms based on the new fee and members' average daily orders in the prior year. If no change in the ERF is warranted, the Exchange would use the existing ERF fee schedule as a basis for assessing the fee.

[8] 15 U.S.C. 78f(b)(4).

[9] For example, BX assesses each member firm an annual membership fee of $3,000 and a monthly trading rights fee of $500. *See* Rule 7001(a).

equitably assess regulatory fees, the Exchange believes that it is not unfairly discriminatory to member firms that fall under the mid-level and top tiers to assess no ERF on certain low-order volume member firms that already pay other regulatory fees adequate to cover the regulatory costs incurred by the Exchange associated with such member firms' activities in a given year. The Exchange divided the total fees assessed under the Registration Fees among the mid-level and top tiers, with 50,000 average daily orders representing the mid-point between remaining two thirds of member firms falling under these tiers and the top tier paying a greater amount than the mid-level tier based on the relative regulatory cost such member firms represent to the Exchange.

The Exchange also believes that the ERF is a reasonable fee as it is assessed on member firms based on their usage of the Exchange, and the Exchange does not believe that the new fee will result in a net increase in fees received compared to the fees currently received through assessment of the Registration Fees. Because the Exchange is more closely tying regulatory fees with regulatory costs and because the Exchange has taken great care in determining the tiers under which member firms will fall under the fee, as described above, the Exchange does not believe that the proposed fee unfairly discriminates between member firms assessed the fee. In addition, because the Exchange is implementing the ERF in the middle of a calendar year, it is pro-rating the fees assessed to reflect the partial calendar year of the ERF's effectiveness and that member firms may have paid Registration Fees through the first five months of 2012. The ERF will be applied to all member firms equally, based upon the tier under which they fall.

The Exchange also believes that the proposed rule change is consistent with the provisions of Section 6(b)(5) of the Act [10] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. As a self-regulatory organization, the Exchange has an obligation to regulate its member firms and their associated persons. The regulatory fees assessed by the Exchange are designed to cover the expenses associated with running an effective regulatory program. Eliminating the Registration Fees and implementing the ERF will not negatively impact the total fees assessed to help cover the regulatory program costs. As discussed, the total fees assessed under Rule 7003(b) will be compared annually to the regulatory costs expected to be incurred during the same calendar year, and the Exchange will make any adjustments to the fee needed to keep it in line with such costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the new fee is pro-competitive as it will more closely align the fee assessed for the Exchange's regulatory program with the use of the Exchange, thus allowing member firms to compete for order flow on a level playing field in terms of regulatory fees assessed as a precondition for participation on the Exchange. The Exchange notes a member firm that believes the ERF to be an excessive burden may reduce its order flow to the Exchange, thus reducing the impact of the ERF, or may withdraw as a member of the Exchange altogether.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BX–2012–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–031. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2012–031, and should be submitted on or before June 20, 2012.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(a)(ii).

[12] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–12997 Filed 5–29–12; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7898]

Culturally Significant Objects Imported for Exhibition

Determinations: ''50th Anniversary Remembrance of the Tragedy at Orly''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''50th Anniversary Remembrance of the Tragedy at Orly,'' imported from abroad by the High Museum of Art for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit object at the High Museum of Art in Atlanta, Georgia from on or about June 2, 2012 to on or about September 9, 2012; and possible additional exhibitions or venues yet to be determined; is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a listing of the exhibit object, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: May 23, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–13101 Filed 5–29–12; 8:45 am]

BILLING CODE 4710–05–P

[13] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7900]

The Designation of Abdallah Azzam Brigades, Also Known as Abdullah Azzam Brigades, Also Known as Ziyad al-Jarrah Battalions of the Abdullah Azzam Brigades, Also Known as Yusuf al-'Uyayri Battalions of the Abdullah Azzam Brigades as a Foreign Terrorist Organization Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

Based upon a review of the Administrative Record assembled in this matter, and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that there is a sufficient factual basis to find that the relevant circumstances described in section 219 of the Immigration and Nationality Act, as amended (hereinafter ''INA'') (8 U.S.C. 1189), exist with respect to Abdallah Azzam Brigades, and also known as Abdullah Azzam Brigades, also known as Ziyad al-Jarrah Battalions of the Abdullah Azzam Brigades, also known as Yusuf al-'Uyayri Battalions of the Abdullah Azzam Brigades.

Therefore, I hereby designate the aforementioned organization and its aliases as a foreign terrorist organization pursuant to section 219 of the INA.

This determination shall be published in the **Federal Register**.

Dated: May 8, 2012.

Thomas R. Nides,

Deputy Secretary of State.

[FR Doc. 2012–13106 Filed 5–29–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7901]

Determination and Certification Under the Arms Export Control Act

Pursuant to section 40A of the Arms Export Control Act (22 U.S.C. 2781), and Executive Order 11958, as amended, I hereby determine and certify to the Congress that the following countries are not cooperating fully with United States antiterrorism efforts:

Cuba, Eritrea, Iran, Democratic People's Republic of Korea (DPRK, or North Korea), Syria, Venezuela.

This determination and certification shall be transmitted to the Congress and published in the **Federal Register**.

Dated: May 8, 2012.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2012–13096 Filed 5–29–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7899]

The Designation of Abdallah Azzam Brigades, Also Known as Abdullah Azzam Brigades, Also Known as Ziyad al-Jarrah Battalions of the Abdullah Azzam Brigades, Also Known as Yusuf al-'Uyayri Battalions of the Abdullah Azzam Brigades, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the organization known as Abdallah Azzam Brigades, and also known as Abdullah Azzam Brigades, also known as Ziyad al-Jarrah Battalions of the Abdullah Azzam Brigades, also known as Yusuf al-'Uyayri Battalions of the Abdullah Azzam Brigades, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: May 3, 2012.

Thomas R. Nides,

Deputy Secretary of State.

[FR Doc. 2012–13104 Filed 5–29–12; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2012–0029]

Request for Comments of a Previously Approved Information Collection

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

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below is being forwarded to the Office of Management and Budget (OMB) for review and comments. A **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 19, 2012, 77 FR 16115.

DATES: Comments must be submitted on or before June 29, 2012.

FOR FURTHER INFORMATION CONTACT: Michael Pyne, Office of Rulemaking (NVS–123), Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 366–4171.

SUPPLEMENTARY INFORMATION:

Title: 49 CFR 571.403, Platform lift systems for motor vehicles and 49 CFR 571.404, Platform lift installations in motor vehicles.

OMB Control Number: 2127–0621.

Type of Request: Renewal of a previously approved information collection.

Abstract

FMVSS No. 403, Platform lift systems for motor vehicles, establishes minimum performance standards for platform lifts designed for installation on motor vehicles. Its purpose is to prevent injuries and fatalities to passengers and bystanders during the operation of platform lifts that assist wheelchair users and other persons with limited mobility in entering and leaving a vehicle. FMVSS No. 404, Platform lift installations in motor vehicles, places specific requirements on vehicle manufacturers or alterers who install platform lifts in new vehicles. Under these regulations, lift manufacturers must certify that their lifts meet the requirements of FMVSS No. 403 and must declare the certification on the owner's manual insert, the installation instructions and the lift operating instruction label. Certification of compliance with FMVSS No. 404 is on the certification label already required of vehicle manufacturers and alterers under 49 CFR part 567. Therefore, lift manufacturers must produce an insert that is placed in the vehicle owner's manual, installation instructions and one or two labels that are placed near the controls of the lift. The requirements and our estimates of burden and cost to the lift manufacturers are given below. There is no burden to the general public.

Respondents: Platform lift manufacturers and vehicle manufacturers/alterers that install platform lifts in new motor vehicles before first vehicle sale.

Estimated Number of Respondents: 10.

Estimated Total Annual Burden

Estimated burden to lift manufacturers to produce an insert for the vehicle owner's manual stating the lift's platform operating volume, maintenance schedule, and instructions regarding the lift operating procedures:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

Estimated burden to lift manufacturers to produce lift installation instructions identifying the vehicles on which the lift is designed to be installed:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

Estimated burden to lift manufacturers to produce two labels for operating and backup lift operation:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

Estimated burden to lift manufacturers to produce two labels for operating and backup lift operation:

—10 manufacturers × 24 hrs. amortized over 5 yrs. = 48 hrs. per year.

Estimated cost to lift manufacturers to produce:

—Label for operating instructions—27,398 lifts × $0.13 per label = $3,561.74.

—Label for backup operations—27,398 lifts × $0.13 per label = $3,561.74.

—Owner's manual insert—27,398 lifts × $0.04 per page × 1 page = $1,095.92.

—Installation instructions—27,398 lifts × $0.04 per page × 1 page = $1,095.92.

Note: Although lift installation instructions are considerably more than one page, lift manufacturers already provide lift installation instructions in the normal course of business and one additional page should be adequate to allow the inclusion of FMVSS specific information.

Total estimated annual cost = $9,315.32.

Total estimated hour burden per year = 144 hours.

Estimated Number of Respondents: 10.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW., Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: May 24, 2012.

Nathaniel Beuse,

Director, Office of Crash Avoidance Standards.

[FR Doc. 2012–13068 Filed 5–29–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2012–0022]

Reports, Forms, and Recordkeeping Requirements

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

ACTION: Request for public comment on a proposed collection of information.

SUMMARY: This notice solicits public comments on the requirements for the collection of information on a safety standard. Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes a collection of information with respect to the

phase-in of the upgraded requirements of Federal Motor Vehicle Safety Standard No. 216, ''Roof crush resistance,'' for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before July 30, 2012.

ADDRESSES: You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

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

Regardless of how you submit your comments, you should mention the docket number of this document. You may call the Docket at (202) 366–9324. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that two copies of the comment be provided.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Louis N. Molino, U.S. Department of Transportation, NHTSA, Room W43–311, 1200 New Jersey Avenue SE., Washington, DC 20590. Mr. Molino's telephone number is (202) 366–1740 and fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before a proposed collection of information is submitted to OMB for approval, Federal agencies must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: Roof Crush Resistance Phase-in Reporting Requirements—Part 585.

OMB Control Number: 2127–NEW.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: New collection of information.

Affected Public: Businesses.

Summary of the Collection of Information: 49 U.S.C. 30111 authorizes the issuance of Federal motor vehicle safety standards (FMVSS) and regulations. The agency, in prescribing a FMVSS or regulation, considers available relevant motor vehicle safety data, and consults with other agencies, as it deems appropriate. Further, the statute mandates that in issuing any FMVSS or regulation, the agency considers whether the standard or regulation is ''reasonable, practicable and appropriate for the particular type of motor vehicle or item of motor vehicle equipment for which it is prescribed,'' and whether such a standard will contribute to carrying out the purpose of the Act.

The Secretary is authorized to invoke such rules and regulations, as deemed necessary to carry out these requirements. Using this authority, on May 12, 2009, the agency published a final rule (74 FR 22348) upgrading the requirements of FMVSS No. 216, ''Roof crush resistance.'' The final rule contained a collection of information because of the proposed phase-in reporting requirements. The collection of information requires manufacturers of passenger cars and of trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 2,722 kilograms (6,000 pounds) or less, to annually submit a report, and maintain records related to the report, concerning the number of such vehicles that meet the upgraded test requirements of FMVSS No. 216 during the three year phase-in of those requirements. The purpose of the reporting and recordkeeping requirements is to assist the agency in determining whether a manufacturer of vehicles has complied with the requirements during the phase-in period.

This notice requests comments on the phase-in reporting requirements of FMVSS No. 216.

Description of the Likely Respondents (Including Estimated Number and Proposed Frequency of Response to the Collection of Information): NHTSA estimates that there are 21 manufacturers of passenger cars, multipurpose passenger vehicles, trucks, and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less. During the phase-in reporting period, this information collection requires a simple written report on the respondent's annual vehicle production and the percent of that production meeting the new two-sided quasi-static test requirements of FMVSS No. 216. There is no burden to the general public.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: NHTSA estimates that the total annual reporting and recordkeeping burden resulting from the collection of information is 1,260 hours and estimates that the total annual cost burden, in U.S. dollars, will be $44,100. No additional resources will be expended by vehicle manufacturers to gather annual production information because they already compile this data for their own use.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of

the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued on: May 24, 2012.

Nathaniel Beuse,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2012–13070 Filed 5–29–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning arbitrage restrictions on tax-exempt bonds.

DATES: Written comments should be received on or before July 30, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Arbitrage Restrictions on Tax-Exempt Bonds.

OMB Number: 1545–1347.

Regulation Project Numbers: FI–36–92; FI–7–94.

Abstract: Section 148 of the Internal Revenue Code requires issuers of tax-exempt bonds to rebate certain arbitrage profits earned on nonpurpose investments acquired with the bond proceeds. Under FI–36–92, issuers are required to file a Form 8038–T and remit the rebate.

Issuers are also required to keep records of certain interest rate hedges so that the hedges are taken into account in determining arbitrage profits. Under FI–7–94, the scope of interest rate hedging transactions covered by the arbitrage regulations was broadened by requiring that hedges entered into prior to the sale date of the bonds are covered as well.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments.

Estimated Number of Respondents: 3,100.

Estimated Time per Respondent: 14 hr., 34 min.

Estimated Total Annual Burden Hours: 42,050.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–12988 Filed 5–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 712

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 712, Life Insurance Statement.

DATES: Written comments should be received on or before July 30, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224 or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Life Insurance Statement.

OMB Number: 1545–0022.

Form Number: 712.

Abstract: Form 712 provides taxpayers and the IRS with information to determine if insurance on the decedent's life is includible in the gross estate and to determine the value of the policy for estate and gift tax purposes. The tax is based on the value of the life insurance policy.

Current Actions: There are no changes being made to Form 712 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 60,000.

Estimated Time per Response: 18 hrs. 40 minutes.

Estimated Total Annual Burden Hours: 1,120,200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–12970 Filed 5–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 7004

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

DATES: Written comments should be received on or before July 30, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns.

OMB Number: 1545–0233.

Form Number: 7004.

Abstract: Form 7004 is used by corporations and certain nonprofit institutions to request an automatic extension of time to file their income tax returns. The information is needed by IRS to determine whether Form 7004 was timely filed so as not to impose a late filing penalty in error and also to insure that the proper amount of tax was computed and deposited.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and non-profit institutions.

Estimated Number of Respondents: 2,834,328.

Estimated Time per Respondent: 6 hr., 46 min.

Estimated Total Annual Burden Hours: 19,216,744.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–12973 Filed 5–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning limitations on percentage depletion in the case of oil and gas wells.

DATES: Written comments should be received on or before July 30, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75.

Abstract: Section 1.613A–3(1) of the regulation requires each partner to separately keep records of his or her share of the adjusted basis of partnership oil and gas property and requires each partnership, trust, estate, and operator to provide to certain persons the information necessary to compute depletion with respect to oil or gas.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

The burden associated with this collection of information is reflected on Forms 1065, 1041, and 706.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–12977 Filed 5–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning pre-change attributes, and limitations on corporate net operating loss carryforwards.

DATES: Written comments should be received on or before July 30, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6664, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: CO–68–87 and CO–69–87 (TD 8352), Final Regulations Under Sections 382 and 383 of the Internal Revenue Code of 1986; Pre-change Attributes, and CO–18–90 (TD 8531), Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryforwards.

OMB Number: 1545–1120.

Regulation Project Number: CO–68–87; CO–69–87; CO–18–90.

Abstract: (CO–68–87 and CO–69–87) These regulations require reporting by a corporation after it undergoes an ''ownership change'' under Code sections 382 and 383. Corporations required to report under these regulations include those with capital loss carryovers and excess credits. (CO–18–90) These regulations provide rules for the treatment of options under Code section 382 for purposes of determining whether acorporation undergoes an ownership change. The regulation allows for certain elections for corporations whose stock is subject to options.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 75,150.

Estimated Time per Respondent: 2 hours, 56 minutes.

Estimated Total Annual Burden Hours: 220,575.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection ofinformation; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 22, 2012.

Allan Hopkins,

Tax Analyst.

[FR Doc. 2012–12993 Filed 5–29–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Wednesday, June 13, 2012, in Conference Room 23 at 131 M Street NE., Washington, DC. The meeting will convene at 9 a.m. and end at 3:30 p.m. The meeting is open to the public.

The purpose of the Council is to provide external advice and review for VA's research mission. The agenda will include a review of the VA research portfolio and a summary of current budget allocations. The Council will also provide feedback on the direction/focus of VA's research initiatives.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested members of the public may submit written statements for the Council's review to Margaret Hannon, Designated Federal Officer, Office of Research and Development (10P9), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC, 20420, or by email at *Margaret.Hannon@va.gov.* Any member of the public wishing to attend the meeting or wishing further information should contact Ms. Hannon at (202) 443–5614.

By Direction of the Secretary.

Dated: May 23, 2012.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–12995 Filed 5–29–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 104 May 30, 2012

Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers; Final Rule and Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2011–BT–STD–0060]

RIN 1904–AC64

Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers

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

ACTION: Direct final rule.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential dishwashers. EPCA also requires the U.S. Department of Energy (DOE) to determine whether amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this direct final rule, DOE is adopting amended energy conservation standards for residential dishwashers. DOE has determined that the amended energy conservation standards for these products would result in significant conservation of energy, and are technologically feasible and economically justified. A notice of proposed rulemaking that proposes identical energy efficiency standards is published elsewhere in today's **Federal Register**. If DOE receives adverse comment and determines that such comment may provide a reasonable basis for withdrawing the direct final rule, this final rule will be withdrawn and DOE will proceed with the proposed rule.

DATES: The effective date of this rule is September 27, 2012 unless adverse comment is received by September 17, 2012. If adverse comments are received that DOE determines may provide a reasonable basis for withdrawal of the final rule, a timely withdrawal of this rule will be published in the **Federal Register**. If no such adverse comments are received, compliance with the amended standards established for residential dishwashers in today's final rule will be required on May 30, 2013.

ADDRESSES: The docket for this rulemaking is available for review at *www.regulations.gov*, including **Federal Register** notices, comments, and other supporting documents/materials. All documents in the docket are listed in the regulations.gov index. Not all documents listed in the index may be publicly available, however, 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-STD-0060*. The regulations.gov Web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT: Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7463. Email: *Stephen.Witkowski@ee.doe.gov*.

Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *Elizabeth.Kohl@hq.doe.gov.*

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The Secretary of Energy has approved publication of today's direct final rule.

I. Summary of the Direct Final Rule and Its Benefits

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles. Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for certain products, such as residential dishwashers, shall be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, the new or amended standard must result in significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)) In accordance with these and other statutory provisions discussed in this notice, DOE is adopting amended energy conservation standards for residential dishwashers. The amended standards, which are established in terms of maximum annual energy use and maximum per-cycle water consumption, are shown in Table I.1. These amended standards apply to all products listed in Table I.1 and manufactured in, or imported into, the United States on or after May 30, 2013.

TABLE I.1—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

Product class	Compliance date: May 30, 2013	
	Maximum annual energy use *	Maximum per-cycle water consumption
1. Standard (≥8 place settings plus 6 serving pieces) ..	307 kWh/year	5.0 gallons/cycle.
2. Compact (<8 place settings plus 6 serving pieces) ..	222 kWh/year	3.5 gallons/cycle.

* Annual energy use, expressed in kilowatt-hours (kWh) per year, is calculated as: The sum of the annual standby electrical energy in kWh and the product of (1) the representative average dishwasher use cycles per year and (2) the sum of machine electrical energy consumption per cycle in kWh, the total water energy consumption per cycle in kWh, and, for dishwashers having a truncated normal cycle, the drying energy consumption divided by 2 in kWh. A truncated normal cycle is defined as the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse option.

These standard levels were submitted jointly to DOE by groups representing manufacturers, energy and environmental advocates, and consumer groups. This collective set of comments, titled ''Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances'' (the ''Joint Petition'' [2]), recommends specific energy conservation standards for residential dishwashers that, in the commenters' view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o).

A. Benefits and Costs to Consumers

Table I.2 presents DOE's evaluation of the economic impacts of today's standards on consumers of residential dishwashers, as measured by the average life-cycle cost (LCC) savings and the median payback period.

TABLE I.2—IMPACTS OF TODAY'S STANDARDS ON CONSUMERS OF RESIDENTIAL DISHWASHERS

Product class	Average LCC savings (*2010$*)	Median payback period (*years*)
Standard	3	11.8
Compact	12	0.3

B. Impact on Manufacturers

The industry net present value (INPV) is the sum of the discounted cash flows to the industry from the base year through the end of the analysis period (2012 through 2047). Using a real discount rate of 8.5 percent, DOE estimates that the INPV for manufacturers of dishwashers is $637.5 million in 2010$. Under today's standards, DOE expects that manufacturers may lose up to 13.3 percent of their INPV, which is approximately $84.6 million. Additionally, based on DOE's interviews with the manufacturers of dishwashers, DOE does not expect any plant closings or significant loss of employment as a result of today's standards.

C. National Benefits

DOE's analyses indicate that today's standards would save a significant amount of energy and water in 2013–2047—an estimated 0.07 quads of cumulative energy, and 0.14 trillion gallons of water.

The cumulative national net present value (NPV) of total consumer costs and savings of today's standards in 2010$ ranges from $0.08 billion (at a 7-percent discount rate) to $0.46 billion (at a 3-percent discount rate). This NPV expresses the estimated total value of future operating-cost savings minus the estimated increased product costs for products purchased in 2013–2047, discounted to 2012.

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

[2] DOE Docket No. EERE–2011–BT–STD–0060, Comment 1.

In addition, today's standards would have significant environmental benefits. The energy savings would result in cumulative greenhouse gas emission reductions of approximately 4.06 million metric tons (Mt) of carbon dioxide (CO_2) from 2013 through 2047. During this period, the standards would also result in emissions reductions [3] of approximately 3.54 thousand tons of nitrogen oxides (NO_X) and zero tons of mercury (Hg).[4]

The value of the CO_2 reductions is calculated using a range of values per metric ton of CO_2 (otherwise known as the Social Cost of Carbon, or SCC) developed by a recent interagency process. The derivation of the SCC values is discussed in section IV.M. DOE estimates that the present monetary value of the CO_2 emissions reductions is between $16 and $242 million, expressed in 2010$ and discounted to 2012. DOE also estimates that the present monetary value of the NO_X emissions reductions, expressed in 2010$ and discounted to 2012, is $2.8 million at a 7-percent discount rate, and $5.2 million at a 3-percent discount rate.[5]

Table I.3 summarizes the national economic costs and benefits expected to result from today's standards for residential dishwashers.

TABLE I.3—SUMMARY OF NATIONAL ECONOMIC BENEFITS AND COSTS OF RESIDENTIAL DISHWASHER ENERGY CONSERVATION STANDARDS

Category	Present value *Million 2010$*	Discount rate %
Benefits		
Operating Cost Savings	600	7
	1341	3
CO_2 Reduction Monetized Value (at $4.9/t) *	16.09	5
CO_2 Reduction Monetized Value (at $22.3/t) *	79.49	3
CO_2 Reduction Monetized Value (at $36.5/t) *	133.5	2.5
CO_2 Reduction Monetized Value (at $67.6/t) *	242.5	3
NO_X Reduction Monetized Value (at $2,537/ton) **	2.76	7
	5.24	3
Total Benefits †	683	7
	1426	3
Costs		
Incremental Installed Costs	522	7
	881	3
Net Benefits		
Including CO_2 and NO_X†	161	7
	545	3

* The CO_2 values represent global monetized values of the SCC in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per metric ton (t) are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.6/t represents the 95th percentile of the SCC distribution calculated using a 3% discount rate.
** The value represents the average of the low and high NO_X values used in DOE's analysis.
† Total Benefits for both the 3% and 7% cases are derived using the SCC value calculated at a 3% discount rate.

The benefits and costs of today's standards, for products sold in 2013–2047, can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value, expressed in 2010$, of the benefits from operating the product (consisting primarily of operating cost savings from using less energy, minus increases in equipment purchase and installation costs, which is another way of representing consumer NPV, plus (2) the annualized monetary value of the benefits of emission reductions, including CO_2 emission reductions.[6]

[3] DOE calculates emissions reductions relative to the most recent version of the *Annual Energy Outlook* (*AEO*) Reference case forecast. As noted in TSD chapter 15, this forecast accounts for regulatory emissions reductions from in-place regulations at the time of preparation of the AEO, including the Clean Air Interstate Rule (CAIR, 70 FR 25162 (May 12, 2005)), but not the Clean Air Mercury Rule (CAMR, 70 FR 28606 (May 18, 2005)). Subsequent regulations, including the recently finalized CAIR replacement rule, the Cross-State Air Pollution rule issued on July 6, 2011, will appear in the forecast for future rulemakings.

[4] Results for NO_X and Hg are presented in short tons. One short ton equals 2000 lbs.

[5] DOE is aware of multiple agency efforts to determine the appropriate range of values to use in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it monetizes Hg emissions reductions in its rulemakings.

[6] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2012, the year used for discounting the NPV of total consumer costs and savings, for the

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of residential dishwashers shipped in 2013–2047. The SCC values, on the other hand, reflect the present value of future climate-related impacts resulting from the emission of one metric ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Estimates of annualized benefits and costs of today's standards are shown in Table I.4. (All monetary values below are expressed in 2010$.) The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reduction, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $22.3/ton in 2010, the cost of the standards for dishwashers in today's rule is $46 million per year in increased equipment costs, while the benefits are $53 million per year in reduced equipment operating costs, $3.9 million in CO_2 reductions, and $0.24 million in reduced NO_X emissions. In this case, the net benefit amounts to $11 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $22.3/ton in 2010, the cost of the standards for dishwashers in today's rule is $44 million per year in increased equipment costs, while the benefits are $66 million per year in reduced operating costs, $3.9 million in CO_2 reductions, and $0.26 million in reduced NO_X emissions. In this case, the net benefit amounts to $27 million per year.

TABLE I.4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS FOR RESIDENTIAL DISHWASHERS SOLD IN 2013–2047 *

	Discount rate	Monetized (*million 2010$/year*)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating Cost Savings	7%	53	48	59.
	3%	66	59	75.
CO_2 Reduction at $4.9/t **	5%	1.1	1.0	1.3.
CO_2 Reduction at $22.3/t **	3%	3.9	3.5	4.7.
CO_2 Reduction at $36.5/t **	2.5%	6.1	5.4	7.2.
CO_2 Reduction at $67.6/t **	3%	12.0	10.8	14.2.
NO_X Reduction at $2,537/ton **	7%	0.24	0.23	0.27.
	3%	0.26	0.24	0.30.
Total †	7% plus CO_2 range	54 to 65	49 to 59	60 to 73.
	7%	57	52	64.
	3% plus CO_2 range	68 to 78	60 to 70	76 to 89.
	3%	70	63	80.
Costs				
Incremental Product Costs	7%	46	44	43.
	3%	44	41	40.
Total Net Benefits				
Total †	7% plus CO_2 range	8 to 19	6 to 16	17 to 30.
	7%	11	8	20.
	3% plus CO_2 range	24 to 35	19 to 29	37 to 49.
	3%	27	22	40.

* The results include benefits to consumers which accrue after 2047 from the dishwashers purchased from 2013 through 2047. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are indirectly included as part of incremental equipment costs. The extent of the costs and benefits will depend on the projected price trends of dishwashers, because the consumer demand for dishwashers is a function of dishwasher prices. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices and housing starts from the *AEO2011* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a low decline rate for projected product price trends in the Low Benefits Estimate, and a high decline rate for projected product price trends in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.G.3.

** The CO_2 values represent global values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per ton are the averages of SCC distributions calculated using 5-percent, 3-percent, and 2.5-percent discount rates, respectively. The value of $67.6 per ton represents the 95th percentile of the SCC distribution calculated using a 3-percent discount rate. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.

time-series of costs and benefits using discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table I.3.From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2013, that yields the same present value. This payment includes benefits to consumers which accrue after 2047 from the dishwashers purchased from 2013 to 2047. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are indirectly included as part of incremental equipment costs. The extent of these costs and benefits depends on the projected price trends of dishwashers because consumer demand of dishwashers is a function of dishwasher prices. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined is a steady stream of payments.

† Total Benefits for both the 3-percent and 7-percent cases are derived using the SCC value calculated at a 3-percent discount rate, which is $22.3/t in 2010 (in 2010$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

D. Conclusion

Based on the analyses culminating in this final rule, DOE found the benefits to the nation of the standards (energy savings, water savings, favorable consumer LCC savings and payback period, positive NPV of consumer benefit, and emission reductions) outweigh the burdens (profit margin impacts that could result in a reduction in INPV and increased operational risk for manufacturers). DOE has concluded that the standards in today's final rule represent the maximum improvement in energy efficiency that is technologically feasible and economically justified, and would result in significant conservation of energy. DOE further notes that residential dishwashers achieving these standard levels are already commercially available.

II. Introduction

The following section briefly discusses the statutory authority underlying today's final rule, as well as some of the relevant historical background related to the establishment of standards for residential dishwashers.

A. Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles,[7] a program covering most major household appliances (collectively referred to as ''covered products''), which includes the residential dishwashers that are the subject of this rulemaking. (42 U.S.C. 6292(a)(6)) EPCA prescribed energy conservation standards for these products (42 U.S.C. 6295(g)(1)), and directed DOE to conduct two cycles of rulemakings to determine whether to amend these standards. (42 U.S.C. 6295(g)(4)) DOE also notes that under 42 U.S.C. 6295(m), DOE must periodically review its energy conservation standards for covered products.

Pursuant to EPCA, DOE's energy conservation program for covered products consists essentially of four parts: (1) Testing; (2) labeling; (3) the establishment of Federal energy conservation standards; and (4) certification and enforcement procedures. The Federal Trade Commission (FTC) is primarily responsible for labeling, and DOE implements the remainder of the program. Subject to certain criteria and conditions, DOE is required to develop test procedures to measure the energy efficiency, energy use, or estimated annual operating cost of each covered product. (42 U.S.C. 6293) Manufacturers of covered products must use the prescribed DOE test procedure as the basis for certifying to DOE that their products comply with the applicable energy conservation standards adopted under EPCA and when making representations to the public regarding the energy use or efficiency of those products. (42 U.S.C. 6293(c) and 6295(s)) Similarly, DOE must use these test procedures to determine whether the products comply with standards adopted pursuant to EPCA. *Id.* The DOE test procedure for residential dishwashers currently appear at title 10 of the Code of Federal Regulations (CFR) part 430, subpart B, appendix C.

DOE must follow specific statutory criteria for prescribing amended standards for covered products. As indicated above, any amended standard for a covered product must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) Furthermore, DOE may not adopt any standard that would not result in the significant conservation of energy. (42 U.S.C. 6295(o)(3)) In deciding whether an amended standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens. (42 U.S.C. 6295(o)(2)(B)(i)) DOE must make this determination after receiving comments on the proposed standard and considering, to the greatest extent practicable, the following seven factors:

1. The economic impact of the standard on manufacturers and consumers of the products subject to the standard;

2. The savings in operating costs throughout the estimated average life of the covered products in the type (or class) compared to any increase in the price, initial charges, or maintenance expenses for the covered products that are likely to result from the imposition of the standard;

3. The total projected amount of energy, or as applicable, water, savings likely to result directly from the imposition of the standard;

4. Any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard;

5. The impact of any lessening of competition, as determined in writing by the Attorney General, that is likely to result from the imposition of the standard;

6. The need for national energy and water conservation; and

7. Other factors the Secretary of Energy (Secretary) considers relevant. (42 U.S.C. 6295(o)(2)(B)(i)(I)–(VII))

EPCA allows DOE to issue a final rule (hereinafter referred to as a ''direct final rule'') establishing an energy conservation standard on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary, that contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). A notice of proposed rulemaking (NOPR) that proposes an identical energy efficiency standard must be published simultaneously with the final rule, and DOE must provide a public comment period of at least 110 days. 42 U.S.C. 6295(p)(4). Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published notice of proposed rulemaking. DOE must publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

Furthermore, EPCA, contains what is known as an ''anti-backsliding'' provision, which prevents the Secretary from prescribing any amended standard that either increases the maximum allowable energy use or decreases the minimum required energy efficiency of a covered product. (42 U.S.C. 6295(o)(1)) Also, the Secretary may not prescribe an amended or new standard if interested persons have established by a preponderance of the evidence that

[7] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

the standard is likely to result in the unavailability in the United States of any covered product type (or class) of performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as those generally available in the United States. (42 U.S.C. 6295(o)(4))

EPCA also establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy savings during the first year that the consumer will receive as a result of the standard, as calculated under the applicable test procedure. See 42 U.S.C. 6295(o)(2)(B)(iii).

Additionally, 42 U.S.C. 6295(q)(1) specifies requirements when promulgating a standard for a type or class of covered product that has two or more subcategories. DOE must specify a different standard level than that which applies generally to such type or class of products for any group of covered products that have the same function or intended use, if products within such group—(A) Consume a different kind of energy from that consumed by other covered products within such type (or class); or (B) have a capacity or other performance-related feature which other products within such type (or class) do not have and such feature justifies a higher or lower standard than applies or will apply to the other products within that type or class. *Id.* In determining whether a performance-related feature justifies a different standard for a group of products, DOE must consider such factors as the utility to the consumer of such a feature and other factors DOE deems appropriate. *Id.* Any rule prescribing such a standard must include an explanation of the basis on which such higher or lower level was established. (42 U.S.C. 6295(q)(2))

Federal energy conservation requirements generally supersede State laws or regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6297(a)–(c)) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions set forth under 42 U.S.C. 6297(d)).

Any final rule for new or amended energy conservation standards promulgated after July 1, 2010, must address standby mode and off mode energy use. (42 U.S.C. 6295(gg)(3)) Specifically, when DOE adopts a standard for a covered product after that date, it must, if justified by the criteria for adoption of standards under EPCA (42 U.S.C. 6295(o)), incorporate standby mode and off mode energy use into the standard, or, if that is not feasible, adopt a separate standard for such energy use for that product. (42 U.S.C. 6295(gg)(3)(A)–(B)) The standards established in today's direct final rule address standby and off mode energy use.

DOE notes that it is also required to amend its test procedures to integrate measures of standby mode and off mode energy consumption into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product unless the current test procedure already fully accounts for and incorporates standby and off mode energy consumption or such integration is technically infeasible. (42 U.S.C. 6295(gg)(2)) DOE is currently considering amendments to the test procedure at appendix C to incorporate measures of off mode energy consumption in addition to the existing measures of standby mode energy use. 75 FR 75290 (Dec. 2, 2010); 76 FR 58346 Sept. 20, 2011)

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's direct final rule is consistent with these principles, including that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.

Consistent with EO 13563, and the range of impacts analyzed in this rulemaking, the energy conservation standards adopted herein by DOE achieve maximum net benefits.

B. Background

1. EISA 2007 Standards

EPCA, as amended by EISA 2007, prescribed energy conservation standards for residential dishwashers manufactured on or after January 1, 2010. 42 U.S.C. 6295(g)(10) These standards are set forth in Table II.1.

TABLE II.1—ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS ESTABLISHED BY EISA 2007

Product class	Annual energy use *(kWh/year)*	Per-cycle water consumption *(gallons/cycle)*
Standard	355	6.5
Compact	260	4.5

The EPCA amendments in EISA 2007 also require DOE to publish a final rule no later than January 1, 2015 determining whether to amend the standards in effect for dishwashers manufactured on or after January 1, 2018. (42 U.S.C. 6295(g)(10)(B)(i)) Today's final rule fulfills this statutory requirement.

2. History of Standards Rulemaking for Residential Dishwashers

The National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12 (March 17, 1989), amended EPCA and required that dishwashers be equipped with an option to dry without heat. NAECA further required that DOE conduct two cycles of rulemakings to determine if amended standards are justified. (42 U.S.C. 6295(g)(1) and (4))

On May 14, 1991, DOE issued a final rule establishing performance standards for dishwashers to complete the first required rulemaking cycle (56 FR 22250). Compliance with the new standards, codified at 10 CFR 430.32(f), was required on May 14, 1994.

DOE then conducted a second standards rulemaking for dishwashers. DOE issued an advance notice of proposed rulemaking (ANOPR) on November 14, 1994 to consider amending the energy conservation standards for clothes washers, dishwashers, and clothes dryers. 59 FR 56423. Subsequently, DOE published a Notice of Availability of the *Rulemaking Framework for Commercial Clothes Washers and Residential Dishwashers, Dehumidifiers, and Cooking Products.* 71 FR 15059 (Mar. 27, 2006). On November 15, 2007, DOE published a second ANOPR (hereafter, the November 2007 ANOPR) addressing energy conservation standards for these products. 72 FR 64432. On December 19, 2007, Congress enacted EISA 2007, which, among other things, established maximum energy and water use levels for residential dishwashers manufactured on or after January 1, 2010. (42 U.S.C. 6295(g)(10)) DOE codified the statutory standards for these products in a final rule published March 23, 2009. 74 FR 12058.

EPCA, as amended by EISA 2007, further requires that DOE publish a final rule no later than January 1, 2015, to determine whether to amend the standards in effect for dishwashers manufactured on or after January 1, 2018. (42 U.S.C. 6295(g)(10)(B)(i)) This rulemaking fulfills this statutory requirement.

On July 30, 2010, DOE received the Joint Petition, a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG), BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U-Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC)) (collectively, the ''Joint Petitioners''). The Joint Petitioners recommended specific energy conservation standards for residential dishwashers that, in their view, would satisfy the EPCA requirements in 42 U.S.C. 6295(o). Earthjustice submitted a comment affirming its support for the Joint Petition. (Earthjustice, No. 2 at p. 1) [8]

After careful consideration of the Joint Petition containing a consensus recommendation for amended energy conservation standards for residential dishwashers, the Secretary has determined that this ''Consensus Agreement'' has been submitted by interested persons who are fairly representative of relevant points of view on this matter. Congress provided some guidance within the statute itself by specifying that representatives of manufacturers of covered products, States, and efficiency advocates are relevant parties to any consensus recommendation. (42 U.S.C. 6295(p)(4)(A)) As delineated above, the Consensus Agreement was signed and submitted by a broad cross-section of the manufacturers who produce the subject products, their trade associations, and environmental, energy efficiency and consumer advocacy organizations. Although States were not signatories to the Consensus Agreement, they did not express any opposition to it. Moreover, DOE does not read the statute as requiring absolute agreement among all interested parties before the Department may proceed with issuance of a direct final rule. By explicit language of the statute, the Secretary has discretion to determine when a joint recommendation for an energy or water conservation standard has met the requirement for representativeness (*i.e.,* ''as determined by the Secretary''). Accordingly, DOE will consider each consensus recommendation on a case-by-case basis to determine whether the submission has been made by interested persons fairly representative of relevant points of view.

Pursuant to 42 U.S.C. 6295(p)(4), the Secretary must also determine whether a jointly-submitted recommendation for an energy or water conservation standard is in accordance with 42 U.S.C. 6295(o) or 42 U.S.C. 6313(a)(6)(B), as applicable. This determination is exactly the type of analysis that DOE conducts whenever it considers potential energy conservation standards pursuant to EPCA. DOE applies the same principles to any consensus recommendations it may receive to satisfy its statutory obligation to ensure that any energy conservation standard that it adopts achieves the maximum improvement in energy efficiency that is technologically feasible and economically justified and will result in significant conservation of energy. Upon review, the Secretary determined that the Consensus Agreement submitted in the instant rulemaking comports with the standard-setting criteria set forth under 42 U.S.C. 6295(o). Accordingly, the consensus agreement levels were included as trial standard level (TSL) 2 in today's rule for residential dishwashers, the details of which are discussed at relevant places throughout this document. The definition of the TSLs considered in this direct final rule is discussed in section V.A.

In sum, as the relevant criteria under 42 U.S.C. 6295(p)(4) have been satisfied, the Secretary has determined that it is appropriate to adopt amended energy conservation standards for residential dishwashers through this direct final rule.

As required by the same statutory provision, DOE is also simultaneously publishing a NOPR which proposes the identical standard levels contained in this direct final rule and is providing for a 110-day public comment period. DOE will consider whether any comment received during this comment period is sufficiently ''adverse'' as to provide a reasonable basis for withdrawal of the

[8] A notation in the form ''Earthjustice, No. 2 at p. 1'' identifies a written comment that DOE has received and has included in the docket of the standards rulemaking for residential dishwashers (Docket No. EERE–2011–BT–STD–0060). This particular notation refers to a comment (1) submitted by Earthjustice, (2) in document number 2 in the docket of that rulemaking, and (3) appearing on page 1 of document number 2.

direct final rule and continuation of this rulemaking under the NOPR. Typical of other rulemakings, it is the substance, rather than the quantity, of comments that will ultimately determine whether a direct final rule will be withdrawn. To this end, the substance of any adverse comment(s) received will be weighed against the anticipated benefits of the Consensus Agreement and the likelihood that further consideration of the comment(s) would change the results of the rulemaking. DOE notes that to the extent an adverse comment had been previously raised and addressed in the rulemaking proceeding, such a submission will not typically provide a basis for withdrawal of a direct final rule.

3. Issues on Which DOE Seeks Comment

As stated previously, in promulgating today's direct final rule pursuant to 42 U.S.C. 6295(p)(4), DOE carefully considered the Joint Petition submitted to DOE, which contained a consensus recommendation for amended energy conservation standards for residential dishwashers. For the reasons stated in this direct final rule, the Secretary determined that the ''Consensus Agreement'' was submitted by interested persons who are fairly representative of relevant points of view on this matter. The Secretary also determined, for the reasons set forth in this direct final rule, that the standards contained in the Consensus Agreement comport with the standard-setting criteria set forth under 42 U.S.C. 6295(o). Therefore, the Secretary promulgates this direct final rule establishing the amended energy conservation standards for residential dishwashers.

As required by EPCA, DOE is also simultaneously publishing a NOPR and providing for a 110-day public comment period. 42 U.S.C. 4295(p)(4). Should DOE determine to proceed with the NOPR, or to gather additional data for future energy conservation standards activities for residential dishwashers, DOE will consider any comments and data received on the direct final standards. Although comments are welcome on all aspects of this rulemaking, DOE is particularly interested in comments on the following:

(1) Impacts of the standards that may lessen or improve the utility or performance of the covered products. These impacts may include increased cycle times to wash dishware, ability to achieve good wash performance (*e.g.,* cleaning, rinsing) and drying performance, increase in noise, and other potential impacts. As discussed in section IV.I.3, manufacturers noted in interviews that any potential utility impacts may be more significant at efficiency levels above those adopted in today's direct final rule. DOE also seeks information on utility impacts at higher efficiency levels and will consider such information in any future rulemaking for dishwashers.

(2) The 2013 compliance date for the proposed standards and whether this compliance date adequately considers the typical dishwasher model design cycle for manufacturers.

(3) Whether repair costs for residential dishwashers would increase at the efficiency levels indicated in today's rule due to any changes in the design and materials and components used in order to comply with the new efficiency standards.

(4) Where there would be any anticipated changes in the consumption of complementary goods (*e.g.,* dishwasher detergent, rinse aid) that may result from the proposed standards.

(5) The 215 cycles per year estimate of consumer usage for residential dishwashers, as well as the estimated 1-hour cycle time, which includes all cycles available on the unit.

(6) The product lifetime for dishwashers assumed in the analysis and the method used to derive the mean age of 15 years.

DOE has prepared a technical support document (TSD) in support of this direct final rule. The TSD, which is available at the rulemaking Web site,[9] provides an overview of the activities DOE undertook in developing standards for residential dishwashers. It presents and describes in detail each analysis DOE performed, including descriptions of inputs, sources, methodologies, and results. These analyses are as follows:

(1) A *market and technology assessment* addresses the scope of this rulemaking, identifies the dishwasher product classes, characterizes the markets for the products, and reviews techniques and approaches for improving their efficiency.

(2) A *screening analysis* reviews technology options to improve the efficiency of residential dishwashers and weighs those options against DOE's four prescribed screening criteria.

(3) An *engineering analysis* develops the relationship between increased manufacturer price and increased efficiency.

(4) A *markups analysis* establishes markups for converting manufacturer prices to customer product costs.

(5) An *energy use analysis* generates energy-use estimates for residential dishwashers as a function of efficiency levels.

(6) A *life-cycle cost analysis* calculates the effects of standards on individual customers and compares the life-cycle costs (LCC) and payback period (PBP) of products with and without higher efficiency standards.

(7) A *shipments analysis* forecasts shipments with and without higher efficiency standards.

(8) A *national impact analysis* forecasts the national energy savings (NES), and the national net present value of total consumer costs and savings, expected to result from specific, potential energy conservation standards for residential dishwashers.

(9) A *consumer subgroup analysis* discusses the effects of standards on different subgroups of consumers.

(10) A *manufacturer impact analysis* discusses the effects of standards on the finances and profitability of product manufacturers.

(11) An *employment impact analysis* discusses the indirect effects of standards on national employment.

(12) A *utility impact analysis* discusses the effects of standards on electric and gas utilities.

(13) An *emissions analysis* discusses the effects of standards on three pollutants—sulfur dioxide (SO_2), nitrogen oxides (NO_X), and mercury—as well as carbon dioxide emissions.

(14) A *regulatory impact analysis* discusses the impact of non-regulatory alternatives to efficiency standards.

4. Test Procedure History

As discussed in section II. A, the DOE test procedure for residential dishwashers is found at Title 10 of the CFR, part 430, subpart B, appendix C. DOE originally established its test procedure for dishwashers in 1977. 42 FR 39964 (Aug. 8, 1977). In 1983, DOE amended the test procedure to revise the representative average-use cycles to more accurately reflect consumer use and to address dishwashers that use 120 degrees Fahrenheit (°F) inlet water. 48 FR 9202 (March 3, 1983). DOE amended the test procedure again in 1984 to redefine the term ''water heating dishwasher.'' 49 FR 46533 (Nov. 27, 1984). In 1987, DOE amended the test procedure to address models that use 50 °F inlet water. 52 FR 47549 (Dec. 15, 1987). In 2001, DOE revised the test procedure's testing specifications to improve testing repeatability, changed the definitions of ''compact dishwasher'' and ''standard dishwasher,'' and reduced the average number of use cycles per year from 322

[9] The rulemaking Web site for residential dishwashers is located at *www1.eere.energy.gov/buildings/appliance_standards/residential/dishwashers.html.*

to 264. 66 FR 65091, 65095–97 (Dec. 18, 2001). In 2003, DOE again revised the test procedure to more accurately measure dishwasher efficiency, energy use, and water use. The 2003 dishwasher test procedure amendments included the following revisions: (1) The addition of a method to rate the efficiency of soil-sensing products; (2) the addition of a method to measure standby power; and (3) a reduction in the average-use cycles per year from 264 to 215. 68 FR 51887, 51899–903 (August 29, 2003). The current version of the test procedure includes provisions for determining estimated annual energy use (EAEU), estimated annual operating cost (EAOC), energy factor (EF) expressed in cycles per kilowatt-hour (kWh), and water consumption expressed in gallons per cycle. 10 CFR 430.23(c). As discussed in section II. A, DOE is currently considering amendments the test procedure to incorporate measures of off mode energy consumption in addition to the existing measures of standby mode energy use.

III. General Discussion

A. Product Classes and Scope of Coverage

When evaluating and establishing energy conservation standards, DOE divides covered products into product classes by the type of energy used or by capacity or other performance-related features that justifies a different standard. In making a determination whether a performance-related feature justifies a different standard, DOE must consider such factors as the utility to the consumer of the feature and other factors DOE determines are appropriate. (42 U.S.C. 6295(q))

Existing energy conservation standards divide residential dishwashers into two product classes based on the capacity, *i.e.,* the number of place settings and serving pieces that can be loaded in the product.

- Standard (capacity equal to or greater than eight place settings plus six serving pieces)
- Compact (capacity less than eight place settings plus six serving pieces)

The Joint Petition proposes energy conservation standard levels for standard and compact product classes based on the same capacity definitions. (Joint Petition, No. 1 at p. 11) In this final rule, DOE maintains the existing standard and compact product classes for residential dishwashers. Based on a survey of products available on the market, DOE determined that compact dishwasher provide unique utility in their countertop or drawer configurations.

B. Technological Feasibility

1. General

In each standards rulemaking, DOE conducts a screening analysis based on information gathered on all current technology options and prototype designs that could improve the efficiency of the products or equipment that are the subject of the rulemaking. As the first step in such an analysis, DOE develops a list of technology options for consideration in consultation with manufacturers, design engineers, and other interested parties. DOE then determines which of those means for improving efficiency are technologically feasible. DOE considers technologies incorporated in commercially available products or in working prototypes to be technologically feasible. 10 CFR part 430, subpart C, appendix A, section 4(a)(4)(i).

After DOE has determined that particular technology options are technologically feasible, it further evaluates each technology option in light of the following additional screening criteria: (1) Practicability to manufacture, install, or service; (2) adverse impacts on product utility or availability; and (3) adverse impacts on health or safety. Section IV. B of this rule discusses the results of the screening analysis for residential dishwashers, particularly the designs DOE considered, those it screened out, and those that are the basis for the TSLs in this rulemaking. For further details on the screening analysis for this rulemaking, see chapter 4 of the direct final rule TSD.

2. Maximum Technologically Feasible Levels

When DOE proposes to adopt an amended standard for a type or class of covered product, it must determine the maximum improvement in energy efficiency or maximum reduction in energy use that is technologically feasible for such product. (42 U.S.C. 6295(p)(1)) Accordingly, in the engineering analysis, DOE determined the maximum technologically feasible (''max-tech'') improvements in energy efficiency for residential dishwashers, using the design parameters for the most efficient products available on the market or in working prototypes. (See chapter 5 of the direct final rule TSD.) The max-tech levels that DOE determined for this rulemaking are described in section IV.C.2 of this final rule.

C. Energy Savings

1. Determination of Savings

DOE used its national impact analysis (NIA) spreadsheet model to estimate energy savings from amended standards for the products that are the subject of this rulemaking.[10] For each TSL, DOE forecasted energy savings beginning in the year that manufacturers would be required to comply with amended standards, and ending in 2047. DOE quantified the energy savings attributable to each TSL as the difference in energy consumption between the standards case and the base case. The base case represents the forecast of energy consumption in the absence of amended mandatory efficiency standards, and considers market demand for more efficient products.

The NIA spreadsheet model calculates the electricity savings in site energy expressed in kilowatt-hours (kWh). Site energy is the energy directly consumed by appliances at the locations where they are used. DOE reports national energy savings on an annual basis in terms of the aggregated source (primary) energy savings, which is the savings in the energy that is used to generate and transmit the site energy. (See chapter 10 of the direct final rule TSD). To convert site energy to source energy, DOE derived annual conversion factors from the model used to prepare the Energy Information Administration's (EIA) *Annual Energy Outlook 2011* (*AEO2011*).

2. Significance of Savings

As noted above, 42 U.S.C. 6295(o)(3)(B) prevents DOE from adopting a standard for a covered product unless such standard would result in ''significant'' energy savings. Although the term ''significant'' is not defined in the Act, the U.S. Court of Appeals, in *Natural Resources Defense Council* v. *Herrington,* 768 F.2d 1355, 1373 (D.C. Cir. 1985), indicated that Congress intended ''significant'' energy savings in this context to be savings that were not ''genuinely trivial.'' The energy savings for all of the TSLs considered in this rulemaking (presented in section V.3.a) are nontrivial, and, therefore, DOE considers them ''significant'' within the meaning of section 325 of EPCA.

D. Economic Justification

1. Specific Criteria

As noted in section II.A, EPCA provides seven factors to be evaluated in

[10] The NIA spreadsheet model is described in section IV.G of this notice.

determining whether a potential energy conservation standard is economically justified. (42 U.S.C. 6295(o)(2)(B)(i)) The following sections discuss how DOE has addressed each of those seven factors in this rulemaking.

a. Economic Impact on Manufacturers and Consumers

In determining the impacts of an amended standard on manufacturers, DOE first uses an annual cash-flow approach to determine the quantitative impacts. This step includes both a short-term assessment—based on the cost and capital requirements during the period between when a regulation is issued and when entities must comply with the regulation—and a long-term assessment over a 30-year analysis period. The industry-wide impacts analyzed include industry net present value (INPV), which values the industry on the basis of expected future cash flows; cash flows by year; changes in revenue and income; and other measures of impact, as appropriate. Second, DOE analyzes and reports the impacts on different types of manufacturers, including impacts on small manufacturers. Third, DOE considers the impact of standards on domestic manufacturer employment and manufacturing capacity, as well as the potential for standards to result in plant closures and loss of capital investment. Finally, DOE takes into account cumulative impacts of various DOE regulations and other regulatory requirements on manufacturers.

For individual consumers, measures of economic impact include the changes in life-cycle cost (LCC) and payback period (PBP) associated with new or amended standards. The LCC, which is specified separately in EPCA as one of the seven factors to be considered in determining the economic justification for a new or amended standard, 42 U.S.C. 6295(o)(2)(B)(i)(II), is discussed in the following section. For consumers in the aggregate, DOE also calculates the national net present value of the economic impacts throughout the forecast period applicable to a particular rulemaking.

b. Life-Cycle Costs

The LCC is the sum of the purchase price of a product (including its installation) and the operating expense (including energy, maintenance, and repair expenditures) discounted over the lifetime of the product. The LCC savings for the considered efficiency levels are calculated relative to a base case that reflects likely market trends in the absence of amended standards. The LCC analysis requires a variety of inputs, such as product prices, product energy consumption, energy prices, maintenance and repair costs, product lifetime, and consumer discount rates. In its analysis, DOE assumed that consumers will purchase the considered products in the first year of compliance with amended standards.

To account for uncertainty and variability in specific inputs, such as product lifetime and discount rate, DOE uses a distribution of values, with probabilities attached to each value. Using this approach, DOE identifies the percentage of consumers estimated to receive LCC savings or experience an LCC increase, in addition to the average LCC savings associated with a particular standard level. In addition to identifying ranges of impacts, DOE evaluates the LCC impacts of potential standards on identifiable subgroups of consumers that may be affected disproportionately by a national standard.

c. Energy Savings

Although significant conservation of energy is a separate statutory requirement for imposing an energy conservation standard, EPCA requires DOE, in determining the economic justification of a standard, to consider the total projected energy savings that are expected to result directly from the standard. (42 U.S.C. 6295(o)(2)(B)(i)(III)) DOE uses the NIA spreadsheet results in its consideration of total projected energy savings.

d. Lessening of Utility or Performance of Products

In establishing classes of products, and in evaluating design options and the impact of potential standard levels, DOE developed standards for residential dishwashers that would not lessen the utility or performance of those products. (42 U.S.C. 6295(o)(2)(B)(i)(IV)) The TSL adopted in today's direct final rule will not reduce the utility or performance of the dishwashers under consideration in this rulemaking.

e. Impact of Any Lessening of Competition

EPCA directs DOE to consider any lessening of competition that is likely to result from standards. It also directs the Attorney General of the United States (Attorney General) to determine the impact, if any, of any lessening of competition likely to result from a proposed standard and to transmit such determination to the Secretary within 60 days of the publication of a direct final rule and simultaneously published proposed rule, together with an analysis of the nature and extent of the impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii)) DOE published the proposed rule containing energy conservation standards identical to those set forth in today's direct final rule and transmitted a copy of today's direct final rule and the accompanying TSD to the Attorney General, requesting that the Department of Justice (DOJ) provide its determination on this issue. DOE will consider DOJ's comments on the rule in determining whether to proceed with the direct final rule. DOE will also publish and respond to DOJ's comments in the **Federal Register** in a separate notice.

f. Need for National Energy Conservation

The energy savings from new or amended standards are likely to provide improvements to the security and reliability of the nation's energy system. Reductions in the demand for electricity also may result in reduced costs for maintaining the reliability of the nation's electricity system. DOE conducts a utility impact analysis to estimate how standards may affect the nation's needed power generation capacity.

Energy savings from today's standards also are likely to result in environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with energy production. DOE reports the environmental effects from today's standards, and from each TSL it considered, in the emissions analysis contained in chapter 15 in the direct final rule TSD and in section V.B.6 of this notice. DOE also reports estimates of the economic value of emissions reductions resulting from the considered TSLs.

g. Other Factors

EPCA allows the Secretary of Energy, in determining whether a standard is economically justified, to consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VII)) In developing this direct final rule, DOE has also considered the submission of the Joint Petition, which DOE believes sets forth a statement by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, and efficiency advocates) and contains recommendations with respect to an energy conservation standard that are in accordance with 42 U.S.C. 6295(o). (Although States were not signatories to the Consensus Agreement, they did not express any opposition to it.) DOE has encouraged the submission of consensus agreements as a way to bring diverse

interested parties together, to develop an independent and probative analysis useful in DOE standard setting, and to expedite the rulemaking process. DOE also believes that standard levels recommended in the Consensus Agreement may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

2. Rebuttable Presumption

As set forth in 42 U.S.C. 6295(o)(2)(B)(iii), EPCA creates a rebuttable presumption that an energy conservation standard is economically justified if the additional cost to the consumer of a product that meets the standard is less than three times the value of the first year's energy savings resulting from the standard, as calculated under the applicable DOE test procedure. DOE's LCC and PBP analyses generate values used to calculate the effect potential amended energy conservation standards would have on the payback period for consumers. These analyses include, but are not limited to, the 3-year payback period contemplated under the rebuttable-presumption test. In addition, DOE routinely conducts an economic analysis that considers the full range of impacts to consumers, manufacturers, the nation, and the environment, as required under 42 U.S.C. 6295(o)(2)(B)(i). The results of this analysis serve as the basis for DOE's evaluation of the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification). The rebuttable presumption payback calculation is discussed in section IV.F.11 of this direct final rule and chapter 8 of the direct final rule TSD.

IV. Methodology and Discussion

DOE used two spreadsheet tools to estimate the impact of today's direct final rule. The first spreadsheet calculates LCCs and PBPs of potential new energy conservation standards. The second provides shipments forecasts and then calculates impacts of potential energy conservation standards on national energy savings and net present value. The two spreadsheets are available online at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/dishwashers.html.* The Department also assessed manufacturer impacts, largely through use of the Government Regulatory Impact Model (GRIM).

Additionally, DOE estimated the impacts on utilities and the environment of energy conservation standards for residential dishwashers. DOE used a version of EIA's National Energy Modeling System (NEMS) for the utility and environmental analyses. The NEMS model simulates the energy sector of the U.S. economy. EIA uses NEMS to prepare its *Annual Energy Outlook,* a widely known baseline energy forecast for the United States. For more information on NEMS, refer to *The National Energy Modeling System: An Overview,* DOE/EIA–0581 (98) (Feb.1998), available at: *http://tonto.eia.doe.gov/FTPROOT/forecasting/058198.pdf.*

The version of NEMS used for appliance standards analysis, which makes minor modifications to the *AEO* version, is called NEMS–BT.[11] NEMS–BT offers a sophisticated picture of the effect of standards, because it accounts for the interactions among the various energy supply and demand sectors and the economy as a whole.

A. Market and Technology Assessment

1. General

When beginning an energy conservation standards rulemaking, DOE develops information that provides an overall picture of the market for the products concerned, including the purpose of the products, the industry structure, and market characteristics. This activity includes both quantitative and qualitative assessments based primarily on publicly available information. The subjects addressed in the market and technology assessment for this rulemaking include products covered by the rulemaking, quantities and types of products sold and offered for sale, retail market trends, product classes and manufacturers, regulatory and non-regulatory programs, and technology options that could improve the energy efficiency of the product(s) under examination. See chapter 3 of the direct final rule TSD for further discussion of the market and technology assessment.

2. Products Included in This Rulemaking

DOE defines ''dishwasher'' under EPCA as ''a cabinet-like appliance which with the aid of water and detergent, washes, rinses, and dries (when a drying process is included) dishware, glassware, eating utensils, and most cooking utensils by chemical, mechanical and/or electrical means and discharges to the plumbing drainage system.'' (10 CFR 430.2) DOE considers this definition to encompass built-in, portable, and countertop dishwashers.

3. Product Classes

Existing energy conservation standards divide residential dishwashers into two product classes based on capacity: (1) Standard; and (2) compact. As mentioned previously in section III.A, DOE is maintaining these product classes for this rulemaking.

4. Non-Regulatory Programs

As part of the market and technology assessment, DOE reviews non-regulatory programs promoting energy efficient residential appliances in the United States. Non-regulatory programs that DOE considers in its market and technology assessment include ENERGY STAR and the Consortium for Energy Efficiency (CEE) Super-Efficient Home Appliance Initiative (SEHA).

ENERGY STAR is a voluntary labeling program administered jointly by the U.S. Environmental Protection Agency (EPA) and DOE. ENERGY STAR identifies energy efficient products through a qualification process.[12] To qualify, a product must exceed Federal minimum standards by a specified amount, or if no Federal standard exists, a product must exhibit select energy-saving features. ENERGY STAR specifications currently exist for residential dishwashers.

The CEE SEHA program develops initiatives for its North American members to promote the manufacture and purchase of energy efficient products and services.[13] The program establishes efficiency tiers beyond the DOE energy conservation standards and the ENERGY STAR specifications. Currently, CEE has set two efficiency tiers above the ENERGY STAR specification for standard dishwashers, and one efficiency tier above the ENERGY STAR specification for compact dishwashers.

5. Technology Options

As part of the market and technology assessment, DOE developed a list of technologies to consider for improving the efficiency of residential dishwashers, as shown in Table IV.1. These technologies encompass all those DOE believes would improve energy efficiency and are technologically feasible, most of which were identified for the November 2007 ANOPR. 72 FR

[11] EIA approves the use of the name ''NEMS'' to describe only an *AEO* version of the model without any modification to code or data. Because the present analysis entails some minor code modifications and runs the model under various policy scenarios that deviate from *AEO* assumptions, the name ''NEMS–BT'' refers to the model as used here. (BT stands for DOE's Building Technologies Program.)

[12] For more information, please visit *www.energystar.gov.*

[13] For more information, please visit *www.cee1.org.*

64432, 64451 (Nov. 15, 2007). In addition to those technology options identified in the November 2007 ANOPR, DOE also considered the use of control strategies to decrease energy and water consumption. This technology option is a change in the product's operation. For instance, a manufacturer may lower the temperature of a wash or rinse cycle to decrease the amount of internal water heating required. Often, decreases in water temperatures or water use are combined with longer cycles to limit the impact on wash performance.

TABLE IV.1—INITIAL TECHNOLOGY OPTIONS FOR RESIDENTIAL DISHWASHERS

1. Condenser drying.
2. Control Strategies.
3. Fan/jet drying.
4. Flow-through heating.
5. Improved fill control.
6. Improved food filter.
7. Improved motor efficiency.
8. Improved spray-arm geometry.
9. Increased insulation.
10. Low-standby-loss electronic controls.
11. Microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls.
12. Modified sump geometry, with and without dual pumps.
13. Reduced inlet-water temperature.
14. Supercritical carbon dioxide washing.
15. Ultrasonic washing.
16. Variable washing pressures and flow rates.

B. Screening Analysis

DOE uses the following four screening criteria to determine which technology options are suitable for further consideration.

(1) *Technological feasibility.* DOE will consider technologies incorporated in commercial products or in working prototypes to be technologically feasible. (The technological feasibility of options was discussed in the preceding section as part of the market and technology assessment.)

(2) *Practicability to manufacture, install, and service.* If mass production and reliable installation and servicing of a technology in commercial products could be achieved on the scale necessary to serve the relevant market at the time the standard comes into effect, then DOE will consider that technology practicable to manufacture, install, and service.

(3) *Adverse impacts on product utility or product availability.* If DOE determines a technology would have significant adverse impact on the utility of the product to significant subgroups of consumers, or would result in the unavailability of any covered product type with performance characteristics (including reliability), features, sizes, capacities, and volumes that are substantially the same as products generally available in the United States at the time, it will not consider this technology further.

(4) *Adverse impacts on health or safety.* If DOE determines that a technology will have significant adverse impacts on health or safety, it will not consider this technology further.

(10 CFR part 430, subpart C, appendix A, (4)(a)(4) and (5)(b)).

Technologies that pass through the screening analysis are referred to as ''design options'' in the engineering analysis. Details of the screening analysis are provided in chapter 4 of the direct final rule TSD.

Based on the preliminary determinations made in the November 2007 ANOPR (72 FR 64432, 64454–55 (Nov. 15, 2007)), and further analysis of the initial technology options, DOE retained the design options shown in Table IV.2 for its subsequent analyses. These remaining design options met all of the screening criteria listed above.

TABLE IV.2—DESIGN OPTIONS RETAINED FOR ENGINEERING ANALYSIS

1. Condenser drying.
2. Control Strategies.
3. Fan/jet drying.
4. Flow-through heating.
5. Improved fill control.
6. Improved food filter.
7. Improved motor efficiency.
8. Improved spray-arm geometry.
9. Increased insulation.
10. Low-standby-loss electronic controls.
11. Microprocessor controls and fuzzy logic, including adaptive or soil-sensing controls.
12. Modified sump geometry, with and without dual pumps.
13. Variable washing pressures and flow rates.

C. Engineering Analysis

In the engineering analysis, DOE evaluates a range of product efficiency levels and their associated manufacturing costs. The purpose of the analysis is to estimate the incremental manufacturer production costs (MPCs) associated with increasing efficiency levels above that of the baseline model in each product class. The engineering analysis considers technologies not eliminated in the screening analysis, designated as design options, in developing cost-efficiency curves, which subsequently are used for the LCC and PBP analyses.

DOE has identified the following three methodologies for generating the manufacturing costs needed for the engineering analysis: (1) The design-option approach, which provides the incremental costs of adding to a baseline model design options that will improve its efficiency; (2) the efficiency-level approach, which provides the relative costs of achieving increases in energy efficiency levels, without regard to the particular design options used to achieve such increases; and (3) the cost-assessment (or reverse-engineering) approach, which provides ''bottom-up'' manufacturing cost assessments for achieving various levels of increased efficiency, based on detailed data regarding costs for parts and material, labor, shipping/packaging, and investment for models that operate at particular efficiency levels.

DOE conducted the engineering analyses for the standard product class in this rulemaking using the efficiency-level approach, combined with the cost-assessment approach, to develop a manufacturing cost for each efficiency level. DOE chose this approach because the efficiency levels considered in the engineering analysis are attainable using technologies currently available on the market for residential dishwashers. This approach involved physically disassembling commercially available products, consulting with outside experts, reviewing publicly available cost and performance information, and modeling equipment costs.

Given the data available for the compact product class, DOE used the design-option approach to develop the cost-efficiency relationship. There are very few, disparate platforms (*i.e.,* countertop units and dishdrawers) available on the market for this product class. Therefore, DOE developed the cost-efficiency relationship by estimating the incremental costs of adding specific design options to a baseline model that would provide sufficient improvement in efficiency to achieve the higher efficiency levels considered for the analysis. DOE weighted the costs at each efficiency level by market share of each platform.

To provide interested parties with additional information about DOE's assumptions and results and the ability to perform independent analyses for verification, DOE associated each efficiency level with specific technologies that manufacturers might use. Chapter 5 of the direct final rule TSD describes the methodology and results of the efficiency level analysis used to derive the cost-efficiency relationships.

1. Baseline Efficiency Levels

The baseline efficiency levels for both the standard and compact product classes are based on the current DOE

energy conservation standards for annual energy use and per-cycle water consumption. These standards took effect for residential dishwashers manufactured on or after January 1, 2010. (42 U.S.C. 6295 (g)(10)) Table IV.3 below shows the baseline efficiency level for each residential dishwasher product class.

TABLE IV.3—BASELINE EFFICIENCY LEVELS FOR RESIDENTIAL DISHWASHER ANALYSIS

Product class	Annual energy use *(kWh/year)*	Per-cycle water consumption *(gallons/cycle)*
Standard	355	6.5
Compact	260	4.5

2. Higher Efficiency Levels

DOE considered efficiency levels higher than baseline levels based on specifications prescribed by ENERGY STAR and CEE's Super-Efficient Home-Appliances Initiative. The highest efficiency levels were defined by the maximum available technology that DOE could identify on the market. (DOE did not identify any working prototypes that were more efficient than the maximum available technology on the market.) Where the increments between adjacent efficiency levels were large, DOE proposed to add an intermediate ''gap-fill'' level. Efficiency Level 2 for standard dishwashers and Efficiency Level 1 for compact dishwashers correspond to the efficiency levels proposed in the Consensus Agreement discussed in section II.B.2. Table IV.4 and Table IV.5 show the efficiency levels analyzed in today's direct final rule, based on annual energy use and per-cycle water consumption.

TABLE IV.4—EFFICIENCY LEVELS FOR STANDARD RESIDENTIAL DISHWASHER ANALYSIS

Level	Efficiency level reference source	Efficiency level	
		Annual energy use *(kWh/year)*	Per-cycle water consumption *(gal/cycle)*
Baseline	DOE Standard	355	6.5
EL 1	ENERGY STAR (effective August 11, 2009)	324	5.8
EL 2	CEE Tier 1/Consensus Agreement	307	5.0
EL 3	CEE Tier 2/Upcoming ENERGY STAR (effective January 20, 2012)	295	4.25
EL 4	Gap Fill *	234	3.8
EL 5	Maximum Available *	180	1.6

* Source: ENERGY STAR-qualified dishwashers as of January 30, 2011.

TABLE IV.5—EFFICIENCY LEVELS FOR COMPACT RESIDENTIAL DISHWASHER ANALYSIS

Level	Efficiency level description	Annual energy use * *(kWh/year)*	Per-cycle water consumption *(gal/cycle)*
Baseline	DOE Standard	260	4.5
EL 1	Consensus Agreement/Upcoming ENERGY STAR (effective January 20, 2012)	222	3.5
EL 2	Maximum Available *	154	2.1

* Source: ENERGY STAR-qualified dishwashers as of January 30, 2011.

3. Proprietary Designs

In its engineering and economic analyses DOE considers all design options that are commercially available or present in a working prototype, including proprietary designs and technologies. DOE will consider a proprietary design in the subsequent analyses only if the achieved efficiency level can also be reached using other nonproprietary design options. If the proprietary design is the only approach available to achieve a given efficiency level, then DOE will reject that efficiency level to avoid impacts on competition that would likely result. DOE solicited comment on any proprietary design options during its manufacturer interviews, and although manufacturers mentioned several technologies that are currently in development, these technologies are not required to meet the efficiency levels considered in this analysis. Therefore, DOE believes that all efficiency levels in today's direct final rule can be achieved without the use of proprietary designs.

4. Reverse Engineering

Based on product teardowns and cost modeling, DOE developed overall cost-efficiency relationships for the standard and compact product classes. Table IV.6 and Table IV.7 show DOE's estimates of incremental manufacturing costs for improvement of dishwasher efficiency above the baseline. Chapter 5 of the direct final rule TSD provides details on DOE's engineering analysis and development of the cost-efficiency curves.

TABLE IV.6—COST-EFFICIENCY RELATIONSHIP FOR STANDARD RESIDENTIAL DISHWASHERS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)	Incremental manufacturing cost		
			(2010$)	($/kWh/yr)	($/gal/cycle)
Baseline	355	6.5			
EL 1	324	5.8	18.27	0.59	26.10
EL 2	307	5.0	31.82	0.66	21.21
EL 3	295	4.25	69.23	1.15	30.77
EL 4	234	3.8	75.18	0.62	27.85
EL 5	180	1.6	82.95	0.47	16.93

TABLE IV.7—COST-EFFICIENCY RELATIONSHIP FOR COMPACT RESIDENTIAL DISHWASHERS

Efficiency level	Annual energy use (kWh/year)	Per-cycle water consumption (gal/cycle)	Incremental manufacturing cost		
			(2010$)	($/kWh/yr)	($/gal/cycle)
Baseline	260	4.5			
EL 1	222	3.5	1.00	0.03	1.00
EL 2	154	2.1	12.11	0.11	5.05

D. Markups Analysis

The markups analysis develops appropriate markups in the distribution chain to convert the estimates of manufacturer cost derived in the engineering analysis to consumer prices. At each step in the distribution channel, companies mark up the price of the product to cover business costs and profit margin. For dishwashers, the main parties in the distribution chain are manufacturers and retailers.

DOE developed an average manufacturer markup by examining the annual Securities and Exchange Commission (SEC) 10–K reports filed by publicly traded manufacturers primarily engaged in appliance manufacturing and whose combined product range includes residential dishwashers.

For retailers, DOE developed separate markups for baseline products (baseline markups) and for the incremental cost of more efficient products (incremental markups). Incremental markups are coefficients that relate the change in the manufacturer sales price of higher-efficiency models to the change in the retailer sales price. DOE relied on economic data from the U.S. Census Bureau to estimate average baseline and incremental markups.[14]

Chapter 6 of the direct final rule TSD provides details on DOE's development of markups for dishwashers.

E. Energy and Water Use Analysis

DOE's energy and water use analysis estimated the range of energy and water use of dishwashers in the field, *i.e.,* as they are actually used by consumers. The energy and water use analysis provided the basis for other analyses DOE performed, particularly assessments of the energy and water savings and the savings in consumer operating costs that could result from DOE's adoption of amended standards.

DOE determined a range of annual energy and per-cycle water consumption of dishwashers by multiplying the per-cycle energy use and per-cycle water use of each considered design by the number of cycles per year in a representative sample of U.S. households.

DOE estimated the per-cycle energy use by subtracting the annual energy use associated with standby power from the total annual energy use and dividing the result by the national average number of dishwasher cycles per year. DOE used data provided by AHAM on the total annual dishwasher energy use and the standby power use for each considered efficiency level.

DOE analyzed per-cycle energy consumption based on two components: (1) Water-heating energy, and (2) machine (motor) and drying energy. The largest component of dishwasher energy consumption is water-heating energy use, which is the energy required to heat the inlet water to the temperature for dishwashing. The machine energy consists of the motor energy (for water pumping and food disposal) and drying energy consists of energy to dry cleaned dishes.

DOE estimated the per-cycle water-heating energy consumption based on DOE's dishwasher test procedure (which refers to this quantity as ''water energy consumption''). DOE estimated this energy consumption for dishwashers that operate with a nominal inlet water temperature of 120 °F, the most common situation in U.S. homes. For a dishwasher using electrically heated water, the water energy consumption, expressed in kWh per cycle, is equal to the water consumption per cycle times a nominal water heater temperature rise of 70 °F times the specific heat of water (0.0024 kWh per gallon per °F).[15] For a dishwasher using gas-heated or oil-heated water, the calculation is the same, but also incorporates a nominal water heater recovery efficiency of 0.75.[16]

The per-cycle machine and drying energy was determined by subtracting the per-cycle water-heating energy consumption from the per-cycle total energy consumption.

DOE determined the standby annual energy consumption by multiplying the energy use in standby mode per hour by the hours the dishwasher is in standby mode, which is the difference between the number of hours in a year and the active hours, which is equal to the number of dishwasher cycles per year multiplied by cycle time, which is estimated to be one hour.[17]

DOE estimated the per-cycle water use by efficiency level in its engineering analysis, as described in chapter 5 of the direct final rule TSD.

[14] U.S. Census, 2002 Business Expenditure Survey (BES), Electronics and Appliance Stores sectors.

[15] The water heater temperature rise of 70 °F assumes an average water heater inlet temperature of 50 °F, as specified as the national average in the dishwasher test procedure.

[16] The recovery efficiency indicates how efficient a water heater is at heating water. The DOE test procedure for dishwashers specifies a recovery efficiency of 0.75 for gas-fired water heating, which is representative of gas water heaters currently in the housing stock.

[17] The one-hour cycle time is an estimate of the typical cycle time for a dishwasher. Actual cycle times vary based on wash selection, load, and model of dishwasher.

To estimate the number of cycles per year in a representative sample of U.S. households, DOE analyzed data from the Energy Information Administration (EIA)'s 2005 Residential Energy Consumption Survey (RECS), which was the most recent such survey available at the time of DOE's analysis.[18] RECS is a national sample survey of housing units that collects statistical information on the consumption of and expenditures for energy in housing units along with data on energy-related characteristics of the housing units and occupants. Of the more than 4,800 households in RECS, almost 2,500 have dishwashers. For each household using a dishwasher, RECS provides data on the number of dishwasher cycles in the following bins: (1) Less than once per week, (2) once per week, (3) 2–3 times per week, (4) 4–6 times per week, (5) at least once per day. DOE converted the above to annual values and created a triangular or uniform distribution for each bin. DOE randomly assigned a specific numerical value from within the appropriate bin to each household in the dishwasher sample. The average number of cycles per year derived from the RECS 2005 data is 174.

DOE also analyzed a review of survey data[19] to estimate the average number of dishwasher cycles per year. In the review, survey data on consumers' dishwasher usage habits were collected from a number of sources including several dishwasher manufacturers, detergent manufacturers, energy and consumer interest groups, independent researchers, and government agencies. These data were also used to develop the 2003 dishwasher test procedure amendments, which included a reduction in the average cycles per year from 264 to 215.[20] Because the survey data are more comprehensive than the RECS data, for today's rule DOE chose an average usage of 215 cycles per year as the most representative value for average dishwasher use.

To estimate the annual number of cycles for each RECS household in the dishwasher sample, DOE multiplied the specific value derived from RECS by the ratio of 215 cycles to 174 cycles (the RECS average). The resulting range of values used in the LCC analysis is consistent with the average use in the DOE dishwasher test procedure.

Table IV.8 shows the estimated average annual energy and water use for each efficiency level analyzed for standard dishwashers.

TABLE IV.8—STANDARD DISHWASHERS: AVERAGE ANNUAL ENERGY AND WATER USE BY EFFICIENCY LEVEL

Efficiency level	Annual energy use				Annual water use
	Water heating *	Machine + drying	Standby †	Total	
	kWh/year	*kWh/year*	*kWh/year*	*kWh/year*	*gal/year*
Baseline	234.8	120.2	0.0	355	1,398
1	209.5	94.8	19.7	324	1,247
2	180.6	111.9	14.5	307	1,075
3	153.5	127.0	14.5	295	914
4	137.3	82.2	14.5	234	817
5	57.8	107.7	14.5	180	344

* Shown for the case of electrically heated water.
† Standby annual energy use based on a dishwasher cycle length of one hour.
Standby hours = 8,760 hours − (215 cycles × 1 hour) = 8,545 hours.

TABLE IV.9—COMPACT DISHWASHERS: AVERAGE ANNUAL ENERGY AND WATER USE BY EFFICIENCY LEVEL

Efficiency level	Annual energy use				Annual water use
	Water heating *	Machine + drying	Standby †	Total	
	kWh/year	*kWh/year*	*kWh/year*	*kWh/year*	*gal/year*
Baseline	162.5	77.8	19.7	260	968
1	126.4	75.9	19.7	222	753
2	75.9	63.6	14.5	154	452

* Shown for the case of electrically heated water.
† Standby annual energy use based on a dishwasher cycle length of one hour.
Standby hours = 8,760 hours − (215 cycles × 1 hour) = 8,545 hours.

Chapter 7 of the direct final rule TSD provides details on DOE's energy and water use analysis for dishwashers.

F. Life-Cycle Cost and Payback Period Analysis

DOE conducted LCC and PBP analyses to evaluate the economic impacts on individual consumers of potential energy conservation standards for dishwashers. The LCC is the total consumer expense over the life of a product, consisting of purchase and installation costs plus operating costs (expenses for energy use, maintenance, and repair). To compute the operating costs, DOE discounts future operating costs to the time of purchase and sums them over the lifetime of the product. The PBP is the estimated amount of time (in years) it takes consumers to recover the increased purchase cost (including installation) of a more efficient product through lower operating costs. DOE calculates the PBP by dividing the change in purchase cost (normally higher) due to a more stringent standard by the change in average annual operating cost (normally lower) that results from the standard.

[18] For information on RECS, see *www.eia.doe.gov/emeu/recs/*.

[19] Available at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/survey_data.pdf*.

[20] 68 FR 51887 (August 29, 2003). The 215 value was based on the review's recommendation that the number of average-use cycles per year be reduced into the range of 200 to 233 cycles.

For any given efficiency level, DOE measures the PBP and the change in LCC relative to an estimate of the base-case appliance efficiency levels. The base-case estimate reflects the market in the absence of new or amended energy conservation standards, including the market for products that exceed the current energy conservation standards.

For each considered efficiency level in each product class, DOE calculated the LCC and PBP for a nationally representative set of housing units. For the analysis for today's rule, DOE developed household samples from the 2005 RECS. For each sample household, DOE determined the energy consumption for the dishwasher and the appropriate electricity price. By developing a representative sample of households, the analysis captured the variability in energy consumption and energy prices associated with the use of residential dishwashers.

Inputs to the calculation of total installed cost include the cost of the product—which includes manufacturer costs, manufacturer markups, retailer and distributor markups, and sales taxes—and installation costs. Inputs to the calculation of operating expenses include annual energy consumption, energy and water prices and price projections, repair and maintenance costs, product lifetimes, discount rates, and the year that compliance with standards is required. DOE created distributions of values for product lifetime, discount rates, and sales taxes, with probabilities attached to each value, to account for their uncertainty and variability.

The computer model DOE uses to calculate the LCC and PBP, which incorporates Crystal Ball (a commercially available software program), relies on a Monte Carlo simulation to incorporate uncertainty and variability into the analysis. The Monte Carlo simulations randomly sample input values from the probability distributions and dishwasher user samples. The model calculated the LCC and PBP for products at each efficiency level for 10,000 housing units per simulation run.

Table IV.10 summarizes the approach and data DOE used to derive inputs to the LCC and PBP calculations. The subsections that follow provide further discussion. Details of the spreadsheet model, and of all the inputs to the LCC and PBP analyses, are contained in chapter 8 and its appendices of the direct final rule TSD (see Table 8.1.1 for a summary of inputs).

TABLE IV.10—SUMMARY OF INPUTS AND METHODS FOR THE LCC AND PBP ANALYSIS *

Inputs	Source/method
Product Cost	Derived by multiplying manufacturer cost by manufacturer and retailer markups and sales tax, as appropriate. Used historical data to derive a price scaling index to forecast product costs.
Installation Costs	Baseline installation cost determined with data from RS Means. Assumed no change with efficiency level.
Annual Energy and Water Use	The sum of the total per-cycle annual energy and water use multiplied by the number of cycles per year and the standby annual energy use. Average number of cycles based on ADL field data. Variability: Based on the 2005 RECS normalized to the average number of cycles.
Energy and Water Prices	Electricity: Based on EIA's Form 861 data for 2010. Variability: Regional energy prices determined for 13 regions. Water: Based on 2010 AWWA/Raftelis Survey. Variability: By census region.
Energy and Water Price Trends	Energy: Forecasted using *Annual Energy Outlook 2011* (*AEO2011)* price forecasts. Water: Forecasted using BLS historic water price index information.
Repair and Maintenance Costs	Assumed no change with efficiency level.
Product Lifetime	Estimated using survey results from RECS (1990, 1993, 1997, 2001, 2005) and the U.S. Census American Housing Survey (2005, 2007), along with historic data on appliance shipments. Variability: Characterized using Weibull probability distributions.
Discount Rates	Approach involves identifying all possible debt or asset classes that might be used to purchase the considered appliances, or might be affected indirectly. Primary data source was the Federal Reserve Board's SCF ** for 1989, 1992, 1995, 1998, 2001, 2004 and 2007.
Compliance Date	2018.†

* References for the data sources mentioned in this table are provided in the sections following the table or in chapter 8 of the direct final rule TSD.
** Survey of Consumer Finances.
† For TSL 2, DOE used 2013 as the compliance date.

1. Product Cost

To calculate consumer product costs, DOE multiplied the manufacturer selling prices developed in the engineering analysis by the supply-chain markups described above (along with sales taxes). DOE used different markups for baseline products and higher-efficiency products, because DOE applies an incremental markup to the increase in MSP associated with higher-efficiency products.

Examination of historical price data for a number of appliances that have been subject to energy conservation standards indicates that an assumption of constant real prices and costs may overestimate long-term trends in appliance prices. Economic literature and historical data suggest that the real costs of these products may in fact trend downward over time according to ''learning'' or ''experience'' curves. Experience curve analysis focuses on entire industries (often operating globally) and aggregates over many causal factors that may not be well characterized. Experience curve analysis implicitly includes factors such as efficiencies in labor, capital investment, automation, materials prices, distribution, and economies of scale at an industry-wide level.[21] Since market competition is very effective, learning in one plant or firm rapidly diffuses to other firms as well, leading to industry-wide effects.

[21] Newell, R.G., 2000. Incorporation of Technological Learning into NEMS Buildings Modules. U.S. Department of Energy, Energy Information Administration, Washington, DC.

On February 22, 2011, DOE published a Notice of Data Availability (NODA, 76 FR 9696) stating that DOE may consider improving regulatory analysis by addressing equipment price trends. In the NODA, DOE proposed that when sufficiently long-term data are available on the cost or price trends for a given product, it would analyze the available data to forecast future trends.

Many commenters were supportive of DOE moving from an assumption-based equipment price trend forecasting method to a data-driven methodology for forecasting price trends. Other commenters were skeptical that DOE could accurately forecast price trends given the many variables and factors that can complicate both the estimation and the interpretation of the numerical price trend results and the relationship between price and cost. DOE evaluated the concerns expressed about its proposed approach for incorporating experience in its forecasts of product prices and determined that retaining an assumption-based approach of a constant real price trend was not consistent with the historical data for residential dishwashers. Therefore, DOE developed a range of potential price trends that was consistent with the available data.

For the default price trend for this final rule, DOE estimated an experience rate for residential dishwashers based on an analysis of long-term historical data. DOE derived a dishwasher price index from 1988 to 2010 using Producer Price Index (PPI) data for miscellaneous household appliances from the Bureau of Labor Statistics' (BLS). (PPI data specific to residential dishwashers were not available.) An inflation-adjusted price index was calculated using the GDP price deflator for the same years. This proxy for historic price data was then regressed on the quantity of dishwashers produced, based on a corresponding series for total shipments of dishwashers.

To calculate an experience rate, a least-squares power-law fit was performed on the dishwasher price index versus cumulative shipments (including imports). DOE then derived a price factor index, with the price in 2010 equal to 1, to forecast prices in the year of compliance for amended energy conservation standards in the LCC and PBP analysis, and for the NIA, for each subsequent year through 2047. The index value in each year is a function of the experience rate and the cumulative production through that year. To derive the latter, DOE used projected shipments from the base case projections made for the NIA (see section IV.G.1 of this notice). The average annual rate of price decline in the default case is 1.27 percent. By 2047, which is the end date of the forecast period, the price is forecasted to drop 38 percent relative to 2010. For the baseline model, the average price decreases from $630 in 2010 to $392 in 2047 (values given in 2010$). DOE's forecast of product prices for dishwashers is described in further detail in appendix 8–E of the direct final rule TSD.

For the NIA, DOE also considered several alternative price trends as sensitivity cases (see section IV.G.3 for a description). In recognition of the uncertainty regarding estimation of future product price trends, DOE will continue to review the relevant literature and seek to continually improve and refine its methodology through research, enhancements to its models and by seeking public input. DOE will also work to ensure the robustness of its data sets as a means to ensure the reliability of its projections.

2. Installation Cost

Installation cost includes labor, overhead, and any miscellaneous materials and parts needed to install the product. DOE used data from the 2010 RS Means Plumbing Cost data book to estimate the baseline installation cost. DOE found no evidence that installation costs would be impacted with increased efficiency levels.

3. Annual Energy Consumption

For each sampled household, DOE determined the energy consumption for a dishwasher at different efficiency levels using the approach described above in section IV.E.

4. Energy Prices

DOE derived average annual energy prices for 13 geographic areas consisting of the nine U.S. Census divisions, with four large states (New York, Florida, Texas, and California) treated separately. For Census divisions containing one of those large states, DOE calculated the regional average excluding the data for the large state.

DOE calculated average residential electricity prices for each of the 13 geographic areas using data from EIA's Form EIA–861 database (based on ''Annual Electric Power Industry Report'').[22] DOE calculated an average annual regional residential price by: (1) Estimating an average residential price for each utility (by dividing the residential revenues by residential sales); and (2) weighting each utility by the number of residential consumers it served in that region. The final rule analysis used the data for 2009, the most recent data available.

DOE calculated average residential natural gas prices for each of the 13 geographic areas using data from EIA's ''Natural Gas Monthly.''[23] DOE calculated average annual regional residential prices by: (1) Estimating an average residential price for each State; and (2) weighting each State by the number of residential consumers. The direct final rule analysis used the data for 2010.

5. Energy Price Projections

To estimate energy prices in future years, DOE multiplied the average regional energy prices discussed in the preceding section by the forecast of annual average residential energy price changes in the Reference case from *AEO2011,* which has an end year of 2035.[24] To estimate price trends after 2035, DOE used the average annual rate of change in prices from 2020 to 2035.

6. Water and Wastewater Prices

For today's direct final rule, DOE obtained data on water and wastewater prices for 2010 from the Water and Wastewater Rate Survey conducted by Raftelis Financial Consultants and the water utility association, AWWA. The survey, which analyzes each industry separately, covers approximately 308 water utilities and 228 wastewater utilities. The water survey includes, for each utility, the cost to consumers of purchasing a given volume of water or treating a given volume of wastewater. The data provide a division of the total consumer cost into fixed and volumetric charges. DOE's calculations use only the volumetric charge to calculate water and wastewater prices, because only this charge is affected by a change in water use. Average water and wastewater prices were estimated for each of four census regions. Each RECS household was assigned a water and wastewater price depending on its census region location.

DOE also used price information for households that use well water and a septic tank from the National Ground Water Association, as well as national cost data on residential septic systems from the National Onsite Wastewater Recycling Association (NOWRA).

Chapter 8 of the direct final rule TSD provides more detail about DOE's

[22] Available at: *www.eia.doe.gov/cneaf/electricity/page/eia861.html.*

[23] Available at: *http://www.eia.gov/oil_gas/natural_gas/data_publications/natural_gas_monthly/ngm.html.*

[24] U.S. Energy Information Administration. *Annual Energy Outlook 2011.* Washington, DC. April 2011.

approach to developing water and wastewater prices.

7. Maintenance and Repair Costs

Repair costs are associated with repairing or replacing components that have failed in an appliance; maintenance costs are associated with maintaining the operation of the product. Typically, small incremental increases in product efficiency produce no, or only minor, changes in repair and maintenance costs compared to baseline efficiency products.

DOE requested information from manufacturers during interviews as to whether maintenance and repair costs are a function of efficiency level and product class. Manufacturers responded that these costs would not increase with efficiency. Therefore, DOE did not assume that more efficient dishwashers would have greater repair or maintenance costs.

8. Product Lifetime

Because the lifetime of appliances varies depending on utilization and other factors, DOE develops a distribution of lifetimes from which specific values are assigned to the appliances in the samples. DOE conducted an analysis of residential dishwasher lifetimes in the field based on a combination of shipments data and RECS 2005 data on the ages of the dishwashers reported in the household stock. As described in chapter 8 of the direct final rue TSD, the analysis yielded an estimate of mean age for residential dishwashers of approximately 15 years. It also yielded a survival function that DOE incorporated as a probability distribution in its LCC analysis. See chapter 8 of the direct final rule TSD for further details on the method and sources DOE used to develop product lifetimes.

9. Discount Rates

In the calculation of LCC, DOE applies discount rates appropriate to households to estimate the present value of future operating costs. DOE estimated a distribution of residential discount rates for dishwashers based on consumer financing costs and opportunity cost of any uses of their funds, including investments in more-efficient appliances.

To establish residential discount rates for the LCC analysis, DOE identified all debt or asset classes that might be used to purchase dishwashers, including household assets that might be affected indirectly. It estimated the average percentage shares of the various debt or asset classes for the average U.S. household using data from the Federal Reserve Board's *Survey of Consumer Finances* (SCF) for 1989, 1992, 1995, 1998, 2001, 2004, and 2007. Using the SCF and other sources, DOE then developed a distribution of rates for each type of debt and asset to represent the rates that may apply in the year in which amended standards would take effect. DOE assigned each sample household a specific discount rate drawn from one of the distributions. The average rate across all types of household debt and equity, weighted by the shares of each class, is 5.1 percent. DOE used the same approach for today's direct final rule. See chapter 8 in the direct final rule TSD for further details on the development of consumer discount rates.

10. Compliance Date of Amended Standards

In the context of EPCA, the compliance date is the future date when parties subject to the requirements of a new or amended standard must comply. EPCA, as amended by EISA 2007, requires that DOE publish a final rule no later than January 1, 2015, to determine whether to amend the standards in effect for dishwashers manufactured on or after January 1, 2018. (42 U.S.C. 6295(g)(10)(B)) Where appropriate, DOE calculated the LCC and PBP for dishwashers as if consumers would purchase new products in 2018. As discussed in section II.B.2, TSL 2, which corresponds to the Consensus Agreement level for standard dishwashers, has a compliance date of 2013. Thus, for TSL 2, DOE used 2013 as the compliance year.

11. Base-Case Efficiency Distribution

To accurately estimate the share of consumers that would be affected by a standard at a particular efficiency level, DOE's LCC analysis considered the projected distribution of product efficiencies that consumers purchase under the base case (*i.e.,* the case without new energy efficiency standards). DOE refers to this distribution of product of efficiencies as a base-case efficiency distribution.

To estimate the base-case efficiency distribution of standard-sized dishwashers for 2013 and 2018, DOE relied on data submitted by AHAM for the current rulemaking. These data provide shares of shipments by efficiency level for 2002–2005 and 2008–2010. These data show significant increase in the share of ENERGY STAR products in both periods. To predict the market shares for each efficiency level in 2013 and 2018, DOE considered the shares and market trends present in the AHAM data and assumed these trends would continue in a manner consistent with the decline in average energy use.

For compact dishwashers, AHAM data for efficiency distributions were not available. Thus, DOE first considered 2010 market data from the NPD Group, Inc.[25] These data show that nearly all shipments for both standard and compact dishwashers are at the baseline efficiency level. For the compact class base-case distribution, however, there were only two types of compact dishwashers in the NPD data set: ''countertop'' and ''portable.'' DOE is not aware of any portable dishwashers currently on the market in the United States that would be classified as compact size based on the number of place settings. Further, there are no compact dishdrawer platforms included in the NPD dataset, which DOE believes represent a sizeable fraction of compact dishwasher shipments. As a result, DOE estimated compact base-case efficiencies from its research on the number of models available at each efficiency level. Of the eight compact dishwashers listed in the FTC database for manufacturer certifications in 2010, four are dishdrawer models with similar performance. Therefore, DOE allocated half of shipments to the dishdrawer platform that meets candidate standard level (CSL) 2. DOE further estimated, based on the number of countertop models and underlying platforms contained within the CEC and FTC databases, that half of remaining shipments (25 percent of total compact dishwasher shipments) would meet CSL 1, while the remaining 25 percent of compact shipments are at the baseline.

The estimated shares for the base-case efficiency distribution for dishwashers are shown in Table IV.11. See chapter 8 of the direct final rule TSD for further information on the derivation of the base-case efficiency distributions. For standard-sized dishwashers, DOE also considered an alternative base-case efficiency distribution that uses a different set of historical data. This distribution is described in appendix 8–F of the direct final rule TSD.

[25] NPD Group, Inc. offers marketing research services, industry tracking, data collection, and analysis. For more information, please visit: *www.npdgroup.com.*

TABLE IV.11—DISHWASHER BASE-CASE EFFICIENCY DISTRIBUTION BY PRODUCT CLASS IN 2013

CSL	Efficiency level (*kWh*)	Standard (*% of shipments*)	Compact (*% of shipments*)
Baseline	355	3.8	25.0
1	324	32.3	25.0
2	307	28.0	50.0
3	295	16.4	.....
4	234	13.8	.....
5	180	5.6	.....

12. Inputs to Payback Period Analysis

The payback period is the amount of time it takes the consumer to recover the additional installed cost of more efficient products, compared to baseline products, through energy cost savings. Payback periods are expressed in years. Payback periods that exceed the life of the product mean that the increased total installed cost is not recovered in reduced operating expenses.

The inputs to the PBP calculation are the total installed cost of the product to the customer for each efficiency level and the average annual operating expenditures for each efficiency level. The PBP calculation uses the same inputs as the LCC analysis, except that discount rates are not needed.

13. Rebuttable-Presumption Payback Period

As noted above, EPCA, as amended, establishes a rebuttable presumption that a standard is economically justified if the Secretary finds that the additional cost to the consumer of purchasing a product complying with an energy conservation standard level will be less than three times the value of the energy (and, as applicable, water) savings during the first year that the consumer will receive as a result of the standard, as calculated under the test procedure in place for that standard. (42 U.S.C. 6295(o)(2)(B)(iii)) For each considered efficiency level, DOE determined the value of the first year's energy and water savings by calculating the quantity of those savings in accordance with the applicable DOE test procedure, and multiplying that amount by the average energy and water price forecast for the year in which compliance with the amended standard would be required. The results of the rebuttable payback period analysis are summarized in section V.B.1.c of this notice.

G. National Impact Analysis–National Energy Savings and Net Present Value Analysis

The national impact analysis (NIA) assesses the national energy savings (NES) and the national net present value (NPV) of total consumer costs and savings that would be expected to result from new or amended standards at specific efficiency levels. (''Consumer'' in this context refers to consumers of the product being regulated.) DOE calculates the NES and NPV based on projections of annual appliance shipments, along with the annual energy consumption and total installed cost data from the energy use and LCC analyses.[26] For the present analysis, DOE forecasted the energy savings, operating cost savings, product costs, and NPV of consumer benefits for products sold from 2018 through 2047.[27]

DOE evaluates the impacts of new and amended standards by comparing base-case projections with standards-case projections. The base-case projections characterize energy use and consumer costs for each product class in the absence of new or amended energy conservation standards. DOE compares these projections with projections characterizing the market for each product class if DOE adopted new or amended standards at specific energy efficiency levels (*i.e.,* the TSLs or standards cases) for that class. For the base-case forecast, DOE considers historical trends in efficiency and various forces that are likely to affect the mix of efficiencies over time. For the standards cases, DOE also considers how a given standard would likely affect the market shares of efficiencies greater than the standard.

DOE uses an MS Excel spreadsheet model to calculate the energy savings and the national consumer costs and savings from each TSL. The TSD and other documentation that DOE provides during the rulemaking help explain the models and how to use them, and interested parties can review DOE's analyses by changing various input quantities within the spreadsheet. The NIA spreadsheet model uses typical values (as opposed to probability distributions) as inputs.

For the results presented in today's notice, DOE used projections of energy prices and housing starts from the *AEO2011* Reference case. As part of the NIA, DOE analyzed scenarios that used inputs from the *AEO2011* Low Economic Growth and High Economic Growth cases. Those cases have higher and lower energy price trends compared to the Reference case, as well as higher and lower housing starts, which result in higher and lower appliance shipments to new homes. NIA results based on these cases are presented in appendix 10–C of the direct final rule TSD.

Table IV.12 summarizes the inputs and methods DOE used for the NIA analysis for the direct final rule. Discussion of these inputs and methods follows the table. See chapter 10 of the direct final rule TSD for further details.

TABLE IV.12—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS

Inputs	Method
Shipments	Annual shipments from shipments model.
Compliance Date of Standard	2018.*
Base-Case Forecasted Efficiencies	Efficiency distributions are forecasted based on historical efficiency data.
Standards-Case Forecasted Efficiencies	Used a ''roll-up'' scenario.
Annual Energy Consumption per Unit	Annual weighted-average values are a function of energy use at each CSL.

[26] For the NIA, DOE adjusts the installed cost data from the LCC analysis to exclude sales tax, which is a transfer.

[27] For TSL 2, which assumes a compliance date in 2013, DOE forecasted the impacts for products sold from 2013 through 2047.

TABLE IV.12—SUMMARY OF INPUTS AND METHODS FOR THE NATIONAL IMPACT ANALYSIS—Continued

Inputs	Method
Total Installed Cost per Unit	Annual weighted-average values are a function of cost at each CSL. Incorporates forecast of future product prices based on historical data.
Annual Energy Cost per Unit	Annual weighted-average values as a function of the annual energy consumption per unit and energy prices.
Repair and Maintenance Cost per Unit	Annual values do not change with efficiency level.
Energy Prices	*AEO2011* forecasts (to 2035) and extrapolation through 2047.
Energy Site-to-Source Conversion Factor	Varies yearly and is generated by NEMS–BT.
Discount Rate	Three and seven percent real.
Present Year	Future expenses discounted to 2012, when the final rule will be published.

* For TSL 2, the compliance date is 2013.

1. Shipments

Forecasts of product shipments are needed to calculate the national impacts of standards on energy and water use, NPV, and future manufacturer cash flows. DOE develops shipment forecasts based on an analysis of key market drivers for residential dishwashers. In DOE's shipments model, shipments of products are driven by new construction and stock replacements. The shipments model takes an accounting approach, tracking market shares of each product class and the vintage of units in the existing stock. Stock accounting uses product shipments as inputs to estimate the age distribution of in-service product stocks for all years. The age distribution of in-service product stocks is a key input to calculations of both the NES and NPV, because operating costs for any year depend on the age distribution of the stock. DOE also considers the impacts on shipments from changes in product purchase price and operating cost associated with higher energy efficiency levels.

New housing forecasts and market saturation data comprised the two primary inputs for DOE's estimates of new construction shipments. ''New housing'' includes newly-constructed single-family and multi-family units (referred to as ''new housing completions'') and mobile home placements. For new housing completions and mobile home placements, DOE used actual data through 2008, and adopted the projections from *AEO2011* for later years.

DOE calibrated the shipments model against historical dishwasher shipments. In general, DOE estimated replacements using a product retirement function developed from product lifetime. DOE based the retirement function on a probability distribution for the product lifetime that was developed in the LCC analysis. The shipments model assumes that no units are retired below a minimum product lifetime and that all units are retired before exceeding a maximum product lifetime.

DOE applied a price elasticity parameter to estimate the effect of standards on dishwasher shipments. DOE estimated the price elasticity parameter from a regression analysis that used purchase price and efficiency data specific to residential clothes washers, refrigerators and dishwashers during 1980–2002. The estimated ''relative price elasticity'' incorporates the impacts from purchase price, operating cost, and household income. Based on evidence that the price elasticity of demand is significantly different over the short run and long run for other consumer goods (i.e., automobiles),[28] DOE assumed that the relative price elasticity declines over time. DOE estimated shipments in each standards case using the relative price elasticity along with the change in the relative price between a standards case and the base case.

For details on the shipments analysis, see chapter 9 of the direct final rule TSD.

2. Forecasted Efficiency in the Base Case and Standards Cases

A key component of the NIA is the trend in energy efficiency forecasted for the base case (without new or amended standards) and each of the standards cases. Section IV.F.11 describes how DOE developed a base-case energy efficiency distribution (which yields a shipment-weighted average efficiency) for each of the considered product classes for the first year of the forecast period. To project the trend in efficiency for standard-sized dishwashers over the entire forecast period, DOE utilized the historical trend in shipment-weighted average efficiency from 2002 to 2010 as provided by AHAM and considered the potential effect of programs such as ENERGY STAR. The historical trend demonstrates that the shipment-weighted average annual energy use decreased by almost 90 kWh from 2002 to 2010, reaching 309 kWh. DOE fit an exponential function to the 2002 to 2010 data that indicated that the base-case shipment-weighted average annual energy use will asymptotically approach a value of 290 kWh by 2025 and remain at that level. For standard-sized dishwashers, DOE also considered an alternative base-case efficiency trend that was estimated using a different set of historical data. This trend is described in appendix 10–D of the direct final rule TSD.

The historical record suggests that the likely market response to new or amended standards is that lower efficiency baseline models will roll up to the standard efficiency level, and some products will exceed the minimum requirements. To estimate efficiency trends in the standards cases, DOE has used ''roll-up'' and/or ''shift'' scenarios in its standards rulemakings. Under the ''roll-up'' scenario, DOE assumes: (1) Product efficiencies in the base case that do not meet the standard level under consideration would ''roll-up'' to meet the new standard level; and (2) product efficiencies above the standard level under consideration would not be affected. Under the ''shift'' scenario, DOE re-orients the distribution above the new minimum energy conservation standard.

DOE determined that a roll-up scenario is most appropriate to establish the distribution of efficiencies for the year that compliance with revised dishwasher standards would be required. For subsequent years, DOE assumed that efficiency would continue to improve in each standards case at the same rate as estimated for the base case, until the max-tech efficiency level is reached. The details of DOE's approach to forecast efficiency trends are described in chapter 10 of the direct final rule TSD.

[28] S. Hymans. Consumer Durable Spending: Explanation and Prediction, *Brookings Papers on Economic Activity,* 1971. Vol. 1971, No. 1, pp. 234–239.

3. Total Installed Cost per Unit

As discussed in section IV. F. 1, DOE developed a dishwasher price trend based on an experience rate for miscellaneous household appliances. It used this trend to forecast the prices of dishwashers sold in each year in the forecast period. DOE applied the same values to forecast prices for each product class at each considered efficiency level.

To evaluate the effect of uncertainty regarding the price trend estimates, DOE investigated the impact of different product price forecasts on the consumer net present value for the considered TSLs for residential dishwashers. In addition to the default price trend, DOE considered two product price sensitivity cases: (1) A high price decline case based on an exponential fit using PPI data for 1991 to 2010; (2) a low price decline case based on an experience rate derived using PPI and shipments data for 1991 to 2000. The derivation of these price trends and the results of these sensitivity cases are described in appendix 10–B of the direct final rule TSD. In the high price decline case, the NPV is significantly higher than in the default case. In the low price decline case, the NPV is slightly lower than in the default case. The rank order of the TSLs is the same in all of the cases.

4. National Energy and Water Savings

For each year in the forecast period, DOE calculates the national energy and water savings for each standard level by multiplying the stock of products affected by the energy conservation standards by the per-unit annual energy savings. Cumulative energy and water savings are the sum of the NES for each year.

To estimate the national energy savings expected from appliance standards, DOE uses a multiplicative factor to convert site energy consumption (at the home) into primary or source energy consumption (the energy required to convert and deliver the site energy). These conversion factors account for the energy used at power plants to generate electricity and losses in transmission and distribution. The conversion factors vary over time because of projected changes in generation sources (*i.e.,* the power plant types projected to provide electricity to the country). The factors that DOE developed are marginal values, which represent the response of the system to an incremental decrease in consumption associated with appliance standards. For today's rule, DOE used annual site-to-source conversion factors based on the version of NEMS that corresponds to *AEO2011,* which provides energy forecasts through 2035. For 2036–2047, DOE used conversion factors that remain constant at the 2035 values.

Section 1802 of the Energy Policy Act of 2005 (EPACT 2005) directed DOE to contract a study with the National Academy of Science (NAS) to examine whether the goals of energy efficiency standards are best served by measuring energy consumed, and efficiency improvements, at the actual point of use or through the use of the full-fuel-cycle, beginning at the source of energy production. (Pub. L. No. 109–58 (August 8, 2005)). NAS appointed a committee on ''Point-of-Use and Full-Fuel-Cycle Measurement Approaches to Energy Efficiency Standards'' to conduct the study, which was completed in May 2009. The NAS committee defined full-fuel-cycle energy consumption as including, in addition to site energy use: Energy consumed in the extraction, processing, and transport of primary fuels such as coal, oil, and natural gas; energy losses in thermal combustion in power generation plants; and energy losses in transmission and distribution to homes and commercial buildings.

In evaluating the merits of using point-of-use and full-fuel-cycle (FFC) measures, the NAS committee noted that DOE uses what the committee referred to as ''extended site'' energy consumption to assess the impact of energy use on the economy, energy security, and environmental quality. The extended site measure of energy consumption includes the energy consumed during the generation, transmission, and distribution of electricity but, unlike the full-fuel-cycle measure, does not include the energy consumed in extracting, processing, and transporting primary fuels. A majority of the NAS committee concluded that extended site energy consumption understates the total energy consumed to make an appliance operational at the site. As a result, the NAS committee recommended that DOE consider shifting its analytical approach over time to use a full-fuel-cycle measure of energy consumption when assessing national and environmental impacts, especially with respect to the calculation of greenhouse gas (GHG) emissions. The NAS committee also recommended that DOE provide more comprehensive information to the public through labels and other means, such as an enhanced Web site. For those appliances that use multiple fuels (*e.g.,* water heaters), the NAS committee indicated that measuring full-fuel-cycle energy consumption would provide a more complete picture of energy consumed and permit comparisons across many different appliances, as well as an improved assessment of impacts.

In response to the NAS committee recommendations, DOE issued a notice of proposed policy for incorporating a full-fuel cycle analysis into the methods it uses to estimate the likely impacts of energy conservation standards on energy use and emissions. 75 FR 51423 (Aug. 20, 2010). In its final Statement of Policy, DOE stated that it intends to calculate FFC energy and emission impacts by applying conversion factors generated by the GREET model to the NEMS-based results currently used by DOE. 76 FR 51282 (Aug. 18, 2011). Additionally, DOE will review alternative approaches to estimating these factors and may decide to use a model other than GREET to estimate the FFC energy and emission impacts in any particular future appliance efficiency standards rulemaking.

5. Net Present Value of Consumer Benefit

The inputs for determining the net present value (NPV) of the total costs and benefits experienced by consumers of considered appliances are: (1) Total annual installed cost, (2) total annual savings in operating costs, and (3) a discount factor. DOE calculates net savings each year as the difference between the base case and each standards case in total savings in operating costs and total increases in installed costs. DOE calculates operating cost savings over the life of each product shipped during the forecast period.

In calculating the NPV, DOE multiplies the net savings in future years by a discount factor to determine their present value. For today's direct final rule, DOE estimated the NPV of appliance consumer benefits using both a 3-percent and a 7-percent real discount rate. DOE uses these discount rates in accordance with guidance provided by the Office of Management and Budget (OMB) to Federal agencies on the development of regulatory analysis.[29] The discount rates for the determination of NPV are in contrast to the discount rates used in the LCC analysis, which are designed to reflect a consumer's perspective. The 7-percent real value is an estimate of the average before-tax rate of return to private capital in the U.S. economy. The 3-percent real value represents the ''social rate of time preference,'' which

[29] OMB Circular A–4 (Sept. 17, 2003), section E, ''Identifying and Measuring Benefits and Costs. Available at: *www.whitehouse.gov/omb/memoranda/m03-21.html.*

is the rate at which society discounts future consumption flows to their present value.

H. Consumer Subgroup Analysis

In analyzing the potential impact of new or amended standards on consumers, DOE evaluates the impact on identifiable subgroups of consumers (*e.g.,* low-income households) that may be disproportionately affected by a national standard. DOE evaluates impacts on particular subgroups of consumers primarily by analyzing the LCC impacts and PBP for those particular consumers from alternative standard levels. Chapter 11 in the direct final rule TSD describes the consumer subgroup analysis. For this rule, DOE analyzed the impacts of the considered standard levels on low-income households and senior-only households.

I. Manufacturer Impact Analysis

The following sections address the various steps taken to analyze the impacts of the amended standards on manufacturers. These steps include conducting a series of analyses, interviewing manufacturers, and evaluating the information received from interested parties during this rulemaking.

1. Overview

In determining whether an amended energy conservation standard for residential dishwashers subject to this rulemaking is economically justified, DOE is required to consider ''the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard.'' (42 U.S.C. 6295(o)(2)(B)(i)(I)) The statute also calls for an assessment of the impact of any lessening of competition as determined by the Attorney General that is likely to result from the adoption of a standard. (42 U.S.C. 6295(o)(2)(B)(i)(V)) DOE conducted the MIA to estimate the financial impact of amended energy conservation standards on manufacturers, and to assess the impacts of such standards on employment and manufacturing capacity.

The MIA is both a quantitative and qualitative analysis. The quantitative part of the MIA relies on the Government Regulatory Impact Model (GRIM), an industry cash-flow model customized for the residential dishwashers covered in this rulemaking. See section IV.I.2 below, for details on the GRIM analysis. The qualitative part of the MIA addresses factors such as product characteristics, characteristics of particular firms, and market trends. The complete MIA is discussed in chapter 12 of the direct final rule TSD. DOE conducted the MIA in the three phases described below.

a. Phase 1, Industry Profile

In Phase 1 of the MIA, DOE prepared a profile of the residential dishwasher industry based on the market and technology assessment prepared for this rulemaking. Before initiating the detailed impact studies, DOE collected information on the present and past market structure and characteristics of the industry, tracking trends in market share data, product attributes, product shipments, manufacturer markups, and the cost structure for various manufacturers.

The profile also included an analysis of manufacturers in the industry using Security and Exchange Commission 10–K filings,[30] Standard & Poor's stock reports,[31] and corporate annual reports released by both public and privately held companies. DOE used this and other publicly available information to derive preliminary financial inputs for the GRIM including industry revenues, cost of goods sold, and depreciation, as well as selling, general, and administrative (SG&A), and research and development (R&D) expenses.

b. Phase 2, Industry Cash Flow Analysis

Phase 2 focused on the financial impacts of potential amended energy conservation standards on the industry as a whole. Amended energy conservation standards can affect manufacturer cash flows in three distinct ways: (1) By creating a need for increased investment, (2) by raising production costs per unit, and (3) by altering revenue due to higher per-unit prices and/or possible changes in sales volumes. DOE used the GRIM to model these effects in a cash-flow analysis of the residential dishwasher industry. In performing this analysis, DOE used the financial values derived during Phase 1 and the shipment assumptions from the NIA.

c. Phase 3, Sub-Group Impact Analysis

Using average cost assumptions to develop an industry-cash-flow estimate may not adequately assess differential impacts of amended energy conservation standards among manufacturer subgroups. For example, small businesses, manufacturers of niche products, or companies exhibiting a cost structure that differs significantly from the industry average could be more negatively affected. During the manufacturer interviews, DOE discussed financial topics specific to each manufacturer and obtained each manufacturer's view of the industry as a whole. DOE reports the MIA impacts of amended energy conservation standards by grouping together the impacts on manufacturers of certain product classes. While DOE did not identify any other subgroup of manufacturers of residential dishwashers that would warrant a separate analysis, DOE specifically investigated impacts on small business manufacturers. See section VI.B for more information.

The MIA also addresses the direct employment impacts in manufacturing of dishwashers. DOE uses census data and information gained through manufacturer interviews in conjunction with the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the base case and at each TSL from 2012 to 2047.

2. GRIM Analysis

DOE uses the GRIM to quantify the changes in cash flow that result in a higher or lower industry value. The GRIM analysis is a standard, annual cash-flow analysis that incorporates manufacturer costs, markups, shipments, and industry financial information as inputs, and models changes in costs, distribution of shipments, investments, and manufacturer margins that could result from amended energy conservation standards. The GRIM spreadsheet uses the inputs to arrive at a series of annual cash flows, beginning with the base year of the analysis, 2012 (which accounts for the investments needed to bring products into compliance), and continuing to 2047. DOE uses the industry average weighted average cost of capital (WACC) of 8.5 percent, as this represents the minimum rate of return necessary to cover the debt and equity obligations manufacturers use to finance operations.

DOE used the GRIM to compare INPV in the base case with INPV at various TSLs (the standards cases). The difference in INPV between the base and standards cases represents the financial impact of the amended standard on manufacturers. DOE collected this information from a number of sources, including publicly available data and interviews with a number of manufacturers. Additional details about the GRIM can be found in chapter 12 of the direct final rule TSD.

[30] Available online at *www.sec.gov.*

[31] Available online at *www2.standardandpoors.com.*

a. GRIM Key Inputs

Manufacturer Production Costs

Changes in the manufacturer production costs (MPCs) of residential dishwashers can affect revenues, gross margins, and cash flow of the industry, making these product cost data key GRIM inputs for DOE's analysis. DOE created separate cost curves for standard and compact product classes using data from tear-downs to develop both the baseline MPCs and the incremental costs that correspond to the proposed design options. The cost model also disaggregated the MPCs into material, labor, overhead, and depreciation. Later, in Phase 3 of the MIA, manufacturers validated these estimates and assumptions during interviews. DOE used the resulting MPCs and cost breakdowns as described in section IV.C above, and further detailed in chapter 5 of the direct final rule TSD, for each efficiency level analyzed in the GRIM analysis.

Base-Case Shipments Forecast

The GRIM estimates manufacturer revenues based on total unit shipment forecasts and the distribution of these values by efficiency level and product class. Changes in the efficiency mix at each standard level affect manufacturer finances. For this analysis, the GRIM uses the NIA shipments forecasts from 2012 to 2047, the end of the analysis period.

To calculate shipments, DOE developed a single shipment model for all dishwashers based on an analysis of key market drivers for residential dishwashers. For greater detail on the shipments analysis, see section IV.G.1 above or chapter 9 of the direct final rule TSD.

Product and Capital Conversion Costs

Amended energy conservation standards will cause manufacturers to incur conversion costs to bring their production facilities and product designs into compliance. For the MIA, DOE classified these costs into two major groups: (1) Product conversion costs and (2) capital conversion costs. Product conversion costs are investments in research, development, testing, marketing, and other non-capitalized costs focused on making product designs comply with the amended energy conservation standard. Capital conversion costs are investments in property, plant, and equipment to adapt or change existing production facilities so that new product designs can be fabricated and assembled.

DOE based its estimates of both the product and capital conversion costs that would be required to meet each TSL on information obtained from manufacturer interviews, the design pathways considered in the engineering analysis, and market information about the number of platform and product families for each manufacturer. DOE's estimates of the product and capital conversion costs for the dishwashers addressed in this rulemaking can be found in section V.B.2 of today's final rule and in chapter 12 of the final rule TSD.

b. GRIM Scenarios

Standards-Case Shipment Forecasts

The MIA results presented in section V.B.2 all use shipments from the reference NIA scenario in the GRIM. To determine efficiency distributions in the standards case for the reference NIA scenario, DOE analyzed the roll-up scenario. In this scenario, DOE assumed that base case shipments of products that did not meet the new standard would roll up to meet the standard in the compliance year. See section IV.G.2 for a description of the standards case efficiency distribution. DOE also used a relative price elasticity that considers the possibility of higher first costs lowering total shipments in the standards case.

The reference NIA scenario used historical data to derive a price scaling index to forecast product costs. The MPCs and MSPs in the GRIM use the default price forecast for all scenarios. See section IV.G.4 for a discussion of DOE's price forecasting methodology.

Markup Scenarios

MSP is equal to MPC times a manufacturer markup. The MSP includes direct manufacturing production costs (*i.e.,* labor, material, and overhead estimated in DOE's MPCs) and all non-production costs (*i.e.,* SG&A, R&D, and interest), along with profit.

To calculate the baseline manufacturer markup, DOE evaluated publicly available financial information for manufacturers of major household appliances whose product offerings include residential dishwashers. During manufacturer interviews, DOE received feedback supporting the calculated 1.24 baseline manufacturer markup. DOE used the baseline manufacturer markup for all products when modeling the base case in the GRIM.

For the standards case in the GRIM, DOE modeled two markup scenarios to represent the uncertainty regarding the potential impacts on prices and profitability for manufacturers following the implementation of amended energy conservation standards. For both GRIM markup scenarios, DOE placed no premium on higher efficiency products. This assumption is informed by a market structure in which over 96 percent of products currently adhere to ENERGY STAR standards, leaving little to no room for differentiation by efficiency level alone, and was further supported by manufacturer interviews. The two standards case markup scenarios are (1) a flat markup scenario, and (2) a preservation of operating profit markup scenario. Modifying these markups from the base case to the standards cases yields different sets of impacts on manufacturers' changing industry revenue and cash flow.

The flat markup scenario assumes that the baseline markup of 1.24 is maintained for all products in the standards case. This scenario represents the upper bound of industry profitability as manufacturers are able to fully pass through additional costs due to standards to their customers under this scenario.

The preservation of operating profit markup scenario is similar to the flat markup scenario with the exception that in the standards case, minimally compliant products lose a fraction of the baseline markup. This scenario is the lower bound profitability scenario and represents a more substantial impact to the dishwasher industry as manufacturers attempt to maintain the lowest possible prices for entry level products while securing the same level of operating profit they saw prior to amended standards.

3. Manufacturer Interviews

DOE interviewed manufacturers representing more than 80 percent of residential dishwasher sales. These interviews were in addition to those DOE conducted as part of the engineering analysis. DOE used these interviews to tailor the GRIM to incorporate unique financial characteristics of the industry. All interviews provided information that DOE used to evaluate the impacts of potential amended energy conservation standards on manufacturer cash flows, manufacturing capacities, and employment levels. See appendix 12–A of the direct final rule TSD for additional information on the MIA interviews. The following sections describe the most significant issues identified by manufacturers.

a. Dishwasher Performance

All manufacturers interviewed expressed concerns about the potential impacts of amended standards on product performance, citing several

adverse and possibly severe consequences of standards above those agreed upon in the Joint Petition. For higher efficiency standards, the performance metrics manufacturers expect to be most severely impacted include wash performance, drying performance, cycle time, and the noise levels reached in operation. In considering these metrics, manufacturers anticipate negative reactions ranging from small but meaningful changes in consumer behavior to higher rates of service calls and returns. For efficiency standards well above those proposed in the Joint Petition, manufacturers foresee blanket rejection of poorly performing products in the market. In considering impacts to wash performance, manufacturers cited an increase in unnecessary rinsing or washing of dishes prior to loading the dishwasher, switching to a more aggressive cycle, and running multiple cycles when dishes are not adequately cleaned in a single cycle as the most likely changes in consumer behavior. Manufacturers went on to suggest that any of these changes would result in an increase in both energy and water consumption over that used by a dishwasher of satisfactory performance. To mitigate the impact of future standards on product performance, several manufacturers recommended the adoption of a performance metric into the test procedure and standard.

While all manufacturers suggested that the efficiency level specified in the Joint Petition would not likely have a substantial negative impact on wash performance, some manufacturers noted that standards above this level would result in a decrease in performance unless substantially higher-cost technology changes were implemented. The comments did not indicate the specific technology changes that would be required. Even without such technology changes, however, several manufacturers already sell products at efficiency levels above those specified by the Joint Petition, including the max-tech efficiency level. Accordingly, DOE evaluated these efficiency levels as part of this rulemaking.

b. Test Procedures

Manufacturers raised concerns over the current DOE dishwasher test procedure and the multitude of additional dishwasher test procedures in the field today. Several manufacturers suggested that the current DOE test procedure does not accurately capture the energy used by dishwashers in the field. These manufacturers cite the single cycle specification and lack of performance metrics in the test procedure as providing an easy avenue for circumvention of the standards. In the scenario described, manufacturers may optimize a particular cycle to perform well on the DOE test procedure with the implicit understanding that this cycle will not meet customer expectations and thus will not be used in the field as customers opt for a different, more energy-intensive cycle.

In contrast, other manufacturers raised concerns over expanding the test procedure to cover multiple cycles citing the additional testing burden this would generate. Similarly, some manufacturers raised concerns over how DOE would implement a performance test, noting that there already exist numerous performance tests in the industry including those developed by AHAM, IEC, and Consumer Reports and that each performance test procedure favors a different machine cycle algorithm.

As discussed in sections II.A and II.B.4, the DOE test procedure for residential dishwashers is found at Title 10 of the CFR part 430, subpart B, appendix C. DOE is considering amendments to the test procedure to incorporate measures of standby mode and off mode energy consumption in accordance with statutory requirements. DOE will consider concerns regarding active mode testing provisions, including those discussed above, in the test procedure rulemaking.

c. Increased Competition

Manufacturers of both baseline and high efficiency products anticipate an increase in competition in industry stemming from amended standards. Manufacturers whose market share is largely attributed to products currently below amended standards expect to see either the removal of features from higher efficiency units as a means to cut costs to maintain a low-cost minimally-compliant product, or the disappearance of entry level models as they are forced to add other features and cost in line with current higher efficiency products. If the latter approach prevails, manufacturers of higher efficiency products expect to see increased competition as manufacturers which previously focused on low efficiency products move into their target segment of the market. As noted in section III.D.1.d, the Attorney General provides DOE with a determination and analysis of the impact of any lessening of competition that is likely to result from the imposition of the standard. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

d. Cumulative Regulatory Burden

Several manufacturers noted that dishwashers are but one of a suite of appliances they produce and that the cumulative burden of research and development to meet standards, capital expenditure and retraining of staff to produce products at the new standards, and product testing to certify compliance of new products represent a significant burden when taken in combination across their various product lines. Manufacturers suggest that the ability to establish standards in a coordinated fashion by such vehicles as a joint petition and receiving adequate notice of DOE's plans for amended standards are both necessary elements in mitigating the cumulative burden and aligning changes in efficiency regulations with the product development cycle. Cumulative regulatory burden is discussed further in section V.B.2.e of today's direct final rule and chapter 12 of the direct final rule TSD.

J. Employment Impact Analysis

DOE considers employment impacts in the domestic economy as one factor in selecting a proposed standard. Employment impacts include direct and indirect impacts. Direct employment impacts are any changes in the number of employees of manufacturers of the products subject to standards, their suppliers, and related service firms. The MIA addresses those impacts. Indirect employment impacts from standards consist of the net jobs created or eliminated in the national economy, other than in the manufacturing sector being regulated, caused by:

(1) Reduced spending by end users on energy;

(2) Reduced spending on new energy supply by the utility industry;

(3) Increased spending on new products to which the new standards apply; and

(4) The effects of those three factors throughout the economy.

One method for assessing the possible effects on the demand for labor of such shifts in economic activity is to compare sector employment statistics developed by the Labor Department's Bureau of Labor Statistics (BLS).[32] The BLS regularly publishes its estimates of the number of jobs per million dollars of economic activity in different sectors of

[32] Data on industry employment, hours, labor compensation, value of production, and the implicit price deflator for output for these industries are available upon request by calling the Division of Industry Productivity Studies (202–691–5618) or by sending a request by email to *dipsweb@bls.gov*. Available at: *www.bls.gov/news.release/prin1.nr0.htm*.

the economy, as well as the jobs created elsewhere in the economy by this same economic activity. Data from BLS indicate that expenditures in the utility sector generally create fewer jobs (both directly and indirectly) than expenditures in other sectors of the economy.[33] There are many reasons for these differences, including wage differences and the fact that the utility sector is more capital-intensive and less labor-intensive than other sectors. Energy conservation standards have the effect of reducing consumer utility bills. Because reduced consumer expenditures for energy likely lead to increased expenditures in other sectors of the economy, the general effect of efficiency standards is to shift economic activity from a less labor-intensive sector (*i.e.,* the utility sector) to more labor-intensive sectors (*e.g.,* the retail and service sectors). Thus, based on the BLS data alone, DOE believes net national employment will increase due to shifts in economic activity resulting from amended standards for dishwashers.

For the standard levels considered in today's direct final rule, DOE estimated indirect national employment impacts using an input/output model of the U.S. economy called Impact of Sector Energy Technologies version 3.1.1 (ImSET).[34] ImSET is a special-purpose version of the ''U.S. Benchmark National Input-Output'' (I–O) model, which was designed to estimate the national employment and income effects of energy-saving technologies. The ImSET software includes a computer-based I–O model having structural coefficients that characterize economic flows among 187 sectors most relevant to industrial, commercial, and residential building energy use.

DOE notes that ImSET is not a general equilibrium forecasting model, and understands the uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Because ImSET does not incorporate price changes, the employment effects predicted by ImSET may over-estimate actual job impacts over the long run for this rule. Because ImSET predicts small job impacts resulting from this rule, regardless of these uncertainties, the actual job impacts are likely to be negligible in the overall economy. DOE may consider the use of other modeling approaches for examining long run employment impacts. DOE also notes that the employment impacts estimated with ImSET for the entire economy differ from the employment impacts in the dishwasher manufacturing sector estimated using the GRIM in the MIA. The methodologies used and the sectors analyzed in the ImSET and GRIM models are different. For more details on the employment impact analysis, see chapter 13 of the direct final rule TSD.

K. Utility Impact Analysis

The utility impact analysis estimates several important effects on the utility industry of the adoption of new or amended standards. For this analysis, DOE used the NEMS–BT model to generate forecasts of electricity consumption, electricity generation by plant type, and electric generating capacity by plant type, that would result from each TSL. DOE obtained the energy savings inputs associated with efficiency improvements to considered products from the NIA. DOE conducts the utility impact analysis as a scenario that departs from the latest *AEO* Reference case. In the analysis for today's rule, the estimated impacts of standards are the differences between values forecasted by NEMS–BT and the values in the *AEO2011* Reference case. For more details on the utility impact analysis, see chapter 14 of the direct final rule TSD.

L. Emissions Analysis

In the emissions analysis, DOE estimated the reduction in power sector emissions of CO_2, NO_X, and Hg from amended energy conservation standards for distribution transformers. DOE used the NEMS–BT computer model, which is run similarly to the AEO NEMS, except that distribution transformer energy use is reduced by the amount of energy saved (by fuel type) due to each TSL. The inputs of national energy savings come from the NIA spreadsheet model, while the output is the forecasted physical emissions. The net benefit of each TSL is the difference between the forecasted emissions estimated by NEMS–BT at each TSL and the *AEO* Reference Case. NEMS–BT tracks CO_2 emissions using a detailed module that provides results with broad coverage of all sectors and inclusion of interactive effects. For today's rule, DOE used the version of NEMS–BT based on *AEO2011,* which incorporated projected effects of all emissions regulations promulgated as of January 31, 2011.

SO_2 emissions from affected electric generating units (EGUs) are subject to nationwide and regional emissions cap and trading programs, and DOE has determined that these programs create uncertainty about the standards' impact on SO_2 emissions. Title IV of the Clean Air Act sets an annual emissions cap on SO_2 for affected EGUs in the 48 contiguous States and the District of Columbia (DC). SO_2 emissions from 28 eastern States and DC are also limited under the Clean Air Interstate Rule (CAIR, 70 Fed. Reg. 25162 (May 12, 2005)), which created an allowance-based trading program that would gradually replaced the Title IV program in those States and DC. Although CAIR has been remanded to EPA by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit), see *North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008), it remained in effect temporarily, consistent with the D.C. Circuit's earlier opinion in *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). On July 6, 2010, EPA issued the Transport Rule proposal, a replacement for CAIR. 75 FR 45210 (Aug. 2, 2010). On July 6, 2011, EPA issued the final Transport Rule, titled the Cross-State Air Pollution Rule. 76 FR 48208 (August 8, 2011). (See *http://www.epa.gov/crossstaterule/*). On December 30, 2011, however, the D.C. Circuit stayed the new rules while a panel of judges reviews them, and told EPA to continue enforcing CAIR (see *EME Homer City Generation* v. *EPA,* No. 11–1302, Order at *2 (D.C. Cir. Dec. 30, 2011)). The *AEO 2011* NEMS–BT used for today's direct final rule assumes the implementation of CAIR.

The attainment of emissions caps typically is flexible among EGUs and is enforced through the use of emissions allowances and tradable permits. Under existing EPA regulations, any excess SO_2 emissions allowances resulting from the lower electricity demand caused by the imposition of an efficiency standard could be used to permit offsetting increases in SO_2 emissions by any regulated EGU. However, if the standard resulted in a permanent increase in the quantity of unused emissions allowances, there would be an overall reduction in SO_2 emissions from the standards. While there remains some uncertainty about the ultimate effects of efficiency standards on SO_2 emissions covered by the existing cap-and-trade system, the NEMS–BT modeling system that DOE uses to forecast emissions reductions currently indicates that no physical reductions in power sector emissions would occur for SO_2. DOE

[33] See Bureau of Economic Analysis, *Regional Multipliers: A User Handbook for the Regional Input-Output Modeling System (RIMS II).* Washington, DC. U.S. Department of Commerce, 1992.

[34] J. M. Roop, M. J. Scott, and R. W. Schultz, *ImSET 3.1: Impact of Sector Energy Technologies,* PNNL-18412, Pacific Northwest National Laboratory, 2009. Available at: *www.pnl.gov/main/publications/external/technical_reports/PNNL-18412.pdf.*

acknowledges, however, that even though there is a cap on SO_2 emissions and uncertainty whether efficiency standards would reduce SO_2 emissions, it is possible that standards could reduce the compliance cost by reducing demand for SO_2 allowances.

As discussed above, the *AEO 2011* NEMS used for today's direct final rule assumes the implementation of CAIR, which established a cap on NO_X emissions in 28 eastern States and the District of Columbia. With CAIR in effect, energy conservation standards are expected to have little or no physical effect on NO_X emissions in the States covered by CAIR, for the same reasons that they may have little effect on SO_2 emissions. However, the standards would be expected to reduce NO_X emissions in the 22 States not affected by the CAIR. For these 22 states, DOE used NEMS–BT to forecast NO_X emission reductions from the standards that are considered in today's direct final rule.

On February 16, 2012, EPA issued national emissions standards for hazardous air pollutants (NESHAPs) for mercury and certain other pollutants emitted from coal and oil-fired EGUs. 77 FR 9304. The NESHAPs do not include emissions caps and, as such, DOE's energy conservation standards would likely reduce Hg emissions. For the emissions analysis for this rulemaking, DOE estimated mercury emissions reductions using NEMS–BT based on *AEO2011,* which does not incorporate the NESHAPs. DOE expects that future versions of the NEMS–BT model will reflect the implementation of the NESHAPs.

M. Monetizing Carbon Dioxide and Other Emissions Impacts

As part of the development of this direct final rule, DOE considered the estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that are expected to result from each of the considered TSLs. In order to make this calculation similar to the calculation of the NPV of consumer benefit, DOE considered the reduced emissions expected to result over the lifetime of products shipped in the forecast period for each TSL. This section summarizes the basis for the monetary values used for each of these emissions and presents the benefits estimates considered.

For today's direct final rule, DOE is relying on a set of values for the social cost of carbon (SCC) that was developed by an interagency process. A summary of the basis for these values is provided below, and a more detailed description of the methodologies used is provided in appendix 15–A of the direct final rule TSD.

1. Social Cost of Carbon

Under Executive Order 12866, agencies must, to the extent permitted by law, ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' The purpose of the SCC estimates presented here is to allow agencies to incorporate the monetized social benefits of reducing CO_2 emissions into cost-benefit analyses of regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions. The estimates are presented with an acknowledgement of the many uncertainties involved and with a clear understanding that they should be updated over time to reflect increasing knowledge of the science and economics of climate impacts.

As part of the interagency process that developed these SCC estimates, technical experts from numerous agencies met on a regular basis to consider public comments, explore the technical literature in relevant fields, and discuss key model inputs and assumptions. The main objective of this process was to develop a range of SCC values using a defensible set of input assumptions grounded in the existing scientific and economic literatures. In this way, key uncertainties and model differences transparently and consistently inform the range of SCC estimates used in the rulemaking process.

a. Monetizing Carbon Dioxide Emissions

The SCC is an estimate of the monetized damages associated with an incremental increase in carbon emissions in a given year. It is intended to include (but is not limited to) changes in net agricultural productivity, human health, property damages from increased flood risk, and the value of ecosystem services. Estimates of the SCC are provided in dollars per metric ton of carbon dioxide.

When attempting to assess the incremental economic impacts of carbon dioxide emissions, the analyst faces a number of serious challenges. A recent report from the National Research Council [35] points out that any assessment will suffer from uncertainty, speculation, and lack of information about (1) future emissions of greenhouse gases, (2) the effects of past and future emissions on the climate system, (3) the impact of changes in climate on the physical and biological environment, and (4) the translation of these environmental impacts into economic damages. As a result, any effort to quantify and monetize the harms associated with climate change will raise serious questions of science, economics, and ethics and should be viewed as provisional.

Despite the serious limits of both quantification and monetization, SCC estimates can be useful in estimating the social benefits of reducing carbon dioxide emissions. Consistent with the directive quoted above, the purpose of the SCC estimates presented here is to make it possible for agencies to incorporate the social benefits from reducing carbon dioxide emissions into cost-benefit analyses of regulatory actions that have small, or ''marginal,'' impacts on cumulative global emissions. Most Federal regulatory actions can be expected to have marginal impacts on global emissions.

For such policies, the agency can estimate the benefits from reduced (or costs from increased) emissions in any future year by multiplying the change in emissions in that year by the SCC value appropriate for that year. The net present value of the benefits can then be calculated by multiplying each of these future benefits by an appropriate discount factor and summing across all affected years. This approach assumes that the marginal damages from increased emissions are constant for small departures from the baseline emissions path, an approximation that is reasonable for policies that have effects on emissions that are small relative to cumulative global carbon dioxide emissions. For policies that have a large (non-marginal) impact on global cumulative emissions, there is a separate question of whether the SCC is an appropriate tool for calculating the benefits of reduced emissions. This concern is not applicable to this notice, and DOE does not attempt to answer that question here.

At the time of the preparation of this notice, the most recent interagency estimates of the potential global benefits resulting from reduced CO_2 emissions in 2010, expressed in 2010$, were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided. For emission reductions that occur in later years, these values grow in real terms over time. Additionally, the interagency group determined that a range of values from 7 percent to 23 percent should be used to adjust the global SCC to calculate domestic

[35] National Research Council. *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use.* National Academies Press: Washington, DC. 2009.

effects,[36] although preference is given to consideration of the global benefits of reducing CO_2 emissions.

It is important to emphasize that the interagency process is committed to updating these estimates as the science and economic understanding of climate change and its impacts on society improves over time. Specifically, the interagency group has set a preliminary goal of revisiting the SCC values within 2 years or at such time as substantially updated models become available, and to continue to support research in this area. In the meantime, the interagency group will continue to explore the issues raised by this analysis and consider public comments as part of the ongoing interagency process.

b. Social Cost of Carbon Values Used in Past Regulatory Analyses

To date, economic analyses for Federal regulations have used a wide range of values to estimate the benefits associated with reducing carbon dioxide emissions. In the final model year 2011 CAFE rule, the U.S. Department of Transportation (DOT) used both a ''domestic'' SCC value of $2 per ton of CO_2 and a ''global'' SCC value of $33 per ton of CO_2 for 2007 emission reductions (in 2007$), increasing both values at 2.4 percent per year.[37] DOT also included a sensitivity analysis at $80 per ton of CO_2. See *Average Fuel Economy Standards Passenger Cars and Light Trucks Model Year 2011,* 74 FR 14196 (March 30, 2009) (Final Rule); Final Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–90 (Oct. 2008) (Available at: *www.nhtsa.gov/fuel-economy*). A domestic SCC value is meant to reflect the value of damages in the United States resulting from a unit change in carbon dioxide emissions, while a global SCC value is meant to reflect the value of damages worldwide.

A 2008 regulation proposed by DOT assumed a domestic SCC value of $7 per ton of CO_2 (in 2006$) for 2011 emission reductions (with a range of $0–$14 for sensitivity analysis), also increasing at 2.4 percent per year. See *Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015,* 73 FR 24352 (May 2, 2008) (Proposed Rule); Draft Environmental Impact Statement Corporate Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Years 2011–2015 at 3–58 (June 2008) (Available at: *www.nhtsa.gov/fuel-economy*). A regulation for packaged terminal air conditioners and packaged terminal heat pumps finalized by DOE in October of 2008 used a domestic SCC range of $0 to $20 per ton CO_2 for 2007 emission reductions (in 2007$). 73 FR 58772, 58814 (Oct. 7, 2008) In addition, EPA's 2008 Advance Notice of Proposed Rulemaking for Greenhouse Gases identified what it described as ''very preliminary'' SCC estimates subject to revision. See *Regulating Greenhouse Gas Emissions Under the Clean Air Act,* 73 FR 44354 (July 30, 2008). EPA's global mean values were $68 and $40 per ton CO_2 for discount rates of approximately 2 percent and 3 percent, respectively (in 2006$ for 2007 emissions).

In 2009, an interagency process was initiated to offer a preliminary assessment of how best to quantify the benefits from reducing carbon dioxide emissions. To ensure consistency in how benefits are evaluated across agencies, the Administration sought to develop a transparent and defensible method, specifically designed for the rulemaking process, to quantify avoided climate change damages from reduced CO_2 emissions. The interagency group did not undertake any original analysis. Instead, it combined SCC estimates from the existing literature to use as interim values until a more comprehensive analysis could be conducted. The outcome of the preliminary assessment by the interagency group was a set of five interim values: Global SCC estimates for 2007 (in 2006 dollars) of $55, $33, $19, $10, and $5 per ton of CO_2. These interim values represent the first sustained interagency effort within the U.S. government to develop an SCC for use in regulatory analysis. The results of this preliminary effort were presented in several proposed and final rules and were offered for public comment in connection with proposed rules, including the joint EPA–DOT fuel economy and CO_2 tailpipe emission proposed rules.

c. Current Approach and Key Assumptions

Since the release of the interim values, the interagency group reconvened on a regular basis to generate improved SCC estimates, which were used in this direct final rule. Specifically, the group considered public comments and further explored the technical literature in relevant fields. The interagency group relied on three integrated assessment models (IAMs) commonly used to estimate the SCC: The FUND, DICE, and PAGE models.[38] These models are frequently cited in the peer-reviewed literature and were used in the last assessment of the Intergovernmental Panel on Climate Change. Each model was given equal weight in the SCC values that were developed.

Each model takes a slightly different approach to model how changes in emissions result in changes in economic damages. A key objective of the interagency process was to enable a consistent exploration of the three models while respecting the different approaches to quantifying damages taken by the key modelers in the field. An extensive review of the literature was conducted to select three sets of input parameters for these models: Climate sensitivity, socio-economic and emissions trajectories, and discount rates. A probability distribution for climate sensitivity was specified as an input into all three models. In addition, the interagency group used a range of scenarios for the socio-economic parameters and a range of values for the discount rate. All other model features were left unchanged, relying on the model developers' best estimates and judgments.

The interagency group selected four SCC values for use in regulatory analyses. Three values are based on the average SCC from three integrated assessment models, at discount rates of 2.5, 3, and 5 percent. The fourth value, which represents the 95th percentile SCC estimate across all three models at a 3-percent discount rate, is included to represent higher-than-expected impacts from temperature change further out in the tails of the SCC distribution.

[36] It is recognized that this calculation for domestic values is approximate, provisional, and highly speculative. There is no a priori reason why domestic benefits should be a constant fraction of net global damages over time.

[37] Throughout this section, references to tons of CO_2 refer to metric tons.

[38] The models are described in appendix 15–A of the direct final rule TSD.

TABLE IV.13—SOCIAL COST OF CO_2, 2010–2050

[In 2007 dollars per metric ton]

	Discount rate			
	5% Avg	3% Avg	2.5% Avg	3% 95th
2010	4.7	21.4	35.1	64.9
2015	5.7	23.8	38.4	72.8
2020	6.8	26.3	41.7	80.7
2025	8.2	29.6	45.9	90.4
2030	9.7	32.8	50.0	100.0
2035	11.2	36.0	54.2	109.7
2040	12.7	39.2	58.4	119.3
2045	14.2	42.1	61.7	127.8
2050	15.7	44.9	65.0	136.2

It is important to recognize that a number of key uncertainties remain, and that current SCC estimates should be treated as provisional and revisable since they will evolve with improved scientific and economic understanding. The interagency group also recognizes that the existing models are imperfect and incomplete. The National Research Council report mentioned above points out that there is tension between the goal of producing quantified estimates of the economic damages from an incremental ton of carbon and the limits of existing efforts to model these effects. There are a number of concerns and problems that should be addressed by the research community, including research programs housed in many of the agencies participating in the interagency process to estimate the SCC.

DOE recognizes the uncertainties embedded in the estimates of the SCC used for cost-benefit analyses. As such, DOE and others in the U.S. Government intend to periodically review and reconsider those estimates to reflect increasing knowledge of the science and economics of climate impacts, as well as improvements in modeling. In this context, statements recognizing the limitations of the analysis and calling for further research take on exceptional significance.

In summary, in considering the potential global benefits resulting from reduced CO_2 emissions, DOE used the most recent values identified by the interagency process, adjusted to 2010$ using the GDP price deflator. For each of the four cases specified, the values used for emissions in 2010 were $4.9, $22.3, $36.5, and $67.6 per metric ton avoided (values expressed in 2010$).[39] To monetize the CO_2 emissions reductions expected to result from amended standards for dishwashers, DOE used the values identified in Table A1 of the ''Social Cost of Carbon for Regulatory Impact Analysis Under Executive Order 12866,'' which is reprinted in appendix 16–A of the direct final rule TSD, appropriately adjusted to 2010$. To calculate a present value of the stream of monetary values, DOE discounted the values in each of the four cases using the specific discount rate that had been used to obtain the SCC values in each case.

2. Valuation of Other Emissions Reductions

DOE investigated the potential monetary benefit of reduced NO_X emissions from the TSLs it considered. As noted above, amended energy conservation standards would reduce NO_X emissions in those 22 States that are not affected by the CAIR, in addition to the reduction in site NO_X emissions nationwide. DOE estimated the monetized value of NO_X emissions reductions resulting from each of the TSLs considered for today's direct final rule based on environmental damage estimates from the literature. Available estimates suggest a very wide range of monetary values, ranging from $370 per ton to $3,800 per ton of NO_X from stationary sources, measured in 2001$ (equivalent to a range of $450 to $4,623 per ton in 2010$).[40] In accordance with OMB guidance, DOE conducted two calculations of the monetary benefits derived using each of the economic values used for NO_X, one using a real discount rate of 3 percent and another using a real discount rate of 7 percent.[41]

DOE is aware of multiple agency efforts to determine the appropriate range of values used in evaluating the potential economic benefits of reduced Hg emissions. DOE has decided to await further guidance regarding consistent valuation and reporting of Hg emissions before it monetizes Hg in its rulemakings.

V. Analytical Results

The following section addresses the results from DOE's analyses with respect to potential energy conservation standards for residential dishwashers. It addresses the TSLs examined by DOE, the projected impacts of each of these levels if adopted as energy conservation standards for dishwashers, and the standards levels that DOE sets forth in today's direct final rule. Additional details regarding DOE's analyses are contained in the publicly available direct final rule TSD supporting this notice.

A. Trial Standard Levels

DOE analyzed the benefits and burdens of four TSLs for residential dishwashers. These TSLs were developed using combinations of efficiency levels for the standard and compact product classes analyzed by DOE. DOE presents the results for those TSLs in today's final rule. DOE presents the results for all efficiency levels that it analyzed in the direct final rule TSD. Table V.1 presents the TSLs and the corresponding efficiency levels for dishwashers. TSL 4 represents the maximum technologically feasible (''max-tech'') improvements in energy efficiency for residential dishwashers. TSL 3 consists of the next efficiency level below the max-tech level for standard dishwashers, and the max-tech level for compacts. The efficiency levels in TSL 2 correspond to the recommended levels in the Joint Petition. TSL 1 consists of the first

[39] Table A1 presents SCC values through 2050. For DOE's calculation, it derived values after 2050 using the 3-percent per year escalation rate used by the interagency group.

[40] For additional information, refer to U.S. Office of Management and Budget, Office of Information and Regulatory Affairs. *2006 Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities.* 2006. Washington, DC.

[41] OMB, Circular A–4: Regulatory Analysis (Sept. 17, 2003).

efficiency levels considered above the baseline.

TABLE V.1—TRIAL STANDARD LEVELS FOR RESIDENTIAL DISHWASHERS

TSL	Standard		Compact	
	CSL	Annual energy use (*KwH*)	CSL	Annual energy use (*kWh*)
1	1	324	1	222
2	2	307	1	222
3	4	234	2	154
4	5	180	2	154

B. Economic Justification and Energy Savings

1. Economic Impacts on Individual Consumers

a. Life-Cycle Cost and Payback Period

Consumers affected by new or amended standards usually experience higher purchase prices and lower operating costs. Generally, the impacts on individual consumers are best captured by changes in LCC and by the PBP. Therefore, DOE calculated the LCC and PBP analyses for the potential standard levels considered in this rulemaking. DOE's LCC and PBP analyses provided key outputs for each TSL, which are reported by dishwasher product class in Table V.2 and Table V.3. The LCC and its components refer to the average values at each efficiency level. The average LCC savings (averaged over all sample consumers), as well as the fraction of product consumers for which the LCC will decrease (net benefit), increase (net cost), or exhibit no change (no impact), are relative to the base-case efficiency distribution. The last column in the tables is the median PBP for the consumer purchasing a design that complies with the TSL. DOE presents the median PBP because it is the most statistically robust measure of the PBP. The results for each potential standard level are relative to the efficiency distribution in the base case (no amended standards). DOE based the LCC and PBP analyses on the range of energy consumption under conditions of actual product use.

TABLE V.2—LCC AND PBP RESULTS FOR STANDARD DISHWASHERS

TSL	Efficiency level (*kWh/yr*)	Life-cycle cost (*2010$*)			LCC savings				Payback period (*years*)
		Installed cost	Discounted operating cost	LCC	Average savings (*2010$*)	Percent of households that experience			
						Net cost	No impact	Net benefit	Median
1	324	$656	$445	$1,101	$1	2	96	2	5.9
2	307	674	411	1,086	3	19	64	17	11.8
3	234	734	318	1,052	41	30	20	50	6.6
4	180	745	232	977	108	23	9	68	4.5

TABLE V.3—LCC AND PBP RESULTS FOR COMPACT DISHWASHERS

TSL	Efficiency level (*kWh/yr*)	Life-cycle cost (*2010$*)			LCC savings				Payback period (*years*)
		Installed cost	Discounted operating cost	LCC	Average savings (*2010$*)	Percent of households that experience			
						Net cost	No impact	Net benefit	Median
1, 2	222	$623	$297	$920	$12	7	76	18	0.3
3, 4	154	638	206	844	52	5	50	44	2.1

For standard-sized dishwashers, DOE also considered an alternative base-case efficiency distribution that uses a different set of historical data. LCC and PBP results using this distribution are described in appendix 8–F of the direct final rule TSD.

b. Consumer Subgroup Analysis

As described in section IV.H, DOE determined the impact of the considered TSLs on low-income households and senior-only households.[42] Table V.4 compares the average LCC savings at each efficiency level for the two consumer subgroups, along with the average LCC savings for the entire sample for each product class for dishwashers. For today's standards, the average LCC savings for low-income households and senior-only households at the considered efficiency levels are not substantially different from the average for all households. At higher efficiency levels the average LCC savings for these subgroups are somewhat lower than the average for all households. Chapter 11 of the direct final rule TSD presents the complete LCC and PBP results for the two subgroups.

[42] DOE did not analyze subgroup impacts for compact dishwashers because the saturation of these products is extremely small.

TABLE V.4—STANDARD DISHWASHERS: COMPARISON OF AVERAGE LCC SAVINGS FOR CONSUMER SUBGROUPS AND ALL HOUSEHOLDS

TSL	Low-income households	Senior-only households	All households
	2010$		
1	$0	$0	$1
2	3	2	3
3	26	24	41
4	84	78	108

c. Rebuttable Presumption Payback

As discussed above, EPCA provides a rebuttable presumption that an energy conservation standard is economically justified if the increased purchase cost for a product that meets the standard is less than three times the value of the first-year energy savings resulting from the standard. In calculating a rebuttable presumption payback period for the considered standard levels, DOE used discrete values rather than distributions for input values, and, as required by EPCA, based the energy use calculation on the DOE test procedures for residential dishwashers. As a result, DOE calculated a single rebuttable presumption payback value, and not a distribution of payback periods, for each efficiency level.

Table V.5 presents the average rebuttable presumption payback periods for the considered TSLs. While DOE examined the rebuttable-presumption criterion, it considered whether the standard levels considered for today's rule are economically justified through a more detailed analysis of the economic impacts of those levels pursuant to 42 U.S.C. 6295(o)(2)(B)(i). The results of that analysis serve as the basis for DOE to evaluate the economic justification for a potential standard level (thereby supporting or rebutting the results of any preliminary determination of economic justification).

TABLE V.5—DISHWASHERS: REBUTTABLE PBPS

	Trial standard level			
	1	2	3	4
Standard (*years*)	5.40	5.51	5.57	4.00
Compact (*years*)	0.23	0.23	1.02	1.02

2. Economic Impacts on Manufacturers

DOE performed an MIA to estimate the impact of amended energy conservation standards on manufacturers of residential dishwashers. The section below describes the expected impacts on manufacturers at each TSL. Chapter 12 of the direct final rule TSD explains the analysis in further detail.

a. Industry Cash Flow Analysis Results

DOE modeled two scenarios using different markup assumptions. Each scenario results in a unique set of cash flows and corresponding industry value at each TSL. These assumptions correspond to the bounds of a range of market responses that DOE anticipates could occur in the standards case. The tables below depict the financial impacts on manufacturers (represented by changes in INPV) and the conversion costs DOE estimates manufacturers would incur at each TSL. The first table corresponds to the flat markup scenario and reflects the lower (less severe) bound of impacts whereas the second table corresponds to the preservation of operating profit scenario and reflects the upper bound of impacts.

The INPV results refer to the difference in industry value between the base case and the standards case, which DOE calculated by summing the discounted industry cash flows from the base year (2012) through the end of the analysis period. The discussion also notes the difference in cash flow between the base case and the standards case in the year before the compliance date of potential amended energy conservation standards. This figure provides an estimate of the required conversion costs relative to the cash flow generated by the industry in the base case.

TABLE V.6—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—FLAT MARKUP SCENARIO

	Units	Base case	Trial standard level			
			1	2	3	4
INPV	(*2010$ millions*)	637.5	593.2	563.6	508.6	491.9
Change in INPV	(*2010$ millions*)		(44.3)	(73.9)	(128.9)	(145.6)
	(*%*)		−7.0%	−11.6%	−20.2%	−22.8%
Product Conversion Costs	(*2010$ millions*)		27.8	34.9	66.5	76.7
Capital Conversion Costs	(*2010$ millions*)		45.5	59.1	195.4	226.3
Total Conversion Costs	(*2010$ millions*)		73.2	94.0	261.9	303.0

TABLE V.7—MANUFACTURER IMPACT ANALYSIS FOR RESIDENTIAL DISHWASHERS—TIERED MARKUP SCENARIO

	Units	Base case	Trial standard level			
			1	2	3	4
INPV	(*2010$ millions*)	637.5	592.2	552.9	463.1	434.8
Change in INPV	(*2010$ millions*)		(45.3)	(84.6)	(174.4)	(202.7)
	(*%*)		−7.1%	−13.3%	−27.4%	−31.8%
Product Conversion Costs	(*2010$ millions*)		27.8	34.9	66.5	76.7
Capital Conversion Costs	(*2010$ millions*)		45.5	59.1	195.4	226.3
Total Conversion Costs	(*2010$ millions*)		73.2	94.0	261.9	303.0

Because standard dishwashers represent over 99 percent of shipments in the year leading up to amended standards, changes to this product class contribute the majority of impacts to INPV across all TSLs analyzed in this rulemaking.

At TSL 1, DOE estimates impacts on INPV to range from −$44.3 million to −$45.3 million, or a change in INPV of −7.0 percent to −7.1 percent. At this level, industry free cash flow is estimated to decrease by approximately 56.5 percent to $21.9 million, compared to the base-case value of $50.5 million in the year leading up to the amended energy conservation standards. As TSL 1 corresponds to current ENERGY STAR standards, and these products represent over 96 percent of shipments in the year leading up to amended standards, only a very small fraction of the market is affected at this efficiency level. In either markup scenario, the impact to INPV at TSL 1 stems from the conversion costs required to switch production lines from manufacturing baseline units to those meeting the standards set at EL 1 for both product classes.

As a large fraction of the energy used in dishwashing is associated with heating the wash water, the design options proposed to meet this efficiency level relate primarily to minimizing the amount of wash water through spray-arm optimization and enabling greater control over the wash water temperature. Both of these practices are in common use in higher efficiency platforms across the industry and contribute to an MPC of $209.25 for standard dishwashers. Because the industry already produces a substantial number of products at this efficiency level, product and capital conversion costs are limited to 73.2 million, which accounts for switching production lines from baseline products to existing higher efficiency platforms.

TSL 2 represents the efficiency level set forth in the Joint Petition, and establishes a compliance date of 2013 as compared the 2018 compliance date for the other TSLs. At TSL 2, DOE estimates impacts on INPV to range from −$73.9 million to −$84.6 million, or a change in INPV of −11.6 percent to −13.3 percent. At this level, industry free cash flow is estimated to decrease by approximately 192.2 percent to −$39.2 million, compared to the base-case value of $42.5 million in the year leading up to the amended energy conservation standards. As with TSL 1, the impact to INPV at TSL 2 stems from the conversion costs required to switch production lines from manufacturing baseline units to those meeting the standards set at EL 2 for both product classes. At TSL 2, these impacts grow as the number of products requiring changes grows from 3.8 percent of shipments in the year leading up to amended standards to 36.1 percent.

As a large fraction of the energy used in dishwashing is associated with heating wash water, the design options proposed to meet this efficiency level relate primarily to minimizing the amount of wash water through additional optimization of the water lines as well as upgrades to higher efficiency pumps and electronic controls. Incorporating these design options leads to an estimated MPC of $222.80 for standard products. While a significant fraction of dishwashers currently employ these energy and water saving measures, the product and capital conversion costs rise to $94.0 million (as compared to $73.2 million for TSL 1), to account for the additional switching of production lines to higher efficiency platforms.

At TSL 3, DOE estimates impacts on INPV to range from −$128.9 million to −$174.4 million, or a change in INPV of −20.2 percent to −27.4 percent. At this level, industry free cash flow is estimated to decrease by approximately 212.6 percent to −$56.8 million, compared to the base-case value of $50.5 million in the year leading up to the amended energy conservation standards. While TSL 3 returns the compliance date to 2018 (5 years after the compliance date for TSL 2) the impact to INPV is more severe as less than 20 percent of shipments in the year leading up to amended standards meet or exceed this efficiency level. As such, the capital and product conversion costs required to bring these products into compliance rise significantly to a total of $261.9 million, $167.9 million more than at TSL 2. These conversion costs stem from both the research programs needed to develop such optimized products and the capital investment required to change over the majority of production lines to produce these high efficiency products.

The design options proposed to meet efficiency standards at TSL 3 include exchanging a heated drying system for a condensation drying system, further optimizing the hydraulic system (extending to a redesign of both the sump and water lines), and incorporating a flow meter, temperature control, and a humidity sensor to finely tune water consumption, temperature, and the drying cycle. Beyond component exchanges alone, the design options proposed at TSL 3 extend to include control strategies that would reduce the wash and rinse water temperatures. The component changes required to enable these improvements contribute to an MPC of $266.16 for standard dishwashers, $43.37 above that at TSL 2.

At TSL 4, DOE estimates impacts on INPV to range from −$145.6 million to −$202.7 million, or a change in INPV of −22.8 percent to −31.8 percent. At this level, industry free cash flow is estimated to decrease by approximately −246.0 percent to −$73.7 million, compared to the base-case value of $50.5 million in the year leading up to the amended energy conservation standards. TSL 4 represents the max-tech efficiency level for all dishwashers. The effects on INPV result from similar sources as TSL 3, but the fraction of products in the market that currently meet this standard is reduced to less than 9 percent in the year leading up to amended standards. As such, standards at TSL 4 would affect nearly all platforms and will result in substantial

capital conversion costs associated with improvements to nearly all production facilities. Because so few products exist at this level today, nearly all manufacturers would face complete redesigns for products to meet this standard. Accordingly, the product conversion costs increase to reflect this substantial research effort. The total conversion cost required to meet standards at TSL 5 is approximately $303.0 million—a $41.1 million increase from TSL 4.

The design options proposed to meet the efficiency levels specified at TSL 4 start with those at TSL 3, but replace the in-line flow-through water heater with one that is integrated with the pump and eliminate the fan used to circulate air during drying. Where these design options have little impact on the product MPC, contributing to only a $7.77 increase over that at TSL 3, they significantly impact INPV because of the large conversion costs associated with developing and producing these highly optimized products.

b. Impacts on Employment

DOE used the GRIM to estimate the domestic labor expenditures and number of domestic production workers in the base case and at each TSL from 2012 to 2047. DOE used the labor content of each product and the manufacturing production costs from the engineering analysis to estimate the total annual labor expenditures associated with residential dishwashers sold in the United States. Using statistical data from the most recent U.S. Census Bureau's 2009 ''Annual Survey of Manufactures'' and interviews with manufacturers, DOE estimates that 95 percent of residential dishwashers sold in the United States are manufactured domestically and hence that portion of total labor expenditures is attributable to domestic labor. Labor expenditures for the manufacture of a product are a function of the labor intensity of the product, the sales volume, and an assumption that wages in real terms remain constant.

Using the GRIM, DOE forecasts the domestic labor expenditure for residential dishwasher production labor in 2018 will be approximately $248.7 million. Using the $27.03 hourly wage rate including fringe benefits and 2,003 production hours per year per employee found in the 2009 ASM, DOE estimates there will be approximately 4,593 domestic production workers involved in manufacturing residential dishwashers in 2018, the year in which amended standards would go into effect for TSL 1, TSL 3, and TSL 4. In addition, DOE estimates that 1,120 non-production employees in the United States will support residential dishwasher production.[43] The employment spreadsheet of the residential dishwasher GRIM shows the annual domestic employment impacts in further detail.

The production worker estimates in this section cover workers only up to the line-supervisor level who are directly involved in fabricating and assembling dishwashers within an Original Equipment Manufacturer (OEM) facility. Workers performing services that are closely associated with production operations, such as material handling with a forklift, are also included as production labor. Additionally, the employment impacts shown are independent of the employment impacts from the broader U.S. economy, which are documented in chapter 13 of the direct final rule TSD.

Table V.8 depicts the potential levels of production employment that could result following amended energy conservation standards as calculated by the GRIM. The employment levels shown reflect the scenario in which manufacturers continue to produce the same scope of covered products in domestic facilities and domestic production is not shifted to lower-labor-cost countries. If all existing production were moved outside of the United States, the expected impact to domestic manufacturing employment would be a loss of 4,593 jobs, the equivalent of the total base case employment. Because there is a risk of manufacturers evaluating sourcing decisions in response to amended energy conservation standards, the expected impact to domestic production employment falls between the potential increases as shown in Table V.8, and the levels of job loss associated with all domestic dishwasher manufacturing moving outside of the United States. The discussion below includes a qualitative evaluation of the likelihood of negative domestic production employment impacts at the various TSLs.

TABLE V.8—TOTAL NUMBER OF DOMESTIC RESIDENTIAL DISHWASHER PRODUCTION WORKERS IN 2018 *

	Base case	Trial standard level			
		1	2	3	4
Total Number of Domestic Production Workers in 2018 (without changes in production locations)	4,593	4,601	4,679	4,658	4,799

* The compliance date for residential dishwashers at TSL 1, TSL 3, and TSL 4 is 2018. At TSL 2, the compliance date is 2013 as specified by the Joint Petition.

All examined TSLs show relatively minor impacts on domestic employment levels relative to total industry employment. At all TSLs, most of the design options analyzed by DOE do not greatly alter the labor content of the final product. For example, longer or more complex wash cycles or improved sump designs involve one-time changes to the final product but do not significantly change the number of steps required for the final assembly of the dishwasher (which would add labor). Because many manufacturers have recently introduced high efficiency products in the United States that meet or exceed the standards in today's final rule, it is unlikely today's direct final rule would greatly impact the sourcing decisions of these manufacturers. However, at higher TSLs, some of the design options analyzed greatly impact the ability of manufacturers to make product changes within existing platforms. The very large upfront capital costs at these levels could influence the decision of some manufacturers to relocate some or all of their domestic production of dishwashers to lower labor cost countries.

c. Impacts on Manufacturing Capacity

Nearly 64 percent of shipments of residential dishwashers already comply with the amended energy conservation standards as agreed upon in the Joint Petition and established in this rulemaking. Every manufacturer that ships standard dishwashers offers products that meet these amended energy conservation standards. Because manufacturers would need to make only minor platform changes and/or increase

the production of existing products by the 2013 compliance date, the experience of multiple manufacturers that already produce standards-compliant dishwashers would allow the industry to meet the amended energy conservation standards proposed in the Joint Petition without any significant impact to manufacturing capacity in the interim.

d. Impacts on Sub-Groups of Manufacturers

Using average cost assumptions to develop an industry cash-flow estimate may not be adequate for assessing differential impacts among manufacturer subgroups. Small manufacturers, niche equipment manufacturers, and manufacturers exhibiting a cost structure substantially different from the industry average could be affected disproportionately. DOE analyzed the impacts to small business, as discussed in section VI.B. DOE did not identify any other subgroups for residential dishwashers for this rulemaking.

e. Cumulative Regulatory Burden

While any one regulation may not impose a significant burden on manufacturers, the combined effects of several impending regulations may have serious consequences for some manufacturers, groups of manufacturers, or an entire industry. Assessing the impact of a single regulation may overlook this cumulative regulatory burden. In addition to energy conservation standards, other regulations can significantly affect manufacturers' financial operations. Multiple regulations affecting the same manufacturer can strain profits and can lead companies to abandon product lines or markets with lower expected future returns than competing products. For these reasons, DOE conducts an analysis of cumulative regulatory burden as part of its rulemakings pertaining to appliance efficiency.

Manufacturers provided comment on some of these regulations during interviews. DOE summarizes and addresses these comments in section IV.I.3. For the cumulative regulatory burden, DOE attempts to quantify or describe the impacts of other Federal regulations that have a compliance date within approximately 3 years of the compliance date of this rulemaking. Most of the major regulations identified by DOE that meet this criterion are other energy conservation standards for products and equipment made by manufacturers of residential dishwashers. See chapter 12 of the direct final rule TSD for the results of DOE's analysis of the cumulative regulatory burden.

3. National Impact Analysis

a. Significance of Energy Savings

To estimate the energy savings attributable to potential standards for dishwashers, DOE compared the energy consumption of those products under the base case to their anticipated energy consumption under each TSL. Table V.9 presents DOE's projections of the national energy savings and national water savings for each TSL considered for dishwashers.[44] The savings were calculated using the approach described in section IV.G.[45] For standard-sized dishwashers, DOE also considered an alternative base-case efficiency trend that was estimated using a different set of historical data. Results calculated using this trend are described in appendix 10–D of the direct final rule TSD.

TABLE V.9—DISHWASHERS: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS (2018–2047) *

	Trial standard level			
	1	2	3	4
Energy (*quads*)	0.02	0.07	0.94	1.59
Water (*trillion gallons*)	0.01	0.14	0.56	1.71

* For TSL 2, the impacts are counted for 2013–2047.

b. Net Present Value of Consumer Costs and Benefits

DOE estimated the cumulative NPV to the nation of the total costs and savings for consumers that would result from particular standard levels for dishwashers. In accordance with the OMB's guidelines on regulatory analysis (OMB Circular A–4, section E, September 17, 2003), DOE calculated NPV using both a 7-percent and a 3-percent real discount rate. The 7-percent rate is an estimate of the average before-tax rate of return to private capital in the U.S. economy, and reflects the returns to real estate and small business capital as well as corporate capital. DOE used this discount rate to approximate the opportunity cost of capital in the private sector, since recent OMB analysis has found the average rate of return to capital to be near this rate. In addition, DOE used the 3-percent rate to capture the potential effects of standards on private consumption (*e.g.,* through higher prices for products and the purchase of reduced amounts of energy). This rate represents the rate at which society discounts future consumption flows to their present value. This rate can be approximated by the real rate of return on long-term government debt (*i.e.,* yield on Treasury notes minus annual rate of change in the Consumer Price Index), which has averaged about 3 percent on a pre-tax basis for the last 30 years.

Table V.10 shows the consumer NPV results for each TSL DOE considered for dishwashers, using a 3-percent and a 7-percent discount rate. The impacts are counted over the lifetime of products purchased in 2018–2047 for TSLs 1, 3 and 4, and in 2013–2047 for TSL 2.

[44] National energy and water savings are cumulative over a 30-year period. Any savings for products entering the housing stock in this 30-year period which occur beyond the 30-year time limit are not reported in the national totals.

[45] Chapter 10 of the direct final rule TSD presents tables that also show the magnitude of the energy savings if the savings are discounted at rates of 7 percent and 3 percent. Discounted energy savings represent a policy perspective in which energy savings realized farther in the future are less significant than energy savings realized in the nearer term.

TABLE V.10—DISHWASHERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2018–2047 *

Discount rate	Trial standard level			
	1	2	3	4
	Billion 2010$			
3 percent	0.12	0.46	6.51	17.45
7 percent	0.03	0.08	1.96	5.88

* For TSL 2, the impacts are counted over the lifetime of products shipped in 2013–2047.

The NPV results presented in Table V.10 are based on the default product price trend. As discussed in section IV.G.3, DOE developed several sensitivity cases with alternative forecasts of future prices of dishwashers. The impact of these alternative forecasts on the NPV results is presented in appendix 10–C of the direct final rule TSD.

For standard-sized dishwashers, DOE also considered an alternative base-case efficiency trend that was estimated using a different set of historical data. NPV results calculated using this trend are described in appendix 10–D of the direct final rule TSD.

Circular A–4 requires agencies to present analytical results, including separate schedules of the monetized benefits and costs that show the type and timing of benefits and costs. Circular A–4 also directs agencies to consider the variability of key elements underlying the estimates of benefits and costs. DOE believes its standard 30-year analysis is fully compliant with Circular A–4. For this rulemaking, DOE undertook an additional sensitivity analysis of its standard 30-year analysis, in compliance with Circular A–4, using a 9-year analytical period. The choice of a 9-year period is a proxy for the timeline in EPCA for the review of the energy conservation standard established in this direct final rule and potential revision of and compliance with a new standard for dishwashers.[46] The timeframe established in EPCA may not be statistically relevant with regard to the product lifetime, product manufacturing cycles or other factors specific to dishwashers. DOE notes that the review timeframe established in EPCA generally does not overlap with the product lifetime, product manufacturing cycles or other factors specific to dishwashers. Thus, this information is presented for informational purposes only and is not indicative of any change in DOE's analytical methodology.

The sensitivity analysis results based on a 9-year analytical period are presented below. Table IV.11 presents DOE's forecasts of the national energy savings and national water savings for each TSL for dishwashers.[47] Table IV.12 shows the consumer NPV results for each TSL DOE considered for dishwashers, using a 3-percent and a 7-percent discount rate. For determination of the NPV, the impacts are counted over the lifetime of products purchased in 2018–2026 for TSLs 1, 3 and 4, and in 2013–2021 for TSL 2 (note that the NPV estimate incorporates all of the operating cost savings of dishwashers purchased in the 9 year analytical period).

TABLE V.11—DISHWASHERS: CUMULATIVE NATIONAL ENERGY AND WATER SAVINGS, NINE-YEAR ANALYSIS PERIOD (2018–2026) *

	Trial standard level			
	1	2	3	4
Energy (*quads*)	0.00	0.01	0.13	0.22
Water (*trillion gallons*)	0.00	0.02	0.08	0.24

* For TSL 2, the impacts are counted for 2013–2021.

TABLE V.12—DISHWASHERS: CUMULATIVE NET PRESENT VALUE OF CONSUMER BENEFITS FOR PRODUCTS SHIPPED IN 2018–2026, NINE-YEAR ANALYSIS PERIOD *

Discount rate	Trial standard level			
	1	2	3	4
	Billion 2010$			
3 percent	0.04	0.07	2.15	6.01
7 percent	0.02	0.00	0.93	2.89

* For TSL 2, the impacts are counted over the lifetime of products shipped in 2013–2021.

[46] EPCA requires DOE to review its standards at least once every 6 years, and requires, for certain products including dishwashers, a 3 year period after any new standard is promulgated before compliance is required, except that in no case may any new standards be required within 6 years of the compliance date of the standards established in this direct final rule. While adding a 6-year review to the 3-year compliance period adds up to 9 years, DOE notes that it may undertake reviews at any time within the 6 year period and that the 3-year compliance date may yield to the 6-year backstop. A 9-year analysis period does not reflect the variability that may occur in the timing of standards reviews and the fact that for some consumer products, the compliance period is 5 years rather than 3 years.

[47] National energy and water savings are cumulative over the 9-year period. Any savings for products entering the housing stock in this 9-year period which occur beyond the 9-year time limit are not reported in the national totals. In contrast, the social benefit and cost estimates include the benefits and costs that are incurred over the lifetime of the dishwashers irrespective of when they are purchased.

c. Impacts on Employment

DOE develops estimates of the indirect employment impacts of potential standards on the economy in general. As discussed above, DOE expects energy conservation standards for dishwashers to reduce energy bills for consumers of those products, and the resulting net savings to be redirected to other forms of economic activity. These expected shifts in spending and economic activity could affect the demand for labor. As described in section IV.J, DOE used an input/output model of the U.S. economy to estimate indirect employment impacts of the TSLs that DOE considered in this rulemaking. DOE understands that there are uncertainties involved in projecting employment impacts, especially changes in the later years of the analysis. Therefore, DOE generated results for near-term timeframes, where these uncertainties are reduced.

The results suggest that today's standards are likely to have negligible impact on the net demand for labor in the economy. The net change in jobs is so small that it would be imperceptible in national labor statistics and might be offset by other, unanticipated effects on employment. Chapter 13 of the direct final rule TSD presents detailed results.

4. Impact on Utility or Performance of Products

As presented in section III.D.1.d of this notice, DOE concluded that the TSL adopted in this direct final rule would not reduce the utility or performance of the dishwashers under consideration in this rulemaking. Manufacturers of these products currently offer units that meet or exceed today's standards. (42 U.S.C. 6295(o)(2)(B)(i)(IV))

5. Impact of Any Lessening of Competition

DOE has also considered any lessening of competition that is likely to result from amended standards. The Attorney General determines the impact, if any, of any lessening of competition likely to result from a proposed standard, and transmits such determination to DOE, together with an analysis of the nature and extent of such impact. (42 U.S.C. 6295(o)(2)(B)(i)(V) and (B)(ii))

DOE published a NOPR containing energy conservation standards identical to those set forth in today's direct final rule and transmitted a copy of today's direct final rule and the accompanying TSD to the Attorney General, requesting that the DOJ provide its determination on this issue. DOE will consider DOJ's comments on the rule in determining whether to proceed with the direct final rule. DOE will also publish and respond to DOJ's comments in the **Federal Register** in a separate notice.

6. Need of the Nation To Conserve Energy

An improvement in the energy efficiency of the products subject to today's rule is likely to improve the security of the nation's energy system by reducing overall demand for energy. Reduced electricity demand may also improve the reliability of the electricity system.

Energy savings from amended standards for residential dishwashers are expected to produce environmental benefits in the form of reduced emissions of air pollutants and greenhouse gases associated with electricity production. Table V.13 provides DOE's estimate of cumulative CO_2, NO_X, and Hg emissions reductions that would be expected to result from the TSLs considered in this rulemaking. In the environmental assessment (chapter 15 of the direct final rule TSD), DOE reports annual CO_2, NO_X, and Hg emissions reductions for each TSL.

As discussed in section IV.L, DOE has not reported SO_2 emissions reductions from power plants because the NEMS–BT modeling system that DOE uses to forecast emissions reductions currently indicates that no physical reductions in power sector emissions would occur for SO_2. DOE also did not include NO_X emissions reduction from power plants in States subject to emissions caps because in such a case an energy conservation standard would likely not affect the overall level of NO_X emissions in those States.[48]

TABLE V.13—EMISSIONS REDUCTION ESTIMATED FOR DISHWASHER TRIAL STANDARD LEVELS

[Cumulative in 2018–2047] *

	TSL 1	TSL 2	TSL 3	TSL 4
CO_2 (*million metric tons*)	1.15	4.06	65.02	98.62
NO_X (*thousand tons*)	0.96	3.54	54.27	83.31
Hg (*tons*)	0.004	0.000	0.274	0.304

* For TSL 2, the impacts are counted for 2013–2047.

DOE also estimated monetary benefits likely to result from the reduced emissions of CO_2 and NO_X that DOE estimated for each of the TSLs considered for dishwashers. As discussed in section IV.M, DOE used values for the SCC developed by an interagency process. The four values for CO_2 emissions reductions in 2010 resulting from that process (expressed in 2010$) are $4.9/ton (the average value from a distribution that uses a 5-percent discount rate), $22.3/ton (the average value from a distribution that uses a 3-percent discount rate), $36.5/ton (the average value from a distribution that uses a 2.5-percent discount rate), and $67.6/ton (the 95th-percentile value from a distribution that uses a 3-percent discount rate). The values for later years are higher due to increasing damages as the magnitude of climate change increases. For each of the four cases, DOE calculated a present value of the stream of annual values using the same discount rate as used in the studies upon which the dollar-per-ton values are based. Table V.14 presents the global values of CO_2 emissions reductions at each TSL. DOE calculated domestic values as a range from 7 percent to 23 percent of the global values. Those results are presented in Table V.15.

[48] EPA issued the final Cross-State Air Pollution Rule on July 6, 2011 (*www.epa.gov/crossstate rule/*). The Cross-State Air Pollution Rule will replace CAIR. In the emissions analysis for today's amended energy conservation standards, DOE's discussion and conclusions about NO_X emissions assume the implementation of CAIR. In future rulemakings, DOE will adjust its relevant models to assume the implementation of the Cross-State Air Pollution Rule.

TABLE V.14—ESTIMATES OF GLOBAL PRESENT VALUE OF CO_2 EMISSIONS REDUCTIONS UNDER DISHWASHER TRIAL STANDARD LEVELS

TSL	*Million 2010$*			
	5% Discount rate, average *	3% Discount rate, average *	2.5% Discount rate, average *	3% Discount rate, 95th percentile *
1	4.88	25.9	44.2	78.9
2	16.1	79.5	133	242
3	278	1484	2534	4515
4	427	2284	3904	6951

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution.

TABLE V.15—ESTIMATES OF DOMESTIC PRESENT VALUE OF CO_2 EMISSIONS REDUCTIONS UNDER DISHWASHER TRIAL STANDARD LEVELS

TSL	*Million 2010$*			
	5% Discount rate, average *	3% Discount rate, average *	2.5% Discount rate, average *	3% Discount rate, 95th percentile *
1	0 to 1	2 to 6	3 to 10	6 to 18.
2	1 to 4	6 to 18	9 to 31	17 to 56.
3	19 to 64	104 to 341	177 to 583	316 to 1039.
4	30 to 98	160 to 525	273 to 898	487 to 1599.

* Columns are labeled by the discount rate used to calculate the SCC and whether it is an average value or drawn from a different part of the distribution.

DOE is well aware that scientific and economic knowledge about the contribution of CO_2 and other GHG emissions to changes in the future global climate and the potential resulting damages to the world economy continues to evolve rapidly. Thus, any value placed in this rulemaking on reducing CO_2 emissions is subject to change. DOE, together with other Federal agencies, will continue to review various methodologies for estimating the social value of reductions in CO_2 and other GHG emissions. This ongoing review will consider the comments on this subject that are part of the public record for this and other rulemakings, as well as other methodological assumptions and issues. However, consistent with DOE's legal obligations, and taking into account the uncertainty involved with this particular issue, DOE has included in this final rule the most recent values and analyses resulting from the ongoing interagency review process.

DOE also estimated a range for the cumulative monetary value of the economic benefits associated with NO_X emissions reductions anticipated to result from amended standards for residential dishwashers. The dollar-per-ton values that DOE used are discussed in section IV.M. Table V.16 presents the cumulative present values for each TSL calculated using 3-percent and 7-percent discount rates.

TABLE V.16—ESTIMATES OF PRESENT VALUE OF NO_X EMISSIONS REDUCTIONS UNDER DISHWASHER TRIAL STANDARD LEVELS

TSL	3% Discount rate *(million 2010$)*	7% Discount rate *(million 2010$)*
1	0 to 3	0 to 1.
2	1 to 10	0 to 5.
3	14 to 148	6 to 59.
4	22 to 230	9 to 91.

The NPV of the monetized benefits associated with emissions reductions can be viewed as a complement to the NPV of the consumer savings calculated for each TSL considered in this rulemaking. Table V.17 and Table V.18 present the NPV values that result from adding the estimates of the potential economic benefits resulting from reduced CO_2 and NO_X emissions in each of four valuation scenarios to the NPV of consumer savings calculated for each TSL considered in this rulemaking, at both a 7-percent and a 3-percent discount rate. The CO_2 values used in the columns of each table correspond to the four scenarios for the valuation of CO_2 emission reductions presented in section IV.M.

TABLE V.17—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 7-PERCENT DISCOUNT RATE) TO NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER DISHWASHER TRIAL STANDARD LEVELS

TSL	Consumer NPV at 7% discount rate added with:			
	SCC Value of $4.9/metric ton CO_2 * and low value for NO_X ** *(billion 2010$)*	SCC Value of $22.3/metric ton CO_2 * and medium value for NO_X ** *(billion 2010$)*	SCC Value of $36.5/metric ton CO_2 * and medium value for NO_X ** *(billion 2010$)*	SCC Value of $67.6/metric ton CO_2 * and high value for NO_X ** *(billion 2010$)*
1	0.04	0.06	0.08	0.11

TABLE V.17—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 7-PERCENT DISCOUNT RATE) TO NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER DISHWASHER TRIAL STANDARD LEVELS—Continued

TSL	Consumer NPV at 7% discount rate added with:			
	SCC Value of $4.9/metric ton CO_2 * and low value for NO_X ** *(billion 2010$)*	SCC Value of $22.3/metric ton CO_2 * and medium value for NO_X ** *(billion 2010$)*	SCC Value of $36.5/metric ton CO_2 * and medium value for NO_X ** *(billion 2010$)*	SCC Value of $67.6/metric ton CO_2 * and high value for NO_X ** *(billion 2010$)*
2	0.10	0.16	0.21	0.33
3	2.24	3.48	4.53	6.53
4	6.31	8.21	9.83	12.92

* These label values represent the global SCC of CO_2 in 2010, in 2010$. Their present values have been calculated with scenario-consistent discount rates.

** Low Value corresponds to $450 per ton of NO_X emissions. Medium Value corresponds to $2,537 per ton of NO_X emissions. High Value corresponds to $4,623 per ton of NO_X emissions.

TABLE V.18—RESULTS OF ADDING NET PRESENT VALUE OF CONSUMER SAVINGS (AT 3-PERCENT DISCOUNT RATE) TO NET PRESENT VALUE OF MONETIZED BENEFITS FROM CO_2 AND NO_X EMISSIONS REDUCTIONS UNDER DISHWASHER TRIAL STANDARD LEVELS

TSL	Consumer NPV at 3% discount rate added with:			
	SCC Value of $4.9/metric ton CO_2 * and low value for NO_X ** *(billion 2010$)*	SCC Value of $22.3/metric ton CO_2 * and medium value for NO_X ** *(billion 2010$)*	SCC Value of $36.5/metric ton CO_2* and medium value for NO_X ** *(billion 2010$)*	SCC Value of $67.6/metric ton CO_2 * and high value for NO_X ** *(billion 2010$)*
1	0.13	0.15	0.17	0.20
2	0.48	0.54	0.60	0.71
3	6.80	8.07	9.12	11.17
4	17.90	19.86	21.48	24.63

* These label values represent the global SCC of CO_2 in 2010, in 2010$. Their present values have been calculated with scenario-consistent discount rates.

** Low Value corresponds to $450 per ton of NO_X emissions. Medium Value corresponds to $2,537 per ton of NO_X emissions. High Value corresponds to $4,623 per ton of NO_X emissions.

Although adding the value of consumer savings to the values of emission reductions provides a valuable perspective, two issues should be considered. First, the national operating cost savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and CO_2 savings are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2013–2047. The SCC values, on the other hand, reflect the present value of all future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

7. Other Factors

The Secretary of Energy, in determining whether a standard is economically justified, may consider any other factors that the Secretary deems to be relevant. (42 U.S.C. 6295(o)(2)(B)(i)(VI))) In developing the direct final rule, DOE has also considered the Joint Petition submitted to DOE. DOE recognizes the value of consensus agreements submitted by parties in accordance with 42 U.S.C. 6295(p)(4) and has weighed the value of such consensus in establishing the standards set forth in today's final rule. DOE has encouraged the submission of consensus agreements as a way to get diverse interested parties together, to develop an independent and probative analysis useful in DOE standard setting, and to expedite the rulemaking process. DOE also believes that standard levels recommended in the consensus agreement may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

C. Conclusion

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency that the Secretary determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, the Secretary must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors discussed previously. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also ''result in significant conservation of energy.'' (42 U.S.C. 6295(o)(3)(B))

The Department considered the impacts of standards at each TSL, beginning with maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and/or burdens of each trial standard level, tables present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results

presented in the tables, DOE also considers other burdens and benefits that affect economic justification. Those include the impacts on identifiable subgroups of consumers, such as low-income households and seniors, who may be disproportionately affected by a national standard. Section V.B.1 presents the estimated impacts of each TSL for these subgroups.

DOE also notes that the economics literature provides a wide-ranging discussion of how consumers trade off upfront costs and energy savings in the absence of government intervention. Much of this literature attempts to explain why consumers appear to undervalue energy efficiency improvements. This undervaluation suggests that regulation that promotes energy efficiency can produce significant net private gains (as well as producing social gains by, for example, reducing pollution). There is evidence that consumers undervalue future energy savings as a result of (1) a lack of information; (2) a lack of sufficient salience of the long-term or aggregate benefits; (3) a lack of sufficient savings to warrant delaying or altering purchases (for example, an inefficient ventilation fan in a new building or the delayed replacement of a water pump); (4) excessive focus on the short term, in the form of inconsistent weighting of future energy cost savings relative to available returns on other investments; (5) computational or other difficulties associated with the evaluation of relevant tradeoffs; and (6) a divergence in incentives (that is, renter versus owner; builder versus purchaser). Other literature indicates that with less than perfect foresight and a high degree of uncertainty about the future, consumers may trade off these types of investments at a higher than expected rate between current consumption and uncertain future energy cost savings.

In DOE's current regulatory analysis, potential changes in the benefits and costs of a regulation due to changes in consumer purchase decisions are included in two ways: First, if consumers forego a purchase of a product in the standards case, this decreases sales for product manufacturers and the cost to manufacturers is included in the MIA. Second, DOE accounts for energy savings attributable only to products actually used by consumers in the standards case; if a regulatory option decreases the number of products used by consumers, this decreases the potential energy savings from an energy conservation standard. DOE provides detailed estimates of shipments and changes in the volume of product purchases in chapter 9 of the direct final rule TSD. However, DOE's current analysis does not explicitly control for heterogeneity in consumer preferences, preferences across subcategories of products or specific features, or consumer price sensitivity variation according to household income (Reiss and White, 2005).[49]

While DOE is not prepared at present to provide a fuller quantifiable framework for estimating the benefits and costs of changes in consumer purchase decisions due to an energy conservation standard, DOE is committed to developing a framework that can support empirical quantitative tools for improved assessment of the consumer welfare impacts of appliance standards. DOE has posted a paper that discusses the issue of consumer welfare impacts of appliance energy efficiency standards, and potential enhancements to the methodology by which these impacts are defined and estimated in the regulatory process.[50] DOE welcomes comments on how to more fully assess the potential impact of energy conservation standards on consumer choice and how to quantify this impact in its regulatory analysis in future rulemakings.

1. Benefits and Burdens of TSLs Considered for Residential Dishwashers

Table V.19 and Table V.20 summarize the quantitative impacts estimated for each TSL for residential dishwashers. The efficiency levels contained in each TSL are described in section V.A.

TABLE V.19—SUMMARY OF RESULTS FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
National Energy Savings (*quads*)	0.02	0.07	0.94	1.59.
National Water Savings (*trillion gal.*)	0.01	0.14	0.56	1.71.
Net Present Value (2010$ billion)				
3% discount rate	0.12	0.46	0.51	17.45.
7% discount rate	0.03	0.08	1.96	5.88.
Cumulative Emissions Reduction				
CO_2 (*million metric tons*)	1.15	4.06	65.02	98.62.
NO_X (*thousand tons*)	0.96	3.54	54.27	83.31.
Hg (*tons*)	0.004	0.000	0.274	0.304.
Value of Emissions Reduction				
CO_2 (*2010$ million*) *	5 to 79	16 to 242	278 to 4515	427 to 6951.
NO_X—3% discount rate (*2010$ million*)	0 to 3	1 to 10	14 to 148	22 to 230.
NO_X—7% discount rate (*2010$ million*)	0 to 1	0 to 5	6 to 59	9 to 91.

Parentheses indicate negative (−) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** Values are for 2047.

[49] P.C. Reiss and M.W. White. Household Electricity Demand, Revisited. *Review of Economic Studies* (2005) 72, 853–883.

[50] Alan Sanstad, Notes on the Economics of Household Energy Consumption and Technology Choice. Lawrence Berkeley National Laboratory. 2010. Available online at: *www1.eere.energy.gov/buildings/appliance_standards/pdfs/consumer_ee_theory.pdf*

TABLE V.20—SUMMARY OF RESULTS FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Manufacturer Impacts				
Impact to Industry NPV (*2010$ million, 8.5% discount rate*)	(44.3)–(45.3)	(73.9)–(84.6)	(128.9)–(174.4)	(145.6)–(202.7)
Industry NPV (*% change*)	(7.0)–(7.1)	(11.6)–(13.3)	(20.2)–(27.4)	(22.8)–(31.8)
Consumer Mean LCC Savings (2010$)				
Standard Dishwasher	1	3	41	108
Compact Dishwasher	13	12	52	52
Consumer Median PBP (Years)				
Standard Dishwasher	5.9	11.8	6.6	4.5
Compact Dishwasher	0.3	0.3	2.1	2.1
Distribution of Consumer LCC Impacts				
Standard Dishwasher:				
Net Cost (%)	1.9	18.7	29.7	22.9
No Impact (%)	96.3	64.1	20.0	9.0
Net Benefit (%)	1.7	17.2	50.4	68.1
Compact Dishwasher:				
Net Cost (%)	6.4	6.5	5.4	5.4
No Impact (%)	75.6	75.6	50.2	50.2
Net Benefit (%)	18.0	17.9	44.4	44.4

Parentheses indicate negative (−) values.

DOE first considered TSL 4, which represents the max-tech efficiency levels. TSL 4 would save 1.59 quads of energy and 1.71 trillion gallons of water, amounts DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $5.88 billion, using a discount rate of 7 percent, and $17.45 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 99 Mt of CO_2, 83 thousand tons of NO_X, and 0.304 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $427 million to $6,951 million.

At TSL 4, the average LCC impact is a savings of $108 for standard dishwashers and a savings of $52 for compact dishwashers. The median payback period is 4.5 years for standard dishwashers and 2.1 years for compact dishwashers. The fraction of consumers experiencing an LCC benefit is 68.1 percent for standard dishwashers and 44.4 percent for compact dishwashers. However, 22.9 percent of standard dishwasher consumers and 5.4 percent of compact dishwasher consumers experience an LCC net cost. In addition, DOE is concerned that reducing energy and water use at TSL 4 without implementing significantly higher-cost technologies could result in the loss of certain consumer utility. Specifically, a substantially longer cycle time could be required to maintain cleaning performance. Therefore, DOE is concerned that TSL 4 may result in a loss of consumer utility.

At TSL 4, the projected change in INPV ranges from a decrease of $145.6 million to a decrease of $202.7 million, equivalent to 22.8 percent and 31.8 percent, respectively. Products that meet the efficiency standards specified by this TSL are forecast to represent less than 9 percent of shipments in the year leading up to amended standards. As such, manufacturers would have to redesign nearly all products by the 2018 compliance date to meet demand. Redesigning all units to meet the current max-tech efficiency levels would require considerable capital and product conversion expenditures. At TSL 4, the capital conversion costs total $226.3 million, 2.2 times the industry annual capital expenditure in the year leading up to amended standards. DOE estimates that complete platform redesigns would cost the industry $76.7 million in product conversion costs. These conversion costs largely relate to the research programs required to develop new products that meet the efficiency standards set forth by TSL 4. These costs are equivalent to 1.6 times the industry annual budget for research and development. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 4 would require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. In addition, manufacturers could face a substantial impact on profitability at TSL 4. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 4 would yield impacts closer to the high end of the range of INPV impacts. If the high end of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss of 31.8 percent in INPV to dishwasher manufacturers.

The Secretary concludes that at TSL 4 for residential dishwashers, the benefits of energy savings, water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on some consumers, the potential burden on all consumers from loss of product utility, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3. TSL 3 would save 0.94 quads of energy and 0.56 trillion gallons of water, amounts DOE considers significant. Under TSL 3,

the NPV of consumer benefit would be $1.96 billion, using a discount rate of 7 percent, and $6.51 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 65 Mt of CO_2, 54 thousand tons of NO_X, and 0.274 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $278 million to $4,515 million.

At TSL 3, the average LCC impact is a savings of $41 for standard dishwashers and a savings of $52 for compact dishwashers. The median payback period is 6.6 years for standard dishwashers and 2.1 years for compact dishwashers. The fraction of consumers experiencing an LCC benefit is 50.4 percent for standard dishwashers and 44.4 percent for compact dishwashers. However, 29.7 percent of standard dishwasher consumers and 5.4 percent of compact dishwasher consumers experience an LCC net cost. In addition, DOE is concerned that reducing energy and water use at TSL 3 without implementing significantly higher-cost technologies could result in the loss of certain consumer utility. Specifically, a substantially longer cycle time could be required to maintain cleaning performance. Therefore, DOE is concerned that TSL 3 may result in significant loss of consumer utility.

At TSL 3, the projected change in INPV ranges from a decrease of $128.9 million to a decrease of $174.4 million, decreases of 20.2 percent and 27.4 percent, respectively. Products that meet the efficiency standards specified by this TSL represent less than 20 percent of shipments in the year leading up to amended standards. As such, manufacturers would have to overhaul a significant fraction of products by the 2018 compliance date to meet demand. Redesigning significant component systems or developing entirely new platforms to meet the efficiency levels specified by this TSL would require considerable capital and product conversion expenditures. At TSL 3, the estimated capital conversion costs total $195.4 million, which is 1.9 times the industry annual capital expenditure in the year leading up to amended standards. DOE estimates that the redesigns necessary to meet these standards would cost the industry $66.5 million in product conversion costs. These conversion costs largely relate to the research programs required to develop products that meet the efficiency standards set forth by TSL 3, and are 1.4 times the industry annual budget for research and development in the year leading up to amended standards. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 3 would require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. Because manufacturers are more likely to reduce their margins to maintain a price-competitive product at higher TSLs, DOE expects that TSL 3 would yield impacts closer to the high end of the range of INPV impacts as indicated by the preservation of operating profit markup scenario. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 27.4 percent in INPV to dishwasher manufacturers.

The Secretary concludes that at TSL 3 for residential dishwashers, the benefits of energy savings, water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on some consumers, the potential burden on all consumers from loss of product utility, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 0.07 quads of energy and 0.14 trillion gallons of water, amounts DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.08 billion, using a discount rate of 7 percent, and $0.46 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 4.06 Mt of CO_2, 3.54 thousand tons of NO_X, and 0.000 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $16 million to $242 million.

At TSL 2, the average LCC impact is a savings of $3 for standard dishwashers and a savings of $12 for compact dishwashers. The median payback period is 11.8 years for standard dishwashers and 0.3 years for compact dishwashers. While some consumers experience an LCC increase, this increase is very small in most cases.

At TSL 2, the projected change in INPV ranges from a decrease of $73.9 million to a decrease of $84.6 million, decreases of 11.6 percent and 13.3 percent, respectively. All dishwasher manufacturers currently produce products that meet the efficiency levels specified at TSL 2. As such, this level corresponds more to incremental product conversions rather than the platform redesigns expected for TSL 3 and TSL 4. Products at or above the efficiency levels of TSL 2 represent nearly 64 percent of shipments in the year leading up to amended standards. As such, DOE believes that the scope of the redesigns necessary to meet TSL 2 by the 2013 compliance date greatly mitigates concerns over manufacturers' ability to redesign products and switch over the bulk of production in time to meet the amended standards by the compliance date (operational risk). DOE estimates that the improvements to manufacturing facilities necessary to meet these standards would cost the industry $59.1 million in capital conversion costs, over $130 million less than those incurred at TSL 3, and only 56 percent of the industry budget for capital expenditure in the year leading up to amended standards. TSL 2 will require an estimated 34.9 million in product conversion costs primarily relating to the research and development programs needed to improve upon existing platforms to meet the specified efficiency levels. This represents 72 percent of the industry budget for research and development in the year leading up to amended standards. The substantial reduction in conversion costs over those incurred at higher TSLs, coupled with the fact that many products currently meet the efficiency standards set forth by TSL 2, greatly mitigate the operational risk and impact on INPV.

The Secretary concludes that at TSL 2 for residential dishwashers, the benefits of energy savings, water savings, positive NPV of consumer benefits, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would outweigh the impacts on manufacturers, including the conversion costs that could result in a reduction in INPV for manufacturers.

In addition, the efficiency levels in TSL 2 correspond to the recommended levels in the Joint Petition, which DOE believes sets forth a statement by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) and contains recommendations with respect to an energy conservation standard that are in accordance with 42 U.S.C. 6295(o). Moreover, DOE has encouraged the submission of consensus agreements as a way for diverse interested parties to develop an independent and probative analysis useful in DOE standard setting and to expedite the rulemaking process. DOE also believes that the standard levels recommended in the consensus agreement may increase the likelihood

for regulatory compliance, while decreasing the risk of litigation.

After considering the analysis and the benefits and burdens of TSL 2, the Secretary concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, DOE today adopts TSL 2 for residential dishwashers. The amended energy conservation standards for residential dishwashers, which are a maximum allowable annual energy use and maximum allowable per-cycle water consumption, are shown in Table V.21.

TABLE V.21—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

Product class	Compliance date: May 30, 2013	
	Maximum annual energy use *	Maximum per-cycle water consumption
1. Standard (≥8 place settings plus 6 serving pieces)	307 kWh/year	5.0 gallons/cycle.
2. Compact (<8 place settings plus 6 serving pieces)	222 kWh/year	3.5 gallons/cycle.

*Annual energy use, expressed in kilowatt-hours (kWh) per year, is calculated as: the sum of the annual standby electrical energy in kWh and the product of (1) the representative average dishwasher use cycles per year and (2) the sum of machine electrical energy consumption per cycle in kWh, the total water energy consumption per cycle in kWh, and, for dishwashers having a truncated normal cycle, the drying energy consumption divided by 2 in kWh. A truncated normal cycle is defined as the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse option.

2. Summary of Benefits and Costs (Annualized) of the Standards

The benefits and costs of today's standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value, expressed in 2010$, of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy and water, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[51] The value of the CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions, while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2013–2047. The SCC values, on the other hand, reflect the present value of all future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Table V.22 shows the annualized values for residential dishwashers under TSL 2, expressed in 2010$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $22.3/ton in 2010 (in 2010$), the cost of the standards for dishwashers in today's rule is $46 million per year in increased equipment costs, while the annualized benefits are $53 million per year in reduced equipment operating costs, $3.9 million in CO_2 reductions, and $0.24 million in reduced NO_X emissions. In this case, the net benefit amounts to $11 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $22.3/ton in 2010 (in 2010$), the cost of the standards for dishwashers in today's rule is $44 million per year in increased equipment costs, while the benefits are $66 million per year in reduced operating costs, $3.9 million in CO_2 reductions, and $0.26 million in reduced NO_X emissions. In this case, the net benefit amounts to $27 million per year.

TABLE V.22—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 2) FOR RESIDENTIAL DISHWASHERS SOLD IN 2013–2047

	Discount rate %	Monetized (*million 2010$/year*)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
Benefits				
Operating Cost Savings	7	53	48	59.
	3	66	59	75.

[51] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2012, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table V.22. From the present value, DOE then calculated the fixed annual payment over a 30-year period, starting in 2013, that yields the same present value. This payment includes benefits to consumers which accrue after 2047 from the dishwashers purchased from 2013 to 2047. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are indirectly included as part of incremental equipment costs. The extent of these costs and benefits depends on the projected price trends of dishwashers because consumer demand of dishwashers is a function of dishwasher prices. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined is a steady stream of payments.

TABLE V.22—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 2) FOR RESIDENTIAL DISHWASHERS SOLD IN 2013–2047—Continued

	Discount rate %	Monetized (*million 2010$/year*)		
		Primary estimate *	Low net benefits estimate *	High net benefits estimate *
CO_2 Reduction at $4.9/t **	5	1.1	1.0	1.3.
CO_2 Reduction at $22.3/t **	3	3.9	3.5	4.7.
CO_2 Reduction at $36.5/t **	2.5	6.1	5.4	7.2.
CO_2 Reduction at $67.6/t **	3	12.0	10.8	14.2.
NO_X Reduction at $2,537/t **	7	0.24	0.23	0.27.
	3	0.26	0.24	0.30.
Total†7	7% plus CO_2 range	54 to 65	49 to 59	60 to 73.
	7%	57	52	64.
	3% plus CO_2 range	68 to 78	60 to 70	76 to 89.
	3	70	63	80.
Costs				
Incremental Product Costs	7	46	44	43.
	3	44	41	40.
Total Net Benefits				
Total †	7% plus CO_2 range	8 to 19	6 to 16	17 to 30.
	7	11	8	20.
	3% plus CO_2 range	24 to 35	19 to 29	37 to 49.
	3	27	22	40.

* The results include benefits to consumers which accrue after 2047 from the dishwashers purchased from 2013 through 2047. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The extent of the costs and benefits will depend on the projected price trends of dishwashers, as the consumer demand for dishwashers is a function of dishwasher prices. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices and housing starts from the *AEO2011* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a low decline rate for projected product price trends in the Low Benefits Estimate, and a high decline rate for projected product price trends in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.G.3.

** The CO_2 values represent global values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.6 per ton represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the SCC value calculated at a 3% discount rate, which is $22.3/ton in 2010 (in 2010$). In the rows labeled as "7% plus CO_2 range" and "3% plus CO_2 range," the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

VI. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866 and Executive Order 13563

Section 1(b)(1) of Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that today's standards address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and effecting exchanges of goods and services).

(3) There are external benefits resulting from improved energy efficiency of residential dishwashers that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, DOE has determined that today's regulatory action is an "economically significant regulatory action" under section 3(f)(1) of Executive Order 12866. Accordingly, section 6(a)(3) of the Executive Order requires that DOE prepare a regulatory impact analysis (RIA) on today's rule and that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) review this rule. DOE presented to OIRA for review the draft rule and other documents prepared for this rulemaking, including the RIA, and included these documents in the rulemaking record. The assessments prepared pursuant to Executive Order 12866 can be found in the technical support document for this rulemaking at *http://www1.eere.energy.gov/buildings/appliance_standards/residential/dishwashers.html*.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281, Jan. 21, 2011). EO 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into

account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's direct final rule is consistent with these principles, including the requirement that, to the extent permitted by law, benefits justify costs and that net benefits are maximized.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by 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 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 today's direct final rule and corresponding NOPR pursuant to the RFA and the policies and procedures discussed above. DOE certifies that the standards established in today's direct final rule and proposed in the NOPR, published elsewhere in today's **Federal Register**, will not have a significant impact on a substantial number of small entities. The factual basis for this certification is set forth below. DOE will consider any comments on the certification or economic impacts of the rule in determining whether to proceed with the direct final rule.

For manufacturers of residential dishwashers, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR part 121.The size standards are listed by North American Industry Classification System (NAICS) code and industry description and are available at: *www.sba.gov/sites/default/files/Size_Standards_Table.pdf.* Residential dishwasher manufacturing is classified under NAICS 335228, ''Other Major Household Appliance Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

To estimate the number of small businesses which could be impacted by the amended energy conservation standards, DOE conducted a market survey using all available public information to identify potential small manufacturers. DOE's research included the AHAM membership directory, product databases (CEE, CEC, and ENERGY STAR databases) and individual company Web sites to find potential small business manufacturers. DOE also asked interested parties and industry representatives if they were aware of any other small business manufacturers during manufacturer interviews and at previous DOE public meetings. DOE reviewed all publicly available data and contacted various companies, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential dishwashers. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign owned and operated.

Almost half of residential dishwashers are currently manufactured in the United States by one corporation that accounts for approximately 49 percent of the total market. Together, this manufacturer and 3 other manufacturers that do not meet the definition of a small business manufacturer comprise 99 percent of the residential dishwasher market. The small portion of the remaining residential dishwasher market (approximately 57,000 shipments) is supplied by a combination of approximately 15 international and domestic companies, all of which have small market shares. These companies are either foreign owned and operated or exceed the SBA's employment threshold for consideration as a small business under the appropriate NAICS code. Therefore, DOE did not identify any small business manufacturers of dishwashers.

Based on the discussion above, DOE certifies that the standards for residential dishwashers set forth in today's rule would not have a significant economic impact on a substantial number of small entities. Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE will transmit this certification to the SBA as required by 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

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

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless

that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

Pursuant to the National Environmental Policy Act (NEPA) of 1969, DOE has determined that today's rule fits within the category of actions included in Categorical Exclusion (CX) B5.1 and otherwise meets the requirements for application of a CX. See 10 CFR Part 1021, App. B, B5.1(b); 1021.410(b) and Appendix B, B(1)–(5). The rule fits within the category of actions because it is a rulemaking that establishes energy conservation standards for consumer products or industrial equipment, and for which none of the exceptions identified in CX B5.1(b) apply. Therefore, DOE has made a CX determination for this rulemaking, and DOE does not need to prepare an Environmental Assessment or Environmental Impact Statement for this rule. DOE's CX determination for this direct final rule is available at *http://cxnepa.energy.gov*.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism.'' 64 FR 43255 (Aug. 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's direct final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

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

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For an amended regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *www.gc.doe.gov*.

DOE has concluded that this direct final rule would likely require expenditures of $100 million or more on the private sector. Such expenditures may include: (1) Investment in research and development and in capital expenditures by dishwasher manufacturers in the years between the direct final rule and the compliance date for the new standards, and (2) incremental additional expenditures by consumers to purchase higher-efficiency residential dishwashers, starting at the compliance date for the applicable standard.

Section 202 of UMRA authorizes a Federal agency to respond to the content requirements of UMRA in any other statement or analysis that accompanies the final rule. 2 U.S.C. 1532(c). The content requirements of section 202(b) of UMRA relevant to a private sector mandate substantially overlap the economic analysis requirements that apply under section 325(o) of EPCA and Executive Order 12866. The **SUPPLEMENTARY INFORMATION** section of the notice of direct final rulemaking and the ''Regulatory Impact Analysis'' section of the TSD for this direct final rule respond to those requirements.

Under section 205 of UMRA, the Department is obligated to identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a written statement under section 202 is required. (2 U.S.C. 1535(a)) DOE is required to select from those alternatives the most cost-effective and least burdensome alternative that achieves the objectives of the rule unless DOE publishes an explanation for doing otherwise, or the selection of such an alternative is inconsistent with law. As required by 42 U.S.C. 6295(g)(1) and (10), and (o), today's direct final rule would establish energy conservation standards for residential dishwashers that are designed to achieve the maximum improvement in energy efficiency that DOE has determined to be both technologically feasible and economically justified. A full discussion of the alternatives considered by DOE is presented in the ''Regulatory Impact Analysis'' section of the TSD for today's direct final rule.

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

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

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

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under 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 direct final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA at OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any 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 concluded that today's regulatory action, which sets forth energy conservation standards for residential dishwashers, is not a significant energy action because the amended standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the direct final rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions. 70 FR 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

M. Congressional Notification

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

VII. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's direct final rule.

List of Subjects

10 CFR Part 429

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

10 CFR Part 430

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

Issued in Washington, DC, on May 11, 2012.

David Danielson,

Assistant Secretary of Energy, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE amends parts 429 and 430, of title 10 of the Code of Federal Regulations, to read 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. In § 429.19 revise paragraph (b)(2) to read as follows:

§ 429.19 Dishwashers.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The estimated annual energy use in kilowatt hours per year (kWh/yr) and the water consumption in gallons per cycle.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 4. In § 430.32 add paragraph (f)(3) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(f) * * *

(3) All dishwashers manufactured on or after May 30, 2013, shall meet the following standard—

(i) Standard size dishwashers shall not exceed 307 kwh/year and 5.0 gallons per cycle.

(ii) Compact size dishwashers shall not exceed 222 kwh/year and 3.5 gallons per cycle.

* * * * *

[FR Doc. 2012–12340 Filed 5–29–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[Docket Number EERE–2011–BT–STD–0060]

RIN 1904–AC64

Energy Conservation Program: Energy Conservation Standards for Residential Dishwashers

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

ACTION: Proposed rule.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential dishwashers. EPCA also requires the U.S. Department of Energy (DOE) to determine whether amended standards would be technologically feasible and economically justified, and would save a significant amount of energy. In this proposed rule, DOE proposes amended energy conservation standards for residential dishwashers identical to those set forth in a direct final rule published elsewhere in today's **Federal Register**. If DOE receives adverse comment and determines that such comment may provide a reasonable basis for withdrawing the direct final rule, DOE will publish a notice withdrawing the final rule and will proceed with this proposed rule.

DATES: DOE will accept comments, data, and information regarding the proposed standards no later than September 17, 2012.

ADDRESSES: See section III, ''Public Participation,'' for details.

Any comments submitted must identify the proposed rule for Energy Conservation Standards for Residential Dishwashers, and provide docket number EERE–2011–BT–STD–0060 and/or regulatory information number (RIN) number 1904–AC64. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

2. *Email: DW-2011-STD-0060@ee.doe.gov*. Include the docket number and/or RIN in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. If possible, please submit all items on a CD. It is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD. It is not necessary to include printed copies.

Docket: The docket is available for review at *regulations.gov,* including **Federal Register** notices, comments, and other supporting documents/materials.

A link to the docket Web page can be found at: *www.regulations.gov/#!docketDetail;D=EERE-2011-BT-STD-0060*.

For further information on how to submit or review public comments or view hard copies of the docket, contact Ms. Brenda Edwards at (202) 586–2945 or email: *Brenda.Edwards@ee.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Witkowski, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–7463, email: *Stephen.Witkowski@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121, (202) 586–7796, email: *Elizabeth.Kohl@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction and Legal Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C. 6291–6309, as codified) established the Energy Conservation Program for Consumer Products Other Than Automobiles,[1] a program covering most major household appliances (collectively referred to as ''covered products''), which includes the residential dishwashers that are the subject of this rulemaking. (42 U.S.C. 6292(a)(6)) EPCA, as amended by the Energy Information and Security Act of 2007 (EISA 2007; Pub. L. 110–140), prescribed the current energy conservation standards for residential dishwashers (42 U.S.C. 6295(g)(10), and directed DOE to publish a final rule no later than January 1, 2015, to determine whether to amend the standards in effect for dishwashers manufactured on or after January 1, 2018. (42 U.S.C. 6295(g)(10)(B)(i))

EISA 2007 also amended EPCA, in relevant part, to grant DOE authority DOE to issue a final rule (hereinafter referred to as a ''direct final rule'') establishing an energy conservation standard for a covered product on receipt of a statement submitted jointly by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) as determined by the Secretary, that contains recommendations with respect to an energy conservation standard that are in accordance with the provisions of 42 U.S.C. 6295(o). EPCA also requires that a notice of proposed rulemaking (NOPR) that proposes an identical energy conservation standard be published simultaneously with the direct final rule, and DOE must provide a public comment period of at least 110 days. (42 U.S.C. 6295(p)(4)) Not later than 120 days after issuance of the direct final rule, if one or more adverse comments or an alternative joint recommendation are received relating to the direct final rule, the Secretary must determine whether the comments or alternative recommendation may provide a reasonable basis for withdrawal under 42 U.S.C. 6295(o) or other applicable law. If the Secretary makes such a determination, DOE must withdraw the direct final rule and proceed with the simultaneously published NOPR. DOE must also publish in the **Federal Register** the reason why the direct final rule was withdrawn. *Id.*

On July 30, 2010, DOE received the ''Agreement on Minimum Federal Efficiency Standards, Smart Appliances, Federal Incentives and Related Matters for Specified Appliances'' (hereinafter, the ''Joint Petition''),[2] a comment submitted by groups representing manufacturers (the Association of Home Appliance Manufacturers (AHAM), Whirlpool Corporation (Whirlpool), General Electric Company (GE), Electrolux, LG Electronics, Inc. (LG),

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

[2] DOE Docket No. EERE–2011–BT–STD–0060, Comment 1.

BSH Home Appliances (BSH), Alliance Laundry Systems (ALS), Viking Range, Sub-Zero Wolf, Friedrich A/C, U–Line, Samsung, Sharp Electronics, Miele, Heat Controller, AGA Marvel, Brown Stove, Haier, Fagor America, Airwell Group, Arcelik, Fisher & Paykel, Scotsman Ice, Indesit, Kuppersbusch, Kelon, and DeLonghi); energy and environmental advocates (American Council for an Energy Efficient Economy (ACEEE), Appliance Standards Awareness Project (ASAP), Natural Resources Defense Council (NRDC), Alliance to Save Energy (ASE), Alliance for Water Efficiency (AWE), Northwest Power and Conservation Council (NPCC), and Northeast Energy Efficiency Partnerships (NEEP)); and consumer groups (Consumer Federation of America (CFA) and the National Consumer Law Center (NCLC)) (collectively, the ''Joint Petitioners''). The Joint Petitioners recommended specific energy conservation standards for residential dishwashers that they believed would satisfy the EPCA requirements in 42 U.S.C. 6295(o). Earthjustice submitted a comment affirming its support for the Joint Petition.[3]

DOE has considered the recommended energy conservation standards and believes that they meet the EPCA requirements for issuance of a direct final rule. As a result, DOE has published a direct final rule establishing energy conservation standards for dishwashers elsewhere in today's **Federal Register**. If DOE receives adverse comments that may provide a reasonable basis for withdrawal and withdraws the direct final rule, DOE will consider those comments and any other comments received in determining how to proceed with today's proposed rule.

For further background information on these proposed standards and the supporting analyses, please see the direct final rule published elsewhere in today's **Federal Register**. That document includes additional discussion on the EPCA requirements for promulgation of energy conservation standards, the current standards for residential dishwashers, and the history of the standards rulemakings establishing such standards, as well as information on the test procedures used to measure the energy efficiency of dishwashers. The document also contains an in-depth discussion of the analyses conducted in support of this rulemaking, the methodologies DOE used in conducting those analyses, and the analytical results.

II. Proposed Standards

When considering proposed standards, the new or amended energy conservation standard that DOE adopts for any type (or class) of covered product shall be designed to achieve the maximum improvement in energy efficiency that DOE determines is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)) In determining whether a standard is economically justified, DOE must determine whether the benefits of the standard exceed its burdens, considering to the greatest extent practicable the seven statutory factors set forth in EPCA. (42 U.S.C. 6295(o)(2)(B)(i)) The new or amended standard must also result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B))

The Department considered the impacts of standards at each trial standard level (TSL) considered by DOE, beginning with maximum technologically feasible level, to determine whether that level was economically justified. Where the max-tech level was not economically justified, DOE then considered the next most efficient level and undertook the same evaluation until it reached the highest efficiency level that is both technologically feasible and economically justified and saves a significant amount of energy.

To aid the reader as DOE discusses the benefits and burdens of each TSL, DOE has included tables that present a summary of the results of DOE's quantitative analysis for each TSL. In addition to the quantitative results presented in the tables, DOE also considers other burdens and benefits that affect economic justification. These include the impacts on identifiable subgroups of consumers, such as low-income households and seniors, who may be disproportionately affected by a national standard. Section V.B.1.b of the direct final rule published elsewhere in today's **Federal Register** presents the estimated impacts of each TSL for these subgroups.

A. Benefits and Burdens of TSLs Considered for Dishwashers

Table II.1 and Table II.2 present a summary of the quantitative impacts estimated for each TSL for dishwashers. The efficiency levels contained in each TSL are described in section V.A of the direct final rule.

TABLE II.1—SUMMARY OF RESULTS FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS: NATIONAL IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
National Energy Savings (*quads*)	0.02	0.07	0.94	1.59
National Water Savings (*trillion gal.*)	0.01	0.14	0.56	1.71
Net Present Value (2010$ billion):				
3% discount rate	0.12	0.46	6.51	17.45
7% discount rate	0.03	0.08	1.96	5.88
Cumulative Emissions Reduction:				
CO_2 (*million metric tons*)	1.15	4.06	65.02	98.62
NO_X (*thousand tons*)	0.96	3.54	54.27	83.31
Hg (*tons*)	0.004	0.000	0.274	0.304
Value of Emissions Reduction:				
CO_2 (*2010$ million*) *	5 to 79	16 to 242	278 to 4515	427 to 6951
NO_X − 3% discount rate (*2010$ million*)	0 to 3	1 to 10	14 to 148	22 to 230
NO_X − 7% discount rate (*2010$ million*)	0 to 1	0 to 5	6 to 59	9 to 91

Parentheses indicate negative (−) values.
* Range of the economic value of CO_2 reductions is based on estimates of the global benefit of reduced CO_2 emissions.
** Values are for 2047.

[3] DOE Docket No. EERE–2011–BT–STD–0060, Comment 2.

TABLE II.2—SUMMARY OF RESULTS FOR RESIDENTIAL DISHWASHER TRIAL STANDARD LEVELS: CONSUMER AND MANUFACTURER IMPACTS

Category	TSL 1	TSL 2	TSL 3	TSL 4
Manufacturer Impacts				
Impact to Industry NPV (*2010$ million, 8.5% discount rate*)	(44.3)–(45.3)	(73.9)–(84.6)	(128.9)–(174.4)	(145.6)–(202.7)
Industry NPV (*% change*)	(7.0)–(7.1)	(11.6)–(13.3)	(20.2)–(27.4)	(22.8)–(31.8)
Consumer Mean LCC Savings (2010$)				
Standard Dishwasher	1	3	41	108
Compact Dishwasher	13	12	52	52
Consumer Median PBP (years)				
Standard Dishwasher	5.9	11.8	6.6	4.5
Compact Dishwasher	0.3	0.3	2.1	2.1
Distribution of Consumer LCC Impacts				
Standard Dishwasher:				
Net Cost (%)	1.9	18.7	29.7	22.9
No Impact (%)	96.3	64.1	20.0	9.0
Net Benefit (%)	1.7	17.2	50.4	68.1
Compact Dishwasher:				
Net Cost (%)	6.4	6.5	5.4	5.4
No Impact (%)	75.6	75.6	50.2	50.2
Net Benefit (%)	18.0	17.9	44.4	44.4

Parentheses indicate negative (−) values.

DOE first considered TSL 4, which represents the max-tech efficiency levels. TSL 4 would save 1.59 quads of energy and 1.71 trillion gallons of water, amounts DOE considers significant. Under TSL 4, the NPV of consumer benefit would be $5.88 billion, using a discount rate of 7 percent, and $17.45 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 4 are 99 Mt of CO_2, 83 thousand tons of NO_X, and 0.304 tons of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 4 ranges from $427 million to $6,951 million. Total generating capacity in 2047 is estimated to decrease by 0.800 GW under TSL 4.

At TSL 4, the average LCC impact is a savings of $108 for standard dishwashers and a savings of $52 for compact dishwashers. The median payback period is 4.5 years for standard dishwashers and 2.1 years for compact dishwashers. The fraction of consumers experiencing an LCC benefit is 68.1 percent for standard dishwashers and 44.4 percent for compact dishwashers. However, 22.9 percent of standard dishwasher consumers and 5.4 percent of compact dishwasher consumers experience an LCC net cost. In addition, DOE is concerned that reducing energy and water use at TSL 4 without implementing significantly higher-cost technologies could result in the loss of certain consumer utility. Specifically, a substantially longer cycle time could be required to maintain cleaning performance. Because it is uncertain how greatly consumers value short cycle times, DOE is concerned that TSL 4 may result in significant loss of consumer utility.

At TSL 4, the projected change in INPV ranges from a decrease of $145.6 million to a decrease of $202.7 million, equivalent to 22.8 percent and 31.8 percent, respectively. Current products that meet efficiency standards specified by this TSL represent less than 9 percent of shipments in the year leading up to amended standards; thus, manufacturers would have to redesign nearly all products by the 2018 compliance date to meet demand. Redesigning all units to meet the current max-tech efficiency levels would require considerable capital and product conversion expenditures. At TSL 4, the capital conversion costs total $226.3 million, 2.23 times the industry annual capital expenditure in the year leading up to amended standards. DOE estimates that complete platform redesigns would cost the industry $76.7 million in product conversion costs. These conversion costs largely relate to the research programs required to develop products that meet the efficiency standards set forth by TSL 4, and represent 164.5 percent of the industry annual budget for research and development. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 4 would require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. In addition, manufacturers could face a substantial impact on profitability at TSL 4. Because manufacturers earn a premium for ENERGY STAR products and additional profit for products that exceed the ENERGY STAR level, collapsing the market to one commodity product makes it unlikely that manufacturers could maintain their base-case profitability on these products after compliance with the standards is required. As a result, DOE expects that TSL 4 would yield impacts closer to the high end of the range of INPV impacts. If the high end of the range of impacts is reached, as DOE expects, TSL 4 could result in a net loss of 31.8 percent in INPV to dishwasher manufacturers.

The Secretary concludes that at TSL 4 for residential dishwashers, the benefits of energy savings, water savings, positive NPV of consumer benefits, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on some consumers, the potential burden on all consumers from loss of product utility, and the impacts on manufacturers, including the conversion costs and profit margin

impacts that could result in a large reduction in INPV. Consequently, the Secretary has concluded that TSL 4 is not economically justified.

DOE then considered TSL 3. TSL 3 would save 0.94 quads of energy and 0.56 trillion gallons of water, amounts DOE considers significant. Under TSL 3, the NPV of consumer benefit would be $1.96 billion, using a discount rate of 7 percent, and $6.51 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 3 are 65 Mt of CO_2, 54 thousand tons of NO_X, and 0.274 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 3 ranges from $278 million to $4,515 million. Total generating capacity in 2047 is estimated to decrease by 0.719 GW under TSL 3.

At TSL 3, the average LCC impact is a savings of $41 for standard dishwashers and a savings of $52 for compact dishwashers. The median payback period is 6.6 years for standard dishwashers and 2.1 years for compact dishwashers. The fraction of consumers experiencing an LCC benefit is 50.4 percent for standard dishwashers and 44.4 percent for compact dishwashers. However, 29.7 percent of standard dishwasher consumers and 5.4 percent of compact dishwasher consumers experience an LCC net cost. In addition, DOE is concerned that reducing energy and water use at TSL 3 without implementing significantly higher-cost technologies could result in the loss of certain consumer utility. Specifically, a substantially longer cycle time could be required to maintain cleaning performance. Because it is uncertain how greatly consumers value short cycle times, DOE is concerned that TSL 3 may result in significant loss of consumer utility.

At TSL 3, the projected change in INPV ranges from a decrease of $128.9 million to a decrease of $174.4 million, decreases of 20.2 percent and 27.4 percent, respectively. Current products that meet efficiency standards specified by this TSL represent less than 20 percent of shipments in the year leading up to amended standards; thus, manufacturers would have to overhaul a significant fraction of products by the 2018 compliance date to meet demand. Redesigning significant component systems or developing new platforms entirely to meet the efficiency levels specified by this TSL would require considerable capital and product conversion expenditures. At TSL 3, the estimated capital conversion costs total $195.4 million, which is 1.93 times the industry annual capital expenditure in the year leading up to amended standards. DOE estimates that the redesigns necessary to meet these standards would cost the industry $66.5 million in product conversion costs. These conversion costs largely relate to the research programs required to develop products that meet the efficiency standards set forth by TSL 3, and represent 142.6 percent of the industry annual budget for research and development in the year leading up to amended standards. As such, the conversion costs associated with the changes in products and manufacturing facilities required at TSL 3 would require significant use of manufacturers' financial reserves (manufacturer capital pools), impacting other areas of business that compete for these resources and significantly reducing INPV. In addition, manufacturers could face a substantial impact on profitability at TSL 3. Because manufacturers earn a premium for ENERGY STAR products and additional profit for products that exceed the ENERGY STAR level, collapsing the market to one commodity product makes it unlikely that manufacturers could maintain their base-case profitability on these products after compliance with the standards is required. As a result, DOE expects that TSL 3 would yield impacts closer to the high end of the range of INPV impacts. If the high end of the range of impacts is reached, as DOE expects, TSL 3 could result in a net loss of 27.4 percent in INPV to dishwasher manufacturers.

The Secretary concludes that at TSL 3 for residential dishwashers, the benefits of energy savings, water savings, positive NPV of consumer benefits, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would be outweighed by the economic burden on some consumers, the potential burden on all consumers from loss of product utility, and the impacts on manufacturers, including the conversion costs and profit margin impacts that could result in a large reduction in INPV. Consequently, the Secretary has concluded that TSL 3 is not economically justified.

DOE then considered TSL 2. TSL 2 would save 0.07 quads of energy and 0.14 trillion gallons of water, amounts DOE considers significant. Under TSL 2, the NPV of consumer benefit would be $0.08 billion, using a discount rate of 7 percent, and $0.46 billion, using a discount rate of 3 percent.

The cumulative emissions reductions at TSL 2 are 4.06 Mt of CO_2, 3.54 thousand tons of NO_X, and 0.000 ton of Hg. The estimated monetary value of the CO_2 emissions reductions at TSL 2 ranges from $16 million to $242 million. Total generating capacity in 2047 is estimated to decrease by 0.001 GW under TSL 2.

At TSL 2, the average LCC impact is a savings of $3 for standard dishwashers and a savings of $12 for compact dishwashers. The median payback period is 11.8 years for standard dishwashers and 0.3 years for compact dishwashers. While some consumers experience an LCC increase, this increase is very small in most cases.

At TSL 2, the projected change in INPV ranges from a decrease of $73.9 million to a decrease of $84.6 million, decreases of 11.6 percent and 13.3 percent, respectively. All dishwasher manufacturers currently produce products that meet the efficiency levels specified at TSL 2. As such, this level corresponds more to incremental product conversions rather than the platform redesigns expected for TSL 3 and TSL 4. Products at or above the efficiency levels of TSL 2 represent over 63 percent of shipments in the year leading up to amended standards. As such, DOE believes that the scope of the redesigns necessary to meet TSL 2 by the 2013 compliance date greatly mitigates concerns over manufacturers' ability to redesign products and switch over the bulk of production in time to meet the amended standards by the compliance date (operational risk). DOE estimates that the improvements to manufacturing facilities necessary to meet these standards would cost the industry $59.1 million in capital conversion costs, over $130 million less than those incurred at TSL 3, and only 55.7 percent of the industry budget for capital expenditure in the year leading up to amended standards. TSL 2 will require an estimated 34.9 million in product conversion costs primarily relating to the research and development programs needed to improve upon existing platforms to meet the specified efficiency levels. This represents 71.6 percent of the industry budget for research and development in the year leading up to amended standards. The substantial reduction in conversion costs over those incurred at higher TSLs, coupled with the fact that many products currently meet the efficiency standards set forth by TSL 2, greatly mitigate the operational risk and impact on INPV.

The Secretary concludes that at TSL 2 for residential dishwashers, the benefits of energy savings, water savings, positive NPV of consumer benefits, generating capacity reductions, emission reductions, and the estimated monetary value of the CO_2 emissions reductions would outweigh the impacts on manufacturers, including the

conversion costs that could result in a reduction in INPV for manufacturers.

In addition, the efficiency levels in TSL 2 correspond to the recommended levels in the Joint Petition, which DOE believes sets forth a statement by interested persons that are fairly representative of relevant points of view (including representatives of manufacturers of covered products, States, and efficiency advocates) and contains recommendations with respect to an energy conservation standard that are in accordance with 42 U.S.C. 6295(o). Moreover, DOE has encouraged the submission of consensus agreements as a way for diverse interested parties to develop an independent and probative analysis useful in DOE standard setting and to expedite the rulemaking process. DOE also believes that the standard levels recommended in the consensus agreement may increase the likelihood for regulatory compliance, while decreasing the risk of litigation.

After considering the analysis and the benefits and burdens of TSL 2, the Secretary concludes that this TSL will offer the maximum improvement in efficiency that is technologically feasible and economically justified, and will result in the significant conservation of energy. Therefore, DOE proposes to adopt TSL 2 for residential dishwashers. The proposed amended energy conservation standards for residential dishwashers, which are a maximum allowable annual energy use and maximum allowable per-cycle water consumption, are shown in Table II.3.

TABLE II.3—AMENDED ENERGY CONSERVATION STANDARDS FOR RESIDENTIAL DISHWASHERS

Product class	Compliance date: May 30, 2013	
	Maximum annual energy use *	Maximum per-cycle water consumption
1. Standard (≥8 place settings plus 6 serving pieces)	307 kWh/year	5.0 gallons/cycle.
2. Compact (<8 place settings plus 6 serving pieces)	222 kWh/year	3.5 gallons/cycle.

* Annual energy use, expressed in kilowatt-hours (kWh) per year, is calculated as: The sum of the annual standby electrical energy in kWh and the product of (1) the representative average dishwasher use cycles per year and (2) the sum of machine electrical energy consumption per cycle in kWh, the total water energy consumption per cycle in kWh, and, for dishwashers having a truncated normal cycle, the drying energy consumption divided by 2 in kWh. A truncated normal cycle is defined as the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse option.

B. Summary of Benefits and Costs (Annualized) of the Standards

The benefits and costs of today's standards can also be expressed in terms of annualized values. The annualized monetary values are the sum of (1) the annualized national economic value, expressed in 2010$, of the benefits from operating products that meet the proposed standards (consisting primarily of operating cost savings from using less energy and water, minus increases in product purchase costs, which is another way of representing consumer NPV), and (2) the monetary value of the benefits of emission reductions, including CO_2 emission reductions.[4] The value of the CO_2 reductions, otherwise known as the Social Cost of Carbon (SCC), is calculated using a range of values per metric ton of CO_2 developed by a recent interagency process.

Although combining the values of operating savings and CO_2 reductions provides a useful perspective, two issues should be considered. First, the national operating savings are domestic U.S. consumer monetary savings that occur as a result of market transactions while the value of CO_2 reductions is based on a global value. Second, the assessments of operating cost savings and SCC are performed with different methods that use quite different time frames for analysis. The national operating cost savings is measured for the lifetime of products shipped in 2013–2047. The SCC values, on the other hand, reflect the present value of all future climate-related impacts resulting from the emission of one ton of carbon dioxide in each year. These impacts continue well beyond 2100.

Table II.4 shows the annualized values for residential dishwashers under TSL 2, expressed in 2010$. The results under the primary estimate are as follows. Using a 7-percent discount rate for benefits and costs other than CO_2 reductions, for which DOE used a 3-percent discount rate along with the SCC series corresponding to a value of $22.3/ton in 2010 (in 2010$), the cost of the standards for dishwashers in today's rule is $46 million per year in increased equipment costs, while the annualized benefits are $53 million per year in reduced equipment operating costs, $3.9 million in CO_2 reductions, and $0.24 million in reduced NO_X emissions. In this case, the net benefit amounts to $11 million per year. Using a 3-percent discount rate for all benefits and costs and the SCC series corresponding to a value of $22.3/ton in 2010 (in 2010$), the cost of the standards for dishwashers in today's rule is $44 million per year in increased equipment costs, while the benefits are $66 million per year in reduced operating costs, $3.9 million in CO_2 reductions, and $0.26 million in reduced NO_X emissions. In this case, the net benefit amounts to $27 million per year.

[4] DOE used a two-step calculation process to convert the time-series of costs and benefits into annualized values. First, DOE calculated a present value in 2011, the year used for discounting the NPV of total consumer costs and savings, for the time-series of costs and benefits using discount rates of 3 and 7 percent for all costs and benefits except for the value of CO_2 reductions. For the latter, DOE used a range of discount rates, as shown in Table II.4. From the present value, DOE then calculated the fixed annual payment over a 30-year period that yields the same present value. The fixed annual payment is the annualized value. Although DOE calculated annualized values, this does not imply that the time-series of cost and benefits from which the annualized values were determined would be a steady stream of payments.

TABLE II.4—ANNUALIZED BENEFITS AND COSTS OF AMENDED STANDARDS (TSL 2) FOR RESIDENTIAL DISHWASHERS SOLD IN 2013–2047

	Discount rate	Monetized (*million 2010$/year*)		
		Primary estimate*	Low net benefits estimate*	High net benefits estimate*
Benefits				
Operating Cost Savings	7%	53	48	59
	3%	66	59	75
CO_2 Reduction at $4.9/t**	5%	1.1	1.0	1.3
CO_2 Reduction at $22.3/t**	3%	3.9	3.5	4.7
CO_2 Reduction at $36.5/t**	2.5%	6.1	5.4	7.2
CO_2 Reduction at $67.6/t**	3%	12.0	10.8	14.2
NO_X Reduction at $2,537/t**	7%	0.24	0.23	0.27
	3%	0.26	0.24	0.30
Total†	7% plus CO_2 range	54 to 65	49 to 59	60 to 73
	7%	57	52	64
	3% plus CO_2 range	68 to 78	60 to 70	76 to 89
	3%	70	63	80
Costs				
Incremental Product Costs	7%	46	44	43
	3%	44	41	40
Total Net Benefits				
Total†	7% plus CO_2 range	8 to 19	6 to 16	17 to 30
	7%	11	8	20
	3% plus CO_2 range	24 to 35	19 to 29	37 to 49
	3%	27	22	40

* The results include benefits to consumers which accrue after 2047 from the dishwashers purchased from 2013 through 2047. Costs incurred by manufacturers, some of which may be incurred prior to 2013 in preparation for the rule, are not directly included, but are indirectly included as part of incremental equipment costs. The extent of the costs and benefits will depend on the projected price trends of dishwashers, as the consumer demand for dishwashers is a function of dishwasher prices. The Primary, Low Benefits, and High Benefits Estimates utilize forecasts of energy prices and housing starts from the *AEO2011* Reference case, Low Estimate, and High Estimate, respectively. In addition, incremental product costs reflect a medium decline rate for projected product price trends in the Primary Estimate, a low decline rate for projected product price trends in the Low Benefits Estimate, and a high decline rate for projected product price trends in the High Benefits Estimate. The methods used to derive projected price trends are explained in section IV.G.3 of the direct final rule.

** The CO_2 values represent global values (in 2010$) of the social cost of CO_2 emissions in 2010 under several scenarios. The values of $4.9, $22.3, and $36.5 per ton are the averages of SCC distributions calculated using 5%, 3%, and 2.5% discount rates, respectively. The value of $67.6 per ton represents the 95th percentile of the SCC distribution calculated using a 3% discount rate. The value for NO_X (in 2010$) is the average of the low and high values used in DOE's analysis.

† Total Benefits for both the 3% and 7% cases are derived using the SCC value calculated at a 3% discount rate, which is $22.3/ton in 2010 (in 2010$). In the rows labeled as ''7% plus CO_2 range'' and ''3% plus CO_2 range,'' the operating cost and NO_X benefits are calculated using the labeled discount rate, and those values are added to the full range of CO_2 values.

III. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule until the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

Submitting comments via regulations.gov. The 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 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 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 below.

DOE processes submissions made through 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 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, or mail also will be posted to 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. Email submissions are preferred. If you submit via mail or hand delivery/courier, please provide all items on a CD, if feasible. It is not necessary to submit printed copies. No facsimiles (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, that are written in English, and that 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. According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit 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. Public Meeting

If DOE withdraws the direct final rule published elsewhere in today's **Federal Register** pursuant to 42 U.S.C. 6295(p)(4)(C), DOE will hold a public meeting to allow for additional comment on this proposed rule. DOE will publish notice of any meeting in the **Federal Register**.

IV. Procedural Issues and Regulatory Review

The regulatory reviews conducted for this proposed rule are identical to those conducted for the direct final rule published elsewhere in today's **Federal Register**. Please see the direct final rule for further details.

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of today's proposed rule.

List of Subjects

10 CFR Part 429

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

10 CFR Part 430

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

Issued in Washington, DC, on May 11, 2012.

David Danielson,

Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend parts 429 and 430 of title 10 of the Code of Federal Regulations, as set forth below:

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

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

Authority: 42 U.S.C. 6291–6317.

2. In § 429.19 revise paragraph (b)(2) to read as follows:

§ 429.19 Dishwashers.

* * * * *

(b) * * *

(2) Pursuant to § 429.12(b)(13), a certification report shall include the following public product-specific information: The estimated annual energy use in kilowatt hours per year (kWh/yr) and the water consumption in gallons per cycle.

* * * * *

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

4. In § 430.32 add paragraph (f)(3) to read as follows:

§ 430.32 Energy and water conservation standards and their effective dates.

* * * * *

(f) * * *

(3) All dishwashers manufactured on or after May 30, 2013, shall meet the following standard—

(i) Standard size dishwashers shall not exceed 307 kwh/year and 5.0 gallons per cycle.

(ii) Compact size dishwashers shall not exceed 222 kwh/year and 3.5 gallons per cycle.

* * * * *

[FR Doc. 2012–12338 Filed 5–29–12; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 104 May 30, 2012

Part III

Department of Housing and Urban Development

Consolidated Delegation of Authority for the Office of Community Planning and Development; Order of Succession for the Office of Community Planning and Development; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5642–D–01]

Consolidated Delegation of Authority for the Office of Community Planning and Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice updates, clarifies, and consolidates delegations of authority from the Secretary to the Assistant Secretary for Community Planning and Development, the General Deputy Assistant Secretary for Community Planning and Development, and the Deputy Assistant Secretary for Special Needs Programs.

DATES: *Effective Date:* May 16, 2012.

FOR FURTHER INFORMATION CONTACT: David H. Enzel, Director, Office of Technical Assistance and Management, Department of Housing and Urban Development, 451 7th Street SW., Room 7228, Washington, DC 20410–7000; telephone number 202–402–5557. (This is not a toll-free number.) For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Relay Service number at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Today's **Federal Register** notice updates, clarifies, and consolidates into one notice the authority delegated by the Secretary to the Assistant Secretary for Community Planning and Development, the General Deputy Assistant Secretary for Community Planning and Development, and the Deputy Assistant Secretary for Special Needs Programs. Clarification of program authorities under existing CPD delegations includes the Neighborhood Stabilization Programs, Community Development Block Grant (CDBG) disaster recovery grants, and homeless assistance programs under the McKinney-Vento Homeless Assistance Act. This notice supersedes all previous delegations to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development, including the delegation published on October 18, 2011 (76 FR 64362). Published elsewhere in today's **Federal Register** is the order of succession for the Office of Community Planning and Development.

Section A. Authority Delegated

Except as provided in Section B, the Secretary of HUD delegates to the Assistant Secretary for Community Planning and Development, the General Deputy Assistant Secretary for Community Planning and Development, and the Deputy Assistant Secretary for Special Needs Programs the authority of the Secretary with respect to the programs and matters listed below in this Section A. Only the Assistant Secretary is delegated the authority to issue or waive regulations.

1. The AIDS Housing Opportunity Act, Title VIII, Subtitle D of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, 104 Stat. 4079 (1990) (codified as amended at 42 U.S.C. 12901–12912); 24 CFR part 574;

2. The Base Closure, Base Closure Community Redevelopment and Homeless Assistance Act of 1994, Public Law 103–421, 108 Stat. 4346 (codified as amended at 10 U.S.C. 2687 note); 24 CFR part 586;

3. Capacity Building for Community Development and Affordable Housing Grants, Section 4 of the HUD Demonstration Act of 1993, Public Law 103–120, 107 Stat. 1148 (codified as amended at 42 U.S.C. 9816 note);

4. Comprehensive Housing Affordability Strategies (CHAS), Title I of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, 104 Stat. 4079 (1990) (codified as amended at 42 U.S.C. 12701 *et seq.*); 24 CFR part 91;

5. Economic Development Initiative grants, as provided for in annual HUD appropriations acts (*e.g.,* the Consolidated Appropriations Resolution, Fiscal Year 2003, Pub. L. 108–7, 117 Stat. 11 (2003));

6. Urban Empowerment Zones (EZ), as authorized under title 26, subtitle A, chapter 1, subchapter U of the Internal Revenue Code (codified as amended at 26 U.S.C. 1391 *et seq.*); 24 CFR parts 597 and 598;

7. The HOME Investment Partnerships Act, Title II of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, 104 Stat. 4079 (1990) (codified as amended at 42 U.S.C. 12721 *et seq.*); 24 CFR part 92;

8. The Loan Guarantee Recovery Fund under Section 4 of the Church Arson Prevention Act of 1996, Public Law 104–155, 110 Stat. 1392 (codified at 18 U.S.C. 241 note); 24 CFR part 573;

9. Neighborhood Initiatives grants specifically designated in annual HUD appropriations acts (*e.g.,* the Consolidated Appropriations Act 2010, Pub. L. 111–117, 123 Stat. 3034 (2009));

10. The Homelessness Prevention and Rapid Re-Housing Program (HPRP), as authorized under the Homelessness Prevention Fund heading of Division A, Title XII of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115;

11. The Housing Trust Fund (HTF), Section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, added by Section 1131 of Public Law 110–289, 122 Stat. 2654 (codified at 12 U.S.C. 4568);

12. Rural Innovation Fund grants as provided for in annual HUD appropriations act(s) (*e.g.,* the Consolidated Appropriations Act 2010, Pub. L. 111–117, 123 Stat. 3084 (2009));

13. The Tax Credit Assistance Program (TCAP), as authorized under the HOME Investments Partnerships Program heading of Division A, Title XII of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 155, 220–21;

14. The Self-Help Housing Opportunity Program (SHOP) under section 11 of the Housing Opportunity Program Extension Act of 1996, Public Law 104–120, 110 Stat. 834 (codified at 42 U.S.C. 12805 note);

15. Technical Assistance and Capacity Building awards authorized under any program or matter delegated under Section A (e.g., section 107 of the Housing and Community Development Act of 1987, Public Law 100–242, 101 Stat. 1815 (1988)) and as provided for in annual and supplemental HUD appropriations acts (*e.g.,* the Consolidated Appropriations Act 2010, Public Law 111–117, 123 Stat. 3093 (2009));

16. Title I of the Housing and Community Development Act of 1974, Public Law 93–383, 88 Stat. 633 (codified as amended at 42 U.S.C. 5301 *et seq.*); 24 CFR part 570, including the following:

a. The Community Development Block Grant (CDBG) program;

b. The Section 108 loan guarantee program;

c. Economic development grants pursuant to Section 108(q);

d. Neighborhood Stabilization programs under the Housing and Economic Recovery Act of 2008, Public Law 110–289, 122 Stat. 2850; Title XII of Division A of the American Recovery and Reinvestment Act of 2009, Public Law 111–5, 123 Stat. 115; and Section1497 of the Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (codified as amended at 42 U.S.C. 5301 note);

e. CDBG Disaster Recovery Grants as provided for in annual and supplemental HUD appropriations acts; and

f. Appalachian Regional Commission grants pursuant to section 214 of the Appalachian Regional Development Act of 1965, Public Law 89–4, 79 Stat. 5 (codified as amended at 40 U.S.C. 14507) and consistent with the CDBG program authorized under Title I of the Housing and Community Development Act of 1974, Public Law 93–383, 88 Stat. 633 (codified as amended at 42 U.S.C. 5301 *et seq.*).

17. Title IV of the McKinney-Vento Homeless Assistance Act, Public Law 100–77, 101 Stat. 482 (1987) (codified as amended at 42 U.S.C. 11301 *et seq.*), *renamed by* an Act of October 30, 2000, Public Law 106–400, 114 Stat. 1675 (2000), including the following:

a. The Emergency Shelter Grants/ Emergency Solutions Grants program, 24 CFR part 576;

b. The Supportive Housing Program, 24 CFR part 583;

c. The Shelter Plus Care Program, 24 CFR part 582;

d. The Moderate Rehabilitation for Single Room Occupancy program, 24 CFR part 882, Subpart H;

e. The Continuum of Care program; and

f. The Rural Housing Stability Assistance program.

18. Title V of the McKinney-Vento Homeless Assistance Act, Public Law 100–77, 101 Stat. 482 (1987) (codified as amended 42 U.S.C. 11411 *et seq.*), *renamed by* an Act of October 30, 2000, Pub. L. 106–400, 114 Stat. 1675 (2000), 24 CFR part 581.

19. The Veterans Homelessness Prevention Demonstration program, as provided for in annual HUD appropriations act(s) (*e.g.,* Omnibus Appropriations Act, 2009, Pub. L. 111–8, 123 Stat. 524 (2009)).

20. Overall departmental responsibility for compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91–646, 84 Stat. 1894 (1971) (codified as amended at 42 U.S.C. 4601 *et seq.*); 49 CFR part 24 (For departmental programs, only the Assistant Secretary for Community Planning and Development is delegated the authority to exercise the federal agency waiver authority provided under 49 CFR 24.7).

21. Overall departmental responsibility for compliance with the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. 4321–4347), and the related laws and authorities cited in 24 CFR 50.4, including (with regard to the Assistant Secretary for Community Planning and Development) the authority to issue and to waive, or approve exceptions or establish criteria for exceptions from provisions of, 24 CFR parts 50, 51, 55, and 58.

22. Certain Office of Community Planning and Development programs that are no longer authorized for funding (or future funding is not anticipated), but whose administration must continue until all departmental responsibilities are discharged and finally terminated. These programs, as of May 2012, include the following:

a. The Slum Clearance and Urban Renewal program under Title I of the Housing Act of 1949, Public Law 81–171, 63 Stat. 413 and any program which is superseded by, or inactive by reason of Title I of the Housing and Community Development Act of 1974, Public Law 93–383, 88 Stat. 633 (codified as amended at 42 U.S.C. 5316);

b. Area-wide grants, inequities grants, disaster grants and the authority to concur in final approval actions regarding innovative grants under section 107 of Title I of the Housing and Community Development Act of 1974, Public Law 93–383, 88 Stat. 633 (repealed 1981);

c. Urban Development Action grants under Title I of the Housing and Community Development Act of 1974, Public Law 93–383, 88 Stat. 633 (codified as amended at 42 U.S.C. 5318);

d. The Rental Rehabilitation Program, United States Housing Act of 1937, § 17, Public Law 98–181, 97 Stat. 1196 (repealed 1990); 24 CFR part 511;

e. The Section 312 Rehabilitation Loan Program, Housing Act of 1964, § 312, Public Law 88–560, 78 Stat. 769 (codified at 42 U.S.C. 1452(b)); 24 CFR part 510;

f. The Urban Homesteading Program, Housing and Community Development Act of 1974, § 810, Public Law 93–383, 88 Stat. 633 (repealed 1990);

g. Enterprise Zone Program under Title VII of the Housing and Community Development Act of 1987, Public Law 100–242, 101 Stat. 1815 (1988) (codified as amended at 42 U.S.C. 11501 *et seq.*);

h. Grants for urban Empowerment Zones (EZ) as provided for in annual HUD appropriations acts (e.g., Consolidated Appropriations Resolution, Fiscal Year 2003, Public Law 108–7, 117 Stat. 11 (2003));

i. HUD's Homeownership Zone Initiative (HOZ) grants as provided for in section 205 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997, Public Law 104–204, 110 Stat. 2874 (1996) and funded with recaptured Nehemiah grants authorized under Title VI of the Housing and Community Development Act of 1987, Public Law 100–242, 101 Stat. 1815 (1988) (codified at 12 U.S.C. 1715l note);

j. The Innovative Homeless Initiatives Demonstration program under the HUD Demonstration Act of 1993, Public Law 103–120, 107 Stat. 1144;

k. The HOPE for Homeownership of Single-family Housing (HOPE 3) program, Title IV, Subtitle C of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, 104 Stat. 4079 (1990) (codified at 42 U.S.C. 12891);

l. New Communities Program, Section 413 of the Housing and Urban Development Act of 1968, Public Law 90–448, 82 Stat. 476 (repealed 1983), Section 726 of the Housing and Urban Development Act of 1970, Public Law 91–609 (repealed 1983), 84 Stat. 1784, Section 474 of the Housing and Urban-Rural Recovery Act of 1983, Public Law 98–181, 97 Stat. 1237 (codified at 12 U.S.C. 1701g–5b), and any other functions, powers, and duties that may affect the liquidation of the New Communities program;

m. Rural Housing and Economic Development grants specifically designated originally in the Fiscal Year 1998 HUD Appropriations Act, Public Law 105–65, 111 Stat. 1344 and subsequent annual HUD appropriations acts;

n. Renewal Communities (RC), as authorized under title 26, subtitle A, chapter 1, subchapter X of the Internal Revenue Code (codified as amended at 26 U.S.C. 1400E *et seq.*); 24 CFR part 599.

o. The Youthbuild Program, Title IV, Subtitle D of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, 104 Stat. 4079 (1990) (repealed 2006); 24 CFR part 585; and Youthbuild Transfer Act (TA) as authorized under Title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended by the Housing and Community Development Act of 1992, Public Law 102–550, 106 Stat. 3723 (1992) (repealed 2006); and

p. All programs consolidated in the Revolving Fund (Liquidating Programs) established pursuant to Title II of the Independent Offices Appropriations Act, Public Law 98–45, 97 Stat. 223 (1983)(codified as amended at 12 U.S.C. 1701g–5), including all authority of the Secretary with respect to functions, administration, and management of the Revolving Fund (Liquidating Programs). Only the Assistant Secretary is the responsible official for allotments in the Revolving Fund (Liquidating Programs); and

23. Suspensions, and/or limited denial of participations under 2 CFR part 2424 with the concurrence of the

General Counsel, or such other official as may be designated by the General Counsel.

Section B. Authority Excepted

There is excepted from the authority delegated under Section A:

1. The power to sue and be sued;

2. Under Title I of the Housing and Community Development Act of 1974, Public Law 93–383, 88 Stat. 633 (codified as amended at 42 U.S.C. 5301 *et seq.*):

a. The power to administer the Indian Community Development Block Grant program, for which the authority has been delegated to the Assistant Secretary for Public and Indian Housing;

b. The power to administer section 107 programs delegated to the Assistant Secretary for Policy Development and Research;

c. The power to issue obligations for purchase by the Secretary of the Treasury under section 108(g) of the Housing and Community Development Act (42 U.S.C. 5308); and

d. The power and authority of the Secretary with respect to nondiscrimination under section 109 may be exercised only with the advice of the Assistant Secretary for Fair Housing and Equal Opportunity.

3. Under the HOME Investment Partnerships Act, Title II of the Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625, 104 Stat. 4079 (1990) (codified as amended at 42 U.S.C. 12721 *et seq.*), the power to administer grants to Indian tribes, for which the authority has been delegated to the Assistant Secretary for Public and Indian Housing;

4. For programs noted in Section A.22 of this delegation that are no longer authorized for funding:

a. The power to establish interest rates; and

b. The power to issue notes or obligations for purchase by the Secretary of the Treasury; and

Section C. Authority To Redelegate

The Assistant Secretary may not redelegate the authority to issue or waive regulations. The Assistant Secretary, the General Deputy Assistant Secretary for Community Planning and Development, and the Deputy Assistant Secretary for Special Needs Programs are authorized to redelegate to employees of the Department any other authority delegated under Section A. Redelegated authority to CPD Deputy Assistant Secretaries or other CPD program officials does not supersede the authority of the Assistant Secretary as designee of the Secretary.

Section D. Delegations Superseded

This notice supersedes all prior delegations of authority from the Secretary to the Assistant Secretary, the General Deputy Assistant Secretary for Community Planning and Development, and the Deputy Assistant Secretary for Grant Programs.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 16, 2012.

Shaun Donovan,

Secretary of Housing and Urban Development.

[FR Doc. 2012–13093 Filed 5–29–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5642–D–02]

Order of Succession for the Office of Community Planning and Development

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Order of Succession for the Office of Community Planning and Development.

SUMMARY: In this notice, the Secretary of HUD designates the Order of Succession for the Office of Community Planning and Development. This Order of Succession supersedes all prior Orders of Succession for the Assistant Secretary for Community Planning and Development, including the Order of Succession, published on October 18, 2011 at 76 FR 64364.

DATES: *Effective Date:* May 16, 2012.

FOR FURTHER INFORMATION CONTACT: David H. Enzel, Director, Office of Technical Assistance and Management, Department of Housing and Urban Development, 451 7th Street SW., Room 7228, Washington, DC 20410, telephone number 202–402–5557. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION: The Secretary of HUD is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Assistant Secretary for Community Planning and Development when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all prior Orders of Succession for the Office of Community Planning and Development, including the Order of Succession published in the **Federal Register** on October 18, 2011 (76 FR 64364).

Accordingly, the Secretary of HUD designates the following Order of Succession for the Office of Community Planning and Development:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Assistant Secretary for Community Planning and Development, the following officials within the Office of Community Planning and Development are hereby designated to exercise the powers and perform the duties of the Office, including the authority to waive regulations:

(1) Deputy Assistant Secretary for Special Needs Programs;

(2) General Deputy Assistant Secretary for Community Planning and Development;

(3) Deputy Assistant Secretary for Grant Programs;

(4) Deputy Assistant Secretary for Operations;

(5) Deputy Assistant Secretary for Economic Development.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all prior Orders of Succession for the Assistant Secretary for Community Planning and Development, including the notice at 76 FR 64364. (October 18, 2011).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 16, 2012.

Shaun Donovan,

Secretary of Housing and Urban Development.

[FR Doc. 2012–13100 Filed 5–29–12; 8:45 am]

BILLING CODE 4210–67–P

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H.R. 298/P.L. 112–107

To designate the facility of the United States Postal Service located at 500 East Whitestone Boulevard in Cedar Park, Texas, as the "Army Specialist Matthew Troy Morris Post Office Building". (May 15, 2012; 126 Stat. 328)

H.R. 1423/P.L. 112–108

To designate the facility of the United States Postal Service located at 115 4th Avenue Southwest in Ardmore, Oklahoma, as the "Specialist Michael E. Phillips Post Office". (May 15, 2012; 126 Stat. 329)

H.R. 2079/P.L. 112–109

To designate the facility of the United States Postal Service located at 10 Main Street in East Rockaway, New York, as the "John J. Cook Post Office". (May 15, 2012; 126 Stat. 330)

H.R. 2213/P.L. 112–110

To designate the facility of the United States Postal Service located at 801 West Eastport Street in Iuka, Mississippi, as the "Sergeant Jason W. Vaughn Post Office". (May 15, 2012; 126 Stat. 331)

H.R. 2244/P.L. 112–111

To designate the facility of the United States Postal Service located at 67 Castle Street in Geneva, New York, as the "Corporal Steven Blaine Riccione Post Office". (May 15, 2012; 126 Stat. 332)

H.R. 2660/P.L. 112–112

To designate the facility of the United States Postal Service located at 122 North Holderrieth Boulevard in Tomball, Texas, as the "Tomball Veterans Post Office". (May 15, 2012; 126 Stat. 333)

H.R. 2668/P.L. 112–113

Brian A. Terry Memorial Act (May 15, 2012; 126 Stat. 334)

H.R. 2767/P.L. 112–114

To designate the facility of the United States Postal Service located at 8 West Silver Street in Westfield, Massachusetts, as the "William T. Trant Post Office Building". (May 15, 2012; 126 Stat. 336)

H.R. 3004/P.L. 112–115

To designate the facility of the United States Postal Service located at 260 California Drive in Yountville, California, as the "Private First Class Alejandro R. Ruiz Post Office Building". (May 15, 2012; 126 Stat. 337)

H.R. 3246/P.L. 112–116

To designate the facility of the United States Postal Service located at 15455 Manchester Road in Ballwin, Missouri, as the "Specialist Peter J. Navarro Post Office Building". (May 15, 2012; 126 Stat. 338)

H.R. 3247/P.L. 112–117

To designate the facility of the United States Postal Service located at 1100 Town and Country Commons in Chesterfield, Missouri, as the "Lance Corporal Matthew P. Pathenos Post Office Building". (May 15, 2012; 126 Stat. 339)

H.R. 3248/P.L. 112–118

To designate the facility of the United States Postal Service located at 112 South 5th Street in Saint Charles, Missouri, as the "Lance Corporal Drew W. Weaver Post Office Building". (May 15, 2012; 126 Stat. 340)

S. 1302/P.L. 112–119

To authorize the Administrator of General Services to convey a parcel of real property in Tracy, California, to the City of Tracy. (May 15, 2012; 126 Stat. 341)

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